POWER, POLITICS AND PARTICIPATION: 
THE RUSSIAN FEDERATION’S 
NATIONAL MINORITIES AND THEIR 
PARTICIPATORY RIGHTS

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Abstract

Participatory rights are essential in the formulation of effective minority policies, but they are probably the most complex rights to delineate and regulate. Difficulties in implementing participatory rights exist in all countries: there are logistic difficulties in the establishment of effective mechanisms enabling the involvement of the whole spectrum of stakeholders in decision-making. This article reveals obstacles to Russia’s implementation of the Framework Convention for the Protection of National Minorities, with a focus on participatory rights (Article 15). It is argued that Russia does not meet the requirements of Article 15, owing to the fact that the form of participation offered to minorities is devoid of guarantees that it will be ‘effective’. An analysis of the two forms of participation – representation in elected bodies and consultative mechanisms, with a particular reference to National Cultural Autonomy – reveals an over-reliance on informal networks and practices in the management of majority-minority relations. Mechanisms for participation are locked into a system that has features partly originating from the Soviet period and partly from policies introduced by former Russian President Vladimir Putin. The article concludes that international standards on minority participation are unlikely to induce a substantial shift in minority policies in Russia given the international standards’ own flexibility and the Russian leadership’s commitment to its own approach to nationality issues in the context of its plans for a ‘managed democracy’. Despite this, it is argued that international standards should not be dismissed as irrelevant in Russia.

Keywords: Framework Convention for the Protection of National Minorities; minority rights; National Cultural Autonomy Participation; Russia

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1. INTRODUCTION

In Russia, the complexities of the interaction of the majority with a plethora of minority groups, or the ‘national question’\(^1\), is not new. As a pluri-ethnic empire and then Union, the central authorities have been acutely aware of the need to accommodate its numerous minorities as a means to stability. Although some forms of Russification have periodically taken place,\(^2\) overall, Russia has not adopted assimilationist policies,\(^3\) nor has it failed to recognise its minorities. In 1969, the Soviet Union ratified the UN International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)\(^4\) and, in 1973, the International Covenant on Civil and Political Rights (ICCPR)\(^5\) – generating international responsibilities inherited by Russia as the successor State of the Soviet Union. In 1996, the Russian Federation became a member of the Council of Europe and subsequently acceded to the Framework Convention for the Protection of National Minorities (FCNM)\(^6\) and the European Convention on Human Rights (ECHR),\(^7\) both ratified in 1998. Additionally, it has signed, although not ratified, the European Charter for Regional or Minority Languages (ECRML).\(^8\) Yet, there remain obstacles to Russia’s implementation of international standards on the protection of national minorities.

While, as will be seen below, there are multiple sources of international law on the right to participation, this article focuses on the FCNM and its Article 15, which states:

> The Parties shall create the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them.

The focus on the FCNM and the Council of Europe is for two reasons. First, in interviews, when asked general questions on international standards on minority protection,\(^9\) The Parties shall create the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them.

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\(^1\) In Russian the expressions Natsional’nyi Vopros (national question) and Natsional’naya Politika (national policy) are used. The term national’nost’, or ‘nationality’, has the same meaning as ‘ethnicity’.


\(^3\) During the Russian Empire some regions were granted regional autonomy. See Bowring, B., ‘Russian Legislation in the Area of Minority Rights’, in: Protsyk, O. & Harzl, B. (eds.), Managing Diversity in Russia, Routledge, London (forthcoming).


\(^7\) Convention for the Protection of Human Rights and Fundamental Freedoms, 4 November 1950, ETS No. 005, entered into force 3 November 1953.

\(^8\) European Charter for Regional or Minority Languages, adopted 5 November 1992, ETS No. 148, entered into force 1 March 1998.
respondents automatically focused on Council of Europe standards, rather than UN instruments. Indeed, the Council of Europe gives everyone in Russia access to the European Court of Human Rights (ECtHR). Many have seized upon this opportunity: since 1998 there has been an exponential increase in applications to the ECtHR based on claims of ECHR violations, reflecting the appeal of Strasbourg in defending human rights (and the concurrent distrust of Russian courts). In turn, there has been an increase in the direct application of the ECHR in Russian courts. The ECtHR reconfirms the Council of Europe as a supranational institution with the authority to issue binding judgements on human rights in Russia. At the same time, the ECHR has no provisions, nor is there yet a protocol, specifically relating to minority rights. Cases concerning minority rights must be based on provisions such as Article 3 (inhuman and degrading treatment), Article 8 (respect for family and private life) and Article 14 (discrimination in the enjoyment of other specific rights). It provides basic guarantees for vulnerable groups including minorities, which grows with its ever-expanding case-law.

Second, specific guidelines on the issue of participation have been developed by the FCNM’s monitoring body, the Advisory Committee of the FCN (ACFC). Its monitoring has encompassed issues such as political representation, consultative mechanisms and National Cultural Autonomies. The FCNM is legally binding on Russia, although, unlike the ECHR, it does not generate jurisprudence.


12 On the one hand, ICERD is equally binding and its monitoring body, the Committee on the Elimination of Racial Discrimination, has at times referred to the issue of under-representation of minorities in political institutions – for example, with regard to the Roma in Moldova. Concluding Observations (Moldova) CERD/C/MDA/CO/8–9, 6 April 2011, para 16(b). It has also positively judged moves towards increased participation of minorities, thereby endorsing such moves. Klimová-Alexander, I. ‘Effective Participation by Minorities: United Nations Standards and Practice’, in: Weller, M. (ed.), Political Participation of Minorities. A Commentary on International Standards and Practice, Oxford University Press, Oxford, 2010, pp. 286–307, at p. 300. On the other hand, in its last report on Russia, in 2008, its comments were confined to issues of participation of Russia’s indigenous peoples, rather than national minorities in the wider sense. The Committee expressed its concern that none of the Russia’s indigenous peoples (the so-called small-in-number indigenous peoples of the North, Siberia and Far East) were represented at federal parliamentary level, and at the abolition, in 2004, of quotas for indigenous peoples in the legislative bodies of Russia’s territorial entities. Concluding Observations (Russia) CERD/C/RUS/CO/19, 22 September 2008, para. 20.

13 ECtHR’s judgements against Russia in most cases require the payment of sums of money as ‘just satisfaction’, and are subject to enforcement through the Council of Europe’s Committee
While the ACFC has devoted considerable attention to participatory rights, the FCNM’s implementation in Russia is fraught with difficulties.\(^14\) This article argues that the requirements of Article 15 are not met, owing to the fact that the form of participation offered to minorities is devoid of guarantees that it will be ‘effective’. An analysis of the two forms of participation – representation in elected bodies and consultative mechanisms, with a particular reference to National Cultural Autonomy – reveals an over-reliance on informal networks and practices in the management of majority-minority relations. Mechanisms for participation are locked into a system that has features partly originating from the Soviet period, partly from policies introduced by former Russian President Vladimir Putin. This article concludes by arguing that international standards on minority participation are unlikely to induce a substantial shift in minority policies in Russia given the international standards’ own flexibility and the Russian leadership’s commitment to its own approach to nationality issues in the context of its plans for a ‘managed democracy’. Nevertheless, international standards should not be dismissed as irrelevant in Russia.

The article focuses on former President Putin’s\(^15\) policies – as under President Medvedev there has been no significant departure from the direction given by Putin to Russia’s reforms.\(^16\) The article includes data from in-depth interviews carried out in Russia in May, June and October 2010, and February 2011. The interviews were for a larger study on the implementation of the FCNM in Russia, focusing on three minorities as case studies: Tatars, Mordovians and Karelians. The interviews took place in the following cities: Kazan (Republic of Tatarstan), Petrozavodsk (Republic of Karelia), Saransk (Republic of Mordovia), Moscow, St. Petersburg, Voronezh and Tver. Different questions were asked of different groups of respondents, depending on their specialisation. The respondents were affiliated with one of the following categories: civil society (38 respondents),\(^17\) academia (23), media (11), public official (18), school employee (2), and the judiciary (3). In total, 95 people were interviewed – 47 women and

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\(^{14}\) This is despite the growing role of the FCNM monitoring procedures referred to by Craig in her article in this same issue: ‘From Security to Justice? The Development of a More Justice-Oriented Approach to the Realisation of European Minority Rights Standards’.

\(^{15}\) Prime Minister since 2008. In September 2011 Russian President Dmitrii Medvedev announced that he would not seek a second term but that Putin would run again for presidency in the Russian presidential elections of March 2012.


\(^{17}\) Of the civil society respondents, 6 were from National Cultural Autonomies, 11 from minority NGOs, 7 from cultural associations – 3 from Congress of Peoples and 11 from human rights NGO.
The interviews included four interviews with Roma rights activists in order to provide insight on the conditions for public participation of disadvantaged, dispersed minorities. Before analysing the participatory rights of Russia’s national minorities, this article will briefly outline the scope of these rights, and subsequently Russia’s ethnic composition – placing minority rights in the Soviet and post-Soviet political contexts.

1.1. EFFECTIVE PARTICIPATION AS A RIGHT

To assess levels of participation of Russia’s national minorities, one first has to clarify the meaning of ‘participation’ and that of its qualifier ‘effective’. In addition to Article 15 of the FCNM, State obligations in the area of participatory rights arise from Article 27 of the ICCPR, in light of General Comment 23 of the UN Human Rights Committee, stating that the exercise of cultural rights ‘may require […] measures to ensure the effective participation of members of minority communities in decisions which affect them’. In the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities there are four specific references to ‘participation’ in the context of cultural, religious, social, economic and public life, and decision-making affecting minorities. ICERD includes provisions on participation in elections and public affairs (Article 5(c)) and on the right to equal participation in cultural activities (Article 5(e)(6)). The OSCE Lund Recommendations on the Effective Participation of National Minorities in Public Life are also relevant, stating that effective participation might call for a system of self-governance that is ‘based on democratic principles’ and ‘reflect the views of the affected population’ (Point 16).

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18 Most of the interviews were in Russian and excerpts reported in the article were translated into English by the author. In the interests of anonymity the names of most of the respondents are not indicated. Dates and places of the interviews are specified only in case of direct references.


21 The Declaration refers to participation of persons belonging to minorities in cultural, religious, social, economic and public life (Art. 2(2)), in decision-making on the minority to which they belong or the region where they live (Art. 2(3)), and in economic progress and development of their country (Art. 4(5)). Art. 5 adds that national policies and programmes, as well as programmes of cooperation and assistance among States, ‘should be planned and implemented with due regard for the legitimate interests of persons belonging to minorities.’ For UN sources of international law and political participation of minorities, see also Klímová-Alexander, I. op.cit. (note 12).


23 Point 16 states:
Institutions of self-governance, whether non-territorial or territorial, must be based on democratic principles to ensure that they genuinely reflect the views of the affected population.
The exact scope of participatory rights is, however, still evolving. The ACFC, in its Opinions on the FCNM’s implementation in the State Parties to the instrument, has repeatedly used the expression ‘effective participation’ – without, however, providing an actual definition of either ‘effectiveness’ or ‘participation’. The expression ‘effective participation’ is incorporated in Article 15 of the FCNM (‘The Parties shall create the conditions necessary for the effective participation of persons belonging to national minorities [...]’). The adjective ‘effective’, in relation to participation, is also employed, inter alia, in Article 2(2) and 2(3) of the UN Declaration, and the importance of effectiveness is further stressed in the UN Declaration’s Commentary. Effectiveness is linked in the Commentary to the involvement of minorities in all stages of decision-making affecting them – at the local, national and international levels. The expression ‘effective participation’ is further found in the OSCE Lund Recommendations where it is described as an ‘essential component of a peaceful and democratic society’ (Point 1). The ACFC’s Opinions establish a close nexus between ‘effective’ participation and the achievement of full and effective equality. Special measures in the form of affirmative action may be required to achieve real equality, concretely and practically levelling opportunities for minorities and the majority. Finally ‘effectiveness’ means that the voice of minorities should not only be heard but also be taken seriously; and the presence of minorities in consultative and elected bodies has to be matched by their actual influence on decision-making.

The monitoring process is based on country reports submitted, at intervals of five years, by the State Party to the FCNM, data from civil society (shadow reports), and ACFC’s visits to the States. On the basis of this data, the ACFC compiles Opinions, which are followed by Resolutions of the Council of Europe’s Committee of Ministers.


Point 1 states:
Effective participation of national minorities in public life is an essential component of a peaceful and democratic society. Experience in Europe and elsewhere has shown that, in order to promote such participation, governments often need to establish specific arrangements for national minorities. These Recommendations aim to Facilitate the inclusion of minorities within the State and enable minorities to maintain their own identity and characteristics, thereby promoting the good governance and integrity of the State.


Henrard, K., ‘’Participation’, ’Representation’ and ’Autonomy’ in the Lund Recommendations and the Reflections in the Supervision of the FCNM and Several Human Rights Conventions’, *International Journal on Minority and Group Rights*, Vol. 12, 2005, pp. 133–168. Similarly, the Lund Recommendations state that guarantees should be provided for minorities to have an ‘effective voice’ (Point 6).

While minorities have a particular right to effective participation in matters that affect them, such as linguistic and education policies, it is now recognised that such rights should extend to other areas, such as social and economic ones; this signals that the State also ‘belongs to’ minorities, paving the way for their integration and, with it, for internal stability. International standards afford States wide margins of discretion in developing participatory mechanisms for minorities. Minimum standards involve two forms of participation: political representation in elected bodies and consultation (through consultative mechanisms). It is not an exclusive choice between the two. Rather, the two should act in unison and be mutually supporting.

1.2. CENTRALLY-DEFINED MINORITY POLICIES: THEN AND NOW

An overview of Russia’s ethnic composition and the history of its majority-minorities relations is now needed. The Russian Federation has over 170 minorities – or ‘nationalities’ (natsional’nosti), as they are referred to in Russia. Minority populations as diverse as Finns, Turkmen and Koreans, with a corresponding plurality of cultures, traditions and languages, populate today’s Russia. Approximately 20 percent of the population of Russia is made up of non-Russians: 3.8 percent Tatars, 2 percent Ukrainians, 1.2 percent Bashkirs, 1.1 percent Chuvasses, 0.9 percent Chechens and 0.8 percent Armenians; other, much smaller, minorities make up the remaining 10.2 percent of the population. As to religious belief, the Muslim minority is substantial. There are over 16 million Muslims in Russia, in addition to people affiliated to numerous other faiths.

The advent of Communism was portrayed by its leaders as the end of the oppression of the Russian Empire’s peoples. Lenin’s ‘Declaration of the Rights of the People of Russia’ contained guarantees of self-determination and equality. The Soviet

30 Article 15, FCNM; and Points 13, 16 and 19, 1999 Lund Recommendations, see supra, note 22.
34 Marko *op. cit.* (note 27), at p. 9.
36 The rest of the population declare themselves ‘Russian’ in the census. The figures are from the 2002 Census. Data from the 2010 Census were still not available at the time of writing.
37 According to the Pew Forum ‘Russia has the largest Muslim population in absolute numbers in all of Europe.’ The Muslims in Russia were projected to increase from approximately 16.4 million (2010) to 18.6 million (2030), and their share of the population from 11.7% (2010) to 14.4% (2030). Available at: pewforum.org/future-of-the-global-muslim-population-russia.aspx (accessed 2 May 2011).
Union devised a system that effectively institutionalised ethnic diversity, with a view to containing ethnic tensions while also disseminating the Communist doctrine.\(^\text{38}\) Hence, the Soviet Union (and Russia’s precursor, the Russian Soviet Federative Socialist Republic) was divided into territories, several of which were ‘assigned’ to certain ethnicities – for example, the Tatar Autonomous Soviet Socialist Republic to the Tatars. The national minorities that had their ‘own’ republic were referred to as ‘titular nationalities’.\(^\text{39}\) One principle at the foundation of all minority policies was a perceived link between ethnicity and territory, encapsulated in Stalin’s definition of a nation as a ‘historically evolved, stable community based on a common language, territory, economic life and psychological make-up manifested in a community of culture’.\(^\text{40}\)

Although the borders varied over the years, the foundations of asymmetric, ethnic federalism are still in place. In 2011, Russia had 83 subiekti (subjects, or territorial units), comprising: 21 ethnic republics (formerly autonomous republics), 46 oblasts, 9 krai, 4 autonomous okrugs, 2 federal cities (Moscow and St. Petersburg) and 1 autonomous oblast (Jewish). This structure has ultimately facilitated the preservation of Russia’s territorial integrity and – with the exception of Chechnya – the prevention of inter-ethnic conflict.\(^\text{41}\)

Soviet nationality policies supported ethnic and cultural diversity. Language being considered the predominant ethnic marker in the Soviet Union, the State established many schools in minority languages.\(^\text{42}\) The local administration was transferred to local leaders through the process of korenizatsiya (‘taking root’ or indigenisation). Local leaders filled positions in the local administration, the local Communist party, the judiciary and industry, through complex quota systems. Overall, in local government titular groups were overrepresented, and affirmative action policies continued up to perestroika.\(^\text{43}\) The transfer of power from the centre to the periphery was famously described as ‘the most ambitious affirmative action programme in history’.\(^\text{44}\)

At the same time, Soviet minority policies lacked coherence. Although titular nationalities were usually able to preserve their ethnic diversity, certain minorities

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\(^{39}\) Italics added.


\(^{42}\) Local languages were considered necessary to reach workers. As Stalin wrote, only the mother tongue enables ‘a full development of the intellectual faculties of the Tatars or of the Jewish worker.’ Stalin, *op. cit.* (note 40), at p. 21. See also Slezkin, Y., ‘The USSR as a Communal Apartment, or How a Socialist State Promoted Ethnic Particularism’, *Slavic Review*, Vol. 53, No. 2, 1994, pp. 413–452.

were subjected to repressive and deeply traumatic measures such as mass deportation during the Stalin period – notably the Crimean Tatars, Germans and Chechens. The numbers of schools in minority languages decreased from the end of the 1930s onwards. The Karelians and Mordovians interviewed, who had lived in the Soviet period, described social attitudes that eroded their dignity as representatives of their ethnic groups, leading to widespread feelings of shame about their origins. The regulation of ethnicity generally occurred from the top down. The wishes of minorities were rarely taken into account in formulating nationality policies. Due to the fact that a number of Soviet leaders considered several non-Russian nationalities as ‘backwards’, the State adopted a paternalistic and patronising attitude towards them. Language policies required minorities to learn a mother tongue determined by their ethnicities, itself biologically inherited from their parents, regardless of personal linguistic preferences and habits. Most importantly, regional leaders recruited by the Bolsheviks had to be unremittingly loyal. Unwavering ‘loyalty’ meant that in practice these leaders were unable to fully represent the interests of their ethnic group.

In post-Soviet Russia attention is paid to ethnic diversity and there has been a proliferation of government programmes on nationalities. As part of its implementation of the FCNM, the Russian government has submitted to the Council of Europe three substantial reports, outlining its programmes for the preservation and development of minority cultures and languages. In its 2006 Second Opinion on the FCNM implementation, the ACFC acknowledged that ‘the Russian Federation has adopted a positive approach to the Framework Convention’s monitoring process’. This statement was echoed by the Committee of Ministers of the Council of Europe, which, in 2007, stated that the Russian authorities had ‘continued to pay attention

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45 Certain ethnic groups were accused of collaboration with the Nazis, or other crimes during the Great Terror (1930s), and deported to Siberia and Central Asia. Duncan refers to the deportation as ‘a demonstration of Russian firmness and a warning to other nationalities.’ Duncan, P., ‘Russia. Accommodating Ethnic Minorities’, in: MacIver, D (ed.), The Politics of Multinational States, MacMillan Press, London, 1999, at 70.

46 Slezkine, loc. cit. (note 42), at p. 416.

47 Although in the 1930s ethnicity was established on the basis of self-identification, this was soon modified, and made to coincide with the parents’ ethnicity. This changed again in post-Soviet Russia: the post-Soviet Russian Constitution, adopted in 1993, states that ethnicity is based on self-identification (‘Everyone shall have the right to determine and indicate his nationality’ – Art. 26(1)).

48 Slezkine, loc. cit. (note 42), at p. 432.


50 In accordance with Art. 25(1) of the FCNM. The last report was submitted in April 2010. ACFC, (Third) Report submitted by Russia, 9 April 2010, ACFC/SR/III(2010)005.

to the protection of national minorities’. Yet, there continue to be impediments to minorities’ participation in decision making regarding matters that affect them, leading to the formulation of policies that, as in the Soviet period, tend to be centrally-defined and essentially top-down. This situation is due to an absence of guarantees that bottom-up initiatives will have an effect on decision-making levels.

2. PARTICIPATION, WITHOUT GUARANTEES

What is the reason for such a lack of guarantees? Essentially, centrally-developed policies radiate a myriad of *ad hoc*, ‘informal’ practices. The predominance of such practices in lieu of universal rules has been documented by Ledeneva: these are (often illegal) means based on ‘opportunist logic’, that involve, among other things, the use of unofficial channels, including the alternative enforcement of the legislation, to achieve particular ends. These circumstances do not signify an utter absence of formal practices and rule of law in Russia. However, a web of informal, opaque practices can be traced, and it exists alongside formal, public structures. As Ledeneva puts it:

> [I]nformal practices were an integral part of the postsocialist transformation […]. [T]hey were beneficial for certain individuals but also made them hostage to the system. These practices were not simply illegal but integrated the law into political, media, and business technologies, often manipulatively. Similarly, they did not simply follow or contradict informal norms but relied on some of them and played one set of norms against the other.

What does the ubiquity of informal practices mean to minorities? It means that mechanisms that ought to enable minority participation are themselves immersed in informal practices and, as such, lack institutionalisation. The *ad hoc* nature of these practices fails to guarantee the accountability of the main actors in the majority-minority relations: public officials and institutions, and the leaders of minority groups themselves. Unlike in the cases analysed by Ledeneva with regard to business practices and politics, the use of informal networks to advance minority interests does not tend to signify a disregard or direct violation of the law, but rather it is a (perhaps inevitable) response to the lack of clear, legally entrenched guarantees for minority groups. In the next two sections, the absence of guarantees for effective participation

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54 *Ibidem*, at p. 190.
is demonstrated with regard to the two principal forms of participation: political representation in elected bodies and mechanisms for consultation.

2.1. (A) POLITICAL PARTICIPATION AND REPRESENTATION

2.1.1. No Political Parties Representing Minorities

In Russia, special provisions for participation in elected bodies do not exist. The legislation stipulates that political parties cannot be established on the basis of professional affiliation, racial, ethnic or religious identity. This particular provision was judged constitutional by the Russian Constitutional Court on the grounds that such parties could exacerbate existing ethnic or religious tensions. The ACFC has criticised the excessive breadth of this form of pre-emptive measure, and stated that 'it is essential that persons belonging to national minorities have a possibility to pursue their legitimate interests also through political parties'. Moreover, it is incompatible with Lund Recommendation No. 8, on the 'formation and activity of political parties', which, in compliance with the principle of freedom of association, 'includes the freedom to establish political parties based on communal identities [...]'. Albania, which, like Russia, prevented national minorities from establishing political parties, lifted the ban in 2000; Russia has not done so. The potential scope of the Russian provision arguably goes even further than the banning of ethnicity-based political parties. If broadly interpreted, it could be used to ban political parties simply for including in their platforms advocacy designed to further the interests of national minorities.

Other legal technicalities hamper direct minority representation through their own political parties. A legal requirement that political parties must have regional branches in at least half of Russia's federal subjects impairs the ability of minorities

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56 Russian Constitutional Court decisions of 15 December 2004, No. 18-P, concerning the case of 'The Orthodox Party of Russia'.
57 Second ACFC Opinion on Russia, see supra, note 51, para. 162.
58 First ACFC Opinion on Russia, ACFC/INF/OP/I(2003)005, 13 September 2002, para. 69. The ACFC further recommended the provision's abolition (ibid).
59 Lund Recommendation, see supra, note 22. Also see PACE Recommendation 1201 (1993) 'On an Additional Protocol on the Rights of National Minorities to the European Convention on Human Rights. Text of the Proposal for an Additional Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, Concerning Persons Belonging to National Minorities.' The proposed text of Art. 6 states: 'All persons belonging to a national minority shall have the right to set up their own organisations, including political parties;' and Weller, M., op.cit. (note 27), at p. 440. The legal reform was welcomed by the ACFC. See First ACFC Opinion on Albania, see supra, note 33, para. 42; 72.
61 Arts. 3 and 5 of Federal Law on Political Parties of 11 July 2001, No 95-FZ.
concentrated in a particular territory to form political parties. This issue was exacerbated by a 2004 decision to substantially increase a political party’s minimum membership requirement from 10,000 to 50,000 members. The following year, a seven percent threshold to access representative bodies was introduced, along with a prohibition on formation of electoral blocs.

2.1.2. Minorities in Parliament Representing … United Russia

Even if minorities do not have their own political parties their representatives can still reach elected bodies. Representation in elected bodies is seen as a *sine qua non* for the effective participation of minorities. As Hofmann puts it:

> [A] seat in elected bodies is seen as a necessary requirement for effective political participation. In my opinion, this means that there are good arguments to consider the mere existence of consultative mechanisms […] as not sufficient for effective political participation.

As noted in the Explanatory Memorandum to Lund Recommendation No. 7, States should establish electoral systems that will result in a representative government, particularly by facilitating adequate representation of national minorities. The ACFC has stressed the need for small, non-territorial minorities to also be guaranteed representation. Special measures for minority representation might involve different forms of proportional representation, the use of quotas, and the lowering of or exemptions to threshold requirements to access legislative bodies. More broadly, Article 21(3) of the Universal Declaration of Human Rights states that ‘[t]he will of the people shall be the basis of the authority of government’. The Russian Constitution

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63 Second ACFC Opinion on Russia, see *supra* note 51, para. 261. The requirement was upheld in the Russian Constitutional Court decision of 1 February 2005, No. 1-P, concerning ‘The Baltic Republican Party’ in Kaliningrad region.

64 The 7% threshold and the prohibition on election blocs were established through the 21 July 2005 Federal Law Amending Laws of the Russian Federation on Elections and Referenda and other Legal Acts of the Russian Federation (No 93-FZ). Subjects of the Russian Federation, however, may set lower thresholds in their own dumas. FCNM Shadow Report, see *supra*, note 61, para. 342. The amendments to election legislation noted above were criticized not only by the ACFC, but also by the Committee of Ministers of the Council of Europe. See Res. CM/ResCMN(2007)7, Point 1(b). See *supra*, note 52.


67 See for example the First ACFC Opinion on Switzerland, ACFC/INF/OP/I(2003)007, 20 February 2003, para. 76.

68 Recommendation 9, Lund Recommendations and Explanatory Report. See *supra*, note 22. In particular, this will facilitate access to elected bodies by smaller minorities. See Weller, *op.cit.* (note 27), at pp. 443–4.

69 Provisions of this kind are also found in the ICCPR (Art. 25) and the ECHR (Art. 3, Protocol 1). See also paragraphs 6 of the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE (Copenhagen Document), 1990.
offers solid foundations for this, by enshrining in Article 3(1) the principle that '[t]he bearer of sovereignty and the only source of power in the Russian Federation shall be its multinational people'.

A margin of appreciation in devising special measures is afforded to States – yet they have a responsibility to ensure that measures are effective.\textsuperscript{70} When low levels of representation of national minorities have been noted in the parliaments of the Member States, the ACFC has encouraged the adoption of measures to rectify this.\textsuperscript{71} An inclusive decision-making process is particularly important in decisions that are likely to affect minorities directly.\textsuperscript{72}

Special measures are not employed in Russia.\textsuperscript{73} This is a departure from the Soviet system, with its highly-regulated model for minority representation. The absence of special measures affects primarily smaller, non-titular minorities, particularly the dispersed, non-territorial ones, such as the Roma. The impact on these minorities is captured in the statement of a Roma activist interviewed in Moscow, who stated: "The Roma [in Russia] are nationalities without status [...]. The situation of Tatars, for example, is very different. Tatars are represented in Ministries. They have their own Ministry of Education in Tatarstan."\textsuperscript{74} This statement can be contrasted to that of a Tatar activist and member of the Tatar National Cultural Autonomy, who stated: "The head of the federal Tatar National Cultural Autonomy is also an MP. I can call him any time. I can also go to the Duma [lower house of parliament] any time."\textsuperscript{75}

Despite the exclusion of smaller groups, in practice there have been, overall, high levels of representation of minorities in both federal and regional representative bodies.\textsuperscript{76} But what type of representation is it? Pitkin differentiates between two types of representation: descriptive and substantial. Descriptive representation means that representatives resemble, or are even a replica, of the represented. One example would be minorities represented by persons belonging to the same minority, with the assumption that the representatives and represented strive towards the same goals. Substantive representation is not based on this assumption, and instead requires that

\textsuperscript{70} For example, see First ACFC Opinion on Hungary, ACFC/INF/OP/I(2001)004, 22 September 2000, para. 49.
\textsuperscript{71} For example, see First ACFC Opinion on the United Kingdom, ACFC/INF/OP/I(2002)006, 20 November 2001, para. 126.
\textsuperscript{72} For example, see First ACFC Opinion on the Czech Republic, ACFC/INF/OP/I(2002)002, 6 April 2001, para. 70.
\textsuperscript{73} The ACFC criticised amendments to Russian legislation in 2004, removing quotas for indigenous people in the Dumas of Russia's federal subjects – a move defined as a 'step backwards' in the implementation of the FCNM’s Art. 15. Second ACFC Opinion on Russia, see supra, note 51, para. 260. The relevant provision (Art. 13 of the 1999 Federal Law of on Guarantees of Rights of Small Indigenous Peoples, No 82–FZ, was repealed by the 2004 Federal Law No 122–FZ of 22.
\textsuperscript{74} The interview with a Roma activist, Moscow, 31 May 2010.
\textsuperscript{75} Interview with a Tatar activist, Moscow 1 June 2010. See below on National Cultural Autonomy.
\textsuperscript{76} This has been welcomed by the ACFC. Second ACFC Opinion on Russia, see supra, note 51, para. 258.
representatives ‘be responsive to the people’ they represent.\textsuperscript{77} Through analysis of the legislation adopted by the Duma,\textsuperscript{78} Chaisty shows that in the second (1996–1999) and third (2000–2003) Dumas there was a degree of substantive representation of minority interests, but that this was much reduced by the United Russia party predominance in the fourth Duma (2004–2007); at this stage numerous minority leaders joined its ranks.\textsuperscript{79} This shift leads to the question: what happened between the third and fourth Duma to cause this change?

2.1.3. United Russia, the ‘Power Vertical’ and the Duma

Since the end of the Soviet Union, there has been a progressive relaxation of the central powers (under former Russian President Boris Yeltsin), followed by a reverse movement strengthening the centre (under former President Putin and President Medvedev). One of the most wide-ranging changes has been the direct appointment of several positions that were once elected, first and foremost through the Russian President’s new (since 2005) control of gubernatorial appointments,\textsuperscript{80} creating what has become known as the ‘power vertical’. Another change has been the creation of a solid parliamentary majority since 2003 under United Russia, a party strongly associated with its leader, Prime Minister Vladimir Putin.\textsuperscript{81}

For national minorities the establishment of United Russia’s predominance in Parliament has had two main consequences. First, minority representation has been reconfirmed as primarily descriptive in nature. Moser shows that while representatives of geographically concentrated minorities in Russia tend to be elected by their co-ethnics in single-mandate districts, this is not the case for those minorities that are more dispersed. Dispersed minorities enter Parliament through ‘support from the Russian majority’ and through ‘assimilation’.\textsuperscript{82} An overwhelming majority of MPs belonging to ethnic minorities have joined United Russia in the fourth Duma; yet, they are representatives of United Russia rather than providing substantial representation.

\textsuperscript{79} Ibid.
\textsuperscript{80} This relatively new presidential power follows a (unconstitutional) measure of 13 September 2004 when Putin, at a session of the government of the Russian Federation, announced that the heads of subjects would be nominated by the president and confirmed in their position (nominally) by the legislature.
\textsuperscript{81} Putin officially became the leader of United Russia in 2008. Even prior to 2008 the party was widely viewed to reflect Putin’s interests. The parliamentary elections of 4 December 2011 saw a reduction of the seats for United Russia from 70% of seats (2007 elections) to 53%. Although the decrease is substantial, United Russia continued to count on an absolute majority.
for minority interests. The leaders of minority organisations interviewed for this research invariably tended to be affiliated to or actual members of United Russia.

United Russia effectively incorporates the entire political spectrum, as well as regional, business and trade union interests. While formally encompassing a multitude of ideologies and positions, it, in fact, truly accommodates none. A respondent, the director of a human rights NGO in Russia called United Russia a ‘party of bureaucrats’, in which the interests of national minorities, ethnicity, even forms of Russian nationalism, are unimportant. What matters are the particularistic interests of those in power, closely associated with the Putin-Medvedev duo, and regulated by, again, informal practices. On the basis of such practices, the many minority leaders who have joined United Russia might further the interests of their fellow minorities – but they equally might not. They are in parliament not by virtue of their own minority status, on the basis of a political platform incorporating minority interests, but as members of United Russia. Persons belonging to minorities as ‘minority representatives’ can only sit in consultative committees. Additionally, while in the 1990s ethnic federalism tended to further minority representation, with Putin’s centralisation policies, Moser argues, there has been a marked increase in clientelism and voting manipulation, which became more common in the ethnic regions than in the Russian ones. Hence, the high representation of minorities in parliament is by assimilation, not in any ethnic sense, but a political one: the assimilation to United Russia. The 2006 FCNM Shadow Report on Russia argues that ‘[e]thnic activists wishing to stand in elections become totally dependent on federal political parties’.

2.2. MECHANISMS OF CONSULTATION: THE BOUNDARIES OF PUBLIC DISCUSSION

In the absence of guarantees for the representation of minority interests in elected bodies, consultative mechanisms automatically acquire an even greater role – having to compensate for the absence of the other building block to participation. The participatory rights of minorities are to be exclusively channelled through the one remaining outlet. In this area, there is, once again, an over-reliance on informal practices and networks; and certain aspects of linguistic and cultural rights remain outside the scope of consultation.

83 Chaisty, op. cit. (note 78).
84 With very few exceptions, these were National Cultural Autonomies rather than NGOs. See below on National Cultural Autonomies.
85 Interview with the director of a human rights NGO, Voronezh, 16 October 2010.
87 FCNM Shadow Report, see supra, note 61, para. 342. It adds that theoretically they can be nominated on party lists without being formally members of the party.
With regard to overall levels of cooperation, both the ACFC’s Second Opinion and the 2006 Shadow Report complained of sporadic contacts between civil society and federal ministries involved in minority issues. An activist from Karelia argued in an interview that opportunities for lobbying and consultation have shrunk as Putin has consolidated his power. And yet, cooperation with the authorities was seen by the ‘civil society’ respondents as a fundamental vehicle for impact. For example, one activist working on Roma children’s education said: ‘there is no point in producing educational materials that will not be institutionalised [and therefore remain unused].’ In turn, the State, given its finite resources, can benefit from civil society. In the ethnic republics visited, the State had outsourced grammar books for the teaching of minority languages and financed Sunday schools and adult education classes teaching minority languages that were organised by minority organisations, as well as financed events such as the traditional Tatar festival Sabantui. The respondents from the ‘civil society’ category reported that in some cases they had forged fruitful cooperation with the authorities, primarily at the local level, allowing them to further their interests. There are cases in which the Russian authorities appear to value civil society’s input. A positive example from Tatarstan saw an active exchange in the preparation of primary schools’ federal educational standards involving the teaching of the language and history of minorities. A representative of the Institute of History of Tatarstan’s Academy of Sciences noted in an interview that the Institute had been consulted by the federal Ministry of Education throughout the entire process. Hence, civil society and the authorities’ outputs can be mutually beneficial and reinforcing.

The respondents from the ‘civil society’ category saw as the essential ingredient for effective cooperation – and for furthering minority rights generally – the maintenance of good relations with the authorities. The drawback of an over-reliance on personal networks is that much is left to the discretion of the local authorities, or even individual public officials, as these have no specific obligation to further minority interests. Invariably, the local authorities have a higher degree of accountability to their superiors than to the public. The vertical system of appointment, replacing elections, introduced by Putin, brings in a heightened attention to the top layers of the leadership, neglecting bottom-up politics. Alongside this, there are of course varying levels of commitment and support in different cities or regions; or even at different times in the same region, as a supportive public official’s position may be left vacant.

88 FCNM Shadow Report, *ibidem*, para. 348, and Second ACFC Opinion on Russia, see *supra*, note 51, para. 90. The ACFC Opinion added that advisory councils ‘are expected to implement rather than contribute to the preparation of minority-relevant legislation.’ (para. 90).
89 Interview with the director of an NGO representing a minority, Petrozavodsk, 21 May 2010.
90 Interview in Moscow, 31 May 2010.
91 Interviews in Petrozavodsk, Saransk, Kazan and Voronezh, May, June and October 2010.
92 Interview with a scholar of the Institute of History, Russian Academy of Science of Tatarstan, Kazan, 9 June 2010.
93 Interviews in all regions, May, June and October 2010, and February 2011.
through personnel cuts or internal restructuring, or occupied by a person with different priorities. Regional imperatives further influence performance: as a respondent put it, ‘all authorities have their own priorities’. Practical considerations also come into the equation: cities tend to have more funds than rural areas. A respondent summarised the situation as follows: ‘The authorities have things that they absolutely must do, and things that they can do if they wish to. Nationality issues are in the second category, they are optional.’ Similarly, interest in and commitment to international standards depends, to a great extent, on the willingness of individual public officials and institutions. This dependence creates a lack of uniformity in policy, generating an absence of guarantees that minority rights will be upheld.

A second limitation to public consultation is the fact that minority issues are treated as part of a cultural discourse, devoid of a political dimension or direct references to minority rights. The general discourse on cultural programmes, rather than rights, has led to what has been defined in a report to the Parliamentary Assembly of the Council of Europe as ‘folklorisation’ of minorities, or minorities’ linguistic and cultural rights being approached as folklore. Russia encourages the celebration of diversity, yet in its archaic, frozen forms, with festivals celebrating national dances and customs – a form that bears little resemblance to a minority’s present conditions. And, one may add, it is a form that is, for the most part, extinct, and therefore presents no threat to Russianness. Writing about Mordovia, Abramov traces the origins of ‘folklorisation’ back to the Soviet period. In the 1960s, he writes, the teaching of the Mordovian languages in schools was abolished, with ‘colossal harm’ for national culture in education, journalism and literature: ‘in the other spheres the national aspect, in essence, was limited only to folklore, which strengthened its primitive character and precluded the development into modern forms’. A respondent from Karelia, working on the promotion of Karelian language use in the republic, echoed that ‘language issues are mixed with folklore’. If these two issues were disaggregated, she suggested, it could lead to nuanced and more effective State policies on language teaching and development per se.

Thus, the specificities of cultural and linguistic rights are left at the periphery of the minority rights discourse to give prominence to general narratives of the coexistence of cultures and ‘tolerance’. At the opposite end of the spectrum is the flip-side of ‘tolerance’, ‘extremism’, which also enters the public discourse through

94 Interview with the director of an NGO, Petrozavodsk, see supra, note 89.
95 Interview with a member of civil society, Kazan, 9 June 2010.
96 Interview with the director of an NGO working on inter-ethnic relations, Moscow, 24 May 2010.
97 Parliamentary Assembly of the Council of Europe, Situation of Finno-Ugric and Samoyed Peoples, Doc. 11087, 26 October 2006.
98 Abramov, V., Mordovskoe Natsional’noe Dvizhenie [Mordovian National Movement], 2nd ed., Mordovian State University ‘Ogareva’, 2010, Saransk (Russia), at 121. Citation translated from the Russian by the author.
99 Interview with a Karelian activist, member of an NGO, Petrozavodsk, 24 May 2010.
official pronouncements featuring in the media. The polarised duality of tolerance-extremism oversimplifies complexities relating to, for example, social integration, discrimination and stereotyping. It singles out a few problematic elements in society (the ‘extremists’) rather than highlighting the complexity across Russian society. In 2007, the Russian authorities had a vehement reaction to a report by the UN Special Rapporteur on ‘Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance’, following meetings with Russian civil society. The report described the pervasive nature of discrimination and harassment experienced by certain, particularly disadvantaged minorities (primarily darker-skinned people, including Central Asians, Caucasians and African immigrants). The Russian authorities condemned the report and its ‘far-reaching conclusions […] based on unproven data and falsifications […].’

It is not only serious social ills like discrimination which remain at the margins of public discussions. Respondents from the ‘civil society’ and ‘academia’ categories referred to Law 309 of December 2007, amending the Federal Law ‘On Education’, as an example of legal reform concerning minority education that excluded the electorate but also specialised bodies from consultation – including a section of the Ministry of Education, the Institute of History of the Republic of Tatarstan, and the Federal National Cultural Autonomies. Law 309 introduced a common federal educational space, affecting the ‘national component’ – or the teaching of language, history and culture of non-Russian nationalities. The absence of public discussions and the swiftness of the law’s adoption, noted by the respondents working in the area of minority education, generated wide-spread concern. This seems to have been disproportionate when compared to the actual impact of the law: its practical application, by 2011, had still been minimal. Yet, the scarce information and dialogue fuelled suspicions and feelings of uncertainty among Russia’s minorities.

102 Federal Law of the Russian Federation of 1 December 2007, No. 309-FZ ‘On the Amendment of Legal Acts of the Russian Federation for the Change of the Understanding and Structure of State Educational Standards’. The law should have entered into force on 5 December 2007, but the date was postponed to 1 September 2009, and then for a further year.
103 No. 3266–1, 10 July 1992.
104 Interview with the representative of a minority (unspecified for reasons of confidentiality), working on nationality issues in the Ministry of Education Moscow, 31 May 2010; interview with the representative of the Kazan’s Institute of History, Kazan, 9 June 2010; interview with the representative of a Federal National Cultural Autonomy, Moscow, 18 October 2010.
105 Mostly due to the lack of clarity as to the modalities of implementation and as to the schools’ new responsibilities.
This is not to say that folklore and ethnography are unimportant. The respondents displayed, overall, positive attitudes to them. Karelians from the Republic of Karelia and from Tver noted that, after what they perceived as their ethnicity’s repression during the Soviet period,106 they were able to overcome feelings of shame about their ethnic origins, and find pride in their nationality through festivals, which enabled them to celebrate their cultural uniqueness. Tatars similarly noted the importance of celebrating traditional Tatar national holidays such as Sabantui. An academic interviewed argued that Russia’s support of festivals indicates the State’s symbolic acceptance and respect for minorities;107 another saw them as an opportunity for representatives of minority associations to bond and attract new recruits.108 However, the authorities might be effectively instrumentalising these events and cultural programmes to channel nationalistic sentiments in a purely cultural direction. The focus on festivals can detract from opportunities to implement more profound, long-lasting changes or from in-depth public discussions on legal reform likely to impact on minorities, such as Law 309. The respondents (civil society and academics) referred to other issues that do not commonly reach the public domain, including the low salaries of language teachers and the closure of national schools on the grounds that they are not financially viable (in some cases, this leaves students that had studied in their national languages with no choice but to join schools with Russian-only education). A Mordovian activist observed that the beneficial effects of festivals could be achieved with much fewer events so that other activities could be more adequately funded.109 He believed that the Russian authorities had made festivals the centrepiece of their nationality programmes as they were relatively easy to organise, allowing them to demonstrate their commitment in this area without engaging in complex, wide-ranging reforms.110

2.2.1. National Cultural Autonomies: A System for Participation?

The previous section has analysed the modalities of cooperation between civil society (minority organisations and NGOs) and the authorities. In addition to these

106 The word ‘repression’ was used by the respondents. Interviews in Petrozavodsk and Tver, May and June 2010. There were also no public discussions on the adoption of a 2009 decree that removed the possibility of students taking the ‘unified State exam’ (Edinyi Gosudarstvennyi Ekzamen), the final secondary school exam, in a minority language rather than Russian (Decree of the Ministry of Education and Science of the Russian Federation No. 362 ‘On the Approval of Regulations on the Methods and Procedures for Conducting State (final) Certification of Students Having Completed the Main General Educational Programmes of Full Secondary Education’, 28 November 2008).

107 Interview with an academic working for the NGO Memorial, Moscow, 24 May 2010.

108 Interview with the director of an NGO representing, Petrozavodsk, see supra, note 89.

109 Interview with a Mordovian academic and activist, Saransk, 20 June 2010. None of the respondents from civil society had been involved in decision-making on the use of government funds, or participated in targeted discussions on this issue. Minority organisations may submit project proposals; the ultimate decisions on funding rests with the authorities.

110 Ibidem.
opportunities, several consultation committees have been formally established and attached to executive and legislative bodies. This section focuses on one particular form of consultation, introduced by the Russian authorities by law, to establish channels of communications between the authorities and minority groups in the shape of National Cultural Autonomies (NCAs). This section examines whether NCAs are an adequate answer to the participation requirement of Article 15 of the FCNM. NCAs do not guarantee a wide representative base for minorities, and there is only a tenuous link of accountability between the representatives (NCA leaders) and the represented (‘ordinary’ members of the same minority).

The NCA system, established through the 1996 Federal Law ‘On National Cultural Autonomy’ (NCA Law), was meant to create a hierarchical structure of representation, with local, regional and federal NCAs. The system would carry the concerns of minorities from the local sections up to the highest political institutions. The NCA system would act as the main form of exchange between the authorities and minorities, condensing the various messages from minority institutions into manageable ‘bites’, to which the government could respond. It was envisaged that each minority, as a group, would speak with one voice, reducing redundant or contradictory messages, and distilling ‘core’ messages that should lay the foundations of nationality policies. Hence, the NCA system is based on the assumption of homogeneity in groups, and it fundamentally presupposes one local institution (one ‘autonomy’) per nationality per territory.

The assumption of homogeneity is what Phillips calls an ‘essentialist’ and ‘reified’ understanding of culture. Other authors echo the criticism of a reductionist model that stresses internal homogeneity, together with a clear-cut separateness from other groups. Narayan talks about a ‘package picture of cultures’. These concepts lead to Brubacker’s ‘groupism’, or ‘the tendency to take discrete, sharply differentiated,
internally homogeneous and externally bounded groups as basic constituents of social life, chief protagonists of social conflict, and fundamental units of social analysis'.

This approach ignores the nuances and the multiple facets of a group, and their dynamic, ever-changing character. There is a further perception of minorities as static, compared with the dynamism of dominant cultures. Similarly, the Russian NCA system (and generally Russia’s approach to nationalities) reduces minorities to their skeletal structures and oversimplifies them. It mirrors the Soviet essentialist approach to ethnicity, which associated ‘core’ attributes to each minority, so as to enable their codification and subdivision. Each nationality is homogenised and, effectively, the perceived essence of an ethnicity tends to revolve around festivals (such as Sabantui for Tatars), customs, traditional music and literature – overlooking many of their other facets.

The internal complexity of minority groups behind the homogenising façade is one of the reasons why the idea of a consultative system with a neat pyramidal structure could not be translated into reality. Some of the respondents linked this to rivalries between competing leaders of minority organisations. For example, one respondent said:

The NCA system was established because they [the authorities] wanted to have a system that was like a pyramid. There would be local, regional and federal NCAs. At the top there would be the federal NCA, that would bring groups together. But not all have formed a federal NCA. The reason is that people have their own ambitions. Two people would want to be leaders of the federal NCA, and the people supporting one would not support the other [the rival], so it just didn’t happen. The reason why there are NCAs and also public organisations [NGO] is this, because of personal ambitions, and more than one person wants to be leader.

Yet, this only explains a diversity of views and priorities in the leadership of minority groups. The problem runs much deeper. There are multiple identities and traits in each person belonging to a minority. In addition to being the representative of a minority, a person has a gender, age, profession, level of education, as well as allegiances and affiliations. An individual’s identity is not shaped solely by his/her ethnic background. Given these multiple layers of identity there should, at least, be an attempt to engage this diversity by widening the potential for participation, enabling different segments of the minority population to become involved, for, as Phillips says:

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119 Interview with a representative of the House of Nationalities, Moscow, 11 October 2010.
In however occasional and patchy a way, modern democracies need to increase and widen that participation in discussion and decision that stretches our sense of alternative, and requires us to confront those who are different from ourselves.\textsuperscript{120}

Similarly, Palermo argues that 'the benchmark of the effectiveness of participation is its degree of pluralism'.\textsuperscript{121} The Russian authorities’ chosen system of representation is antithetical to the notion of broad representation. While minorities should be allowed to develop a ‘group-oriented dimension’ (through the right of association),\textsuperscript{122} a group’s internal \textit{differences} should also be recognised through a system of representation that allows a wider range of voices to receive attention during consultation. There should also be space for internal dissent within the collective persona created by the group.\textsuperscript{123}

In practice, not all people can (or wish to) be politically active, but accountable representatives can act as delegates for the group as a whole. The rules for the appointment of delegates and for their accountability, therefore, acquire paramount importance. A loose system of participation, based primarily (or solely) on all-inclusive procedures such as open meetings, leads to what Phillips calls one of the ‘paradoxes of participation’: in theory all can participate, but in practice many encounter obstacles.\textsuperscript{124} Participation requires an investment in time, energy and possibly funds (through loss of earnings), which only some people can afford. Clearly, the particular societal segments that can make these ‘sacrifices’ cannot be representative of the group – they might, for example, have greater financial stability and higher levels of education than average. Ultimately, it is the vote that guarantees a basic right that is enjoyed by all members of a group.\textsuperscript{125} Yet, the Russian NCA system is not based on a voting system for the selection of delegates but effectively on self-appointment.\textsuperscript{126}

The NCAs’ hierarchical structure operates on the assumption that local concerns (from local NCAs) will be elevated to the federal level (through the Federal NCA’s access to the federal consultative body for NCAs, the Federal Consultative Council). In the absence of voting or other guarantees of broad representation, this seemingly

\textsuperscript{121} Palermo, \textit{loc.cit.} (note 31), at p. 411.
\textsuperscript{122} Marko, \textit{op.cit.} (note 27), at p. 4.
\textsuperscript{123} Nimni, E., ‘National-Cultural Autonomy as an Alternative to Minority Territorial Nationalism’, \textit{Ethnopolitics}, Vol. 6, No. 3, 2007, pp. 345–364, at p. 360. There should not be an expectation, within and outside the group, of general consent. This can lead to a stultified debate and even self-censorship. See, for example, the effects of this phenomenon on the women’s movement, with ‘women being pressured to pretend to agree.’ Phillips, A., \textit{Engendering Democracy}, Polity Press, Cambridge, 1991, at p. 126.
\textsuperscript{124} Phillips, \textit{ibidem}, at pp. 140–6.
\textsuperscript{125} \textit{Ibid.}
\textsuperscript{126} Although not the case in NCAs, there are other minority institutions where elections take places, such as the World Congress of Tatars and the Movement of Mordovian Peoples. Abramov argues that, in the case of the Movement of Mordovian Peoples, voting results might be controlled. Abramov, V., \textit{Mordovskoe Natsional’noe Dvizhenie [Mordovian National Movement]}, 2nd ed., Mordovian State University ‘Ogareva’, Saransk, Russia, 2010.
inclusive process masks communication channels with a trajectory from the local elite to the federal, via the regional, elite. Two of the respondents expressed the opinion that those who participate in these processes are the minority groups’ intelligentsia. They both referred to the exclusion of ‘ordinary’ minority members, particularly in the case of disadvantaged minorities, such as the Roma and nationalities from Central Asia. In the case of Central Asian nationalities, the first respondent noted:

There is a gap between the minority leaders and the rest of the group, and not even communication between them […]. The leaders represent the intelligentsia, people who have lived in Russia for along time, have status and work.127

The second respondent, an activist on Roma rights (herself a Russian) said:

There was a roundtable I attended, when there was a discussion on tabor [Romani] settlements of the town of […]. There was a conflict between Roma and the administration for houses that were built without permission and some were destroyed by a decision of the court. At the roundtable there was nobody from the community, only a representative of the Roma Federal NCA, a famous singer and actor. He is the picture of Roma life that corresponds to the stereotype, not to reality. He didn’t defend the Roma, he said that the authorities were right.129

The Russian NCA system is based on a descriptive, rather than a substantial, form of representation – the former assuming that belonging to a certain (ethnic) group will automatically guarantee the representation of the group’s interests. More important than ethnic affiliation is a strong link of accountability between the representatives and the represented.130 This link is tenuous in the case of NCAs in the absence of procedures to elect and remove representatives.

Similarly, the motivations for establishing an NCA do not always appear linked to a concern for accountability and group interests in the leaders. Once the NCA Law was adopted, an ‘offer’ was implicitly made to nationalities to organise themselves into NCAs. Osipov argues that minority groups accepted the ‘offer’ for reasons that are not necessarily (or solely) linked to cultural preservation, but, linked to, among other reasons, calculations over potential material benefits; expectations of government support; and to ingratiate themselves with the authorities by demonstrating loyalty. On the basis of the model of one NCA per minority per territory, minority organisations were eager to seize the opportunity to become the NCA for their area, filling the niche

127 Interview with a Russian scholar, Institute of Ethnology, Russian Academy of Science, Moscow, 12 October 2010.

128 Not specified for reasons of confidentiality.

129 Interview with a Roma rights activist, working for a human rights NGO in St Petersburg, St Petersburg, 25 October 2010.

130 Verstichel, loc.cit. (note 27), at p. 459.
that would otherwise be occupied by another organisation.\textsuperscript{131} The NCA system was established on a first-come, first-served basis – or in a form of ‘survival of the fastest’.

These motivations indicate loyalty to and preoccupation with the authorities rather than the group. Registering as an NCA, in particular, signals to the authorities that the organisation wishes to focus on culture, distancing itself from politics and, therefore, remaining non-threatening to the status quo. Although some respondents indicated cases of cooperation with the local authorities, cooperation, as one respondent put it, came with a ‘contract’ of loyalty.\textsuperscript{132} Daucé believes that NCAs are no more than a system for handpicking loyalists. In describing the Tatar associations in Moscow, she suggests that the NCA Law was a tool of political control over independent Tatar associations. NCA leaders were selected for their loyalty to the authorities and are rewarded with State support while other Tatar associations are marginalised.\textsuperscript{133}

In practice, NCAs are not necessarily given preference compared to other minority organisations, while financial and other governmental support is minimal. Yet, NCAs continue to be established. According to a Russian analyst, leadership of an NCA can be seen as a step towards a political career.\textsuperscript{134} Another respondent expressed the opinion that the flexibility and non-transparency of regulations meant that NCAs might give access to opportunities to enrich oneself through illicit means. Some noted other potential benefits of loyalty to the authorities. For example, speaking about an NCA in a Petrozavodsk, an activist (belonging to a different minority) said:

\[\text{[The representatives of this NCA] are not interested in the kopeks that they might get from the government. They have their own festivals. What they need is visas and work permits for their fellow [minority members].}\textsuperscript{135}\]

In this case, NCAs may become a device to better enable amicable relations with the authorities, and the resulting networks may be used to benefit family and friends of the same minority. In an environment where unpredictability and informal practices permeate society,\textsuperscript{136} these networks may be a necessity. The leader of a minority NCA,\textsuperscript{137} when asked whether persons of the same minority, some of whom were recent

\begin{thebibliography}{10}
\bibitem{132} Interview with Russian a scholar, Institute of Geography, Russian Academy of Science, Moscow, 21 February 2011.
\bibitem{134} Interview with a Russian scholar, Institute of Ethnology, Russian Academy of Science, Moscow, 12 October 2010. This is the case not only in Russia: the prospects of a political career may attract many minority representatives. See Palermo, \textit{loc.cit.} (note 31), at p. 411.
\bibitem{135} Interview with an activist for a regional minority, Petrozavodsk, 23 May 2010.
\bibitem{136} Ledeneva, \textit{op.cit.} (note 53).
\bibitem{137} Interview in Petrozavodsk, 26 May 2010.
\end{thebibliography}
immigrants, experienced discrimination in Russia, said that obtaining citizenship was a priority to see one’s rights respected. In this case, leadership of an NCA might enable the resolution of some very real concerns of minorities, including immigrants – yet in a roundabout and opaque manner, through a circuitous route and informal networks.

Some respondents (civil society and academia) argued that leaders might be driven more by self-interest than altruism. Approximately half of the minority leaders interviewed were wealthy businessmen: informal networks might help protect their businesses from the unpredictability of the Russian economic and legal environment, where, again, informal practices are ubiquitous. Reality is likely to be an amalgam of motivations. Helping fellow minorities will reconfirm one’s position as the leader of that minority and ultimately serve his/her interests. For the cultivation of good relations with the authorities, membership in bodies such as public councils and parliamentary assemblies are of further benefit to establish one’s status. This model might, in practice, be beneficial to the group generally, even when it originates from self-interest. The leaders of minority organisations may use their informal networks with the local authorities to help fellow minorities (for example, when the latter are harassed by law-enforcement officials). One respondent, the leader of a minority group in a city (not in an ethnic republic) and the head of a public council advising the local authorities on nationality issues, said: ‘When they [persons belonging to national minorities] get stopped by the police they call me. They ask me to go and speak to the police’. The potential benefits of this system come with a risk of bestowing excessive discretionary powers on the groups’ leaders. As noted by a Russian scholar:

Limited accountability and uncertain responsiveness to the needs of minority members point to the questionable internal democracy of NCAs. Ultimately, NCAs’ minority leaders are complicit in perpetuating the (government’s) unwritten rules for the regulation of nationality issues. As Osipov puts it:

For the elites [the NCA system] is an instrument of self-realisation. They [the leaders] do represent the interests of the group, but they have the right to the point of contact [monopolise the interaction] between the group and the authorities. This unique channel is monopolised by these leaders. The majority of them are good, they want to help. But the system is built in a way that even good people become corrupted by it. They have to show their loyalty. Limited accountability and uncertain responsiveness to the needs of minority members point to the questionable internal democracy of NCAs. Ultimately, NCAs’ minority leaders are complicit in perpetuating the (government’s) unwritten rules for the regulation of nationality issues. As Osipov puts it:

[P]ower means general acknowledgement of certain ideas and rules as part of the natural and unavoidable order. Power functions as a wide range of control techniques embedded in society itself, and it remains invisible, being literally kept out of politics in the narrow

\[^{138}\text{Ledeneva, op.cit. (note 53).}\]

\[^{139}\text{Some of the minority leaders interviewed had passes to access the federal Duma.}\]

\[^{140}\text{Interview with the leader of a minority group, Voronezh, 15 October 2010. Another leader of a minority group in the same city reported the same.}\]

\[^{141}\text{Interview with a Russian scholar, Institute of Geography, see supra, note 132.}\]
sense. Thus, the Russian system of diversity governance looks stable and rests on a silent agreement between the government and the citizenry.\textsuperscript{142}

Finally, consultative bodies should not be seen in a vacuum but as part of a system providing legal guarantees and judicial remedies. However, mechanisms for minority participation are not constitutionally guaranteed: relevant provisions are only found in the NCA Law, and there has been no sustained effort to implement them.\textsuperscript{143} A second problem is that the vagueness of the legislation means that the rights of NCAs tend to be ambiguous and open to interpretation. One respondent referred to provisions in the NCA Law, by which NCAs have a right to receive financial assistance from governmental bodies, yet there is no concurrent obligation on governmental bodies to provide such support – at least not in all cases. A different formulation is used for three levels of authorities in Article 16 of the NCA Law: the federal authorities ‘can provide support’ to NCAs from the federal budget; the authorities of Russia’s subjects ‘provide support’ from the subjects’ budgets; and the organs of local self-government ‘have the right to provide support’. Similarly, Article 9 of the NCA Law was amended in 2004,\textsuperscript{144} modifying the provision that federal and regional authorities ‘assist’ NCAs to stating that these authorities ‘can support’ NCAs (in their activities in the areas of education and the media). The respondent argued that ‘they may [provide support], but they also may not!’\textsuperscript{145} The fact that the NCA Law does not have detailed provisions on relations between NCAs and the authorities, or on effective financing, precludes long-term and fruitful cooperation.\textsuperscript{146} Due to the vagueness of the regulations on the functioning of NCAs, their use is mostly ad hoc – offering scarce opportunities for ‘effective participation’ in decision-making.

To conclude, in Russia there prevails a stultified system of representation, which fails to involve any but the leaders of minority institutions. The NCA system is a loose arrangement for the ‘consultation’ of the few, rather than an institutionalised form of participation encompassing the minority group’s diverse segments.

3. THE RELEVANCE OF INTERNATIONAL STANDARDS ON MINORITY PARTICIPATION IN RUSSIA

This last section focuses on a possible role for international standards in minority rights in enhancing the participatory rights of minorities of Russia. When asked to


\textsuperscript{143} Ibid.


\textsuperscript{145} Interview with a representative of a minority organisation, St Petersburg, 23 October 2010.

\textsuperscript{146} Osipov, op. cit. (note 131).
comment on this issue, public officials’ responses substantially differed from those of civil society, in that the former centred on the theme of Russia as ‘different’ from the rest of Europe (and, therefore, from other Council of Europe’s Member States). This was linked by these respondents to distinct historical and political traditions, and Russia’s unique pluri-ethnic makeup. It also reflected the wide-spread view that Russia ought to follow an intrinsically Russian path. Already in 1999, Putin had argued for the ‘Russian idea’ to be shaped by the ‘organic merger of universal, human values with primordial Russian values’. He added that:

Russia will not soon become, if it at all becomes, a second edition of, say, the USA or England, where liberal values have deep historical traditions […]. A strong State for a Russian is not an anomaly, not something to fight against, but, instead, a source and guarantor of order […].

Putin’s style of leadership has been described as ‘managed democracy’, or ‘a combination of democratic institutions and authoritarian institutions’. It finds expression in Putin’s view for Russia as a ‘great power’ (‘derzhavost’), commanding respect in the international arena. Russia’s commitment to following its ‘own’ path might explain why similar concerns are expressed by the ACFC in both the First and Second Opinions, with no substantive changes between the two. A high-ranking former public official in the area of minority rights, thus, called the FCN m and ECRml ‘additional’ to the systems and regulations already functioning in Russia. International standards were, in this case, perceived as effectively superfluous. Similarly, in the case of the FCNM, the Russian government has argued in its Second Report that ‘basically all provisions of the Framework Convention have been respected’. This approach is facilitated by the fact that the FCNM is a flexible instrument. This flexibility allows the development of tailored policies that truly accommodate the specific needs of different groups – yet, the flexibility of international standards is a double-edge sword, as vague provisions may well generate vague policies. This side of flexibility is a perceived weakness of

147 In this, Putin uses the adjective rossiiskii (civic Russian) rather than russkii (ethnic Russian), so as not to exclude non-Russian nationalities. Putin, V. ‘Rossiya na Rubezhe Tysyacheletiya’ [‘Russia at the Eve of the Millenium’], Rossiiskaya Gazeta, No. 255, 31 December 1999.

148 Ibid.


151 Interview in Moscow, 2 June 2010.


153 This is progressively changing through standard-setting via a judicial discourse. See Pentassuglia 2009, op.cit. (note 11).
international minority instruments, noted by the respondents of the ‘civil society’ category. It is illustrated by the following statement by a respondent, the representative of a human rights NGO:

I would really like to see the FCNM realised, it’s a very good convention […]. But the FCNM is only principles. If the Language Charter was ratified it would not really change things much. […] Like the Russian Constitution, they are declarative, the do not provide details [on how to safeguard minorities]. But ideally what is in the FCNM should be realised and the work I do [in a human rights NGO] is directed towards this.\textsuperscript{154}

Indeed, international law is not equipped to address a major inhibitor of effective participation in Russia: the missing link of accountability between representatives and represented. In the case of special measures in electoral systems established by the State, the ACFC has been clear that the State has a responsibility to ensure their effective functioning and the ‘credibility of the system’.\textsuperscript{155} Such special measures, including in electoral systems, have, however, been rejected by Russia. In the case of representation in minority associations, including NCAs, international law does not venture so far as to regulate relations between the members of a minority group and their leaders. Here, direct intervention by the State would amount to interference in these institutions’ internal operations, themselves protected by the right to free association (Article 11 ECHR and Article 7 FCNM). Weller argues that minority organisations have obligations of accountability and transparency;\textsuperscript{156} yet, this can only be construed as a moral responsibility towards the members of the said group, rather than a legal responsibility. While the State must guarantee permanent and constructive exchanges with advisory councils, minorities themselves organise their leadership. Certainly, the issue of internal democracy is a complex one. The opportunity for minorities to self-organise risks monopolisation by ethnic entrepreneurs when these individuals choose to prioritise their own interests over the group’s. And, as it has been shown in this article, descriptive representation is not sufficient for effective participation – especially when based on essentialist, reductionist attitudes vis-à-vis the group. International law cannot reach deep down to the complexities posited by the relationships between some leaders and ‘ordinary’ persons belonging to minorities. To circumvent what are potentially perverse results of the informality of flexible consultation arrangements, more formal, institutionalised mechanisms, including representation in elected bodies, ought to exist alongside looser arrangements.

If special measures for minority representation are dismissed by Russia, what can be seen, then, as the role of international minority rights law in Russia? This article has

\textsuperscript{154} Interview with the representative of a human rights NGO in St. Petersburg. St. Petersburg, 25 October 2010.
so far provided a rather pessimistic account of its application in Russia. Against this background, data from interviews point to a small but valuable role for international standards for minority protection. The foundations of international human rights law are already incorporated into domestic law via the ECHR, increasingly used in Russian courts.\footnote{See Trochev, \textit{loc.cit.} (note 9) and Burkov, \textit{op.cit.} (note 10).} Regional public officials reported invoking international standards on minority protection in campaigning and lobbying, and employing them in centre-periphery exchanges. For example, a civil servant in Karelia reported citing Russia's international minority rights obligations to solicit the allocation of adequate funding to the republic for programmes on minority cultures, such as media in Karelian language. The Tatarstani Parliament, in May 2009, called on the Russian authorities to ratify the ECRML in order to uphold the right to access education in one’s minority language – a right the regions saw menaced by Law 309.\footnote{Gordeev, Y., 'Tatarstan Gotov Prikryt'sya Khartiei' ['Tatarstan is Ready to Ratify the Charter'], \textit{Nezavisimaya Gazeta}, 19 May 2009. Available at: www.ng.ru/ng_politics/2009–05–19/14_Tatarstan.html (accessed 1 July 2011).} Minorities in Russia have started framing their claims by referring to linguistic rights, rather than cultural programmes.\footnote{Suleymanova, D., 'International Language Rights Norms in the Dispute over Latinization Reform in the Republic of Tatarstan', \textit{Caucasian Review of International Affairs}, Vol. 4, No. 1, 2010, pp. 43–56.} The Council of Europe has acted as mediator by facilitating exchanges between the Russian authorities and civil society at Council of Europe-sponsored events;\footnote{For example, the Council of Europe and European Union 2009–11 project ‘Minorities in Russia: Developing Culture, Language, Media and Civil Society’. Managed in cooperation with the Russian government, the project aimed at aiding the preparatory process towards the ECRML’s ratification.} and by considering the claims and observations included by civil society in FCNM Shadow Reports, which contributed to the formulation of the ACFC’s recommendations. The civil society representatives who worked for organisations that had made use of the international standards – primarily through the compiling of FCNM Shadow Reports – referred to them as additional ammunition in the fight for their rights. Even when they questioned the tangible impact of the Council of Europe’s mediating role, their approach was diametrically opposed to that of those public officials who considered international standards ‘superfluous’. Rather, they regretted that the standards could not be more far-reaching in inducing change towards greater implementation.

4. CONCLUSION

This article reveals numerous challenges to the implementation of international standards in the area of minority participation in Russia. Political parties cannot be formed by minorities, and there are low levels of substantive representation in the Duma. Consultative mechanisms are fragile, devoid of effective legal guarantees
which would enable minorities to have a real impact on decision-making in matters that directly concern them.

Minorities are not utterly excluded from decision-making, but inclusion depends on circumstances rather than on formal systems guaranteeing representation and participation. Meanwhile, the points of entry for public discussion on decision-making have decreased with the political centralisation established by Putin during his presidency. The ‘power vertical’ and non-democratic appointment processes reinforce those arrangements, already present during the Soviet period, that see many leaders of minority groups directing their allegiance to the federal authorities rather than their own ethnic groups. NCAs do not satisfy the participatory rights of minorities in Russia, offering no guarantees that the concerns of ‘ordinary’ persons belonging to national minorities will be represented at a higher level. International law cannot address issues of internal democracy of minority associations.

In some cases, minority organisations have forged fruitful cooperation with the authorities, allowing them to further their interests. Informal networks may benefit minorities in some instances. And, arguably, a complex system of co-decision or veto powers might be untenable with the extremely high number of minorities in Russia, effectively paralysing legislative bodies. The downside of an overreliance on informal networks, however, is a lack of transparency as well as a lack of accountability between the leaders of minority groups and minority members. The absence of strong guarantees and a clear role for NCAs exempts minority leaders and the government from specific responsibilities. The interviews showed that, although there are some minority leaders who genuinely, and with great motivation, attempt to further their groups’ interests, their performance is contingent upon their personal levels of commitment, and on their own networks, rather than on guarantees of effective participation. Ultimately, what happens is ad hoc: minority leaders might help their fellow minorities, but they also might not. Public officials might cooperate with (leaders of) minority groups but they also might not.

International standards on minority participation are unlikely to substantially shift policies on minority rights under the Putin-Medvedev leadership. At the same time, it would be inaccurate to simply dismiss international standards as irrelevant in Russia. The Council of Europe’s ACFC Opinions and Committee of Ministers Recommendations provide an alternative interpretation to the Russian government’s nationality discourse, countering the over-simplification of the nationality question as filtered into a narrative of ‘tolerance’ and ‘extremism’. The ACFC stresses minority rights – rather than generally on the preservation of national cultures and languages. A part of civil society actively participates in processes to further minority rights in Russia through the submission of shadow reports and appeals to international bodies. The voice of civil society, which may be feeble in Russia, is carefully analysed in Strasbourg. Civil society’s use of international standards as a supplementary instrument to frame their claims means that, while these standards do not directly
shape nationality policies, they might, almost imperceptibly, contribute to a progressive widening of the scope of action for minorities, inside and outside Russia.

What is needed for the Council of Europe standards to have a more enhanced role in promoting the rights of Russia’s national minorities? In addition to stronger legal guarantees for minorities and institutionalised consultative arrangements, of vital importance is the presence of favourable conditions amenable to the upholding of minority rights in the Council of Europe Member States. Thus, Marko argues:

[T]he best legal instruments for ‘effective participation’ cannot ‘ensure’ this goal if there is not a political climate and willingness of inter-ethnic dialogue and co-operation to give the members of national minorities a voice which is also ‘taken seriously.’ Hence, in the end, not more or other legal instruments are necessary, but the full implementation of the instruments in place linked with much more effort to provide for the goals foreseen in Article 6 of the Framework Convention, namely to create ‘a spirit of tolerance and intercultural dialogue and take effective measures to promote mutual respect and understanding and co-operation’. Hence, the ‘effectiveness’ of Article 15 of the Framework Convention has to be seen in the entire context of the Framework Convention, since the creation of tolerance and intercultural dialogue is a task to be achieved through the education system, the media and civil society empowerment.  

Then, Marko traces a continuum between the upholding of minority rights through participation, and a favourable political climate, as well as commitment to intercultural dialogue – to be realised within the spheres of education, media and civil society. The centralising tendencies of the Russian regime do not provide such a favourable political climate. Meanwhile, informal practices hold captive spheres of Russian society, such as the media and civil society, essential to build a spirit of tolerance and inter-cultural dialogue. The true respect for other nations and cultures is bound up with democratic development. It is contingent upon the freedom of institutions (civil society, education and media) from their dependency on the centre and from policies based on cultural programmes but not cultural rights. The current complexities are not about an intrinsic incompatibility of international law and the Russian political system, but about aspects of the Putin-Medvedev leadership, and a series of legacies from the Soviet period that are inimical to international standards application in the area of minority rights. One should, however, not assume a perpetual ‘power vertical’. It would not be the first case of Russia taking a sharp turn that alters its destiny.

161 Marko (note 27), at p. 9.