

**Framework Convention for the
Protection of National Minorities**
Opportunities for NGOs
and Minorities

minority
rights
group
international

By Magdalena Syposz

minority
rights
group
international

Minority Rights Group International
54 Commercial Street, London, E1 6LT, United Kingdom
Tel: +44 (0)20 7422 4200
Fax: +44 (0)20 7422 4201
Email: minority.rights@mrgmail.org
Website: www.minorityrights.org

Framework Convention for the Protection of National Minorities

Opportunities for NGOs and Minorities

ISBN 1 904584 38 1

By Magdalena Syposz

**Framework
Convention for
the Protection
of National
Minorities**
Opportunities
for NGOs and
Minorities

Published by Minority Rights Group International, March 2006

Acknowledgements

MRG would like to thank everyone who contributed to this guide, in particular the expert readers and the local NGOs that have produced shadow reports and have shared their expertise with MRG.

This guide is published as part of the activities carried out within the framework of MRG's Southeast Europe Diversity and Democracy Partnership Programme. The Programme is financially supported by the UK Department for International Development, Charles Stewart Mott Foundation, Development Cooperation Ireland, Swedish International Development Cooperation Agency and EC CARDS.

Minority Rights Group International

Minority Rights Group International (MRG) is an international non-governmental organization (NGO) working to promote the rights of national, ethnic, religious and linguistic minorities and indigenous peoples. MRG has been working on using the Framework Convention for the Protection of National Minorities (FCNM) as a tool for improved minority protection since it came into force. This includes increasing awareness of the FCNM, training civil society how to use it, advising on how to produce shadow reports, advocacy to strengthen the monitoring mechanism and facilitating participation of minority-based and inter-ethnic human rights NGOs in implementing it. Much of the work has been done in cooperation with the Council of Europe's FCNM Secretariat and in concert with local NGOs, including many minority-based NGOs. MRG has produced this guide in the hope that it will help NGOs from across the Council of Europe area to get involved and to put together information on the implementation of the FCNM in a way that will be most useful to the Advisory Committee in assessing the compliance of the state concerned. In this way, relevant information can be used to put international pressure on governments to change.

ISBN 1 904584 38 1. Published March 2006. Typeset by Texture. Printed in the UK on recycled paper. **Framework Convention for the Protection of National Minorities: Opportunities for NGOs and Minorities** is published by MRG as a contribution to public understanding of the issue which forms its subject. The text and views of the authors do not necessarily represent in every detail and in all its aspects, the collective view of MRG.

Magdalena Syposz was MRG's Europe/Central Asia Programme Coordinator from 1999 to 2005.

Contents

Abbreviations	5
Introduction	7
Using international human rights standards for improved minority protection	9
The Framework Convention for the Protection of National Minorities	15
Implementation and monitoring of the FCNM	21
Preparing shadow reports and additional information	27
Appendix 1: Text of the FCNM and Explanatory Report	49
Appendix 2: Ratification and reporting status chart	73
Appendix 3: Sample questions on education	77
Appendix 4: Sample recommendations from the shadow report on Croatia	79
Appendix 5: Useful websites/addresses	81
Glossary	83
Notes	85

Abbreviations

AC	Advisory Committee on the FCNM
EC	European Commission
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
EU	European Union
FCNM	Framework Convention for the Protection of National Minorities
IGO	intergovernmental organization
INGO	international non-governmental organization
MRG	Minority Rights Group International
NGO	non-governmental organization
OSCE	Organization for Security and Cooperation in Europe
PACE	Parliamentary Assembly of the Council of Europe
UN	United Nations

Introduction

The Framework Convention for the Protection of National Minorities (FCNM) is a key legally binding instrument devoted to minority protection.¹ It entered into force on 1 February 1998, and as of February 2006 has been ratified by 38² states across the Council of Europe. The FCNM puts a legal obligation on states to act to protect minorities. Implementation of the FCNM is monitored by the Committee of Ministers of the Council of Europe with the assistance of the Advisory Committee. The monitoring process offers considerable opportunities for minorities and non-governmental organizations (NGOs) to have input into the FCNM's monitoring and implementation, and to use it to improve minority protection in their communities/countries.

Depending on the domestic context as well as on organizational priorities and capacities, different minority-based and human rights NGOs get involved with international advocacy for different reasons. One thing they have in common, however, is that they would like to use the international instruments and organizations available as tools to improve the protection of human rights of minority individuals and communities in their country. International pressure is required, together with domestic advocacy, so that their government, or in some cases international actors influential in their country, will take action to improve laws, policies and practices for minority protection.

Many local NGOs have submitted their own information to the Advisory Committee, which acts in many ways like the treaty monitoring body. This information is called 'shadow reports', 'alternative reports', 'additional information' or information from 'other sources'. Basically, this is information on the situation of a minority or minorities in the country, what steps the state is taking to implement the FCNM, any progress made and any problems or areas where minority protection should be improved. This information is from the perspective of the NGO that submits it, and it can be a very useful way for minority NGOs or minority communities, if they are consulted, to let their concerns be known at the international level, and to participate actively in monitoring a Convention which is designed to protect their rights. Information from NGOs is vital for the Advisory Committee to help it assess the actual situation of minorities.

Any pressure that the Council of Europe may apply on a government will

usually be stronger if complemented by domestic advocacy. It is therefore very important not to see the submission of a shadow report or other information as an end in itself, but as a tool to help with the domestic advocacy to change the situation. This is also important for the credibility of the NGO raising the issue with the Council of Europe. Actors carrying out domestic advocacy, particularly if they come from and consult with minority communities, are good potential partners for governments and international actors to participate in decision-making processes that affect their communities.

Using international human rights standards for improved minority protection

Using the human rights system

Human rights are universal and indivisible. They include economic, social, cultural, political and civil rights, and are spelled out in a number of treaties, such as the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention of Human Rights/ECHR). All human rights treaties apply equally to persons belonging to minorities and majorities, and some provisions can be particularly useful for minorities. For example, Arts 29 and 30 of the Convention on the Rights of the Child (CRC) stipulate possibilities for learning in one's own language, and include the right of minority children to practise their own religion, language and culture. Articles of the European Convention of Human Rights dealing with the prohibition of ethnic discrimination (Art. 14); the right to respect for private and family life (Art. 8); freedom of thought, conscience and religion (Art. 9); freedom of expression (Art. 10); and freedom of assembly and association (Art. 11) can be particularly useful for minorities. When deciding to use international standards to improve minority protection at home, it is important to:

- Check which intergovernmental organizations your state belongs to. This will affect the minority-related political commitments your state has made and is under a political obligation to implement. For example, United Nations (UN) member states are committed to implement the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (UNDM) and, likewise, members of the Organization for Security and Co-operation in Europe (OSCE) must comply with the 1990 Document of the Copenhagen Human Dimension Meeting.
- Check which instruments your state is under a legal obligation to implement. This includes UN and Council of Europe treaties that your state has ratified, and bilateral treaties.³ For European Union (EU) member states, these instruments also include EU obligations such as the Race and Employment Directives. States have a legal obligation to implement only those international

standards to which they have agreed, i.e. those they have ratified and which have entered into force.

- Check whether the instrument in question is justiciable, i.e. whether its provisions can be invoked before domestic courts. This is the case, for example, for the ECHR.⁴ The FCNM is legally binding on states which have ratified it, but most of its provisions are not justiciable. This means that they alone cannot be used to make a claim before domestic courts. Nevertheless, governments are legally obliged to implement it and judges and civil servants are obliged to interpret domestic legislation in a way that conforms with the FCNM and all international law.
- Check what is the position of international law vis-à-vis domestic law within the legal system of your state. Often, international treaties take precedence over statutory law, and, in some cases in Central Europe, international treaties even take precedence over the Constitution. This information is usually included in the Constitution of the state.
- Read all relevant instruments that are applicable in your state together and decide which is the best one to use in your situation or at the particular time when you need to take action. For example, do you need a legal judgment? Is domestic advocacy, combined with external political pressure likely to influence the government to take appropriate action? Is your state coming up for examination by one of the treaty bodies,⁵ which would give you an opportunity to provide information to the treaty body, which could then put pressure on your state to comply with the treaty?
- Remember that international human and minority protection standards offer a minimum level of protection. In some cases, a higher level of provision may be necessary; check whether your domestic legislation or practice offers a higher level of protection. States cannot ‘hide’ behind the fact that they are respecting the minimum standards and that therefore no higher level of provision is needed. Art. 22 of the FCNM states that the Convention cannot be used to lower existing provision, which includes ‘acquired’ rights. Acquired rights are rights that a particular minority or minorities have enjoyed; these may be included in domestic laws or it may be that policies and practice have enabled the minority community/ies to enjoy a certain level of protection. One example is access to higher education in a minority language. This is not covered in detail by the FCNM, nor by other international instruments. However, there is a need for minority language education for, for example, the Hungarian minority in Romania, the Albanian community in Macedonia, or the Swedish minority in Finland. Related to this is the need for rights to be provided according to the

expressed needs of different minorities; needs may vary according to the size, pattern of living and culture of a community. Resources to provide for these varied needs must be considered.

- Consider good practices and precedents in other countries. It is important not to simply advocate for copying another system, as each system will need to be adapted to the specific context. However, the Advisory Committee’s Opinions on the FCNM from a range of countries can point you to good practice, for example, how large a proportion of the population a minority needs to be before it is generally considered reasonable for a minority language to be used in public administration at the local level.⁶ You could use this emerging interpretation of what is generally required or reasonable in your domestic advocacy, particularly if the policies/practices in your country are not up to the standard of what is considered good practice.
- Remember that the human/minority rights regime is evolving and the challenge of human rights advocates is to work with the treaty monitoring bodies and states to broaden the interpretation of standards and strengthen the monitoring processes to ensure compliance. So, just because something is not considered good practice or reasonably required today does not mean it will not be tomorrow. But evidence, analysis and advocacy are needed for that.

Minority rights – part of the human rights system

Minority rights are human rights. The system of minority rights protection is based on the following:⁷

Equal enjoyment of human rights

There *must* be equal enjoyment of all human rights by everyone, equality before the law and equal protection of the law. Equality before the law includes equality before the courts, equal access to justice, equal access to public service. Equal enjoyment of human rights does not necessarily mean identical treatment as, in certain circumstances, groups may be treated differently for the purpose of achieving equal rights, as stipulated in minority rights instruments.

Non-discrimination

Prohibition of discrimination is included in most human rights treaties. This is crucial for the protection of human rights of minorities. The ICCPR, for example, includes in Art. 2 the prohibition of discrimination on grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. The ICERD, Art. 1, defines discrimination as:

'any distinction which has the purpose or effect of impairing the recognition, enjoyment or exercise on an equal footing of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life'.

Special measures

The post-Second World War international system of human rights protection focused on the protection of the rights of the individual, coupled with non-discrimination and equal enjoyment of human rights and equality before the law. It soon became apparent that this system was not sufficient to protect the human rights of persons belonging to minorities and that special measures were necessary to overcome discriminatory practices and ensure equality in fact. Special measures aim to ensure equal protection of minorities both in law and in fact. These are rights, not privileges, and they do not constitute discrimination. Special measures were developed in the following fields in order to bring minorities into full and effective equality with the rest of the population: language; education; religion; culture; identity protection; participation in economic, social, cultural, public life.

Special measures are in effect until full and effective equality is achieved. This may be for always, for example in case of mother tongue (first language) education. Other measures may be for a limited time, such as, for example, affirmative action/positive discrimination in access to employment in public service. Special measures put additional positive obligations on states to act and commit resources to ensure that minorities' human rights are protected. States should always implement minority rights with the meaningful participation of minorities in the decision-making processes. Minority groups and individuals can decide whether or not they wish to use the special measures available to them, and have an input into how this should be done. There is a considerable role for minority civil society, including NGOs, to contribute to deliberating, implementing and monitoring both general laws, policies and practices, and those that are specifically aimed at improving minority protection. Key international instruments devoted specifically to the protection of minorities include the OSCE Document of the Copenhagen Meeting of the Conference on the Human Dimension (1990), the UNDM (1992), the Council of Europe's FCNM (1995).

Why international advocacy? What is the value added?

Advocacy is the *process of achieving change* to protect human rights and improve the lives of people. Advocacy includes:

- involving people whose lives are affected/ensuring participation;
- influencing decision-makers to change laws, policies, and practices;
- raising public awareness of issues/rights in order to change attitudes.

International advocacy should not be carried out in isolation, but should be combined with domestic advocacy. Advocacy at all levels should be carried out with the participation of those whose lives it is trying to change. Participation is a right that is particularly important for minorities because they are often marginalized, economically and politically.

Some of the possible benefits of advocating at the international level include:

- States are *legally bound* by the treaties they have ratified and they are breaking international law if they do not respect or implement the treaties. There are many other commitments states make, such as declarations, that they are *politically bound* to implement. States are also under an obligation to implement the recommendations of treaty monitoring bodies. NGOs have the possibility of influencing monitoring treaties and other commitments, including the content of the recommendations of the treaty monitoring bodies.
- No one likes to be *embarrassed* in front of their peers. This includes states. If NGOs raise issues effectively at the international level, the states are likely to be embarrassed into taking concrete steps to improve a domestic situation, or at least to be seen to be taking steps to improve the situation.
- *Foreign pressure* can be effective, depending on the *leverage* the international actor has on the government. For example, in the context of accession negotiations to the EU, the Copenhagen criteria, which all candidate states have to meet, and which include the obligation to protect the rights of minorities, were used effectively by NGOs to press for change. The challenge is what to do once the leverage is gone (e.g. once a state accedes to the EU). In non-EU member states, pressure from the EU can be used in combination with leverage over funding. Issues of conditionality of aid and double standards need to be considered, but are beyond the scope of this guide.
- At certain *times of opportunity* international pressure can be used more effectively than at other times. This depends on regional and global political developments, and how much leverage a certain organization has at a certain time. In the case of international treaties, times of opportunity include times when a state is coming up for monitoring.

How does international advocacy fit in with your domestic advocacy?

Ultimately, minority and human rights NGOs are trying to achieve change at home. This needs to be kept in focus. International advocacy is usually of little use unless it is combined with domestic advocacy. When domestic and international advocacy complement each other, this can be very effective. In the context of the

FCNM, pressure from NGOs at home as well as from the Advisory Committee can make the government more likely to change its mind or take some action on an issue of concern, such as making a change in legislation, initiating a programme, allocating funds, or taking concrete steps to ensure minority participation in decision-making processes generally. It is important to decide specifically who you are trying to influence domestically to achieve change (e.g. local or national government, a particular ministry, the police) and to whom will they listen.

If your NGO decides to get involved in international advocacy, you will need to choose how best to use your limited resources. This would include decisions on which forum/instrument to use, which in turn would depend on the situation you are trying to change; who the decision-makers are likely to listen to; when you need results; and what opportunities are coming up. The FCNM can be a useful tool for changing a pattern of discrimination or exclusion; improving legislation, policy or practice; enhancing minority participation in decision-making processes; and initiating or enhancing dialogue between minorities and the government. It is not the most useful instrument available for grave violations of basic human rights in urgent cases or in individual cases, except where a number of individual cases can illustrate a pattern of discrimination; then the FCNM can be used in the medium term to try to change the pattern.

The Framework Convention for the Protection of National Minorities

What is the Council of Europe?

The Council of Europe is an organization of states. It has 46 member states. It has political and judicial or quasi-judicial mechanisms to oversee its work. The executive body is the Committee of Ministers, composed of Ministers of Foreign Affairs of each member state. The deliberative forum is the Parliamentary Assembly, made up of parliamentarians of different political groupings. It has the power of recommendation, and is involved in decisions on membership of the Council of Europe; it also elects the Secretary-General. Other bodies, such as Committees of Experts and the Congress of Local and Regional Authorities, oversee particular aspects of the work of the Council of Europe. The Council of the Europe has legal mechanisms which monitor states' compliance to their commitments under the Council of Europe's conventions. This includes the European Court of Human Rights, which monitors the European Convention of Human Rights, deciding on cases brought to it by individuals and states. It also includes committees which monitor other conventions, including the FCNM. The structure of the Council of Europe is serviced by the Secretariat, located in Strasbourg. The Secretariat is organized into Directorates. One of these is the Directorate-General of Human Rights, which includes the Secretariat of the FCNM.

What is the FCNM?

The FCNM is an instrument of the Council of Europe. It entered into force on 1 February 1998 and so far 38 states have ratified it. The FCNM is legally binding in those states that have ratified it. This means that the state parties are legally obliged to translate the provisions of the FCNM into domestic law, policy and practice. The term 'framework' means that the Convention contains mostly programme-type provisions aimed at improving minority protection rather than specifying individual rights, although it does refer to rights. This means that the focus is on what the state has to do to guarantee a right rather than the right itself. Many of the Articles of the FCNM contain language such as: 'The Parties undertake to guarantee to persons belonging to national minorities the right of equality before the law ...' (Art. 4). The FCNM also includes some rights. Importantly, it contains the right to self-identification (Art. 3).

Most of the provisions contained in the FCNM are not justiciable; this means that they alone cannot be relied on in domestic courts. There is also no international court to bring a case to. The provisions are flexible, which can be a weakness or a strength. The weakness is that some states may try to interpret the FCNM in a minimalist way and not improve minority protection. However, Art. 2 states that ‘the provisions of this Framework Convention shall be applied in good faith ...’ Also, Art. 22 refers to the fact that nothing in this Convention can limit existing rights, including ‘acquired’ rights. This implies that the efforts should be expanded to whatever extent possible in relation to the context and resources. The flexibility of the FCNM can also be a strength because the state parties are obliged to act and to take specific measures to implement the provisions of the Convention. But states have room to develop provisions which best fit a particular situation. This should be done with the full participation of minority communities and using the Opinions of the Advisory Committee; in this way really good provisions can be developed, and interpretation can continue to be broadened. Undoubtedly, the FCNM contains weaknesses, like any negotiated document, and because of its nature it is important to look not only at the text but also at the monitoring and how the Convention has evolved, and continues to evolve, through the interpretation of State Reports, the Advisory Committee’s Opinions, Comments made by states on the Opinions, and the Resolutions of the Committee of Ministers. Furthermore, through the Opinions of the Advisory Committee, there is increasing clarity on the actual content of the principles. A certain flexibility in the wording allows for dynamic interpretation of the treaty, which evolves with time; this is not specific to the FCNM, and has also been the case, for example, with ECHR.

To whom does the FCNM apply?

The FCNM does not contain a definition of a national minority. This is in line with other international instruments, as there is no internationally agreed legally binding definition of national minority.⁸ Key elements of who constitutes a minority group are: (1) objective criteria such as distinct language, religion, national or ethnic origin; (2) numbers; (3) subjective element, i.e. the group’s will to preserve its own identity, and an individual’s will to identify with a group; and (4) a time factor, i.e. how long the group has been on the territory. Crucially, it is not for states alone to decide whether a minority group exists and who constitutes a minority group. The Opinions of the Advisory Committee include standard language on each state, which refers to the margin of appreciation that all states must have; however, states must not make arbitrary decisions on to whom the FCNM applies.⁹ Such decisions must be based on objective criteria and take into account the right to self-identification.

One of the basic principles of the FCNM is the right to self-identification. Art. 3 states that:

‘every person belonging to a national minority shall have the right to freely choose to be treated or not to be treated as such and no disadvantage shall result from this choice or from the exercise of the rights which are connected with that choice.’

States have some discretion in deciding the personal scope of application of the FCNM. This has led to a number of problems, whereby some states have entered declarations,¹⁰ some of which attempt to limit the scope of application. For example, Denmark declared that the FCNM applies only to the ‘German minority in South Jutland’, excluding the German minority outside South Jutland and other groups, such as the Roma. Estonia, among other states, has declared that the FCNM applies only to citizens; however, this is a particular problem in the context of Estonia where many ethnic Russians have problems obtaining Estonian citizenship. In its Opinions, the Advisory Committee has strongly criticized the approaches of both Denmark and Estonia with regard to the scope of application of the FCNM: ‘the Advisory Committee considers that, bearing in mind the prevailing situation of minorities in Estonia, the above declaration is restrictive in nature’, ‘the Advisory Committee considers that the personal scope of application of the Framework Convention in Denmark ... has not been satisfactorily addressed ...’ and that ‘this approach is not compatible with the Framework Convention’.¹¹

Some Articles of the FCNM can apply to a wider range of groups than other Articles, which require the minorities to be present on the territory ‘traditionally’ and/or ‘in substantial numbers’. In this respect, Art. 6 has the widest scope as it obliges states to ‘take effective measures to promote mutual respect and understanding and co-operation among all persons living on their territory’. This Article can be used by groups such as recent immigrants. Opinions of the Advisory Committee can provide useful guidance in this respect.

Content of the FCNM

The FCNM creates legal obligations for states. It obliges state parties to realize the principles of the FCNM by taking special measures, refraining from certain practices and guaranteeing specific rights. Most of its provisions set general principles and objectives and are worded as state obligations. The FCNM covers issues such as the right to self-identification, language, identity, education, religion, association, cross-border contacts and participation. The emphasis is placed on the protection of persons belonging to national minorities, who may

exercise their rights individually and in community with others. Clearly, there is a collective dimension as many minority rights only make sense when exercised in a community.

NGOs that want to use the FCNM in their work should refer to the actual text of the Convention. It gives details of the specific obligations and its text is legally binding on the states that have ratified it. The following overview should provide a general sense of what is covered by the FCNM. The Preamble is the section that provides the reason for developing the FCNM and provides important insights into the ‘spirit’ of the agreement. As explained above, the principles in the text are worded in general terms. The statements in the Preamble should be seen as a guide for interpreting the FCNM. It recognizes that the upheavals of European history have shown that the protection of national minorities is essential to stability, democratic security and peace in this continent.

It stresses, among other things, that:

‘a pluralist and genuinely democratic society should not only respect the ethnic, cultural, linguistic and religious identity of each person belonging to a national minority but also create appropriate conditions enabling them to express, preserve and develop this identity.’

State parties are thus required to take action. It also declares that ‘the creation of a climate of tolerance and dialogue is necessary to enable cultural diversity to be a source and a factor, not of division, but of enrichment for each society’. The Explanatory Report states in paragraph 11 that the provisions leave the states concerned a measure of discretion in the implementation of the objectives and principles in order to enable them to take particular circumstances into account. It should be kept in mind that the FCNM is a living document and its interpretation evolves over time. It is good to also look to the Opinions of the Advisory Committee to provide guidance on how interpretation is evolving; Opinions may be more useful than the Explanatory Report in certain cases. A précis of the FCNM follows with our emphasis given.

Section I, Arts 1–3, sets out several general principles:

- Art. 1 states that the protection of national minorities is part of the international system for human rights protection.
- Art. 2 declares that the FCNM should be implemented in good faith and through cooperation between states.
- Art. 3 says that every person belonging to a national minority is free to choose – without the risk of disadvantage – whether or not to be treated as a minority,

and that the rights which flow from the principles of the FCNM can be exercised individually or in community with others.

Section II, Arts 4–19, is the main operative part of the text and contains the ‘programme-type’ provisions. They set out the objectives and principles protected by the FCNM. The state parties should implement the provisions through legislation and appropriate policies at home and, where appropriate, through bilateral and multilateral agreements.

- Art. 4 specifies the obligation of state parties to guarantee the ‘right of equality before law and equal protection of the law’. It also obliges states to take ‘adequate measures’ to promote ‘full and effective equality’ in all areas of life and determines that these measures shall not be considered acts of discrimination.
- Art. 5 obliges state parties to ‘promote the conditions necessary’ for minorities to maintain and develop their culture, and to preserve their identity. It also specifies that states should ensure that minorities are not assimilated ‘against their will’.
- Art. 6 asks state parties to encourage mutual respect, tolerance, intercultural dialogue and cooperation among all persons in their country. It further obliges state parties to protect persons from ‘discrimination, hostility, or violence’ targeted at them because of their minority identity.
- Art. 7 concerns the right to freedom of peaceful assembly, association, expression, thought, conscience and religion.
- Art. 8 deals with the right to manifest ‘religion or belief and to establish religious institutions, organizations, and associations’.
- Art. 9 specifies that the right to freedom of expression includes the freedom to receive and impart information in the minority language. It also protects against discrimination in access to the media and promotes the possibility for minorities to create their own media.
- Art. 10 covers linguistic freedoms, including the use of the minority language in private and in public, and before administrative and judicial authorities.
- Art. 11 continues with the use of minority names, and the display of information and topographical indications in the minority language.
- Art. 12 addresses intercultural education such that state parties are obligated to foster knowledge of the ‘culture, history, language, and religion’ of minorities and of the majority. They must also ‘promote equal opportunities for access to education at all levels’.
- Art. 13 protects the right of minorities to create and manage ‘their own private educational and training establishments’, without entailing any financial obligation for the government.

- Art. 14 protects the right to learn a minority language. Furthermore, it deals with the possibility for minorities to be taught the minority language or to receive instruction in it, without prejudice to learning or being taught in the official language.
- Art. 15 obliges state parties to enable minorities to participate effectively in cultural, social and economic life, and in public affairs.
- Art. 16 declares that state parties are not allowed to ‘alter the proportion of the population’ in areas with concentrations of minorities when these measures are aimed at restricting the rights covered by the FCNM.
- Art. 17 protects the right to ‘maintain free and peaceful contacts across frontiers’. It also protects the right to participate in NGO activities, both at the domestic and international levels.
- Art. 18 covers cooperation between states by encouraging bi- and multilateral agreements between each other to protect minorities.
- Art. 19 declares that the only ‘limitations, restrictions or derogations’ that state parties can make to the FCNM’s principles are those permitted in other international legal instruments.

Section III, Arts 20–3, concentrates on issues regarding the interpretation of the principles in Section II.

- Art. 20 requires persons belonging to national minorities to respect domestic legislation.
- Art. 21 protects the territorial integrity and political independence of states.
- Art. 22 states that the FCNM may not be used to limit higher standards of protection provided either in other international instruments or under domestic legislation, including acquired rights.
- Art. 23 concerns the interpretation of the rights which are subject to provisions in both the FCNM and the ECHR.

Section IV, Articles 24–6, and Section V, Articles 25–32, set out the principles for the monitoring and entering into force of the FCNM. These are described in more detail below.

Implementation and monitoring of the FCNM

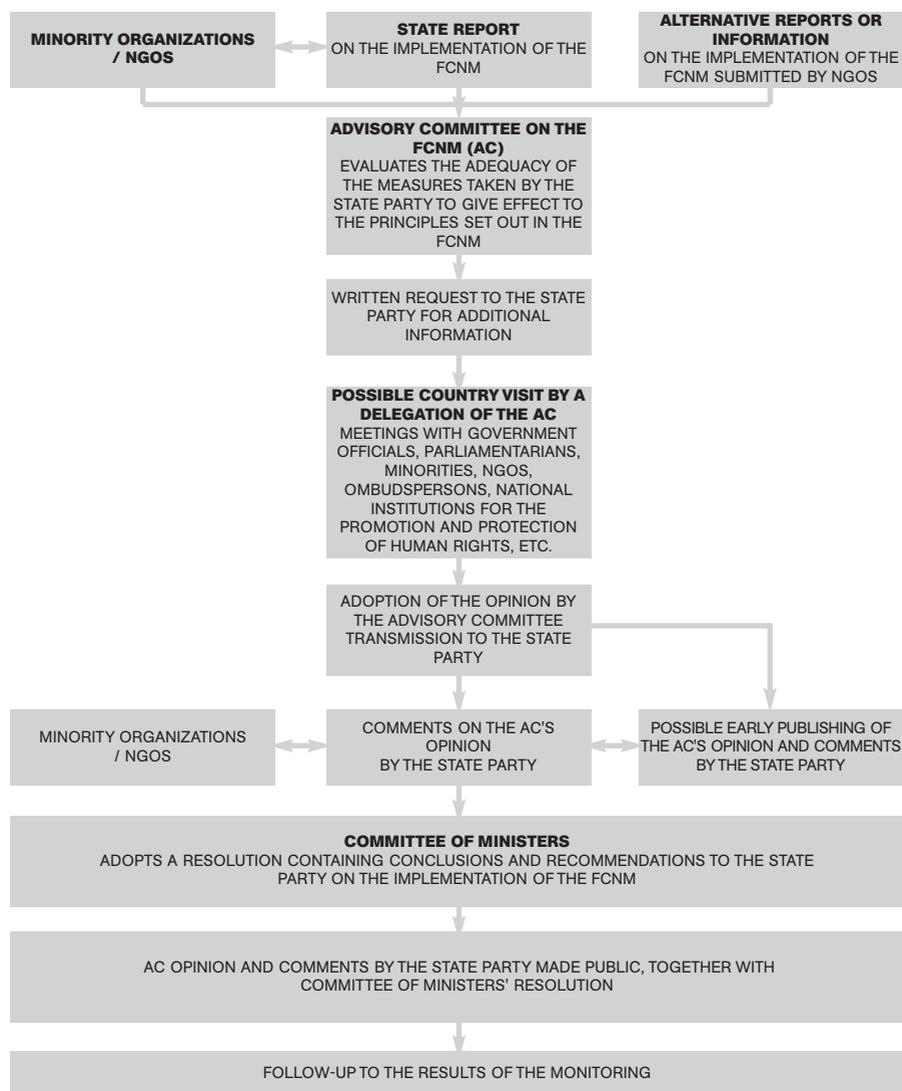
Implementation

States are obligated to implement the FCNM after it has been ratified by the state. States have an obligation to act. They must take specific and effective steps to design and implement laws, strategies, policies and programmes in such a way that the provisions of the FCNM are implemented and minority protection is secured. States have an obligation to ensure mechanisms for effective participation of minorities in decision-making processes. This includes meaningful involvement of minorities in implementation of the FCNM; however, implementation is the responsibility of the state.

Monitoring by the Council of Europe

Implementation of the FCNM is monitored by the Committee of Ministers with the assistance of the Advisory Committee. The Advisory Committee is made up of 18 experts from states that have ratified the FCNM. The 18 experts are nominated by states and approved by the Committee of Ministers and they serve in their personal capacity.¹² The Advisory Committee assesses states’ compliance with the FCNM on the basis of State Reports and information from ‘other sources’. ‘Other sources’ include intergovernmental organizations, such as OSCE or UN reports, Ombudspersons, academic research, international NGOs and, crucially, national and minority NGOs. It has been usual practice that, during the monitoring process, the states invite the Advisory Committee to visit the country to meet a range of government departments and civil society actors, including minority representatives and NGOs, to discuss key issues in minority protection.¹³ The Advisory Committee formulates its Opinion and submits it to the Committee of Ministers. At this stage, the state examined has the opportunity to comment on the Advisory Committee’s Opinion. On the basis of the Advisory Committee’s Opinion and State Comment, the Committee of Ministers issues its Resolution, which includes conclusions and recommendations to states. The Committee of Ministers’ Resolutions are usually very similar to the summary of the relevant Opinion of the Advisory Committee and make specific reference to the full text of the Opinion. The Committee of Ministers’ Resolutions are agreed by the state concerned. The state must comply with the Resolution, including publicizing the

Figure 1
FCNM monitoring mechanism



Source: FCNM Secretariat of the Council of Europe

information, and keep the Advisory Committee informed of steps taken and significant developments. The Advisory Committee offers its assistance to states.

This monitoring process offers various opportunities for involvement by minority and broader civil society. These include:

- Raising awareness of minority rights and of the FCNM.
- Being in dialogue with the government and having input into the production of the State Report.
- Raising key issues through producing shadow reports, or submitting other relevant information to the Advisory Committee.
- Participating in meetings when the Advisory Committee visits the state and raising key issues.
- Lobbying for early publication of the Advisory Committee's Opinion by the state, and that the state translates the Opinion into official and minority languages.
- Publicizing the Opinion of the Advisory Committee and the Committee of Ministers' Resolution.
- Participating in follow-up activities, including follow up seminars with the Advisory Committee and any task force set up by the government to implement the recommendations contained in the Resolution and the Opinion.
- Ongoing monitoring and keeping the Advisory Committee informed of key developments. The Advisory Committee has worked to develop continuous dialogue with states on implementation of the FCNM and wider issues of minority protection. Most Committee of Ministers' country-specific Resolutions request that states keep the Advisory Committee regularly informed of action taken in response to the first and second cycles of monitoring. Each Advisory Committee Opinion also highlights specific issues of concern, and proposes specific recommendations. Civil society can also keep the Advisory Committee informed of major developments. For example, if a major new piece of legislation, such as a law on minorities, is discussed in parliament or adopted, a brief analysis of key positive and negative aspects would be useful between reporting cycles.
- Getting involved in the thematic work of the Advisory Committee. Since 2004, the Advisory Committee has also been working on thematic areas, initially on education, participation and media. This is a relatively new area for the Advisory Committee and the process still has to develop; NGOs can write to the FCNM Secretariat if they want to be involved or provide information.
- Suggesting and advocating for ways that monitoring work can be improved; this would include the work of the government and/or the Advisory Committee in relation to follow-up to Opinions and Resolutions, for example.

State reports

States are required to produce reports on their compliance with the FCNM one year after entry of the Convention into force and then every five years.¹⁴

First reporting cycle

The first State Report is to be submitted in accordance with an Outline adopted by Committee of Ministers in 30 September 1998.¹⁵ The first State Report is to have two parts. Part I should contain an overview including general information on policy concerning the protection of national minorities, historical overview, basic demographic information, basic economic data and measures the state has taken to implement the FCNM that have worked especially well, as well as areas where help is needed from the Advisory Committee. Part II should follow the Articles of the FCNM and provide full specific information on measures adopted to ensure its implementation. This means that the issues should be dealt with in the order in which they are raised in the Articles. Information contained in the State Report should be broken up into the following categories: narrative, legal state infrastructure, policy, factual.

Second reporting cycle

The second State Report is due five years after the first one was due (i.e. six years after the entry of the FCNM into force, regardless of whether the first State Report may have been delayed). So, the second State Reports for the first 19 states in which the FCNM entered into force in February 1998 were due in February 2004. In January 2003, the Committee of Ministers adopted a new Outline.¹⁶ For the second cycle of State Reports, this Outline should be followed instead of the 1998 Outline, while the states that have not yet reported must use the 1998 outline.

In the second cycle, State Reports are to include:

- Practical arrangements made at national level for following up the results of the first monitoring cycle on the implementation of the FCNM. This is to include specific measures taken to improve participation of civil society in the implementation of the Convention.
- Measures taken to improve implementation of the FCNM in response to the Resolution adopted by the Committee of Ministers in respect of the country concerned. This should be on an Article-by-Article basis.
- Answers to specific questions to each state party to the FCNM. Similar specific questions are also put to NGOs and these are available from the FCNM Secretariat. The specific questions are put together by the Advisory Committee and they aim to deal with the most important issues in the state concerned,

based on the Opinions from the previous reporting cycle and on ongoing developments in a particular state in minority protection.

It is already clear that the Advisory Committee sees the State Reports as part of continuous dialogue between the Council of Europe, states and national minorities on how to improve minority protection and implement the FCNM more effectively. Also, it is clear that the Advisory Committee considers minority and wider civil society participation to be key for improved arrangements at home and for external monitoring.

Civil society input into State Reports

States are encouraged to consult with minorities and other members of civil society during the reporting process. However, regardless of the extent of the consultation, the ultimate responsibility for the contents of the State Report lies with the state.¹⁷ A number of states have held consultation meetings or asked civil society organizations to comment on their draft report. In other states there has been no consultation. In some cases it has been difficult for NGOs even to find out who is responsible for putting together the State Report. Usually, this is the Ministry of Foreign Affairs or Department for Minorities; however, if NGOs have problems locating the responsible ministry or department, they can contact the local Council of Europe office or the FCNM Secretariat to find out. Though some states may make drafts of their State Reports available during the consultation process, all State Reports become publicly available at the latest when they are submitted to the FCNM Secretariat.¹⁸

Contributing to the State Report process in no way prevents NGOs from submitting their own information directly to the Advisory Committee. Indeed, civil society is encouraged to do both.

Preparing shadow reports or additional information

This section focuses on producing relevant information for the Advisory Committee. This may be a comprehensive shadow report or simple evidence that relates to one of the Articles of the FCNM. It can be anything from 1 page long, but should preferably not exceed 20 pages. All shadow reports will be different and there is no single model for a shadow report. Different human rights organizations from the same country, and even the same minority community, can submit their own information to the Advisory Committee. Organizations often choose to work together. In several countries different minority organizations and national human rights organizations have worked together to produce often very comprehensive shadow reports. One advantage of working together is that the support base for the issue is broader and this can be very positive for an advocacy campaign. Furthermore, a committee member faced with time constraints and a large pile of documents may be more likely to pay attention to a shadow report produced by a coalition of NGOs, as it will condense information from a broad range of sources. However, no one organization or coalition has monopoly on producing 'the' shadow report for any country, and broad participation is encouraged.

Below are some things to consider, suggestions, and issues NGOs face when producing shadow reports or providing other evidence on aspects of the implementation of the FCNM. We tried to select the key issues and common problems, and this is not an exhaustive list. The content, and some aspects of the process and methodology of putting together the information, will be specific for each NGO, each community and each context. Importantly, decisions on these issues should be linked to how the shadow report will be used for both international and domestic advocacy to achieve change at home. We tried to include things that, on the basis of MRG's experience, would be useful for the treaty monitoring bodies as well as for the international side of an advocacy campaign. Crucially, the international advocacy needs to go hand in hand with domestic advocacy. Domestic NGOs are best placed to develop a domestic advocacy strategy that will be well suited to the needs of their community and the domestic context.

What action can NGOs realistically expect? Is it worth it?

Putting together a shadow report, or even evidence on one specific Article, requires time and money. When deciding whether to commit your resources in this way,

and asking others for their contribution, it is important to be aware of what you can expect, and to communicate this clearly to all stakeholders so as not to raise false expectations. This is particularly important in NGOs' consultations with broader minority communities.

The Advisory Committee produces Opinions which are considered by the Committee of Ministers, and Resolutions are adopted by the Committee of Ministers on the basis of the Advisory Committee's Opinion, State Comment and Committee of Ministers' deliberations. NGO analysis, if produced well, will be considered by the Advisory Committee when they are putting together their Opinion and in their discussions with the state. With a good shadow report, civil society organizations can expect to see some of the points they have made reflected in the Advisory Committee's Opinion, and they may see how their work informed the Advisory Committee's recommendations. Some of the examples NGOs used might also be used, but it should be stressed that AC looks at patterns of protection and violation and not at individual cases as such. In addition, information provided by NGOs may be used in dialogue between the Advisory Committee and the state, but much of the dialogue is private and the NGO concerned is not likely to know whether their issues have been raised. At worst, an NGO may never know whether their report has been useful. However, a number of members of the Advisory Committee have stressed that good civil society information is very useful and that major issues are raised with the government.¹⁹ Many NGO concerns are also reflected in the Opinions of the Advisory Committee.

In the first cycle of reporting, in some cases it has taken two years between the submission of the State Report and the adoption of the Committee of Ministers' Resolution, at which time (at the latest) the Advisory Committee's Opinion becomes public. This time-frame is a major issue of concern, and MRG and others have been advocating for a reduced time-frame. The Advisory Committee has taken steps to ensure that the monitoring process is more time-efficient in the second round of reporting; however, some of the reasons for the delays in monitoring are beyond the control of the Advisory Committee, such as delays in submitting State Reports, which makes it very difficult to plan. Concrete steps to speed up monitoring include new working methods of the Advisory Committee, for example, sending a questionnaire on the most pressing issues to states in advance, and speeding up the process of drafting the Opinion. Importantly, the Advisory Committee has been authorized by the Committee of Ministers to submit proposals to commence monitoring without the State Report in cases of delay over 24 months, which seems to have had an impact on some states submitting reports.²⁰ In the second monitoring cycle, so far, the time between states reporting and the Advisory Committee issuing its Opinion has been much reduced. For a number of states this has taken seven

months or less; for a few states, however, it has taken 15 months or more for the Advisory Committee to produce an Opinion. It is likely that NGOs that have submitted information will have no visible results apart from the dialogue established with the Advisory Committee and with their government for between six months and one year. On the other hand, it is also likely that concerns raised by NGOs, if done in a credible and documented way, will be reflected in the Advisory Committee's Opinion, and possibly the Committee of Ministers' Resolutions.

When deciding whether to produce a shadow report, it would be worthwhile to consider what impact such a report and advocacy carried out with it can have domestically, regardless of whether the Advisory Committee explicitly takes up the issues raised in the shadow report. For example, in some countries, the mere publication of a shadow report may prompt action by authorities once they see that the issue (which they may have ignored in the past) has been brought to the attention of the Council of Europe. Below are key questions NGOs should address when deciding to prepare a shadow report.

Why?

Purpose of NGO information for the Advisory Committee

The purpose of NGOs supplying information to the Advisory Committee is: to present a critical assessment of the situation and to provide the Advisory Committee with a more complete/accurate picture of the issues. Information from NGOs will be read with State Reports to help the Advisory Committee assess the situation and issue its Opinion.

Purpose(s) for the NGOs

NGOs should be clear about why they are producing a shadow report, and what their objectives are. It is much more effective if shadow reports are part of an advocacy campaign rather than a one-off initiative. The overall aim of producing a shadow report will be to achieve change at home. There may be more than one objective. These might be:

- to highlight a specific issue or a range of issues at international level;
- to work with other civil society organizations/other minorities and/or majority, to achieve change on specific issue(s) that would be of benefit to all;
- to initiate/improve dialogue with the government on specific issue(s) on the basis of analysis/findings/recommendations included in the shadow report.

Once the objectives are clear, make sure that producing a shadow report is going to help achieve them. Remember that the FCNM is concerned with

laws/policies/practices and patterns of discrimination, not individual cases. Individual cases can be used to illustrate a pattern, but the FCNM does not have an individual redress mechanism.

Who?

Each NGO should decide whether it will produce additional information on its own, or work with other NGOs to produce a joint shadow report. In any case, it is crucial to consider and demonstrate how the minority community/ies are involved in the entire process. The following questions can be helpful when deciding the extent of community involvement:

- Are the priorities decided and the information used a result of ongoing work with minority community/ies, or will there be specific research/meetings with members of minority community/ies as part of the process of putting together the shadow report?
- How will different views within each community be sought and incorporated?
- How will you ensure that different parts of the community – young/old, women/men, different professional groupings, urban/rural within the community are included?
- How will you ensure that people know what to expect and that their expectations are realistic? How will you inform them of any progress made?

Credibility is key, and NGOs must ensure that they involve minority communities and do not claim to represent views or people they do not have a mandate to represent. Table 3 may be useful when deciding whether a shadow report should be produced by one NGO or a coalition.

When?

The first step for each NGO is to find out when the State Report is due.²¹ The first State Report is due one year after the entry into force of the FCNM in the state. The second report is due five years after that. The Advisory Committee examines the state’s compliance with the Convention after it receives the State Report.²² It is always worth *checking in advance with the FCNM Secretariat for any deadlines and the timetable*.

The best time to submit shadow reports is before the Advisory Committee considers the State Report so that the Advisory Committee can use the NGO analysis in its examination of the State Report and when forming its Opinion.²³ The Advisory Committee usually begins to consider the state within three months²⁴ of the submission of the State Report. But, the timespan could be shorter, for

Table 1
Is the FCNM the right mechanism for you?

Key objectives	Support base / community involvement	How useful is FCNM?	Domestic context	Required inputs	Anticipated positive outcomes	Risks/ possible negative outcomes	What can be done to minimize risks/ negative outcomes?
Be specific and clear on what change you are trying to achieve	Whose issue is this? How is the community involved: through consultation, or indirect input	Is the issue covered by an Article in the FCNM? Where in the monitoring cycle is your state?	What is going on locally? What leverage will FCNM or Advisory Committee pressure have?	Time Money Expertise	What can you expect: change in a policy, law, programme? attention to your issue at the international level?	Resources taken away from other work. What will have to be sacrificed? Backlash from government, media If joint work, possibilities of disagreement	Involve minority community early in consultations Be clear about what can be expected Inform decision-makers of your work and get their comments, if appropriate
Are the objectives SMART, i.e.: Specific Measurable Achievable Resourced Timebound?	Are there other mechanisms which would better deal with your issue (e.g. national law, UN/Council of Europe conventions, EU laws/processes)? Are different parts of the community involved (e.g. young/old, men/women, different professional groups)? What are the expectations of the community?	Are there other mechanisms which would better deal with your issue (e.g. national law, UN/Council of Europe conventions, EU laws/processes)?	Is the time it will take to see the outcomes acceptable?		improved dialogue with government? possible input into policy-making? stronger/emerging coalition of NGOs working together? increased community activism?	Possible divisions within/ between communities. Unrealistic unfulfilled expectations	Prepare media campaign Clarify roles and responsibilities early Secure necessary resources

Table 2
Example from a shadow report produced in 2002/03 by
Center for Multiculturalism and Vojvodina Center for
Human Rights, Serbia and Montenegro²⁵

Decide your key objectives	Support base / community involvement	How useful is FCNM?	Domestic context	Required inputs	Anticipated positive outcomes	Risks/ possible negative outcomes	What can be done to minimize risks/ negative outcomes?
To improve educational provision for minority children in Vojvodina through provision of good materials in minority languages, and teacher training	Problem for all minorities in Vojvodina Work carried out by a coalition of NGOs, inter-ethnic and minority based, from different communities Parents and teachers in minority schools would be involved in the research	Arts 12–14 NGO work was ready to commence several months before State Report was due	Ongoing educational reform in Serbia Draft law on minorities (subsequently adopted during the research) Government of Serbia and Montenegro likely to take account of international pressure in an effort to improve relations, and show it is committed to democratic processes EU aid means EU has leverage	Research team from several NGOs Research in schools Coordination, analysis and production of report Financial resources	Increased pressure on government both internationally and domestically Possibilities for input into the ongoing educational reform Strengthening joint advocacy on the issue which affects different communities	Difficulties getting all minorities on board and possible divisions between the biggest group with a strong lobby and smaller groups Resource intensive	Minority communities involved early, particularly minority teachers and parents. Awareness-raising among minority teachers and minority NGOs on what could be expected, including a training seminar Dialogue with decision-makers

Table 3
Deciding whether to submit a joint shadow report

When deciding whether to cooperate with other NGOs to produce a joint shadow report, each NGO must decide what is better for their organization in specific situation/context.

Issues to consider for all shadow reports	Additional questions for joint reports	Pros of working together	Cons of working together
<i>Credibility</i>			
How will you ensure that the report, and the process have credibility?	Which communities/ issues are covered? Why?	A range of NGOs might bring in stronger links with a range of communities, together with national and international advocacy experience. All of this will be good for credibility and may make advocacy more effective.	One NGO can compromise the credibility of all NGOs and of the process.
Does your NGO have the mandate to do what is proposed?	How well does your NGO know the other NGO(s) you are considering working with? Is the cooperation good?	Smaller NGOs may need the support of other NGOs to help them establish credibility	
Make sure your NGO does not claim to be representing those it cannot represent, e.g. the whole community	Are the NGOs working together minority based or general human rights organizations? What is the mandate of each organization?		
	If a committee is set up to coordinate the joint report, what is its make-up and how does it get its mandate?		
	How have NGOs been selected to enter into the cooperation? What if other NGOs approach the group and would like to be involved?		
<i>Community involvement</i>			
How will you involve the community/ies? How will you make sure that different parts of each community are consulted (men/women, different professional groups, old/young)?	Will each organization work with one community, or will there be joint meetings where you will try to get different points of view?	It can be easier to ensure broad support base if all cooperating NGOs have strong links with the communities	The consultation process can become very complicated
<i>Issues to be covered</i>			
How will you identify, select and prioritize issues? How will you ensure that the community/ies are really involved in this process?	Are there key cross-cutting issues that are relevant for all communities?	Issues identified are likely to be the most crucial ones and joint recommendations can be stronger	It can be more difficult to identify the key issues to focus on and to agree recommendations
Decide on the key issues to be included early in the process.	Deciding key issues early on is especially important if the report is to cover more than one community. Some issues may be very important for one community, e.g. sustainable return of Serbs to Croatia, while other issues may be a priority for other minorities, e.g. access to education for Roma in Croatia.		Joint reports are likely to mean compromises and that not all issues for each community will be covered

example if the State Report is considerably overdue. It is usually better to wait until the State Report has been submitted before submitting additional information, so that the NGO can see what is in the State Report and make comments, if appropriate. This does not mean that the work on the shadow report should not begin until the State Report is in; indeed, it should probably begin earlier.

If it is not possible to submit NGO information before the Advisory Committee begins to consider the State Report, the NGO information should be submitted at least one month before the Advisory Committee visits your country, if at all possible. This will enable the information to be read in advance by the delegation, and it will enable the Advisory Committee to draw on your analysis. There may also be an opportunity for your organization to meet with the Advisory Committee to discuss your issues. In the second reporting cycle, the visit is likely to be shortly after the Advisory Committee starts considering the State Report, but this depends on timetabling and the invitation from the state concerned.

Another opportunity to provide written information so that it can be used by the Advisory Committee when forming its Opinion is immediately (usually within two or three weeks) after the Advisory Committee visits your country. Check with the FCNM Secretariat for the precise time-frame if you would like to do this. This can be done by NGOs that have met with the Advisory Committee and raised an issue, and are following it up by providing evidence or more details. This has to be done immediately because the Opinion is usually drafted very soon after the visit, and often agreed at the following meeting of the Advisory Committee. Once the Opinion is formed it cannot be altered.

The Advisory Committee encourages states to be in continuous dialogue with it and with minorities on the implementation of the FCNM. Therefore very important information can be submitted to the Advisory Committee at any time, regardless of where in the reporting cycle the state is. This should be limited to analysis of key changes in legislation, policy and practice. The Advisory Committee may raise the issues in its ongoing dialogue with states.

What?

Depending on the situation of your community and your organization's objectives, capacities and resources, you will need to make some basic decisions about what shape your report will take. This is linked to what change you are trying to achieve and your organizational advocacy strategy. For the second reporting cycle, it is also useful to find out what questions the Advisory Committee would like to hear about from civil society. These are likely to be similar to the questions posed to the state, and should be available from the FCNM Secretariat approximately eight months before the State Report is due.²⁶ Although there are exceptions, most of the states

have focused on the legislation and on the positive steps they are taking or positive aspects of the situation, while ignoring the problems on the ground. If your NGO is advocating for general improvement of minority protection, you may focus on practice in one or more key areas covered by the FCNM and you may choose to focus on the questions raised by the Advisory Committee (see p. 27). If your NGO is working to change a particular law or policy, you may wish to provide an analysis of what effect that law or policy has on minority individuals or communities, and show how it is discriminatory.

Some things to consider are:

- Will your information cover one or several minorities? How will the minority community/ies be involved? How will you ensure that different voices within the community, including for example those of different professional groups (e.g. teachers), people of different ages, and men and women, are heard? If the report is being put together by a group of people, it is important that this group is diverse.
- Will your shadow report be comprehensive or cover one/a few key issues? NGO information can focus on any number of relevant Articles, or even one part of one Article only (for example, information on use of one minority language in public administration in a local area as covered by Art. 10.2). If the shadow report only covers one or two issues because your NGO does not have the resources to cover all the important issues, in the covering letter flag the other issues that your NGO considers important but has not been able to cover in the report, and let the Advisory Committee know how you prioritized your issues.
- Will your NGO use the questions to the civil society raised by the Advisory Committee?²⁷ These should refer to the main problematic areas in the country. However, the list is not comprehensive and NGOs may need to draw attention to new or deepening problems.
- Will your NGO submit other, shorter information, rather than putting together a shadow report? For example, if discriminatory job adverts appear in the newspapers in your country, it can be very powerful to send these to the Advisory Committee, together with a letter explaining how common this problem is, whether it has been brought to the attention of the government and whether the government has taken any steps to rectify the issue.

Make sure the choices you make about the shape of your shadow report are feasible, and that you will be able to make your submission on time. It is much better to submit quality information on one or two points than to submit

information which is of worse quality but covers many points, or not to submit the information on time because the project was too ambitious.

How?

When an NGO has decided that submitting a shadow report/additional information would be a good way to support the advocacy to improve the situation in their community/country and that it fits in with their organizational strategy, the NGO can consider some of the steps below in order to prepare the submission. As with the rest of this guide, these are suggestions only, based on MRG's experience of working with local NGOs. Each NGO should decide on their own best way to put together the shadow report, depending on their context, resources and advocacy strategy.

Resources

The following resources can be very useful when preparing a shadow report:

- Text of the FCNM and Explanatory Report.
- Outline for State Reports. The Outline is for states NOT for shadow reports; however, it is useful to refer to it because it includes guidelines for what is expected from states and can show NGOs what type of information the Advisory Committee looks for when assessing a state's compliance.
- Specific questions that the Advisory Committee has sought answers to from civil society. These should be very similar to what Advisory Committee is requesting from states, and should cover the key issues in each country (for second round of reporting).
- Current State Report, as soon as it is available. It is useful to refer to the State Report when preparing, or at least before finalizing, the shadow report. This is important both in order not to duplicate the State Report and because NGOs are likely to want to provide a different analysis or to criticize some of the points made in the State Report. Previous State Report, Advisory Committee's Opinion, Committee of Ministers' Resolution and State Comment (for second round of reporting) can also be useful.²⁸
- Evidence your NGO already has. This would include any relevant information your NGO has collected as part of its ongoing work (see below for more detail).
- Information from other sources, including other NGOs, Ombudspersons' reports, other Council of Europe/intergovernmental organization (IGO) reports. Information that backs up the points you are making and which may not be readily available to the Advisory Committee is most useful. The Advisory Committee regularly refers to other Council of Europe/IGO reports.

Possible steps to take when preparing shadow reports

Identify key needs and select the most important issues

Identifying and prioritizing the key issues should be done with the involvement of the minority community. The needs expressed by the community are the most important in the needs assessment process. As resources are usually limited, it is worth considering at the start how feasible it is to provide quality information on the issues identified, and what are the opportunities for change in relation to these issues. Consider which issues your NGO advocates on, how the key issues fit into your organization's strategy and how these will be taken forward in advocacy. Also, consider the domestic political context – for example, are there reforms under way that could be influenced through domestic and international advocacy (e.g. education, regional development, poverty reduction strategies)? Are there issues which desperately need to be highlighted at the international level (e.g. recognition, lack of access to justice, police abuse)? Which of these is FCNM monitoring most likely to be able to influence (e.g. patterns not individual cases)? Finally, consider the resources. How much research will you need to do? Do you have evidence on some of the issues already that you have collected as part of your ongoing work? How much can you do with the time and money you have? Based on answers to all these questions, select one or a few issues that your NGO will raise.

Relate issues to the Articles of the FCNM

Decide which Articles of the FCNM cover your issue. Whether the NGO is submitting a comprehensive report or is focusing on one issue, they should refer to the State Report structure and the FCNM itself to make sure that their information is presented in a format which is easy for the Advisory Committee to use alongside the State Report. This means relating the information to the articles of the FCNM. Once you have selected the articles of the Convention which relate to your issues, you should analyse them and consider all the relevant questions which could be asked under each article, and then prioritize the questions your NGO will address. An example of questions relating to education under Arts 12–14 is included in Appendix 3.

In some cases, there may be more than one relevant Article and you will need to decide under which Article you want to submit the information. For example, minorities' access to employment in public service is covered by Art. 15 on full and effective participation but also by Art. 4 on full and effective equality. The decision on which Article to report under will depend on which aspect of employment in the public sector your NGO wants to stress. When you are unsure, it can be helpful to check the State Report to see where the state has put the issue that your NGO wants to address; this is because the Advisory Committee will look through the shadow report in parallel with the State Report, so it would be able to make a

comparison. But you may want to stress that a specific issue also relates to an Article which the state has not stressed; feel free to do this.

Consult minority community and other stakeholders – ensure you have broader support and keep your supporters with you

Consultation with the broader minority community is crucial and this should be started very early in the process. This gives credibility to your report, ensures that the needs and priorities identified are shared, and can provide useful insight. Involving the minority community helps to ensure that there is broader support for the advocacy to be carried out in connection with submitting the shadow report. Consulting the broader minority specifically on the FCNM shadow report has advantages, such as support for related advocacy, and increased awareness among the wider community of international standards. However, in some cases this may not be possible due to lack of resources, or it may be that the NGO submitting the shadow report works very closely with the community on the particular issues as part of its ongoing work so it makes sense to use this information rather than carry out specific consultation on the shadow report. Consultation as part of ongoing work can also provide very useful input into the shadow report. It is important to be transparent about how the consultation was carried out and what is being done with the information collected, both with the Advisory Committee and the wider minority community. It may also be useful to consult with other stakeholders, such as other NGOs; usually it is good if this is done early on in the process.

In all the consultations, explain the process to all the stakeholders in order not to raise false expectations and to avoid misunderstandings. For example, not many people are likely to be very familiar with the different possibilities and limitations of the FCNM. At a minimum, it is worth explaining briefly what the Convention is, what rights it covers, what the monitoring process is. It is important to stress that this is part of ongoing advocacy work to improve the situation and that submitting the information at the international level is likely to help start a dialogue with decision-makers at home, or put further pressure on the government, but is not likely to solve all the problems. Make sure that your NGO is in regular contact with members of the community and others who have been consulted, and provide updates/feedback as things happen. The wider community can provide crucial support for domestic advocacy.

Link the shadow report to your organizational advocacy strategy – develop a plan for raising the issues domestically and internationally
Producing a shadow report should not be a goal in itself. It is a way to achieve change at home and either should be linked to an ongoing advocacy campaign, or

an advocacy campaign should be developed as part of the process. It is important to consider from the start how the shadow report will fit into your NGO's organizational strategy. Results can be much better if producing a shadow report and related advocacy is not a one-off activity but part of the ongoing work. Consider an advocacy campaign at different levels:

Working with local and national government. This includes negotiating with central and local authorities, as appropriate. Local NGOs should consider submitting their reports to local authorities and any other institutions dealing with the issues addressed in the report. This could include, for example, police boards, health care trusts, school boards, educational and other projects dealing with community issues. Wide dissemination at the local level can be used for reference and to enhance ongoing daily advocacy. In cases where local authorities are difficult to work with, it can increase your negotiating power if they know that your NGO is also in contact with central authorities and international organizations on the issue. Working with the government at the national level can help bring about change in laws, policies and implementation, including overseeing what local authorities do. Depending on the domestic context, it can be useful to let the national government know early on that your NGO is producing a shadow report. This particularly refers to the ministry/department responsible for overseeing implementation of the FCNM and to any other departments that deal with the issues your NGO is raising, such as education, health and regional development. You could use the process of putting together the report as a negotiating tool in order to improve the situation, as the authorities are likely to want to be seen to be open to working with civil society.

Working with other NGOs domestically and internationally. Regardless of whether an NGO decides to work on its own to provide additional information or to submit a joint shadow report with other NGOs, it is usually useful to connect with other domestic NGOs and international NGOs on issues of common concern. At a minimum, it is good to inform others of what your NGOs is doing. But it is also worth exploring whether it makes sense to work together or somehow cooperate on advocacy on the issues. Often, cooperation within civil society can strengthen advocacy. Cooperation between local, national and international NGOs can make the campaign effective at different levels. Even if the decision is that it is best for each NGO to work separately, at least you will work knowing that you have not missed opportunities for cooperation. When planning your advocacy strategy, consider how, when and if your NGO would like to cooperate with other NGOs, and approach them, or at least inform them, of what your NGO is doing early on.

Working with the Council of Europe and other international actors. Inform the FCNM Secretariat early that your NGO is planning to submit a shadow report or

additional information. You may also talk to them and see if there is any topic in particular where more information would be needed. There may be opportunities for your NGO to meet with the Advisory Committee if a visit to your country is coming up. It may be also useful to find out about any cooperation activities that the FCNM Secretariat may be involved in your country and see whether there are any opportunities for your NGO to get involved. The information contained in the shadow report can also be used as a basis for advocacy within other international fora, such as the UN, European Commission or OSCE. For example, if your state is coming up for examination by other treaty bodies, such as the UN Committee for the Elimination of Racial Discrimination (CERD) or the Committee for the Elimination of Discrimination Against Women (CEDAW), some of the information could be used, or it could be submitted to the relevant UN Special Rapporteur. Within the EC some information could be used to improve monitoring of the Race and Employment Directives, or in the context of accession negotiations or stabilization and association processes. In extreme cases, contact with international bodies can be very helpful if there is a safety risk to human rights defenders in your country.

Advocacy and lobbying for minority rights using shadow report on the FCNM²⁹ in the Republic of Macedonia: case study prepared by the Working Group on Minority Issues

The Working Group for Minority Issues (WGMI) prepared the *Shadow Report on the Situation of National Minorities in Republic of Macedonia* and sent it to the Advisory Committee in the Council of Europe, the Ministry of Internal Affairs of the Republic of Macedonia (responsible for State Reports submission), the agencies that supported the report preparation process and follow-up activities (ECMI and MRG), WGMI members' original NGOs, other interested domestic and international organizations and institutions.

WGMI also prepared an advocacy and lobbying campaign that uses the shadow report and includes:

- a translation of the report into the languages of minorities discussed in it, where applicable;
- printing 300 copies of the report in different languages, depending on needs;
- a press conference;
- meetings of the WGMI with NGOs, local authorities, community leaders, political parties (especially minorities' parties) and others at the ECMI Network regional centres, to promote the report at a local level;

- submission of copies of the report to NGOs working on human/minority rights/issues, ministries, other relevant bodies;
- putting the report and other data related to the preparation process on the Internet for wide usage;
- round-table with representatives from the parliament, government, domestic and foreign governmental and non-governmental organizations and institutions, independent experts, etc.

Other promotional activities that are not directly connected with these initiatives:

- further monitoring, analysis and reporting on the situation of the national minorities;
- participation of the WGMI in the realization of the recommendations set out in the shadow report and the resolutions of the Council of Ministers;
- participation of the WGMI in activities of other organizations or groups, in the direction of advocacy and lobbying using the shadow report;
- using the shadow report in advocacy activities and to lobby for the rights of national minorities undertaken by other groups and organizations independently from the WGMI.

Analyse the situation, and support your analysis with facts, evidence and statistics/estimates: be accurate

Good analysis of the actual situation of minorities, as well as of the effect that certain laws/policies/programmes have on minorities, is very much needed by the Advisory Committee. Civil society is in a strong position to provide this information, especially NGOs that have strong links with minority communities and can draw on the views of different members of minority communities. A law or policy that may seem good or neutral to an outsider can have a detrimental effect on minorities. This includes both minority-specific laws/policies and general ones. For example, lack of or insufficient access to health care for those who are not in employment will have a disproportionate effect on poor groups, and if minorities – or some minorities – are overly represented among the poor, this will have detrimental effect on the group. Having to pay for an ID card will have negative impact on those who can least afford it. Regional development of particular areas of the country can bypass the areas where minorities live. Minorities may have access to the media in their own languages, but this can be at very unsocial hours. These are some examples of issues which are important to

point out in a shadow report, as knowledge from within the country and within a minority community can add a very important perspective to help outsiders understand and to bring government to account. NGOs submitting additional information should analyse the effect of laws/policies/programmes, pointing out where exactly the problem lies and how to improve the situation. Analysis should draw on facts and be supported by evidence.

Focus on practice

NGOs, particularly minority NGOs and those that regularly work with minority communities, are once again in the best position to provide information about what the situation is really like in practice. This information is crucial for the Advisory Committee because the FCNM is only useful if it helps to improve the situation of minorities. Furthermore, with some exceptions, states have not been providing information about practice or problems on the ground. Any such information that NGOs can provide, particularly local information, which would otherwise be very difficult for the Advisory Committee to obtain, is crucial.

Provide disaggregated data

A key problem is lack of disaggregated data, both by minority and within the minority by, for example, location or age or gender. This data, particularly on economic participation, is very much needed by the Advisory Committee.³⁰ If your NGO has such disaggregated data, it would be very good to submit it. Even obtaining a sample of views from a local community – by carrying out a survey or interviews – can show important trends, and can be very useful.

Differentiate between facts, and estimates and opinions

This is particularly important for areas where the facts are disputed. One example is with regard to the numbers of a minority, which is important because of the right to self-identification (Art. 3) and because some provisions are more extensive for minorities who inhabit a particular area ‘traditionally’ and/or ‘in substantial numbers’ (e.g. language use in public administration, educational provision). It is increasingly accepted that censuses or other official statistics do not necessarily provide an accurate picture of the number of people belonging to a particular group. This is for many reasons, ranging from political agendas, to ways censuses are conducted, to under-reporting by people who otherwise identify themselves as members of the group. This has been especially the case for minorities that have traditionally faced extensive discrimination, such as the Roma across Europe; for unrecognized minorities, when the state may deny the existence of the group, such as Macedonians in Greece; and for groups in post-conflict situations, for example

in Southeast Europe. If this is the case, it is important to provide both the official number and any estimates, such as from NGOs, giving their source, and allow the reader make up their own mind.

Keep in mind the audience: there may be more than one audience for your report

Primary audience: Advisory Committee. The Advisory Committee is made up of 18 persons from across the Council of Europe area. Each state party nominates one or two persons based on their expertise in minority protection. They are intended to act in their personal capacity as experts and not as representatives of their respective governments. In practice, though, some members may be less independent than others. They are selected by the Committee of Ministers and serve on the Advisory Committee for four years. They are usually academics, often in the field of international law, although other professionals have also served on the Advisory Committee. So far, most Advisory Committee members have come from majority communities. Four or five people from the Advisory Committee make up a working group, which examines each State Report and prepares the first draft of the Opinion. Then, the draft Opinion is considered and adopted by the whole Advisory Committee. This includes the expert nominated by the country that is examined (if there is one), whose role is primarily to correct in the plenary session what they may believe to be inaccuracies in or omissions from the Opinion. However, Advisory Committee members do not belong to the working group considering their state. Advisory Committee members’ expenses are covered, but they do not get paid for serving on the committee. Advisory Committee members should have an expertise on minority rights and issues in Europe; however, they may not be familiar with the detail of the situation of your minority community or country. So, you will need to provide some context for the case you are presenting and not assume that if you refer to a policy or a practice your readers will know about it. This is especially important if a policy or practice is problematic, because the government may not have drawn attention to it or may have presented it in a more positive light.

Other audiences. Possible advocacy targets/allies, including government (relevant departments), Ombudspersons, parliamentarians, broader minority community and civil society actors, domestic and international media, international actors (other intergovernmental organizations, such as the UN Working Group on Minorities, CERD, the European Commission, other governments, Members of the European Parliament, international donors), domestic and international NGOs.

When putting together a shadow report, it is essential to tailor it to the needs of the Advisory Committee and any other important audiences. It can be useful to

have several people read your draft shadow report; their comments can help to shape the report for the audience. The readers should come from different backgrounds (community leaders, NGO activists, someone who is either not working explicitly on minority issues, or is based in another country, possibly a sympathetic public servant in personal capacity). Some of the readers should be removed from the situation in your minority community/country, if possible. It may also be worthwhile to adapt the information presented in your shadow report for one of these audiences. For example, the media would be sent a press release with the shadow report as reference document. MEPs or particular departments in foreign governments may need more contextual information, or a focus on a particular issue of interest, such as development under Art. 15 on participation in social and economic life.

Be critical but balanced: provide examples of positive practices, if any, especially new ones

Shadow reports should provide critical assessment of the situation. However, acknowledging positive practices shows that you are serious and not only interested in criticizing. Everyone needs encouragement and, if there are particular people within governments who have worked hard to bring about change, they may need external support to continue to achieve results, no matter how small. This is important for the second round of reports, after states have had the Committee of Ministers' Resolution and the Advisory Committee Opinion which have recommended ways to improve minority protection. NGOs producing shadow reports should keep in mind the following questions:

- Has the government taken effective steps to implement any of the recommendations? Which ones? Are particular government departments doing a good job?
- Has progress in minority protection been made? Which aspects?
- Has participation of minorities in decision-making processes improved?

Use information your NGO already has

Although producing a shadow report will usually require research, do not underestimate the importance of information your NGO already has from your ongoing work. The most valuable information will be that which would not otherwise be easily accessible to the Advisory Committee. This is often data collected locally and local analysis, or data not available in English or French. When deciding what to include in your shadow report, keep in mind that the Advisory Committee regularly refers to other treaty bodies and intergovernmental organizations' reports.

NGOs may still want to refer to some IGO information (e.g. OSCE reports or information from other treaty bodies), but should be very selective.

Include recommendations

It is a good idea to include recommendations, as these are your ideas for improving the situation. Be creative and make them feasible. Make sure your recommendations are very specific and achievable, and include how progress should be measured. The recommendations should be based on the evidence and analysis in your shadow report.³¹

Practical tips on presentation

- *Language.* Shadow reports should be submitted in English or French. Although both English and French are working languages of the Council of Europe, submitting the report in English will ensure a much wider readership. Make sure that the report is in good, clear English/French. If it is not possible to submit the report in English or French, you should contact the FCNM Secretariat *in advance* and see whether it is possible to submit it in another language, but this should be avoided if possible. The Secretariat does not have money for translation of shadow reports, and the languages which could be useful depend on the make-up of the working group considering your state.
- Always include a one-page or, at most, two-page *summary*.
- The shadow report should follow the State Report *structure* (or part of it), that is, it should follow the Articles of the FCNM.
- *Length.* The shorter the shadow report, the more likely it is that it will be read fully. Sometimes very good information can be provided in as little as 3–4 pages. The Advisory Committee receives a lot of information on each state, and concise, well-presented and documented information is best. More details can be included in the annexes.
- Include a covering letter with brief *presentation of your NGO(s), process and methodology for putting together the shadow report, extent of community involvement* and *contact details* for further information.
- Submit the information both *electronically* and in *hard copy*, if possible.

Do not make claims you cannot substantiate

It is very easy to lose credibility both for your NGO and your issues, and for NGOs more generally. NGOs must be professional in their approach. Make sure that, if you are critical towards the state, you have solid evidence to back it up. Governments have good databases and it is in their interest not to be presented in a bad light at the international level. Information from 'other sources', which presents

information as facts but does not back it up with evidence, or even presents false evidence, is useless and very easy to discredit. Furthermore, NGOs presenting such information not only lose their own NGO's credibility but make it more difficult for other NGOs to participate in the monitoring process or in negotiations with a particular government because the credibility of the whole NGO sector can be questioned.

Do not try to reproduce the State Report

This is not your job. It can be tempting to try to describe all the laws and policies currently in place, and to provide statistics. But remember that NGO reports will be read in conjunction with the State Report. States are usually good at providing a list of laws, policies and official statistics. An important exception is when a law/policy is problematic and NGOs want to explain the problem or to offer their analysis. In these cases, analysis of laws should of course be included. Also, official statistics are often disputed, for example, the results of censuses with regard to the size of different communities. In these cases, official statistics can be referred to and minority or other reliable estimates provided. If, however, you have statistics or estimates, particularly disaggregated by gender, age and location, which are not included in the State Report, these are very useful.

Where?

Submit the shadow report/additional information to:

Council of Europe
 Directorate-General of Human Rights – DG II
 Secretariat of the Framework Convention for the Protection of National Minorities
 and of the DH-MIN
 F – 67075 Strasbourg Cedex
 Tel +33 (0) 3 90 21 44 33
 Fax +33 (0) 3 90 21 49 18
 Email: minorities.fcnm@coe.int

You may want to contact the FCNM Secretariat early on in the process to let them know that you are planning to submit a report, to establish contact and to ask about any deadlines. It could also be useful for the FCNM Secretariat to know in advance that there will be some additional information submitted by your NGO. Make sure you follow up to check that the document has arrived and to make personal contact with the relevant person coordinating the work on your country in the FCNM Secretariat.

Depending on the domestic context, NGOs may want to provide copies to the government department/ministry responsible for implementing/reporting on the FCNM, and any departments working on issues on which you have focused (e.g. Ministry of Education, Ministry of Health, relevant authorities at the regional and local level). This can be a good way to offer information and to open up dialogue on key issues. NGOs may also consider informing the media or submitting their shadow reports (or adapted versions) to other intergovernmental organizations, donors and foreign governments influential in the country.

Appendix 1: Text of the FCNM and Explanatory Report

*From Council of Europe website (includes translations into majority and minority languages):
[http://www.coe.int/T/e/human_rights/Minorities/2._FRAMEWORK_CONVENTION_\(MONITORING\)/1._Texts/FCNM%20Texts%20E%20F%20and%20other%20languages.asp](http://www.coe.int/T/e/human_rights/Minorities/2._FRAMEWORK_CONVENTION_(MONITORING)/1._Texts/FCNM%20Texts%20E%20F%20and%20other%20languages.asp)*

Introduction

The Framework Convention for the Protection of National Minorities, drawn up within the Council of Europe by the Ad Hoc Committee for the Protection of National Minorities (CAHMIN) under the authority of the Committee of Ministers, was adopted by the Committee of Ministers of the Council of Europe on 10 November 1994 and opened for signature by the member States of the Council of Europe on 1 February 1995. Non-member States may also be invited by the Committee of Ministers to become Party to this instrument.

This publication contains the text of the Framework Convention for the Protection of National Minorities as well as the explanatory report.

Framework Convention for the Protection of National Minorities

The member States of the Council of Europe and the other States, signatories to the present framework Convention,

Considering that the aim of the Council of Europe is to achieve greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage;

Considering that one of the methods by which that aim is to be pursued is the maintenance and further realisation of human rights and fundamental freedoms;

Wishing to follow-up the Declaration of the Heads of State and Government of the member States of the Council of Europe adopted in Vienna on 9 October 1993;

Being resolved to protect within their respective territories the existence of national minorities;

Considering that the upheavals of European history have shown that the protection of national minorities is essential to stability, democratic security and peace in this continent;

Considering that a pluralist and genuinely democratic society should not only respect the ethnic, cultural, linguistic and religious identity of each person belonging to a national minority, but also create appropriate conditions enabling them to express, preserve and develop this identity;

Considering that the creation of a climate of tolerance and dialogue is necessary to enable cultural diversity to be a source and a factor, not of division, but of enrichment for each society;

Considering that the realisation of a tolerant and prosperous Europe does not depend solely on co-operation between States but also requires transfrontier co-operation between local and regional authorities without prejudice to the constitution and territorial integrity of each State;

Having regard to the Convention for the Protection of Human Rights and Fundamental Freedoms and the Protocols thereto;

Having regard to the commitments concerning the protection of national minorities in United Nations conventions and declarations and in the documents of the Conference on Security and Co-operation in Europe, particularly the Copenhagen Document of 29 June 1990;

Being resolved to define the principles to be respected and the obligations which flow from them, in order to ensure, in the member States and such other States as may become Parties to the present instrument, the effective protection of national minorities and of the rights and freedoms of persons belonging to those minorities, within the rule of law, respecting the territorial integrity and national sovereignty of states;

Being determined to implement the principles set out in this framework Convention through national legislation and appropriate governmental policies,

Have agreed as follows:

Section I

Article 1

The protection of national minorities and of the rights and freedoms of persons belonging to those minorities forms an integral part of the international protection of human rights, and as such falls within the scope of international co-operation.

Article 2

The provisions of this framework Convention shall be applied in good faith, in a spirit of understanding and tolerance and in conformity with the principles of good neighbourliness, friendly relations and co-operation between States.

Article 3

1 Every person belonging to a national minority shall have the right freely to choose to be treated or not to be treated as such and no disadvantage shall result from this choice or from the exercise of the rights which are connected to that choice.

2 Persons belonging to national minorities may exercise the rights and enjoy the freedoms flowing from the principles enshrined in the present framework Convention individually as well as in community with others.

Section II

Article 4

1 The Parties undertake to guarantee to persons belonging to national minorities the right of equality before the law and of equal protection of the law. In this respect, any discrimination based on belonging to a national minority shall be prohibited.

2 The Parties undertake to adopt, where necessary, adequate measures in order to promote, in all areas of economic, social, political and cultural life, full and effective equality between persons belonging to a national minority and those belonging to the majority. In this respect, they shall take due account of the specific conditions of the persons belonging to national minorities.

3 The measures adopted in accordance with paragraph 2 shall not be considered to be an act of discrimination.

Article 5

1 The Parties undertake to promote the conditions necessary for persons belonging to national minorities to maintain and develop their culture, and to preserve the essential elements of their identity, namely their religion, language, traditions and cultural heritage.

2 Without prejudice to measures taken in pursuance of their general integration policy, the Parties shall refrain from policies or practices aimed at assimilation of persons belonging to national minorities against their will and shall protect these persons from any action aimed at such assimilation.

Article 6

1 The Parties shall encourage a spirit of tolerance and intercultural dialogue and take effective measures to promote mutual respect and understanding and co-operation among all persons living on their territory, irrespective of those persons' ethnic, cultural, linguistic or religious identity, in particular in the fields of education, culture and the media.

2 The Parties undertake to take appropriate measures to protect persons who may be subject to threats or acts of discrimination, hostility or violence as a result of their ethnic, cultural, linguistic or religious identity.

Article 7

The Parties shall ensure respect for the right of every person belonging to a national minority to freedom of peaceful assembly, freedom of association, freedom of expression, and freedom of thought, conscience and religion.

Article 8

The Parties undertake to recognise that every person belonging to a national minority has the right to manifest his or her religion or belief and to establish religious institutions, organisations and associations.

Article 9

1 The Parties undertake to recognise that the right to freedom of expression of every person belonging to a national minority includes freedom to hold opinions and to receive and impart

information and ideas in the minority language, without interference by public authorities and regardless of frontiers. The Parties shall ensure, within the framework of their legal systems, that persons belonging to a national minority are not discriminated against in their access to the media.

2 Paragraph 1 shall not prevent Parties from requiring the licensing, without discrimination and based on objective criteria, of sound radio and television broadcasting, or cinema enterprises.

3 The Parties shall not hinder the creation and the use of printed media by persons belonging to national minorities. In the legal framework of sound radio and television broadcasting, they shall ensure, as far as possible, and taking into account the provisions of paragraph 1, that persons belonging to national minorities are granted the possibility of creating and using their own media.

4 In the framework of their legal systems, the Parties shall adopt adequate measures in order to facilitate access to the media for persons belonging to national minorities and in order to promote tolerance and permit cultural pluralism.

Article 10

1 The Parties undertake to recognise that every person belonging to a national minority has the right to use freely and without interference his or her minority language, in private and in public, orally and in writing.

2 In areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, if those persons so request and where such a request corresponds to a real need, the Parties shall endeavour to ensure, as far as possible, the conditions which would make it possible to use the minority language in relations between those persons and the administrative authorities.

3 The Parties undertake to guarantee the right of every person belonging to a national minority to be informed promptly, in a language which he or she understands, of the reasons for his or her arrest, and of the nature and cause of any accusation against him or her, and to defend himself or herself in this language, if necessary with the free assistance of an interpreter.

Article 11

1 The Parties undertake to recognise that every person belonging to a national minority has the right to use his or her surname (patronym) and first names in the minority language and the right to official recognition of them, according to modalities provided for in their legal system.

2 The Parties undertake to recognise that every person belonging to a national minority has the right to display in his or her minority language signs, inscriptions and other information of a private nature visible to the public.

3 In areas traditionally inhabited by substantial numbers of persons belonging to a national minority, the Parties shall endeavour, in the framework of their legal system, including, where

appropriate, agreements with other States, and taking into account their specific conditions, to display traditional local names, street names and other topographical indications intended for the public also in the minority language when there is a sufficient demand for such indications.

Article 12

1 The Parties shall, where appropriate, take measures in the fields of education and research to foster knowledge of the culture, history, language and religion of their national minorities and of the majority.

2 In this context the Parties shall inter alia provide adequate opportunities for teacher training and access to textbooks, and facilitate contacts among students and teachers of different communities.

3 The Parties undertake to promote equal opportunities for access to education at all levels for persons belonging to national minorities.

Article 13

1 Within the framework of their education systems, the Parties shall recognise that persons belonging to a national minority have the right to set up and to manage their own private educational and training establishments.

2 The exercise of this right shall not entail any financial obligation for the Parties.

Article 14

1 The Parties undertake to recognise that every person belonging to a national minority has the right to learn his or her minority language.

2 In areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, if there is sufficient demand, the Parties shall endeavour to ensure, as far as possible and within the framework of their education systems, that persons belonging to those minorities have adequate opportunities for being taught the minority language or for receiving instruction in this language.

3 Paragraph 2 of this article shall be implemented without prejudice to the learning of the official language or the teaching in this language.

Article 15

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.

Article 16

The Parties shall refrain from measures which alter the proportions of the population in areas inhabited by persons belonging to national minorities and are aimed at restricting the rights and freedoms flowing from the principles enshrined in the present framework Convention.

Article 17

1 The Parties undertake not to interfere with the right of persons belonging to national minorities to establish and maintain free and peaceful contacts across frontiers with persons lawfully staying in other States, in particular those with whom they share an ethnic, cultural, linguistic or religious identity, or a common cultural heritage.

2 The Parties undertake not to interfere with the right of persons belonging to national minorities to participate in the activities of non-governmental organisations, both at the national and international levels.

Article 18

1 The Parties shall endeavour to conclude, where necessary, bilateral and multilateral agreements with other States, in particular neighbouring States, in order to ensure the protection of persons belonging to the national minorities concerned.

2 Where relevant, the Parties shall take measures to encourage transfrontier co-operation.

Article 19

The Parties undertake to respect and implement the principles enshrined in the present framework Convention making, where necessary, only those limitations, restrictions or derogations which are provided for in international legal instruments, in particular the Convention for the Protection of Human Rights and Fundamental Freedoms, in so far as they are relevant to the rights and freedoms flowing from the said principles.

Section III**Article 20**

In the exercise of the rights and freedoms flowing from the principles enshrined in the present framework Convention, any person belonging to a national minority shall respect the national legislation and the rights of others, in particular those of persons belonging to the majority or to other national minorities.

Article 21

Nothing in the present framework Convention shall be interpreted as implying any right to engage in any activity or perform any act contrary to the fundamental principles of international law and in particular of the sovereign equality, territorial integrity and political independence of States.

Article 22

Nothing in the present framework Convention shall be construed as limiting or derogating from any of the human rights and fundamental freedoms which may be ensured under the laws of any Contracting Party or under any other agreement to which it is a Party.

Article 23

The rights and freedoms flowing from the principles enshrined in the present framework Convention, in so far as they are the subject of a corresponding provision in the Convention for the Protection of Human Rights and Fundamental Freedoms or in the Protocols thereto, shall be understood so as to conform to the latter provisions.

Section IV**Article 24**

1 The Committee of Ministers of the Council of Europe shall monitor the implementation of this framework Convention by the Contracting Parties.

2 The Parties which are not members of the Council of Europe shall participate in the implementation mechanism, according to modalities to be determined.

Article 25

1 Within a period of one year following the entry into force of this framework Convention in respect of a Contracting Party, the latter shall transmit to the Secretary General of the Council of Europe full information on the legislative and other measures taken to give effect to the principles set out in this framework Convention.

2 Thereafter, each Party shall transmit to the Secretary General on a periodical basis and whenever the Committee of Ministers so requests any further information of relevance to the implementation of this framework Convention.

3 The Secretary General shall forward to the Committee of Ministers the information transmitted under the terms of this Article.

Article 26

1 In evaluating the adequacy of the measures taken by the Parties to give effect to the principles set out in this framework Convention the Committee of Ministers shall be assisted by an advisory committee, the members of which shall have recognised expertise in the field of the protection of national minorities.

2 The composition of this advisory committee and its procedure shall be determined by the Committee of Ministers within a period of one year following the entry into force of this framework Convention.

Section V**Article 27**

This framework Convention shall be open for signature by the member States of the Council of Europe. Up until the date when the Convention enters into force, it shall also be open for signature by any other State so invited by the Committee of Ministers. It is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

Article 28

1 This framework Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date on which twelve member States of the Council of Europe have expressed their consent to be bound by the Convention in accordance with the provisions of Article 27.

2 In respect of any member State which subsequently expresses its consent to be bound by it, the framework Convention shall enter into force on the first day of the month following the

expiration of a period of three months after the date of the deposit of the instrument of ratification, acceptance or approval.

Article 29

1 After the entry into force of this framework Convention and after consulting the Contracting States, the Committee of Ministers of the Council of Europe may invite to accede to the Convention, by a decision taken by the majority provided for in Article 20.d of the Statute of the Council of Europe, any non-member State of the Council of Europe which, invited to sign in accordance with the provisions of Article 27, has not yet done so, and any other non-member State.

2 In respect of any acceding State, the framework Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of the instrument of accession with the Secretary General of the Council of Europe.

Article 30

1 Any State may at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories for whose international relations it is responsible to which this framework Convention shall apply.

2 Any State may at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this framework Convention to any other territory specified in the declaration. In respect of such territory the framework Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of such declaration by the Secretary General.

3 Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General. The withdrawal shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Secretary General.

Article 31

1 Any Party may at any time denounce this framework Convention by means of a notification addressed to the Secretary General of the Council of Europe.

2 Such denunciation shall become effective on the first day of the month following the expiration of a period of six months after the date of receipt of the notification by the Secretary General.

Article 32

The Secretary General of the Council of Europe shall notify the member States of the Council, other signatory States and any State which has acceded to this framework Convention, of:

a. any signature;

b. the deposit of any instrument of ratification, acceptance, approval or accession;

c. any date of entry into force of this framework Convention in accordance with Articles 28, 29 and 30;

d. any other act, notification or communication relating to this framework Convention.

In witness whereof the undersigned, being duly authorised thereto, have signed this framework Convention.

Done at Strasbourg, this 1st day of February 1995, in English and French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe and to any State invited to sign or accede to this framework Convention.

Explanatory report BACKGROUND

1. The Council of Europe has examined the situation of national minorities on a number of occasions over a period of more than forty years. In its very first year of existence (1949), the Parliamentary Assembly recognised, in a report of its Committee on Legal and Administrative Questions, the importance of “the problem of wider protection of the rights of national minorities”. In 1961, the Assembly recommended the inclusion of an article in a second additional protocol to guarantee to national minorities certain rights not covered by the European Convention on Human Rights (ECHR). The latter simply refers to “association with a national minority” in the non-discrimination clause provided for in Article 14. Recommendation 285 (1961) proposed the following wording for the draft article on the protection of national minorities:

“Persons belonging to a national minority shall not be denied the right, in community with the other members of their group, and as far as compatible with public order, to enjoy their own culture, to use their own language, to establish their schools and receive teaching in the language of their choice or to profess and practise their own religion.”

2. The committee of experts, which had been instructed to consider whether it was possible and advisable to draw up such a protocol, adjourned its activities until a final decision had been reached on the Belgian linguistics cases concerning the language used in education (European Court of Human Rights. Judgment of 27 July 1968, Series A No. 6). In 1973 it concluded that, from a legal point of view, there was no special need to make the rights of minorities the subject of a further protocol to the ECHR. However, the experts considered that there was no major legal obstacle to the adoption of such a protocol if it were considered advisable for other reasons.

3. More recently, the Parliamentary Assembly recommended a number of political and legal measures to the Committee of Ministers, in particular the drawing up of a protocol or a convention on the rights of national minorities. Recommendation 1134 (1990) contains a list of principles which the Assembly considered necessary for the protection of national minorities. In October 1991, the Steering Committee for Human Rights (CDDH) was given the

task of considering, from both a legal and a political point of view, the conditions in which the Council of Europe could undertake an activity for the protection of national minorities, taking into account the work done by the Conference on Security and Co-operation in Europe (CSCE) and the United Nations, and the reflections within the Council of Europe.

4. In May 1992, the Committee of Ministers instructed the CDDH to examine the possibility of formulating specific legal standards relating to the protection of national minorities. To this end, the CDDH established a committee of experts (DH-MIN) which, under new terms of reference issued in March 1993, was required to propose specific legal standards in this area, bearing in mind the principle of complementarity of work between the Council of Europe and the CSCE. The CDDH and the DH-MIN took various texts into account, in particular the proposal for a European Convention for the Protection of National Minorities drawn up by the European Commission for Democracy through Law (the so-called Venice Commission), the Austrian proposal for an additional protocol to the ECHR, the draft additional protocol to the ECHR included in Assembly Recommendation 1201 (1993) and other proposals. This examination culminated in the report of the CDDH to the Committee of Ministers of 8 September 1993, which included various legal standards which might be adopted in this area and the legal instruments in which they could be laid down. In this connection, the CDDH noted that there was no consensus on the interpretation of the term "national minorities".

5. The decisive step was taken when the Heads of State and Government of the Council of Europe's member States met in Vienna at the summit of 8 and 9 October 1993. There, it was agreed that the national minorities which the upheavals of history have established in Europe had to be protected and respected as a contribution to peace and stability. In particular, the Heads of State and Government decided to enter into legal commitments regarding the protection of national minorities. Appendix II of the Vienna Declaration instructed the Committee of Ministers:

– to draft with minimum delay a framework convention specifying the principles which contracting States commit themselves to respect, in order to assure the protection of national minorities. This instrument would also be open for signature by non-member States;

– to begin work on drafting a protocol complementing the European Convention on Human Rights in the cultural field by provisions guaranteeing individual rights, in particular for persons belonging to national minorities.

6. On 4 November 1993, the Committee of Ministers established an ad hoc Committee for the Protection of National Minorities (CAHMIN). Its terms of reference reflected the decisions taken in Vienna. The committee, made up of experts from the Council of Europe's member States, started work in late January 1994, with the participation of representatives of the CDDH, the Council for Cultural Co-operation (CDCC), the Steering Committee on the Mass Media (CDMM) and the European Commission for Democracy through Law. The High Commissioner on National Minorities of the CSCE and the Commission of the European Communities also took part, as observers.

7. On 15 April 1994, CAHMIN submitted an interim report to the Committee of Ministers, which was then communicated to the Parliamentary Assembly (Doc. 7109). At its 94th session in May 1994, the Committee of Ministers expressed satisfaction with the progress achieved

under the terms of reference flowing from the Vienna Declaration.

8. A certain number of provisions of the framework Convention requiring political arbitration as well as those concerning the monitoring of the implementation were drafted by the Committee of Ministers (517bis meeting of Ministers' Deputies, 7 October 1994).

9. At its meeting from 10 to 14 October 1994, CAHMIN decided to submit the draft framework Convention to the Committee of Ministers, which adopted the text at the 95th Ministerial Session on 10 November 1994. The framework Convention was opened for signature by the Council of Europe's member States on 1 February 1995.

GENERAL CONSIDERATIONS

Objectives of the framework Convention

10. The framework Convention is the first legally binding multilateral instrument devoted to the protection of national minorities in general. Its aim is to specify the legal principles which States undertake to respect in order to ensure the protection of national minorities. The Council of Europe has thereby given effect to the Vienna Declaration's call (Appendix II) for the political commitments adopted by the Conference on Security and Co-operation in Europe (CSCE) to be transformed, to the greatest possible extent, into legal obligations.

Approaches and fundamental concepts

11. In view of the range of different situations and problems to be resolved, a choice was made for a framework Convention which contains mostly programme-type provisions setting out objectives which the Parties undertake to pursue. These provisions, which will not be directly applicable, leave the States concerned a measure of discretion in the implementation of the objectives which they have undertaken to achieve, thus enabling them to take particular circumstances into account.

12. It should also be pointed out that the framework Convention contains no definition of the notion of "national minority". It was decided to adopt a pragmatic approach, based on the recognition that at this stage, it is impossible to arrive at a definition capable of mustering general support of all Council of Europe member States.

13. The implementation of the principles set out in this framework Convention shall be done through national legislation and appropriate governmental policies. It does not imply the recognition of collective rights. The emphasis is placed on the protection of persons belonging to national minorities, who may exercise their rights individually and in community with others (see Article 3, paragraph 2). In this respect, the framework Convention follows the approach of texts adopted by other international organisations.

Structure of the framework Convention

14. Apart from its Preamble, the framework Convention contains an operative part which is divided into five sections.

15. Section I contains provisions which, in a general fashion, stipulate certain fundamental principles which may serve to elucidate the other substantive provisions of the framework Convention.

16. Section II contains a catalogue of specific principles.

17. Section III contains various provisions concerning the interpretation and application of the framework Convention.

18. Section IV contains provisions on the monitoring of the implementation of the framework Convention.

19. Section V contains the final clauses which are based on the model final clauses for conventions and agreements concluded within the Council of Europe.

COMMENTARY ON THE PROVISIONS OF THE FRAMEWORK CONVENTION

PREAMBLE

20. The Preamble sets out the reasons for drawing up this framework Convention and explains certain basic concerns of its drafters. The opening words already indicate that this instrument may be signed and ratified by States not members of the Council of Europe (see Articles 27 and 29).

21. The Preamble refers to the statutory aim of the Council of Europe and to one of the methods by which this aim is to be pursued: the maintenance and further realisation of human rights and fundamental freedoms.

22. Reference is also made to the Vienna Declaration of Heads of State and Government of the member States of the Council of Europe, a document which laid the foundation for the present framework Convention (see also paragraph 5 above). In fact, the text of the Preamble is largely inspired by that declaration, in particular its Appendix II. The same is true of the choice of undertakings included in Sections I and II of the framework Convention.

23. The Preamble mentions, in a non-exhaustive way, three further sources of inspiration for the content of the framework Convention: the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and instruments which contain commitments regarding the protection of national minorities of the United Nations and the CSCE.

24. The Preamble reflects the concern of the Council of Europe and its member States about the risk to the existence of national minorities and is inspired by Article 1, paragraph 1, of the United Nations Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities (Resolution 47/135 adopted by the General Assembly on 18 December 1992).

25. Given that the framework Convention is also open to States which are not members of the Council of Europe, and to ensure a more comprehensive approach, it was decided to include certain principles from which flow rights and freedoms which are already guaranteed in the ECHR or in the protocols thereto (see also in connection with this, Article 23 of the framework Convention).

26. The reference to United Nations conventions and declarations recalls the work done at the universal level, for example in the International Covenant on Civil and Political Rights

(Article 27) and in the Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities. However this reference does not extend to any definition of a national minority which may be contained in these texts.

27. The reference to the relevant CSCE commitments reflects the desire expressed in Appendix II of the Vienna Declaration that the Council of Europe should apply itself to transforming, to the greatest possible extent, these political commitments into legal obligations. The Copenhagen Document in particular provided guidance for drafting the framework Convention.

28. The penultimate paragraph in the Preamble sets out the main aim of the framework Convention: to ensure the effective protection of national minorities and of the rights of persons belonging to those minorities. It also stresses that this effective protection should be ensured within the rule of law, respecting the territorial integrity and national sovereignty of States.

29. The purpose of the last recital is to indicate that the provisions of this framework Convention are not directly applicable. It is not concerned with the law and practice of the Parties in regard to the reception of international treaties in the internal legal order.

SECTION I

Article 1

30. The main purpose of Article 1 is to specify that the protection of national minorities, which forms an integral part of the protection of human rights, does not fall within the reserved domain of States. The statement that this protection “forms an integral part of the international protection of human rights” does not confer any competence to interpret the present framework Convention on the organs established by the ECHR.

31. The article refers to the protection of national minorities as such and of the rights and freedoms of persons belonging to such minorities. This distinction and the difference in wording make it clear that no collective rights of national minorities are envisaged (see also the commentary to Article 3). The Parties do however recognise that protection of a national minority can be achieved through protection of the rights of individuals belonging to such a minority.

Article 2

32. This article provides a set of principles governing the application of the framework Convention. It is, *inter alia*, inspired by the United Nations Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (General Assembly Resolution 2625 (XXV) of 24 October 1970). The principles mentioned in this provision are of a general nature but do have particular relevance to the field covered by the framework Convention.

Article 3

33. This article contains two distinct but related principles laid down in two different paragraphs.

Paragraph 1

34. Paragraph 1 firstly guarantees to every person belonging to a national minority the freedom to choose to be treated or not to be treated as such. This provision leaves it to every such person to decide whether or not he or she wishes to come under the protection flowing from the principles of the framework Convention.

35. This paragraph does not imply a right for an individual to choose arbitrarily to belong to any national minority. The individual's subjective choice is inseparably linked to objective criteria relevant to the person's identity.

36. Paragraph 1 further provides that no disadvantage shall arise from the free choice it guarantees, or from the exercise of the rights which are connected to that choice. This part of the provision aims to secure that the enjoyment of the freedom to choose shall also not be impaired indirectly.

Paragraph 2

37. Paragraph 2 provides that the rights and freedoms flowing from the principles of the framework Convention may be exercised individually or in community with others. It thus recognises the possibility of joint exercise of those rights and freedoms, which is distinct from the notion of collective rights. The term "others" shall be understood in the widest possible sense and shall include persons belonging to the same national minority, to another national minority, or to the majority.

SECTION II

Article 4

38. The purpose of this article is to ensure the applicability of the principles of equality and non-discrimination for persons belonging to national minorities. The provisions of this article are to be understood in the context of this framework Convention.

Paragraphs 1 and 2

39. Paragraph 1 takes the classic approach to these principles. Paragraph 2 stresses that the promotion of full and effective equality between persons belonging to a national minority and those belonging to the majority may require the Parties to adopt special measures that take into account the specific conditions of the persons concerned. Such measures need to be "adequate", that is in conformity with the proportionality principle, in order to avoid violation of the rights of others as well as discrimination against others. This principle requires, among other things, that such measures do not extend, in time or in scope, beyond what is necessary in order to achieve the aim of full and effective equality.

40. No separate provision dealing specifically with the principle of equal opportunities has been included in the framework Convention. Such an inclusion was considered unnecessary as the principle is already implied in paragraph 2 of this article. Given the principle of non-discrimination set out in paragraph 1 the same was considered true for freedom of movement.

Paragraph 3

41. The purpose of paragraph 3 is to make clear that the measures referred to in paragraph 2 are not to be regarded as contravening the principles of equality and non-discrimination. Its

aim is to ensure to persons belonging to national minorities effective equality along with persons belonging to the majority.

Article 5

42. This article essentially aims at ensuring that persons belonging to national minorities can maintain and develop their culture and preserve their identity.

Paragraph 1

43. Paragraph 1 contains an obligation to promote the necessary conditions in this respect. It lists four essential elements of the identity of a national minority. This provision does not imply that all ethnic, cultural, linguistic or religious differences necessarily lead to the creation of national minorities (see in this regard the report of the CSCE meeting of experts, held in Geneva in 1991, section II, paragraph 4).

44. The reference to "traditions" is not an endorsement or acceptance of practices which are contrary to national law or international standards. Traditional practices remain subject to limitations arising from the requirements of public order.

Paragraph 2

45. The purpose of paragraph 2 is to protect persons belonging to national minorities from assimilation against their will. It does not prohibit voluntary assimilation.

46. Paragraph 2 does not preclude the Parties from taking measures in pursuance of their general integration policy. It thus acknowledges the importance of social cohesion and reflects the desire expressed in the preamble that cultural diversity be a source and a factor, not of division, but of enrichment to each society.

Article 6

47. This article is an expression of the concerns stated in Appendix III to the Vienna Declaration (Declaration and Plan of Action on combating racism, xenophobia, anti-Semitism and intolerance).

Paragraph 1

48. Paragraph 1 stresses a spirit of tolerance and intercultural dialogue and points out the importance of the Parties' promoting mutual respect, understanding and co-operation among all who live on their territory. The fields of education, culture and the media are specifically mentioned because they are considered particularly relevant to the achievement of these aims.

49. In order to strengthen social cohesion, the aim of this paragraph is, inter alia, to promote tolerance and intercultural dialogue, by eliminating barriers between persons belonging to ethnic, cultural, linguistic and religious groups through the encouragement of intercultural organisations and movements which seek to promote mutual respect and understanding and to integrate these persons into society whilst preserving their identity.

Paragraph 2

50. This provision is inspired by paragraph 40.2 of the Copenhagen Document of the CSCE. This obligation aims at the protection of all persons who may be subject to threats or acts of

discrimination, hostility or violence, irrespective of the source of such threats or acts.

Article 7

51. The purpose of this article is to guarantee respect for the right of every person belonging to a national minority to the fundamental freedoms mentioned therein. These freedoms are of course of a universal nature, that is they apply to all persons, whether belonging to a national minority or not (see, for instance, the corresponding provisions in Articles 9, 10 and 11 of the ECHR), but they are particularly relevant for the protection of national minorities. For the reasons stated above in the commentary on the preamble, it was decided to include certain undertakings which already appear in the ECHR.

52. This provision may imply for the Parties certain positive obligations to protect the freedoms mentioned against violations which do not emanate from the State. Under the ECHR, the possibility of such positive obligations has been recognised by the European Court of Human Rights.

53. Some of the freedoms laid down in Article 7 are elaborated upon in Articles 8 and 9.

Article 8

54. This article lays down more detailed rules for the protection of freedom of religion than Article 7. It combines several elements from paragraphs 32.2, 32.3 and 32.6 of the CSCE Copenhagen Document into a single provision. This freedom of course applies to all persons and persons belonging to a national minority should, in accordance with Article 4, enjoy it as well. Given the importance of this freedom in the present context, it was felt particularly appropriate to give it special attention.

Article 9

55. This article contains more detailed rules for the protection of the freedom of expression than Article 7.

Paragraph 1

56. The first sentence of this paragraph is modelled on the second sentence of Article 10, paragraph 1, of the ECHR. Although the sentence refers specifically to the freedom to receive and impart information and ideas in the minority language, it also implies the freedom to receive and impart information and ideas in the majority or other languages.

57. The second sentence of this paragraph contains an undertaking to ensure that there is no discrimination in access to the media. The words “in the framework of their legal systems” were inserted in order to respect constitutional provisions which may limit the extent to which a Party can regulate access to the media.

Paragraph 2

58. This paragraph is modelled on the third sentence of Article 10, paragraph 1, of the ECHR.

59. The licensing of sound radio and television broadcasting, and of cinema enterprises, should be non-discriminatory and be based on objective criteria. The inclusion of these requirements, which are not expressly mentioned in the third sentence of Article 10, paragraph 1, of the ECHR, was considered important for an instrument designed to protect

persons belonging to a national minority.

60. The words “sound radio”, which also appear in paragraph 3 of this article, do not appear in the corresponding sentence in Article 10 of the ECHR. They are used in order to reflect modern terminology and do not imply any material difference in meaning from Article 10 of the ECHR.

Paragraph 3

61. The first sentence of this paragraph, dealing with the creation and use of printed media, contains an essentially negative undertaking whereas the more flexibly worded second sentence emphasises a positive obligation in the field of sound radio and television broadcasting (for example the allocation of frequencies). This distinction reflects the relative scarcity of available frequencies and the need for regulation in the latter field. No express reference has been made to the right of persons belonging to a national minority to seek funds for the establishment of media, as this right was considered self-evident.

Paragraph 4

62. This paragraph emphasises the need for special measures with the dual aim of facilitating access to the media for persons belonging to national minorities and promoting tolerance and cultural pluralism. The expression “adequate measures” was used for the reasons given in the commentary on Article 4, paragraph 2 (see paragraph 39), which uses the same words. The paragraph complements the undertaking laid down in the last sentence of Article 9, paragraph 1. The measures envisaged by this paragraph could, for example, consist of funding for minority broadcasting or for programme productions dealing with minority issues and/or offering a dialogue between groups, or of encouraging, subject to editorial independence, editors and broadcasters to allow national minorities access to their media.

Article 10

Paragraph 1

63. The recognition of the right of every person belonging to a national minority to use his or her minority language freely and without interference is particularly important. The use of the minority language represents one of the principal means by which such persons can assert and preserve their identity. It also enables them to exercise their freedom of expression. “In public” means, for instance, in a public place, outside, or in the presence of other persons but is not concerned in any circumstances with relations with public authorities, the subject of paragraph 2 of this article.

Paragraph 2

64. This provision does not cover all relations between individuals belonging to national minorities and public authorities. It only extends to administrative authorities. Nevertheless, the latter must be broadly interpreted to include, for example, ombudsmen. In recognition of the possible financial, administrative, in particular in the military field, and technical difficulties associated with the use of minority languages in relations between persons belonging to national minorities and the administrative authorities, this provision has been worded very flexibly, leaving Parties a wide measure of discretion.

65. Once the two conditions in paragraph 2 are met, Parties shall endeavour to ensure the use of a minority language in relations with the administrative authorities as far as possible.

The existence of a “real need” is to be assessed by the State on the basis of objective criteria. Although contracting States should make every effort to apply this principle, the wording “as far as possible” indicates that various factors, in particular the financial resources of the Party concerned, may be taken into consideration.

66. The Parties’ obligations regarding the use of minority languages do not in any way affect the status of the official language or languages of the country concerned. Moreover, the framework Convention deliberately refrains from defining “areas inhabited by persons belonging to national minorities traditionally or in substantial numbers”. It was considered preferable to adopt a flexible form of wording which will allow each Party’s particular circumstances to be taken into account. The term “inhabited ... traditionally” does not refer to historical minorities, but only to those still living in the same geographical area (see also Article 11, paragraph 3, and Article 14, paragraph 2).

Paragraph 3

67. This paragraph is based on certain provisions contained in Articles 5 and 6 of the European Convention on Human Rights. It does not go beyond the safeguards contained in those articles.

Article 11

Paragraph 1

68. In view of the practical implications of this obligation, the provision is worded in such a way as to enable Parties to apply it in the light of their own particular circumstances. For example, Parties may use the alphabet of their official language to write the name(s) of a person belonging to a national minority in its phonetic form. Persons who have been forced to give up their original name(s), or whose name(s) has (have) been changed by force, should be entitled to revert to it (them), subject of course to exceptions in the case of abuse of rights and changes of name(s) for fraudulent purposes. It is understood that the legal systems of the Parties will, in this respect, meet international principles concerning the protection of national minorities.

Paragraph 2

69. The obligation in this paragraph concerns an individual’s right to display “in his or her minority language signs, inscriptions and other information of a private nature visible to the public”. This does not, of course, exclude persons belonging to national minorities from being required to use, in addition, the official language and/or other minority languages. The expression “of a private nature” refers to all that is not official.

Paragraph 3

70. This article aims to promote the possibility of having local names, street names and other topographical indications intended for the public also in the minority language. In implementing this principle the States are entitled to take due account of the specific circumstances and the framework of their legal systems, including, where appropriate, agreements with other States. In the field covered by this provision, it is understood that the Parties are under no obligation to conclude agreements with other States. Conversely, the possibility of concluding such agreements is not ruled out. It is also understood that the legally binding nature of existing agreements remains unaffected. This provision does not imply any official recognition of local names in the minority languages.

Article 12

71. This article seeks to promote knowledge of the culture, history, language and religion of both national minorities and the majority population in an intercultural perspective (see Article 6, paragraph 1). The aim is to create a climate of tolerance and dialogue, as referred to in the preamble to the framework convention and in Appendix II of the Vienna Declaration of the Heads of State and Government. The list in the second paragraph is not exhaustive whilst the words “access to textbooks” are understood as including the publication of textbooks and their purchase in other countries. The obligation to promote equal opportunities for access to education at all levels for persons belonging to national minorities reflects a concern expressed in the Vienna Declaration.

Article 13

Paragraph 1

72. The Parties’ obligation to recognise the right of persons belonging to national minorities to set up and manage their own private educational and training establishments is subject to the requirements of their educational system, particularly the regulations relating to compulsory schooling. The establishments covered by this paragraph may be subject to the same forms of supervision as other establishments, particularly with regard to teaching standards. Once the required standards are met, it is important that any qualifications awarded are officially recognised. The relevant national legislation must be based on objective criteria and conform to the principle of non-discrimination.

Paragraph 2

73. The exercise of the right referred to in paragraph 1 does not entail any financial obligation for the Party concerned, but neither does it exclude the possibility of such a contribution.

Article 14

Paragraph 1

74. The obligation to recognise the right of every person belonging to a national minority to learn his or her minority language concerns one of the principal means by which such individuals can assert and preserve their identity. There can be no exceptions to this. Without prejudice to the principles mentioned in paragraph 2, this paragraph does not imply positive action, notably of a financial nature, on the part of the State.

Paragraph 2

75. This provision concerns teaching of and instruction in a minority language. In recognition of the possible financial, administrative and technical difficulties associated with instruction of or in minority languages, this provision has been worded very flexibly, leaving Parties a wide measure of discretion. The obligation to endeavour to ensure instruction of or in minority languages is subject to several conditions; in particular, there must be “sufficient demand” from persons belonging to the relevant national minorities. The wording “as far as possible” indicates that such instruction is dependent on the available resources of the Party concerned.

76. The text deliberately refrains from defining “sufficient demand”, a flexible form of wording which allows Parties to take account of their countries’ own particular circumstances. Parties have a choice of means and arrangements in ensuring such instruction, taking their particular educational system into account.

77. The alternatives referred to in this paragraph – “opportunities for being taught the minority language or for receiving instruction in this language” – are not mutually exclusive. Even though Article 14, paragraph 2, imposes no obligation upon States to do both, its wording does not prevent the States Parties from implementing the teaching of the minority language as well as the instruction in the minority language. Bilingual instruction may be one of the means of achieving the objective of this provision. The obligation arising from this paragraph could be extended to pre-school education.

Paragraph 3

78. The opportunities for being taught the minority language or for receiving instruction in this language are without prejudice to the learning of the official language or the teaching in this language. Indeed, knowledge of the official language is a factor of social cohesion and integration.

79. It is for States where there is more than one official language to settle the particular questions which the implementation of this provision shall entail.

Article 15

80. This article requires Parties to 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. It aims above all to encourage real equality between persons belonging to national minorities and those forming part of the majority. In order to create the necessary conditions for such participation by persons belonging to national minorities, Parties could promote – in the framework of their constitutional systems – inter alia the following measures:

- consultation with these persons, by means of appropriate procedures and, in particular, through their representative institutions, when Parties are contemplating legislation or administrative measures likely to affect them directly;
- involving these persons in the preparation, implementation and assessment of national and regional development plans and programmes likely to affect them directly;
- undertaking studies, in conjunction with these persons, to assess the possible impact on them of projected development activities;
- effective participation of persons belonging to national minorities in the decision-making processes and elected bodies both at national and local levels;
- decentralised or local forms of government.

Article 16

81. The purpose of this article is to protect against measures which change the proportion of the population in areas inhabited by persons belonging to national minorities and are aimed at restricting the rights and freedoms which flow from the present framework Convention. Examples of such measures might be expropriation, evictions and expulsions or redrawing administrative borders with a view to restricting the enjoyment of such rights and freedoms (“gerrymandering”).

82. The article prohibits only measures which are aimed at restricting the rights and freedoms flowing from the framework Convention. It was considered impossible to extend the

prohibition to measures having the effect of restricting such rights and freedoms, since such measures may sometimes be entirely justified and legitimate. One example might be resettlement of inhabitants of a village in order to build a dam.

Article 17

83. This article contains two undertakings important to the maintenance and development of the culture of persons belonging to a national minority and to the preservation of their identity (see also Article 5, paragraph 1). The first paragraph deals with the right to establish and maintain free and peaceful contacts across frontiers, whereas the second paragraph protects the right to participate in the activities of non-governmental organisations (see also in this connection, the provisions on freedom of assembly and of association in Article 7).

84. The provisions of this article are largely based on paragraphs 32.4 and 32.6 of the Copenhagen Document of the CSCE. It was considered unnecessary to include an explicit provision on the right to establish and maintain contacts within the territory of a State, since this was felt to be adequately covered by other provisions of the framework Convention, notably Article 7 as regards freedom of assembly and of association.

Article 18

85. This article encourages the Parties to conclude, in addition to the existing international instruments, and where the specific circumstances justify it, bilateral and multilateral agreements for the protection of national minorities. It also stimulates transfrontier co-operation. As is emphasised in the Vienna Declaration and its Appendix II, such agreements and co-operation are important for the promotion of tolerance, prosperity, stability and peace.

Paragraph 1

86. Bilateral and multilateral agreements as envisaged by this paragraph might, for instance, be concluded in the fields of culture, education and information.

Paragraph 2

87. This paragraph points out the importance of transfrontier co-operation. Exchange of information and experience between States is an important tool for the promotion of mutual understanding and confidence. In particular, transfrontier co-operation has the advantage that it allows for arrangements specifically tailored to the wishes and needs of the persons concerned.

Article 19

88. This article provides for the possibility of limitations, restrictions or derogations. When the undertakings included in this framework Convention have an equivalent in other international legal instruments, in particular the ECHR, only the limitations, restrictions or derogations provided for in those instruments are allowed. When the undertakings set forth in this framework Convention have no equivalent in other international legal instruments, the only limitations, restrictions or derogations allowed are those which, included in other legal instruments (such as the ECHR) in respect of different undertakings, are relevant.

SECTION III

Article 20

89. Persons belonging to national minorities are required to respect the national constitution and other national legislation. However, this reference to national legislation clearly does not entitle Parties to ignore the provisions of the framework Convention. Persons belonging to national minorities must also respect the rights of others. In this regard, reference may be made to situations where persons belonging to national minorities are in a minority nationally but form a majority within one area of the State.

Article 21

90. This provision stresses the importance of the fundamental principles of international law and specifies that the protection of persons belonging to national minorities must be in accordance with these principles.

Article 22

91. This provision, which is based on Article 60 of the ECHR, sets out a well-known principle. The aim is to ensure that persons belonging to national minorities benefit from whichever of the relevant national or international human rights legislation is most favourable to them.

Article 23

92. This provision deals with the relationship between the framework Convention and the Convention for the Protection of Human Rights and Fundamental Freedoms, reference to which is included in the Preamble. Under no circumstances can the framework Convention modify the rights and freedoms safeguarded in the Convention for the Protection of Human Rights and Fundamental Freedoms. On the contrary, rights and freedoms enshrined in the framework Convention which are the subject of a corresponding provision in the Convention for the Protection of Human Rights and Fundamental Freedoms must be interpreted in accordance with the latter.

SECTION IV

Articles 24–26

93. To provide for overseeing the application of the framework Convention, the Committee of Ministers is entrusted with the task of monitoring the implementation by the Contracting Parties. The Committee of Ministers shall determine the modalities for the participation in the implementation mechanism by the Parties which are not members of the Council of Europe.

94. Each Party shall transmit to the Secretary General on a periodical basis and whenever the Committee of Ministers so requests information of relevance to the implementation of this framework Convention. The Secretary General shall transmit this information to the Committee of Ministers. However, the first report, the aim of which is to provide full information on legislative and other measures which the Party has taken to give effect to the undertakings set out in the framework Convention, must be submitted within one year of the entry into force of the framework Convention in respect of the Party concerned. The purpose of the subsequent reports shall be to complement the information included in the first report.

95. In order to ensure the efficiency of the monitoring of the implementation of the framework Convention, it provides for the setting up of an advisory committee. The task of this advisory committee is to assist the Committee of Ministers when it evaluates the adequacy of the measures taken by a Party to give effect to the principles set out in the framework Convention.

96. It is up to the Committee of Ministers to determine, within one year of the entry into force of the framework Convention, the composition and the procedures of the advisory committee, the members of which shall have recognised expertise in the field of the protection of national minorities.

97. The monitoring of the implementation of this framework Convention shall, in so far as possible, be transparent. In this regard it would be advisable to envisage the publication of the reports and other texts resulting from such monitoring.

SECTION V

98. The final provisions contained in articles 27 to 32 are based on the model final clauses for conventions and agreements concluded within the Council of Europe. No article on reservations was included; reservations are allowed in as far as they are permitted by international law. Apart from Articles 27 and 29 the articles in this section require no particular comment.

Articles 27 and 29

99. The framework Convention is open for signature by the Council of Europe's member States and, at the invitation of the Committee of Ministers, by other States. It is understood that "other States" are those States which participate in the Conference on Security and Co-operation in Europe. These provisions take account of the Vienna Declaration, according to which the framework Convention should also be open for signature by non-member States (see Appendix II to the Vienna Declaration of the Council of Europe Summit).

Link to Treaty site: <http://conventions.coe.int/Default.asp> (ETS157)
<http://conventions.coe.int/Treaty/EN/WhatYouWant.asp?NT=157>

Appendix 2: Ratification and reporting status chart

From the Council of Europe website (accessed 6 February 2006):
<http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=157&CM=8&DF=06/02/2006&CL=ENG>

Framework Convention for the Protection of National Minorities

CETS No.: 157

Treaty open for signature by the member States and up until the date of entry into force by any other State so invited by the Committee of Ministers

Opening for signature

Entry into force

Place: Strasbourg

Conditions: 12 Ratifications

Date: 1/2/1995

Date: 1/2/1998

Status as of: 6/2/2006

Member States of the Council of Europe

States	Signature	Ratification	Entry into force	Notes	R.	D.	A.	T.	C.	O.
Albania	29/6/1995	28/9/1999	1/1/2000							
Andorra										
Armenia	25/7/1997	20/7/1998	1/11/1998							
Austria	1/2/1995	31/3/1998	1/7/1998		X					
Azerbaijan		26/6/2000 a	1/10/2000		X					
Belgium	31/7/2001				X					
Bosnia and Herzegovina	24/2/2000 a	1/6/2000								
Bulgaria	9/10/1997	7/5/1999	1/9/1999		X					

Croatia	6/11/1996	11/10/1997	1/2/1998																	
Cyprus	1/2/1995	4/6/1996	1/2/1998																	
Czech Republic	28/4/1995	18/12/1997	1/4/1998																	
Denmark	1/2/1995	22/9/1997	1/2/1998		X															
Estonia	2/2/1995	6/1/1997	1/2/1998		X															
Finland	1/2/1995	3/10/1997	1/2/1998																	
France																				
Georgia	21/1/2000	22/12/2005	1/4/2006																	
Germany	11/5/1995	10/9/1997	1/2/1998		X															
Greece	22/9/1997																			
Hungary	1/2/1995	25/9/1995	1/2/1998																	
Iceland	1/2/1995																			
Ireland	1/2/1995	7/5/1999	1/9/1999																	
Italy	1/2/1995	3/11/1997	1/3/1998																	
Latvia	11/5/1995	6/6/2005	1/10/2005		X															
Liechtenstein	1/2/1995	18/11/1997	1/3/1998		X															
Lithuania	1/2/1995	23/3/2000	1/7/2000																	
Luxembourg	20/7/1995				X															
Malta	11/5/1995	10/2/1998	1/6/1998		X	X														
Moldova	13/7/1995	20/11/1996	1/2/1998																	
Monaco																				
Netherlands	1/2/1995	16/2/2005	1/6/2005		X	X														
Norway	1/2/1995	17/3/1999	1/7/1999																	

Poland	1/2/1995	20/12/2000	1/4/2001		X															
Portugal	1/2/1995	7/5/2002	1/9/2002																	
Romania	1/2/1995	11/5/1995	1/2/1998																	
Russia	28/2/1996	21/8/1998	1/12/1998		X															
San Marino	11/5/1995	5/12/1996	1/2/1998																	
Serbia and Montenegro		11/5/2001 a	1/9/2001																	
Slovakia	1/2/1995	14/9/1995	1/2/1998																	
Slovenia	1/2/1995	25/3/1998	1/7/1998		X															
Spain	1/2/1995	1/9/1995	1/2/1998																	
Sweden	1/2/1995	9/2/2000	1/6/2000		X															
Switzerland	1/2/1995	21/10/1998	1/2/1999		X															
the former Yugoslav Republic of Macedonia	25/7/1996	10/4/1997	1/2/1998		X															
Turkey																				
Ukraine	15/9/1995	26/1/1998	1/5/1998																	
United Kingdom	1/2/1995	15/1/1998	1/5/1998																	

Non-member States of the Council of Europe

Total number of signatures not followed by ratifications: 4

Total number of ratifications/accessions: 38

Notes: a: Accession – s: Signature without reservation as to ratification – su: Succession – r: Signature “ad referendum”.

R.: Reservations – D.: Declarations – A.: Authorities – T.: Territorial Application – C.: Communication – O.: Objection.

Source : Treaty Office on <http://conventions.coe.int>

Appendix 3: Sample questions on education

Compiled by Stephanie Marsal, FCNM Secretariat, Council of Europe

Draft checklist of issues relating to education

Article 12

- Legal framework: is there a legal basis for minority education, possible contradiction/inconsistencies between general act on education and act on minority education, effects of decentralization, complexity of law and decrees?
- Means of enforcement of legal provisions concerning education;
- Content of national and school curriculum and planned or existing review of curricula and textbooks to reflect cultural ethnic diversity;
- Availability of textbooks (precise the role of bilateral agreements in this area);
- Availability of teachers (precise the role of bilateral agreements in this area), information on the ratio students/teachers;
- Pre-school education for minority children;
- Problems in accessing education at all levels including higher education and systems (such as quota system) put in place to increase access to education for minorities (functioning and results);
- Equal opportunities for accessing *quality* education;
- Opportunities for adult education for minorities;
- Treatment of minorities in schools, issue of separate classes/schools, existence of so-called 'special schools';
- Statistical information (school attendance and attainment for minorities).

Article 13

- Legal framework: criteria set forth in the legislation for opening private minority schools and existing restrictions in opening up private schools;
- Potential problems with registration of private minority schools;
- Quality and supervision of minority education;
- Subsidies given to private schools and equal distribution of subsidies.

Article 14

- Legal framework relating to (a) instruction of the minority language; (b) instruction in the minority language;
- Situation in practice with regard to (a) instruction of the minority language; (b) instruction in the minority language;
- Demands formulated by minorities and reply of the authorities;
- Threshold to open up a class in minority language and other criteria set forth, authorities involved in the decision-making on this issue;
- Qualification of the teachers (to what extent the teachers are coming from minority communities) and adequacy of the textbooks;
- Existence and functioning of bilingual classes;
- General: consultation and participation of minority parents/pupils in the educational system.

Also educational issues may be looked into under Arts 4 and 6, taking the following angles:

Article 4 – Equality and non-discrimination in education

Article 6 – Education as a tool for promoting tolerance

Appendix 4: Sample recommendations from the shadow report on Croatia

Prepared by Center for Peace, Legal Advice and Psychosocial Assistance in Vukovar and Community of Serbs in Rijeka

In order to ensure full and effective implementation of the provisions of the FCNM, the Republic of Croatia, as its priorities, should:

- Related to the implementation of the Art. 4 of the FCNM – ensure the respect of all internationally accepted obligations and take concrete and measurable steps towards the elimination of existing negative consequences of discriminatory policies against persons belonging to national minorities, and recognize and/or compensate acquired rights terminated on the basis of discrimination and human rights violations, which primarily refers to Serbs and Roma. In the same sense, among the rest, it is necessary to ensure full implementation of the provisions of the Annex G of the Secession Agreement of the Former SFRY and to interpret them in 'good faith' (recognition and protection of private real estates and movable assets, and acquired and tenancy rights) and effective implementation of the National Programme for Roma.
- Related to the implementation of the Arts. 16 and 18 of the FCNM – create required political, security, legal and economic preconditions for the sustainable return of refugees and displaced persons to their homes, in the urban areas in particular. To solve the refugee and displaced persons problems, it is necessary to intensify cross-border cooperation with Bosnia and Herzegovina and Serbia and Montenegro at all levels.
- Related to the implementation of the Art. 15 of the FCNM – ensure proportional representation for persons belonging to minorities in the state administration and judicial bodies and eliminate discrimination in employment of those persons. It is necessary to constantly keep in mind possible changes in proportional representation of persons belonging to minorities within the national population structure in certain areas considering the number of refugees and displaced persons returned and complaints against the 2001 census results. It is necessary to ensure and encourage creation of preconditions for effective functioning of the councils for national minorities at local and regional levels by fully implementing and respecting the provisions of the Constitutional Law on the Rights of National Minorities.
- Related to the implementation of the Art. 6 of the FCNM – make additional efforts and start with the concrete activities aimed at encouraging inter-ethnic cooperation and understanding at all levels. It is necessary to impartially, with the inclusion of all relevant

society structures, research all aspects of drastic reductions in number of persons belonging to national minorities in the period 1991–2001. It is necessary to continue cooperation with the International Criminal Tribunal for Former Yugoslavia (ICTY) and to ensure preconditions for processing all persons who committed war crimes, regardless of their ethnicity and in impartial and transparent processes. It is necessary to call to account and efficiently punish persons responsible for ethnically or religiously motivated incidents, violence, animosities and discrimination, and to eliminate those issues.

- It is necessary to ensure effective and non-selective implementation of the Constitutional Law on the Rights of National Minorities and other relevant laws at all levels. It is necessary to provide an official interpretation of particular provisions and terms in the Constitutional Law such as the term 'acquired rights' and to interpret those provisions and terms in good faith and in the spirit of international standards (FCNM) and customs considering particularities of minority communities and geographical areas.

Appendix 5: Useful websites/ addresses

Center of Documentation and Information on Minorities in Europe – Southeast Europe – information on the FCNM, including shadow reports:

http://www.greekhelsinki.gr/bhr/english/special_issues/fcnm_guide.html

Council of Europe – minorities page:

http://www.coe.int/T/E/human_rights/minorities/

European Centre for Minority Issues:

<http://www.ecmi.de/>

European Union – anti-discrimination and relations with civil society:

http://europa.eu.int/comm/employment_social/fundamental_rights/index_en.htm

European Union – website about anti-discrimination initiatives:

<http://www.stop-discrimination.info/>

MINELRES (Minority Electronic Resources) – directory of resources on minority human rights and related problems of the transition period in Eastern and Central Europe:

<http://www.minelres.lv/>

Minority Rights Group International:

<http://www.minorityrights.org/>

Organization for Security and Cooperation in Europe – High Commissioner on National Minorities

<http://www.osce.org/hcnm/>

UN Office of the High Commissioner for Human Rights – minorities page:

<http://www.ohchr.org/english/issues/minorities/>

Glossary

Advisory Committee – the expert body that assists the Committee of Ministers to monitor the implementation of the FCNM. The Advisory Committee assesses the situation in each state which is party to the FCNM and produces an Opinion on how the Convention is being implemented, which is then submitted to the Committee of Ministers.

Advocacy – the *process of achieving change* to protect human rights/improve lives of people. Advocacy includes:

- 1 involving people whose lives are affected/ensuring participation
- 2 influencing decision-makers to change laws, policies, and practices
- 3 raising public awareness of issues/rights to change attitudes

Committee of Ministers – the executive body of the Council of Europe, made up of Ministers of Foreign Affairs from the member states. The Committee of Ministers is in charge of monitoring implementation of the FCNM, and does so with the help of the Advisory Committee. The Committee of Ministers issues Resolutions on the implementation of the FCNM in each state party, including how it should be improved.

Convention – a multilateral instrument that is legally binding on states that have ratified it.

FCNM Secretariat – the office within the Council of Europe that provides support to the Advisory Committee in monitoring the FCNM. The Secretariat is part of the Directorate-General of Human Rights, and is the contact point for NGOs wishing to be involved in the monitoring process.

Lobbying – targeted actions to influence the right people (decision/policy makers) to make a particular decision or bring about positive change. This can be introducing new legislation or changing old legislation, implementing laws, policies, programmes. Lobbying is a tool for advocacy and an important part of it.

Monitoring cycle – this refers to the stages of the monitoring process over a five-year period (as states report every five years). For example, in February 2006, Slovakia was in the second monitoring cycle and the Advisory Committee had issued an Opinion, but it was not yet public.

Monitoring mechanism – this is how monitoring works. Monitoring is based on state reporting and information from other sources, which is due one year after the entry into force of the FCNM in a state and then every five years. State Reports and other information is considered by the Advisory Committee and dialogue takes place with the state and civil society. The Advisory Committee issues an Opinion, which is submitted to the Committee of Ministers. The state has a chance to comment on the Opinion and the Committee of Ministers then issues a Resolution

Opinion – Opinions are issued by the Advisory Committee on each state it monitors and are submitted to the Committee of Ministers. The Opinions contain the Advisory Committee's view on the implementation of the FCNM in each state and recommendations for action.

Other sources – sources other than the government of the state concerned that can submit information for consideration to the Advisory Committee. This includes civil society, including community organizations, local, national and international NGOs and others, such as other treaty bodies or intergovernmental organizations. Information from 'other sources' is read together with the information from the state to help the Advisory Committee issue its Opinion on the state.

Shadow reports/additional information – information submitted by NGOs on the implementation of the FCNM in their country. It should present a critical analysis of the situation in order to present their perspective on the situation or a fuller picture. Shadow reports/additional information are part of the information from 'other sources' and are read together with the State Report by the Advisory Committee when monitoring each state. Also called 'alternative' or 'parallel' reports.

Resolution – Resolutions are passed by the Committee of Ministers. In the context of the FCNM, country-specific Resolutions include the outcomes of monitoring and the steps the state should take to improve implementation. Resolutions are agreed by the whole Committee of Ministers, including the state that is being monitored.

State party – a state that has ratified the FCNM and has agreed to be bound by it.

State Report – a state's assessment of its progress on implementation of the FCNM. State Reports are submitted to the Advisory Committee one year after the entry into force of the Convention and then every five years, and form the basis for discussion on monitoring implementation.

Notes

- 1 The text of the FCNM is included in Appendix 1 and is available on: http://www.coe.int/T/e/human_rights/Minorities/2_FRAMEWORK_CONVENTION_%28MONITORING%29/1_Texts/FCNM%20Texts%20E%20F%20and%20other%20languages.asp#TopOfPage
- 2 A list of ratifications and reporting status is included in Appendix 2 and is available on: [http://www.coe.int/T/E/human_rights/minorities/2_FRAMEWORK_CONVENTION_\(MONITORING\)/2_Monitoring_mechanism/Chart%20of%20signs%20and%20rats.asp#TopOfPage](http://www.coe.int/T/E/human_rights/minorities/2_FRAMEWORK_CONVENTION_(MONITORING)/2_Monitoring_mechanism/Chart%20of%20signs%20and%20rats.asp#TopOfPage). Information on the second reporting cycle is available on: http://www.coe.int/T/E/human_rights/minorities/2_FRAMEWORK_CONVENTION_%28MONITORING%29/2_Monitoring_mechanism/3_State_Reports_and_UNMIK_Kosovo_Report/2_Second_cycle/List_SR_2nd_cycle.asp#TopOfPage
- 3 See www.conventions.coe.int and www.un.int
- 4 The ECHR is self-executing in most countries throughout continental Europe, but in some countries a special implementing Act is needed to make the ECHR provisions domestically applicable (e.g. the Human Rights Act in the UK).
- 5 These are the bodies that monitor the implementation by states of treaties they have signed up to, for example the Human Rights Committee and Committee on the Elimination of Racial Discrimination at the United Nations, and the FCNM's Advisory Committee
- 6 For a compilation of the Advisory Committee's Opinions see: [http://www.coe.int/T/E/human_rights/minorities/2_FRAMEWORK_CONVENTION_\(MONITORING\)/2_Monitoring_mechanism/4_Opinions_of_the_Advisory_Committee/1_Country_specific_opinions/2_Second_cycle/List_2nd_Opinions.asp#TopOfPage](http://www.coe.int/T/E/human_rights/minorities/2_FRAMEWORK_CONVENTION_(MONITORING)/2_Monitoring_mechanism/4_Opinions_of_the_Advisory_Committee/1_Country_specific_opinions/2_Second_cycle/List_2nd_Opinions.asp#TopOfPage) (2nd cycle) and: <http://www.coe.int/T/E/human%5Frights/minorities/2%2E%5FFRAMEWORK%5FCONVENTION%5F%28MONITORING%29/2%2E%5FMonitoring%5Fmechanism/4%2E%5FOpinions%5Fof%5Fthe%5FAdvisory%5FCommittee/1%2E%5FCountry%5Fspecific%5FOpinions/1%2E%5FFirst%5Fcycle/List%20of%20Opinions.asp#TopOfPage> (1st cycle)
- 7 Alfredsson, G., 'Minority Rights: International Standards and Monitoring Procedures. Minority Rights Handbook', *Latvian Human Rights Quarterly* vol. 5/6, 1998.
- 8 There were several attempts at coming up with a definition, for example, by UN Special Rapporteur Capotorti and the Parliamentary Assembly of the Council of Europe (rec. 1201 and 1492).

- 9 The Opinion on Hungary during the first reporting cycle, for example, includes the following standard wording under Art. 3, included in all Opinions.

'The Advisory Committee underlines that in the absence of a definition in the Framework Convention itself, the parties must examine the personal scope of application to be given to this instrument within their country. The position of the Hungarian Government is therefore deemed to be the outcome of this examination.

Whereas the Advisory Committee notes on one hand that parties have a margin of appreciation in this respect in order to take the specific circumstances prevailing in their country into account, it notes on the other hand that this margin of appreciation must be exercised in accordance with general principles of international law and the fundamental principles set out in Article 3. In particular, it stresses that the implementation of the Framework Convention should not be a source of arbitrary or unjustified distinctions.

For this reason the Advisory Committee considers that it is part of its duty to examine the personal scope given to the implementation of the Framework Convention in order to ensure that no arbitrary or unjustified distinctions have been made. Furthermore, it considers that it must verify the proper application of the fundamental principles set out in Article 3.'

- 10 For a list of declarations from states, see:

<http://www.conventions.coe.int/Treaty/Commun/ListeDeclarations.asp?NT=157&CM=7&DF=13/04/05&CL=ENG&VL=1>

- 11 For the full text, see the Advisory Committee's first Opinion on Denmark and Estonia under Art. 3.

- 12 For current membership, see:

[http://www.coe.int/T/e/human_rights/Minorities/2_FRAMEWORK_CONVENTION_\(MONITORING\)/2_Monitoring_mechanism/1_Brief_introduction/H\(1998\)005rev.11%20E%20Briefing%20document.asp#TopOfPage](http://www.coe.int/T/e/human_rights/Minorities/2_FRAMEWORK_CONVENTION_(MONITORING)/2_Monitoring_mechanism/1_Brief_introduction/H(1998)005rev.11%20E%20Briefing%20document.asp#TopOfPage)

- 13 During the first five years of monitoring, Spain was the only state that did not invite the Advisory Committee to visit.

- 14 The timetable for submitting State Reports and a list of State Reports submitted are included in Appendix 2 and are available electronically on:

http://www.coe.int/T/E/human_rights/minorities/2_FRAMEWORK_CONVENTION_%28MONITORING%29/2_Monitoring_mechanism/3_State_Reports_and_UNMIK_Kosovo_Report/1_First_cycle/List%20of%20State%20Reports.asp#TopOfPage. Information on the second reporting cycle is available on:

http://www.coe.int/T/E/human_rights/minorities/2_FRAMEWORK_CONVENTION_%28MONITORING%29/2_Monitoring_mechanism/3_State_Reports_and_UNMIK_Kosovo_Report/2_Second_cycle/List_SR_2nd_cycle.asp#TopOfPage

- 15 For details, see Outline for Reports to be Submitted Pursuant to Article 25 paragraph 1 of the Framework Convention for the Protection of National Minorities.

[http://www.coe.int/T/e/human_rights/Minorities/2_FRAMEWORK_CONVENTION_\(MONITORING\)/2_Monitoring_mechanism/2_Outlines_for_state_reports/1_First_cycle/ACFC-INF\(1998\)001%20E%20Outline.asp](http://www.coe.int/T/e/human_rights/Minorities/2_FRAMEWORK_CONVENTION_(MONITORING)/2_Monitoring_mechanism/2_Outlines_for_state_reports/1_First_cycle/ACFC-INF(1998)001%20E%20Outline.asp)

- 16 See: [http://www.coe.int/t/e/human_rights/minorities/2_framework_convention_\(monitoring\)/2_monitoring_mechanism/2_Outlines_for_state_reports/2_Second_cycle/ACFC-INF\(2003\)001%20E%20Outline.asp](http://www.coe.int/t/e/human_rights/minorities/2_framework_convention_(monitoring)/2_monitoring_mechanism/2_Outlines_for_state_reports/2_Second_cycle/ACFC-INF(2003)001%20E%20Outline.asp)

- 17 In the first round of state reporting, Slovakia suggested that the contents of the State Report had been agreed by some civil society organizations. In its Opinion the Advisory Committee made it clear that the state alone is responsible for the content. The Advisory Committee stated in its general remarks that:

The Advisory Committee welcomes the fact that a number of minority organisations have provided their input in the process leading to the adoption of the Report. The Advisory Committee should however like to emphasise that, notwithstanding this consultation, the content of the Report is the responsibility of the Government and not, as suggested in the final passage of the Report, of all bodies and institutions who have participated in the process.

- 18 The full Internet address is included in note 15. Hard copies can be requested from the FCNM Secretariat.

- 19 Hofmann, R. (First President of the Advisory Committee), 'The Framework Convention at the end of the first cycle of monitoring', paper presented in Strasbourg, October 2003, on the occasion of the FCNM's fifth anniversary conference.

- 20 For details, see the AC's *Fourth Activity Report*, covering the period from 1 June 2002 to 31 May 2004:

[http://www.coe.int/T/e/human_rights/Minorities/2_FRAMEWORK_CONVENTION_\(MONITORING\)/3_Advisory_Committee/3_Activity_reports/ACFC-INF\(2004\)001%20E%20Fourth%20Activity%20Report.asp#P139_19711](http://www.coe.int/T/e/human_rights/Minorities/2_FRAMEWORK_CONVENTION_(MONITORING)/3_Advisory_Committee/3_Activity_reports/ACFC-INF(2004)001%20E%20Fourth%20Activity%20Report.asp#P139_19711)

- 21 This information is included in Appendix 2 and is available electronically. Full address in footnote 15.

- 22 An exception is that if the State Report is 24 months overdue, the Advisory Committee can propose to start monitoring without the State Report.

- 23 This timing is for the information to be used by the Advisory Committee. Depending on their objectives, NGOs may choose to submit shadow reports at different times. For example, if the state is long overdue in reporting, NGOs may submit some information and publicize the fact in order to put pressure on the state to report. This was the case in Macedonia, whose first State Report was very overdue for various reasons, including the Kosovo war and the internal conflict in 2000. The Association for Democratic Initiatives (ADI) in Macedonia coordinated the work of several NGOs to produce a comprehensive shadow report to put pressure on

88 NOTES

Macedonia to fulfil its obligation to report. This was part of a wide advocacy campaign to improve minority protection. Macedonia subsequently submitted a State Report in 2003.

24 The report is available electronically on:

http://www.greekhelsinki.gr/bhr/english/articles/fcnm_fry_alt_rep_2003.html

25 Three months is generally a safe time. If there is a problem with producing the shadow report within three months of the State Report, or if the situation is changing quickly – e.g. because of forthcoming elections – it is particularly important to contact the FCNM Secretariat to find out the timetable. Also, there have been one or two cases where submitting information within three months of the release of the State Report would have been beneficial, particularly where the State Report is very overdue.

26 Advisory Committee's *Fourth Activity Report*, covering the period 1 June 2002 to 31 May 2004.

27 For the second reporting cycle, the Advisory Committee gives a list of questions to the state that they would like answers to before the state produces its State Report. These questions cover key problematic areas in the country. The Advisory Committee also produces questions to civil society at this point, which cover similar issues to the questions to the state.

28 This information is available electronically on:

<http://www.coe.int/T/e/human%5Frights/Minorities/2%2E%5FFRAMEWORK%5FCONVENTION%5F%28MONITORING%29/2%2E%5FMonitoring%5Fmechanism/>

29 The full shadow report is available on:

http://www.ecmingonet.org.mk/uk_inet_wmi_docdown.htm

30 See, for example, Phillips, A., 'Commentary on social and economic participation of persons belonging to national minorities', paper presented in Strasbourg, October 2003, on the occasion of the FCNM's 5th anniversary conference.

31 See Appendix 4 for an example of good recommendations from the shadow report on Croatia produced by Center for Peace, Legal Advice and Psychosocial Assistance in Vukovar and Community of Serbs in Rijeka.