

**THE COUNCIL OF EUROPE'S  
FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL  
MINORITIES**

**ANALYSIS AND OBSERVATIONS  
ON THE MONITORING MECHANISM**



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This paper has been prepared by the Secretariat of Minority Rights Group International (MRG). Comments were sought from independent assessors. The text and views do not necessarily represent, in every detail and all its aspects, the collective view of MRG.

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## I. Introduction

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On 1 February 1998 the Council of Europe's Framework Convention for the Protection of National Minorities<sup>1</sup> entered into force. This is an important milestone, since it is the first legally binding international instrument devoted to the plight of minorities. It is the result of a decision taken at the Vienna Summit of Heads of State and Government in October 1993 that the Council of Europe should transform the political commitments of the 1990 Copenhagen Document of the Conference for Security and Cooperation in Europe (CSCE)<sup>2</sup> and the 1992 United Nations (UN) Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities into legal obligations.

Minority Rights Group International (MRG), a London based international non-governmental organization (NGO) working to secure minority rights worldwide and to promote cooperation between communities, considers standard-setting in the field of minority rights and monitoring of implementation of these standards essential. It has been closely involved in providing advice to those who drafted the Copenhagen Document and the UN Declaration on (...) Minorities, as well in the creation of the UN Working Group on Minorities. MRG welcomes the entering into force of the Framework Convention and is committed to seeing it effectively implemented.

The Convention contains programme-type provisions setting out objectives as well as principles concerning issues such as association, cross-border contacts, education, equality, identity, language, media, participation, and religion. According to the Preamble, the Contracting Parties are to implement the objectives and principles through national legislation and policies.<sup>3</sup> The provisions leave the States concerned a measure of discretion in the implementation of the objectives in order to enable them to take particular circumstances into account.<sup>4</sup> Although it is true that minority situations differ from country to country and consequently require different approaches, the danger is that the vaguely worded objectives and principles will be interpreted restrictively by the Contracting Parties. This flexibility to translate the objectives into national legislation and policies which best suit their specific situation, may possibly be used by Parties to escape their obligations. In this context, serious doubts have already been expressed regarding the impact of the Convention.

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<sup>1</sup> Opened for signature 1 February 1995. According to Art. 27 the Convention is up until the date when it enters into force also open to states, who are not members of the Council of Europe and who have been invited to sign by the Committee of Ministers. Armenia and Belarus have been invited hereto. Armenia signed the Convention on 25 July 1997.

<sup>2</sup> Since 1 January 1995 called the Organization for Security and Cooperation in Europe (OSCE).

<sup>3</sup> See the Preamble, para. 13.

<sup>4</sup> See the Explanatory Note, para. 11.

In addition to a constructive and cooperative approach of the State Parties, the success of the Convention will to a large extent depend on the monitoring of the implementation of the Convention. A well functioning monitoring mechanism can substantially contribute to overcoming the danger of different and restrictive interpretations. It can, therefore, help to ensure harmonized interpretation and effective implementation. The Convention provides that the Committee of Ministers of the Council of Europe shall monitor the implementation of the Convention on the basis of reports submitted by States and will be assisted in this task by an Advisory Committee.<sup>5</sup> On 17 September 1997 the Committee of Ministers adopted Resolution 97(10) that provides further guidance on the composition, election and appointment of the Advisory Committee and the procedures to be followed in performing the monitoring functions.

The Resolution requires the Advisory Committee to consist of independent experts. This is of major importance. Minority issues are, by their nature, politically sensitive. The fact that the Committee of Ministers is in charge of monitoring of the Convention and not an independent body, such as is the case for the European Convention on Human Rights, has already been charged to be a serious weakness of the Convention. The involvement of an impartial body in the assessment of the issues can reduce the level of politicization and facilitate the task of the Committee of Ministers. In this context a well functioning Advisory Committee is crucial.

Many questions regarding the monitoring and especially regarding the functioning of the Advisory Committee are, however, not yet resolved by the Convention and the Resolution. Some of them will be addressed by the Advisory Committee's rules of procedure, which will be drawn up by the Advisory Committee at its first session. These draft rules will then need to be adopted by the Committee of Ministers. The monitoring mechanism is still in a development stage and there is a good opportunity to turn it into a well functioning mechanism.

Since MRG believes that the chance should not be missed to make the Convention a worthwhile and effective instrument for the protection of minorities, it has drawn up recommendations concerning the monitoring mechanism. These are presented in this paper.

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<sup>5</sup> Arts. 24-26 of the Convention.

## II. Monitoring Mechanism

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The Convention provides very few directions regarding the monitoring of its provisions. Articles 24-26 specify that the Committee of Ministers of the Council of Europe, assisted by an Advisory Committee, will evaluate the adequacy of the measures taken by the Parties in order to give effect to the principles laid down in the Convention on the basis of their reports. The States who have ratified the Convention<sup>6</sup> are obliged to submit their initial reports on the legislative and other measures taken in order to give effect to the principles set out in the Convention within 12 months after the entry into force of the Convention in respect of them. Thereafter each Party shall submit on a periodical basis and whenever the Committee of Ministers so requests any further information of relevance. Resolution (97)10 provides that periodic reports are to be submitted every five years<sup>7</sup> and that the Advisory Committee may invite the Committee of Ministers to request *ad hoc* reports in order to address situations which may arise between two periodic reports of a Party concerned.<sup>8</sup>

### A. The Advisory Committee

According to Resolution 97(10) State reports will be considered first by the Advisory Committee, which will then formulate its opinions regarding the realization of the principles of the Convention and submit these to the Committee of Ministers.<sup>9</sup>

As mentioned above, the Convention's articles are worded vaguely. The Explanatory Note provides some guidance,<sup>10</sup> but many issues of interpretation still remain unresolved. The Advisory Committee has a unique role to play in ensuring that the Convention is interpreted in the spirit of true commitment to the protection of minorities. It can substantially assist the Committee of Ministers with the monitoring of the implementation of the Convention by formulating sound opinions on State reports. In addition to commenting on the measures taken by the Parties, it could also suggest further measures which could be taken to implement the Convention. Therefore, it will be in a strong position to contribute to a broad and harmonized interpretation of the provisions.

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<sup>6</sup> As of 10 February 1998 the following members have ratified the Convention: Czech Republic, Croatia, Cyprus, Denmark, Estonia, Finland, the Former Yugoslav Republic of Macedonia, Germany, Hungary, Italy, Liechtenstein, Malta, Moldova, Romania, San Marino, Slovakia, Spain, Ukraine and the United Kingdom. The entry into force of the Convention with respect to these States is 1 February 1998, except for Italy and Liechtenstein (entry into force 1 March 1998), for Ukraine and the United Kingdom (entry into force 1 May 1998) and for Malta (entry into force 1 June 1998).

<sup>7</sup> See Res. (97)10, para. 21.

<sup>8</sup> *Id.*, para. 35.

<sup>9</sup> *Id.*, paras. 22, 23.

<sup>10</sup> The Explanatory Note also refers to concrete measures which can be taken to implement the Convention. See *e.g.* Arts. 12.1 and 15.

*i. Composition*

The Resolution provides that there will be a limited number of experts on the Advisory Committee with a minimum of 12 and a maximum of 18 ordinary members.<sup>11</sup> Each Party may nominate at least two experts.<sup>12</sup> The Committee of Ministers shall elect one of these experts to be entered on the List of Experts Eligible to Serve on the Advisory Committee in respect of that Party.<sup>13</sup>

Concerning the qualifications of the members of the Advisory Committee, the Resolution states that they need to have recognized expertise in the field of the protection of national minorities, serve in their individual capacity, be independent and impartial.<sup>14</sup> In view of the requirement of recognized expertise, MRG recommends that the members of the Advisory Committee have a sound knowledge of human and minority rights, an understanding of the national situations of minorities of the Parties to the Convention, and practical experience of minority issues. In addition, they should be known for their independent and balanced approach as well as their political wisdom. As the work of the Advisory Committee would clearly benefit from a multi-disciplinary approach, its members should range from international lawyers, to educationalists, linguistic scholars, political analysts and sociologists. MRG also believes that the Advisory Committee should have a good gender balance.

The experts will need to allocate a considerable amount of time to the work of the Committee. Especially in view of the requirements of availability and independence MRG suggests that the offer of an honorarium is considered in order to broaden the range of potential candidates.<sup>15</sup>

Since the success of the Framework Convention will to a very large extent depend on the functioning of the monitoring system, it is of the utmost importance that the Advisory Committee is composed of the most suitable people. The first deadline for the submission of candidates by Parties is 1 February 1998. MRG recommends that the procedure in which Parties nominate members for the Advisory Committee is transparent and public. Parties should allow suggestions to be made to them and invite comments on their potential candidates by interested parties, such as minority communities. MRG also suggests that members of minority communities are considered as candidates.<sup>16</sup>

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<sup>11</sup> See Res. (97)10, para. 2.

<sup>12</sup> *Id.*, para. 8.

<sup>13</sup> *Id.*, para. 9. Once more than 18 countries have ratified the Convention and the number of entries on the list will exceed 18 a rotation system will begin. See Res. (97)10, para. 15.

<sup>14</sup> *Id.*, paras. 5,6.

<sup>15</sup> See also the Parliamentary Assembly's Rec. 1300 (1996), para. 15(iv): '[M]embers should not hold any position which is incompatible with their independence and impartiality or the demands of this office'.

<sup>16</sup> It should be noted that members of the Advisory Committee shall not have the right to take part in a vote regarding the report of the Party in respect of which they have been elected to the list. See Res. (97)10, para. 34.

In March 1998 the Committee of Ministers will select the first group of experts of the States which have so far ratified the Convention.<sup>17</sup> The procedure in which the Committee of Ministers selects the candidates nominated by the Parties should be transparent and public. MRG recommends that job descriptions and candidate specifications are drawn up by the Council of Europe for the next round of selections. The Committee of Ministers should also seek opinions from others. In particular, MRG suggests that the Parliamentary Assembly, being the democratic organ of the Council of Europe, is consulted.<sup>18</sup>

## *ii. Rules of Procedure*

At its first session in May 1998 the Advisory Committee will draw up its rules of procedure. In order for the Committee to be taken seriously and respected, it is important that its work is well organized. Therefore, a realistic and workable system needs to be put in place with manageable timeframes for the studying of State reports, the collection of information from other sources and when it will draw up its final opinions. If the timeframe is too broad, one risks the danger of losing the momentum. New developments may take place reducing the accuracy of the state reports. If the timeframe is too tight and, as a consequence, too often not met, it may be an incentive for Parties to become negligent and not respect time-limits themselves.

A related matter is how to deal with Parties that do not submit their reports on time or whose reports are inadequate. If there are justified reasons a delay may be granted. If not, the Advisory Committee may issue a warning, including a new deadline. If this new deadline is not met, other means of pressure should be exerted by, for example, giving extensive publicity to the non delivery of the Party concerned, and officially informing the other Parties. Alternatively it could proceed with the examination of the situation of minorities in the country concerned on the basis of information obtained from other sources.

Another consideration is the procedure used by the Committee to make decisions. Efforts should be made to establish a system of agreement by consensus. If this is not feasible and voting will take place by majority, MRG suggests that at the time when the conclusions of the Committee of Ministers and the opinions of the Advisory Committee are made public, the opinions expressed by the individual members are also made public. This would contribute to the transparency of the monitoring process. At the same time, some consideration should be given to the merits of including the possibility of members requesting a secret ballot in particular cases.

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<sup>17</sup> See *supra* footnote 6.

<sup>18</sup> See also the Parliamentary Assembly's Rec. 1285 (1996), para. 16(v.c) in which it recommends the Committee of Ministers to organize the election of the members along the same lines as the selection of the members of the European Commission of Human Rights and the European Committee for the Prevention of Torture. The members of both of these bodies are nominated by the Parliamentary Assembly and elected by the Committee of Ministers. See also Art. 5 of the European Convention on the Prevention of Torture and Art. 21 of the European Convention on Human Rights.



### *iii. Sources of Information for the Consideration of Reports*

According to Resolution (97)10 the Advisory Committee shall consider the submitted reports and formulate its opinions, which will then be transmitted to the Committee of Ministers. For the examination of the reports it may make use of additional information in order to be in a better position to assess the actual situation of the Party concerned. The Advisory Committee may request the Party concerned for further written information or invite its representatives to a meeting.<sup>19</sup>

The fact that the Advisory Committee can seek dialogue with the Parties concerned while reviewing their compliance with legal obligations is favourable to the monitoring process, the building of confidence and, in the end, the implementation of the Convention. In this context MRG strongly recommends that members of the Advisory Committee undertake missions to obtain firsthand information. These missions should not just be undertaken in case of problematic situations, but on an impartial and regular basis. Parties should welcome and facilitate these visits and enable members to travel freely and independently.

The Advisory Committee may also actively seek information from other sources. However, if it wishes to do so, it has to give prior notification of its intention to the Committee of Ministers.<sup>20</sup> The Advisory Committee may also organize meetings with experts and representatives from other sources on the condition that it receives a mandate to do this from the Committee of Ministers.<sup>21</sup> It is important that this should be merely a formal question and that consent can be obtained without delay.

According to Resolution (97)10 interested parties may also submit information to the Advisory Committee of their own accord.<sup>22</sup> The monitoring process will be strengthened if the Advisory Committee receives comments on the reports from a variety of other sources, such as academic institutions, international governmental organizations (IGOs), national and international NGOs, and minority communities. It would also be valuable to receive comments from organs and bodies of the Council of Europe, such as the Parliamentary Assembly and the European Commission against Racism and Intolerance (ECRI).

Information from other independent sources is indispensable for sound monitoring and will assist the Advisory Committee to obtain a balanced picture. However, this brings with it a responsibility for these other sources to present information of a high quality. It should be detailed and factual with reference to sources. In this context MRG recommends that the Council of Europe supports activities to inform and train minority representatives on the Convention and its monitoring system.

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<sup>19</sup> See Res. (97)10, paras. 29, 32.

<sup>20</sup> *Id.*, para. 31.

<sup>21</sup> *Id.*, para. 32.

<sup>22</sup> *Id.*, para. 30.

Resolution 97(10) provides that State reports shall be made public by the Council of Europe once they have been submitted to the Secretary General.<sup>23</sup> In order to realize effective participation of other sources in the process, it has to be ensured that a system will be set up to inform interested parties about the release of the state reports.<sup>24</sup> Enough time needs to be given to interested parties to comment on the State reports before their consideration by the Advisory Committee.<sup>25</sup> Besides publication of the reports, MRG also recommends that the Council of Europe disseminates reports widely. States should submit their reports in the official as well as in the minority languages.

Other sources of information could also include other States. There is the risk of politicization if they are involved in the examination of the report of a country where minorities of their kin live. However, as the Convention places obligations on States towards each other, MRG believes that they should take part in the monitoring process. It would show their commitment towards ensuring that the principles laid down in the Convention are implemented.

It is important to set up a system to share information with other IGOs. Reference may in this context be made to, for example, the OSCE and in particular its High Commissioner on National Minorities. With regard to the UN, links should be created with its treaty bodies, its special rapporteurs, the Working Groups on Minorities and the Working Group on Indigenous Populations. Also in view of the fact that the Advisory Committee may ask the Committee of Ministers to request an *ad hoc* report in case a critical situation arises between two reports, it would be useful if information on minority issues would be collected on a regular basis, and not only after state reports have been received.

Cooperation between the various bodies and organs of different IGOs which are dealing with minority issues, will also contribute to building on each others work. For example, it will be important for the Advisory Committee to take into account the recommendations made by the Committee on the Elimination of Racial Discrimination and which projects are undertaken by the United Nations Development Programme (UNDP).

Although State reports will be made public by the Council of Europe upon receipt, States may also make the report public at an earlier stage.<sup>26</sup> MRG strongly advises that States seek the comments from interested parties when the report is still in draft form, so that these comments can, if considered appropriate, still be included in the final version of the report. To take it a step further, states may even involve interested parties in the drawing up of the report. They can contribute by providing additional information to clarify or correct certain issues. Their involvement at the drafting stage will decrease potential discussions on the report at the level of the Advisory Committee and help promote constructive discussion on controversial issues.

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<sup>23</sup> *Id.*, para. 20.

<sup>24</sup> See also the Explanatory Note, para. 97, which calls for transparency and which envisions the publication of State reports and related documents.

<sup>25</sup> The rules of procedures of the Advisory Committee need to address this issue (see also above).

<sup>26</sup> See Res. (97)10, para. 20.

For efficient monitoring it is essential to provide the Advisory Committee with sufficient secretarial support. For example, the setting up and running of a system for the collection and distribution of information requires substantial assistance. It is to be expected that the Advisory Committee's workload will be particularly heavy around the first of February 1999 when the first initial reports are due. Special arrangements for this occasion should be made.

The Council of Europe should also allocate sufficient resources to the translation and dissemination of documents, and create a budget which allows minorities to travel to Strasbourg at the invitation of the Advisory Committee and members of the Advisory Committee to visit reporting countries.

## **B. The Committee of Ministers**

Resolution (97)10 provides that the opinions of the Advisory Committee will be transmitted to the Committee of Ministers.<sup>27</sup> Subsequently, the Committee of Ministers shall evaluate the adequacy of the measures taken by the Party concerned to give effect to the principles of the Convention and adopt conclusions and recommendations. The conclusions and recommendations shall be made public upon adoption. The opinions of the Advisory Committee on the report of the Party concerned as well as the comments of the Parties in relation to the opinion of the Advisory Committee shall be made public at the same time.<sup>28</sup> If the Committee of Ministers does not follow the opinions of the Advisory Committee MRG recommends that it explains why this is the case in order to avoid potentially ungrounded accusations of political decision-making.

It is important that the Committee of Ministers is not afraid to adopt recommendations which are critical of Parties in case of an obvious lack of compliance. Otherwise the whole exercise of monitoring compliance with the Convention becomes insignificant, which will seriously undermine the potential of the Convention. The Committee should also attach great importance to the proper followup to their recommendations and set deadlines for the submission of information on their implementation.

According to Resolution (97)10 the Advisory Committee shall be involved in the follow up to the conclusions and recommendations on an *ad hoc* basis, as instructed by the Committee of Ministers.<sup>29</sup> Although the Advisory Committee is thus not attributed with a specific role in the follow up to the conclusions and recommendations of the Committee, it may receive instructions to that extent in certain cases. MRG recommends that the Advisory Committee is in principle always involved in the process of reviewing the information on followup as provided by Parties for its expert advice.

The conclusions and recommendations of the Committee of Ministers and the opinions of the Advisory Committee should be translated into the minority languages of the country and widely disseminated, so that a discussion at the national level can take place. Interested parties can contribute to the followup process and should be given the opportunity of doing this. Also support with the implementation of recommendations could be offered by the Council of Europe in the form of technical assistance and advisory services. The Council of Europe should provide this, and cooperate and coordinate in this respect with other IGOs, NGOs and academic institutions. Institutions such as the European Bank for Reconstruction and Development as well as the European Commission should be kept informed, so that they can support constructive measures needing, especially those needing additional resources.

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<sup>27</sup> *Id.*, para. 23.

<sup>28</sup> *Id.*, paras. 24-27.

<sup>29</sup> *Id.*, para. 36.

### III. Information to be Provided in State Reports

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In order for the Advisory Committee and the Committee of Ministers to be able to carry out their tasks well, it is of the utmost importance that Parties provide relevant information in their reports. MRG therefore recommends that the Advisory Committee draws up 'reporting guidelines' with detailed instructions for reporting States on what legal and factual information they need to supply with regard to every substantive article of the Convention. The reporting guidelines of UN treaty bodies<sup>30</sup> can be of particular use and serve as examples, since these bodies have longstanding experience in the examination of State reports. The guidelines will not only facilitate the work of the Committees, but also the work of States, since they have clearer direction as to how to report. In this context the Council of Europe should also consider the possibility of producing a handbook on reporting under the Convention.<sup>31</sup> This may help advance similar and comparable consideration of State reports, and will promote objectivity in the review of these reports.

It is beyond the scope of this paper to analyze every article and make suggestions regarding the information that should be provided in order to assess the level of implementation. Nevertheless, some comments of a more general nature follow:

#### 1. *De Jure and de Facto* Measures

According to Article 25 of the Convention 'full information needs to be provided on the legislative and other measures taken to give effect to the principles set out in the Convention'. Thus, a complete picture should be provided of all *de jure* and *de facto* measures taken by national, regional and local authorities regarding minorities.

#### 2. Domestic Structures

The initial reports need to contain basic information on the country's legal, administrative and judicial structures which are relevant to minorities, including information on the mandate and functioning of existing domestic institutions which deal with minority issues.

#### 3. Remedies

In particular, information is needed on effective domestic judicial and administrative remedies.<sup>32</sup> The implementation of the principles of the Convention would clearly be enhanced if persons belonging to national minorities can invoke their rights before a domestic court or administrative institution.<sup>33</sup> If domestic remedies are available for the individuals

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<sup>30</sup> See, for example, the guidelines of the Committee on Economic, Social and Cultural Rights; the Committee on the Elimination of Racial Discrimination; the Committee on the Elimination of Discrimination Against Women; the Human Rights Committee and the Committee on the Rights of the Child.

<sup>31</sup> See also the *UN Manual on Human Rights Reporting*, UN Doc. HR/PUB/91/1 (1991). Updated in 1997.

<sup>32</sup> The Convention provisions are themselves not directly applicable (see Explanatory Note paras.11 and 29). It is however a matter of the domestic legal order of each Party whether there are justiciable rights to be derived from the Convention.

<sup>33</sup> For example, the right to use freely and without interference his or her minority language (Art. 10.1)

concerned, this gives them the possibility to actively pursue the rights conferred on them, which contributes to the actual realization of the objectives and principles of the Convention.<sup>34</sup>

Information should also be provided on bodies dealing with complaints, including ombudsman institutions. If Convention provisions are difficult to translate into rights of persons belonging to national minorities under domestic law and if it is therefore not possible to provide for a domestic remedy, bodies could be set up where concerns and complaints can be raised.

#### 4. International Standards

Information also needs to be provided on the status of international standards as well as standards ensuing from bilateral agreements in the domestic legal order. According to Article 22 the Convention may not be interpreted as limiting or derogating from existing human and minority rights standards. The Committees should therefore also be attentive to the fact that the Convention is under no condition used to reduce minority standards in case higher standards are provided under other instruments.<sup>35</sup>

#### 5. Demographic and Statistical Information

Relevant demographic and statistical information should be supplied, including gender disaggregated data, so that the situation of minorities and the need for measures to be taken can be assessed. This information will also enable the Committees to compare the situation of minorities at different times and, therefore, to evaluate the effectiveness of measures taken.

#### 6. Explanation of Circumstances and Conditions

Many provisions are worded in vague terms. For example, it is unclear what is meant by 'substantial numbers' (Articles 10.2, 11.3 and 14.2), 'sufficient demand' (Articles 11.3 and 14.2), 'a real need' (Article 10.2), 'where necessary' (Articles 4.2, 18.1 and 19), 'where appropriate' (Articles 11.3 and 12.1) and 'as far as possible' (Articles 9.3, 10.2 and 14.2). These references to special circumstances and conditions may be used to escape responsibilities under the Convention. Therefore, Parties should explain the basis on which they established whether or not circumstances were applicable or conditions were met in their case.

#### 7. Effectiveness of Measures

Parties should themselves report on the progress and achievements in the field of ensuring minority rights. In addition they could indicate where difficulties are encountered and where technical assistance would be welcome.

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<sup>34</sup> To the extent that the Convention's provisions overlap with those of the ECHR an effective national remedy should already be guaranteed and available according to Art. 13 ECHR.

<sup>35</sup> According to the Explanatory Note the aim of Art. 22 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'. Therefore, if national legislation provides higher standards than the Convention, these may not be lowered on the basis of the Convention.

## IV. To Whom Does the Convention Apply?

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It is not the aim of this paper to make suggestions on how the substantive provisions of the Convention should be interpreted by the Committees. However, one issue which is not dealt with by the Convention, but which is crucial for the realization of its objective, i.e. the protection of minorities, is the question of to whom the Convention applies. The Committees will need to consider this question carefully.

The Convention does not provide a definition for a national minority. According to Article 3 'Every person belonging to a national minority shall have the right freely to choose to be treated or not to be treated as such [...]'<sup>36</sup> This, however, does not address the problem of states denying the existence of minorities. Various States have already submitted declarations or reservations upon signature or ratification explaining which groups they will consider to be national minorities.<sup>37</sup>

According to international law, reservations may not be contrary to the object and purpose of the treaty. In addition, the selection may not be discriminatory, i.e. making unjustified distinctions between groups. Reference may also be made in this context to General Comment 23 (50) of the UN Human Rights Committee on Article 27 of the International Covenant on Civil and Political Rights (ICCPR) according to which the existence of a minority does not depend upon a decision by the State but requires this to be established by objective criteria.

One topical issue in this context is citizenship.<sup>38</sup> The Convention does not require that persons belonging to national minorities are citizens. Also General Comment 23 (50) on Article 27 ICCPR states that individuals do not need to be citizens in order to receive protection as a person belonging to a minority.

Another difficult and related question is whether or not a longstanding link with the territory of the State in question is required for a community to be considered a national minority. The Convention does not require that national minorities should be traditional minorities. Only in Articles 10.2, 11.3 and 14.2 is specific reference made to 'areas traditionally inhabited' by minorities.<sup>39</sup> General Comment 23 (50) states that persons belonging to minorities under Article 27 ICCPR can also be migrant workers.

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<sup>36</sup> The Explanatory Note states that this does not imply that individuals have the right to arbitrarily choose to belong to any national minority, but that the individual's subjective choice is inseparably linked to objective criteria relevant to the person's identity.

<sup>37</sup> See the declarations of Denmark, Estonia, Germany, Liechtenstein, Luxembourg and the Former Yugoslav Republic of Macedonia.

<sup>38</sup> See the declarations of Estonia, Germany and Luxembourg, which all refer to the citizenship of persons belonging to national minorities.

<sup>39</sup> See the six declarations submitted so far: the groups they consider to fall under the definition of national minority are all traditional minorities.

According to Article 1 the protection of national minorities forms an integral part of the protection of human rights. Minority rights are therefore a matter of international concern. The recognition of a national minority by a State cannot be conclusive for the question whether or not a group falls within the scope of the Convention. The Committees should address in their recommendations and opinions the question of to which groups the Convention applies in a given country. Although it is in principle left to the discretion of Parties to define, in the light of the specific circumstances of the country, which groups are covered by the Convention, this does not mean that reservations made by Parties should not be reviewed against the object and purpose of the Convention or the principle of non-discrimination. So requirements of citizenship and/or traditional links with the country concerned may result in a violation of international law under the specific circumstances of the case. MRG recommends that the Committees engage in an open dialogue with the Parties on this question.



## **V. Recommendations**

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MRG believes that if the Council of Europe's Framework Convention on National Minorities is to become an effective instrument for the protection of minorities, it is essential to develop a well functioning monitoring mechanism. This paper has addressed various questions regarding this mechanism. From the many recommendations and suggestions which have been made, the main ones are repeated below:

### **Advisory Committee**

1. Members of the Advisory Committee should have a sound knowledge of human and minority rights, understanding of the national situations of minorities of the Parties to the Convention, and practical experience with minority issues. They should be known for their independent and balanced approach as well as their political wisdom. They should come from a wide variety of disciplines and the Committee should have a good a gender balance.
2. The procedures in which States nominate members for the Advisory Committee and in which the Committee of Ministers selects the members, should be transparent and public. The procedures should allow for suggestions and comments to be made by interested parties, such as minority communities.

### **Sources of Information for the Consideration of Reports**

3. The Advisory Committee should receive comments on the State reports from a variety of other sources, such as IGOs, national and international NGOs, academic institutions, minority communities, organs and bodies of the Council of Europe, and other States. In order to realize effective participation of all these sources in the process, a system needs to be set up to inform interested parties about the release of State reports, to translate them into relevant languages and to disseminate them widely. It needs to be ensured that enough time is given to comment on the State reports. With regard to other IGOs a system should be put in place to share information on a regular and institutionalized basis.
4. The Council of Europe should organize or support activities to inform and train minority representatives on the Convention and its monitoring system. It should also consider producing a manual on the Convention and its reporting system.
5. States should seek comments from interested parties when the report is still in draft form, so that these comments can, if considered appropriate, be included in the final version of the report.
6. Constructive dialogue should be encouraged and effective approaches should be supported. In this context, the Advisory Committee should be enabled to undertake missions to reporting states on a regular basis.

### **Committee of Ministers**

7. The Committee of Ministers should not be afraid of adopting recommendations which are critical of Parties where there is an obvious lack of compliance.
8. The conclusions and recommendations of the Committee of Ministers as well as the opinions of the Advisory Committee should be translated into the main languages of the country and widely disseminated.
9. The Committee should attach great importance to proper followup to their recommendations, set deadlines for the submission of information on their implementation, and involve the Advisory Committee in the process of reviewing the information on followup as provided by Parties. Interested parties can also contribute to the followup process and should be given the opportunity to do this.
10. The Council of Europe should offer support with the implementation of recommendations in the form of technical assistance and advisory services. In this respect cooperation and coordination with other IGOs, NGOs or academic institutions is required.

### **Information to be Provided in State Reports**

11. The reports should provide information on all *de jure* and *de facto* measures taken by national, regional and local authorities regarding minorities. The Advisory Committee should draw up 'reporting guidelines' with detailed instructions for reporting States on what legal and factual information they need to supply with regard to every substantive article. The reporting guidelines of UN treaty bodies can serve as examples.
12. The initial reports need to contain basic information on the country's legal, administrative and judicial structures which are relevant to minorities. This includes information on the mandate and functioning of existing domestic institutions which deal with minority issues and on effective domestic judicial and administrative remedies. Information also needs to be provided on the status of international standards as well as standards ensuing from bilateral agreements in the domestic legal order. In addition, relevant demographic and statistical information needs to be supplied.

### **To Whom Does the Convention Apply?**

13. The Committees should address in their recommendations and opinions the question of to which groups the Convention applies in a given country. Reservations made by Parties on this question should be reviewed against the object and purpose of the Convention and the principle of non-discrimination. The Committees should engage in an open dialogue with the Parties on this question.

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