

## FCNM: From Analysis to Action

### Protecting minorities in Europe

#### Executive Summary

In the last decade, Europe has been beset by major inter-ethnic wars in the Balkans and in the Caucasus, separatist organizations have continued to use violence in Western Europe, while many ethnic groups, particularly the Roma, suffered prejudice and overt or institutional discrimination.

The year 1998 marked the advent of the new Council of Europe (CoE) Framework Convention for the Protection of National Minorities (FCNM); it is legally binding and has been ratified by three-quarters of the CoE's members.

The FCNM offers an objective, apolitical way of responding to the needs of minorities by agreeing minimal norms that must be met. Four years after it entered into force, it is time to assess its effectiveness.

Significant progress has been made, but much more needs to be done. Double standards among CoE States must be eliminated. More substantial policies and programmes are needed in almost every State to ensure full and effective equality, and to facilitate the effective participation of minorities throughout Europe.

The monitoring of the FCNM is crucial for measuring and managing change, and has become a dynamic vehicle for constructive criticism and the exchange of experiences. This Briefing therefore makes a series of recommendations for extending the scope of the FCNM and for strengthening its monitoring. It also calls for a well-publicized and coordinated institutional strategy by the CoE to protect and promote the rights of minorities and to enhance cooperation between communities.

#### Why the FCNM is needed

##### Stability, democratic security and peace

In the 1990s, major wars erupted in former Yugoslavia and in the Caucasus, while violence continued in Corsica, Northern Ireland and the Basque country. In some cases, while not leading to violence, serious political tensions have developed around minority issues, for example, between ethnic Russians and ethnic majorities in a number of countries of the former Soviet Union, and between ethnic Hungarians and ethnic majorities in Romania and Slovakia. Distrust between different ethnic groups has been used by political leaders to reinforce their position of power, on occasion leading to 'ethnic conflicts'. The major conflicts have subsided but latent tensions exist in many places.

Also, in most countries there is intolerance and prejudice towards immigrants, asylum-seekers, and towards certain ethnic minorities. In particular, discrimination against Roma has continued across Europe at government and community level. Xenophobic

political parties of the right have attracted growing support in parts of Western Europe and their intolerance is often left unchallenged by the State.

In Central and Eastern Europe, some States often place Roma children in schools for those with severe learning difficulties. Many Roma children come from poor families, and some do not speak the official language well, but they do not have learning difficulties and excluding them from mainstream education exacerbates their problems rather than addressing them. In Southern Europe, some States deny the existence of whole communities. If the FCNM is properly applied, it will put an end to this and many other injustices and humiliations.

The FCNM was designed to protect national minorities and promote tolerance throughout society. It is a unique, legally binding instrument, offering individual protection with a collective dimension, and adding substantially to other standards such as the European Convention on Human Rights (ECHR). The Preamble<sup>1</sup> states that the protection of national minorities is

essential to stability, democratic security and peace; it also refers to the need for a pluralist and genuinely democratic society in order to realize a tolerant and prosperous Europe.

##### Rights for all in Europe

The CoE has achieved a considerable success with the FCNM. In less than five years, 34 of its 44 member States have ratified the Convention.<sup>2</sup> All the applicant States to the CoE were obliged to ratify the FCNM, while the European Union (EU) has stated that how States implement the FCNM will be an important factor in considering how the EU accession criteria on minority rights (1993 Copenhagen criteria)<sup>3</sup> are met.

However Belgium, France, Greece, Luxembourg and the Netherlands have not ratified this Convention, while Denmark and, to a lesser extent, Germany have done so but entered declarations limiting the potential beneficiaries of the FCNM. The prospect of the FCNM being accepted as part of EU law, or *acquis communautaire*, is a distant one.

These double standards emerge from a failure of some States in the EU to

embrace pluralism and to protect minorities that have been in their country for several decades. Pending the abolition of legal constraints, with goodwill, it would still be possible, in the meantime, for these states to implement key elements of the FCNM, as the protection offered is largely through policies and programmes.

## What is the FCNM?

The Council of Europe's FCNM is the first legally binding, multilateral instrument devoted to the protection of minorities. It came into force in 1998. It represents minimum standards and reinforces international human rights law. The Convention contains mostly programme-type provisions setting out principles and objectives that States are expected to implement through legislation and policies.

The FCNM covers, *inter alia*:

- the right to self-identification
- development of culture
- full and effective equality
- tolerance and intercultural dialogue
- freedom of association
- right to religious belief and practice
- access to the media
- use of minority languages
- use of minority names
- intercultural education
- minority education establishments
- learning of and in minority languages
- effective participation in public affairs
- effective participation in economic, social and cultural life
- safeguards against altering proportions of population in minority areas
- cross-frontier contacts
- bilateral treaties

The FCNM does not define what a national minority is, and the language is often vaguely worded to take into account circumstances in different States. This can be problematic; some States may take a narrow interpretation and not apply the Convention in good faith.

## Quality of monitoring

### State reporting

The FCNM offers States some measure of discretion in the implementation of the objectives of the Convention, noting the range of situations and problems to be resolved.<sup>4</sup> How international law is transformed into domestic law, and how policies and programmes are implemented, will vary from State to State. Article 2 of the FCNM demands that all States apply its provisions in good faith and in a spirit of understanding and tolerance. Careful monitoring is required, both to ensure good faith and to offer advice on often complex issues.

The Advisory Committee (AC) is the key monitoring body. It is essential that it has the capability to fulfil its crucial role. Members of the AC should have sound knowledge and experience of human and minority rights. They should be known for their independence, come from a wide variety of backgrounds, and include members of minorities and civil society. The AC should be balanced in terms of gender. States need to be more sensitive to this, and more transparent in their identification of independent experts. States should always consult civil society organizations on nominations, and the current balance of the AC should be considered.

Many State Reports have failed to reflect openly on problematic issues, and few Reports have shown how the FCNM is implemented in practice, or the impact of social and economic policies and programmes, concentrating instead almost entirely on legislation. Census and other statistical data is often out of date or inadequate (see reading list 4), gender and social distinctions among minorities are rarely identified, even in alternative reports (reading list 5), while few Reports attempt to measure levels of unemployment. This indicates the need for a new approach to data collection for the next round of State Reports.

States have adopted the commendable practice of inviting the AC to visit. This has offered opportunities for dialogue with many key actors locally, for finding new information and creating a climate of confidence.

The Committee of Ministers (COM) of the CoE passes Resolutions based on the AC's Opinions, while taking into account State Comments. Even though the Resolutions have been very largely based on the Concluding Remarks in the Opinions, some governments seek to dilute criticism in them. Since Resolutions are debated *in camera*, without representatives of minorities being able to join the debate, the procedure lacks transparency and could appear to be biased. Consequently the CoM Resolutions follow the Conclusions of the AC and any changes should be scrutinized and publicized by civil society.

The effective implementation of standards requires self-criticism; States with minorities should continually seek ways to enhance the implementation of the FCNM in their policies and programmes.

### Protection delayed is protection denied

Two of the most significant problems that have emerged with monitoring the implementation of the FCNM relate to time delays. The first was expected, because of the five-year cycle between full State Reports. The second was unexpected: it is taking on average over 20 months from the receipt of the State Report to the adoption of an Opinion by the AC,<sup>5</sup> and a further 11 months for the CoM to agree its Resolution and publish the Opinion and Resolution (reading list 4).

Minority participants at MRG workshops have consistently taken the view that Opinions should be published within 12 months,<sup>6</sup> and some Governmental Offices for National Minorities have taken a similar view.<sup>7</sup> An efficient process is important: situations move on and momentum can be lost if too much time elapses between the State Report and the CoM Resolution, not least because civil society organizations need to use the process for advocacy.

If some modest additional resources are provided to prevent a backlog in 2004/5, when the large majority of States report, it would be possible for the AC to reach Opinions in 9 to 12 months. Additionally, a new custom should be encouraged whereby States

agree to make these Opinions public immediately, or, at the latest, four months later, when their own Comment on the Opinion is due. These two improvements will be the acid test of the political will of States, individually and collectively, to strengthen protection.

The five-year reporting cycle may be satisfactory where States are fully complying with the FCNM; in those States where substantial problems have emerged, however, regular yearly interim reports are essential. States should work with the CoE to resolve these outstanding issues in order to comply with the Convention.

### Ownership and working together

The struggle for minority rights has lasted for many decades, at the United Nations (UN) and elsewhere. This is a symptom of how controversial the issue is, domestically and internationally, leading some to conclude that the implementation of the FCNM at all levels would also be a major struggle for the CoE.

This fear has proved largely unfounded and, although there was a major controversy around the AC's Opinion on Denmark,<sup>8</sup> the FCNM has been an instrument for dialogue and engagement on these controversial political issues, providing an objective and legal standard for constructive debate with analytical and judicious Opinions.

Some initially believed that the AC would be in conflict with the CoM, a political body that would compromise on issues of principle. Others thought that there would be considerable tension between minorities and governments. The CoE has encouraged free debate around the FCNM, it has supported training initiatives involving minorities, it has publicized the FCNM widely and translated key documents. However, more work is required as many still do not know about the FCNM and how to use it.

The AC has developed a relationship of trust with the CoM. Its trust in the goodwill of minorities and governments has been respected and reciprocated, leading to a climate of dialogue and joint ownership. All States, to date, have encouraged visits

and accepted that minorities and civil society organizations will also be in dialogue with the AC. International non-governmental organizations (NGOs) have also played a dynamic role in promoting the Convention.

This climate of trust and dialogue, however, has not prevented the AC from being critical, when required. The AC must always express its views clearly and independently.

### From analysis to action

There is a danger of complacency over implementation of the FCNM. Government officials may be tempted to believe that, once the CoM's Resolution has been adopted, priorities can move elsewhere. It may be thought that, since criticisms by the AC are diplomatically worded, they can be quickly forgotten. That would be a serious error, underestimating the tensions and conflicts there have been in Europe, and how deeply many minorities feel excluded.

The key issue is to move from analysis to action. Legislation, policies and prioritized programmes are needed to implement the FCNM, using the evidence, analysis and interest stimulated during the monitoring process. Within each State, many actors from all communities, centrally and locally, must be involved. People from different disciplines and professions must be encouraged to tackle the social, economic, cultural and political issues. There are rarely easy answers, hence the full and effective participation of all in helping to find constructive ways forward is essential. Opinions, Comments and Resolutions must be translated into key languages and widely disseminated.

Governments should set up a task force, in which minorities should participate, to look at how the Resolution of the CoM is implemented, and to establish a continuous rapport with the AC, sharing experiences of problems and good practice.

Governments across the CoE area, as well as the EU and donors, should give serious consideration to using the Opinions and Resolutions to guide the funding of programmes, which will help lay the foundations for a stable Europe, full participation and the inclusion of all, and long-term prosperity.

The CoE should publish information on its range of work on minorities and establish a strategy for its work with minorities, drawing together the competences of all parts of the organization to help reduce discrimination and advance the implementation of minority rights and the FCNM.

### How the FCNM is implemented and monitored

Each State that ratifies the FCNM must ensure that it is implemented. States must submit their first State Report on implementation to the CoE within one year of ratification and then at least every five years. The protection of minorities is complex, and all States have a measure of discretion in implementing the objectives of the provisions in the FCNM.

Formally, the Committee of Ministers (CoM) monitors the implementation of the FCNM, with the assistance of an Advisory Committee (AC) of unpaid independent experts, nominated by States but scrutinized by the CoE. In practice, most of the work, including country visits, is undertaken by the AC and its working groups. The CoM considers the opinion of the AC and passes a Resolution on this basis.

Monitoring should be as transparent as possible and governed by clear rules.

Civil society organizations can be actively involved in submitting evidence to the AC and in meeting the AC during country visits. They should also monitor the implementation of the Resolutions.

Votes in the CoM are taken on a negotiated text and are by consensus; it would be a breach of trust if States did not implement the recommendations in these Resolutions. States must liaise with the AC and it is crucial that they also consult with minorities.

# working to secure the rights of minorities and indigenous peoples

minority  
rights  
group  
international

## Recommendations

- 1 All States should ratify the FCNM and, pending the removal of legal constraints, should seek to implement the principles of the FCNM in practice. States should continue to develop the scope of application of the FCNM, seeking to protect all established minorities.
- 2 State Reports and monitoring require some changes, with a greater focus on the implementation of programmes. The provision of good quality, up-to-date data on social and economic issues, that is disaggregated by age and gender and reflects geographical differences, is essential.
- 3 All States should be pressed to report on time and the AC's Opinions should be published within 12 months of the submission of State Reports.
- 4 States should involve minorities more actively in the reporting and implementation of the FCNM. Joint task groups should be set up around problem areas to encourage minority participation and agreed responses.
- 5 States should ensure that, through consultative and transparent nomination procedures, the AC is made up of independent experts with a minority/majority and gender balance.
- 6 States should initiate a programme to raise awareness of minority rights and the FCNM. This should include the translation into key languages of the text of the FCNM and Explanatory Report, Opinions, Comments and Resolutions, and wide dissemination of them.
- 7 The CoM should take great care to follow the Conclusions of the AC in its own Resolutions, and strongly resist pressure from governments to weaken criticism. It should be more transparent in its work on the FCNM.
- 8 Each year the CoM should review the situation in States where non-compliance with the FCNM has been identified. On key issues, States should present progress reports to the AC and the CoM.
- 9 As a priority, the CoM should provide more resources for the AC, for speedy and dynamic monitoring and to promote effective implementation of the CoM's Resolutions. This would include follow-up visits and advice, and dialogue with States and civil society on problematic issues between reporting cycles.
- 10 The CoE should establish an institution-wide strategy to link all its work on minorities to create synergies and encouragement for all of the CoE to assist in implementing the resolutions of the CoM. The CoE, UN, OSCE and EU should work together in a coordinated and complementary way for minority protection across Europe.

## Recommended reading

- 1 *Framework Convention for the Protection of National Minorities – Collected Texts*, 2nd edn, Council of Europe Publishing, August 2001.
- 2 The third *Activity Report* of the Advisory Committee covering the period November 2000–May 2002. [www.humanrights.coe.int/minorities/eng/sitemap.htm](http://www.humanrights.coe.int/minorities/eng/sitemap.htm)
- 3 Phillips, A., *FCNM Policy Paper*, MRG, London, September 2002.
- 4 CoE Minorities home page for State Reports, Advisory Committee Opinions, State Comments and Resolutions on monitoring by the Committee of Ministers. [www.humanrights.coe.int/minorities/eng/sitemap.htm](http://www.humanrights.coe.int/minorities/eng/sitemap.htm)
- 5 Comprehensive information on the FCNM, including Alternative State Reports written by civil society organizations, can be read on the web site of the Greek Helsinki Monitor. [www.greekhelsinki.gr/english/reports/CEDIME-FCNM.htm](http://www.greekhelsinki.gr/english/reports/CEDIME-FCNM.htm)

## Notes

- 1 See recommended reading item 1.
- 2 For full details visit CoE FCNM website – see recommended reading item 4.
- 3 Final statement, EU European Council meeting Copenhagen 1993.
- 4 See the Explanatory Report to the FCNM in the Collected Texts on the FCNM, CoE publication.
- 5 See Third Activity Report of the Advisory Committee May 2002.
- 6 MRG and CoE joint sponsored training meetings in Strasbourg, September 2001 and May 2002.
- 7 9th Council of Europe meeting of the Governmental Offices for National Minorities in Vilnius 25–6 April 2002.
- 8 See Comment of Denmark on AC Opinion on CoE minorities website, recommended reading item 4.

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