



COUNCIL OF EUROPE      CONSEIL DE L'EUROPE

Strasbourg, 7 October 1996

CAHMEC(96)4

**AD HOC COMMITTEE ON THE IMPLEMENTATION MECHANISM  
OF THE FRAMEWORK CONVENTION FOR THE  
PROTECTION ON NATIONAL MINORITIES**

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***Draft final activity report of CAHMEC containing a list of pertinent questions and possible options raised by the implementation of articles 24-26 of the framework Convention for the protection of national minorities, with a view to the preparation of decisions by the ad hoc committee of deputies***

Note:

It is suggested that this document form the basis for discussion in the second and final meeting (at this stage) of CAHMEC which will be held from 28-31 October in Strasbourg.

The document has been prepared by the Secretariat and is based on the addendum to the last meeting report CAHMEC (96)3. In the new document the paragraphs relating to "I. The functions to be performed under the monitoring mechanism" and "II. The procedure to be followed in performing the functions" have been integrated into a new heading entitled: "I. The procedure to be followed in performing the monitoring functions".

The text in the paragraphs has been left unchanged, whilst all the original numbering has been maintained so that the original place can easily be traced. Paragraph 22 has been deleted as it has no place in the final activity report. It is hoped that this restructuring will make it easier to identify the pertinent issues.

In a further attempt to assist the work of the CAHMEC the Secretariat has, where clear alternatives exist, inserted options in italics. Of course these are not more than suggestions and may be amended or deleted by CAHMEC.

**DRAFT FINAL ACTIVITY REPORT OF THE CAHMEC CONTAINING A LIST OF PERTINENT QUESTIONS AND POSSIBLE OPTIONS RAISED BY THE IMPLEMENTATION OF ARTICLES 24-26 OF THE FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES, WITH A VIEW TO THE PREPARATION OF DECISIONS BY THE AD HOC COMMITTEE OF DEPUTIES**

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**I: THE PROCEDURE TO BE FOLLOWED IN PERFORMING THE MONITORING FUNCTIONS**

**A. The functions and division of labour**

*Q. which functions should be performed by the Committee of Ministers and which functions by the advisory committee ?*

**1. General**

23. The CAHMEC noted and took as a point of departure that the framework Convention clearly lays down that State-reports<sup>1</sup> are to be submitted to the Secretary General who will transmit them to the Committee of Ministers. The Committee of Ministers is entrusted with taking the final decisions under the monitoring mechanism and the role of the advisory committee is to assist the Committee of Ministers.
24. The general philosophy of CAHMEC regarding the two bodies and their mutual relationship was that the functions of the Committee of Ministers under the framework Convention could not be circumscribed and that the focus of discussion should be on the advisory committee, whose functions derive from the Committee of Ministers. It was suggested that the two bodies should work together in a relationship of complete trust and mutual respect, without suggesting that these bodies are on an equal footing.
25. There was general agreement that the work of the advisory committee should be carried out in a neutral, impartial and de-politicized way on the basis of expertise.
26. Most experts considered that the examination of the State-reports should in all cases be undertaken by the advisory committee with a view to preparing draft conclusions of the Committee of Ministers. One expert considered that it would be for the Committee of Ministers to decide in each case whether or not the advisory committee should be involved.

*Option 1: advisory committee to prepare draft conclusions in all cases*

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<sup>1</sup> The word "State-reports" refers to the transmission of "full information on the legislative and other measures taken to give effect to the principles set out in this framework Convention" (Article 25, paragraph 1) and to the transmission of "any further information of relevance to the implementation of the framework Convention". (Article 25, paragraph 2). (See also paragraph 44 of this Appendix).

*Option 2: involvement of the advisory committee to be decided by the Committee of Ministers on a case by case basis*

*(see also paragraph 39 below)*

27. The views as to the precise scope and content of the duties to be performed by the advisory committee are reflected under the following headings.

## **2. Functions prior to consideration of the first reports.**

28. It was suggested that prior to receiving the first reports, the advisory committee should prepare a draft for its rules of internal procedure, which would have to be approved by the Committee of Ministers. Alternatively it was suggested that these rules should be elaborated before the advisory committee would meet.

*Option 1: rules of internal procedure of the advisory committee to be drafted by the advisory committee subject to approval of the Committee of Ministers*

*Option 2: rules of internal procedure of the advisory committee to be drafted and approved by the Committee of Ministers*

29. It was suggested that the advisory committee could prepare an outline for the State-reports, prior to the first reports being received.

*(see also paragraph 16 below)*

30. It was suggested that prior to taking up its functions concerning the first State-reports the advisory committee should establish contacts with bodies within the Council of Europe, NGOs, national minorities as well as with relevant bodies in other International Organisations with a view to receiving information.

## **3. Intake of information**

*Q. should it be possible for information from other sources than the state-report to play a part in the implementation mechanism?*

1. There was general agreement in the Committee that information from other sources than State reports should be able to play a part in the implementation mechanism.

2. A number of experts favoured the drawing up of a list of possible sources of information, which would not be exhaustive ("for example"). The following sources were suggested for inclusion in such a list: the Parliamentary Assembly and other bodies of the Council of Europe, other Contracting Parties, member States of the Council of Europe, International Organisations, NGOs, the press, national minorities (legally established organisations) and private persons.

*(Options: See below)*

3. Other experts favoured an open clause on this matter and considered that it was not necessary to draw up a list of sources.

*Option 1: a clause containing a non-exhaustive list of possible sources*

*Option 2: an open clause without a list of possible sources*

4. Some experts suggested that representatives of national minorities (national and international organisations) should be consulted. In some cases it might be difficult to establish who the representatives are.

*(see below under "C. Hearings")*

5. One expert suggested that where representatives of national minorities were involved they should be democratically elected.

*(see below under "C. Hearings")*

6. It was suggested that national minorities could be involved in the preparation of the State-reports.

*Q. if so, should certain information be expressly excluded from the process?*

7. The majority of experts who expressed themselves were not in favour of excluding any source of information. It could be left up to the monitoring mechanism to decide upon such questions.

*(Options: see below)*

8. Other experts were in favour of excluding certain types of information. The following types were mentioned: anonymous information, information incompatible with the framework Convention and information which amounts to dis-information.

*Option 1: rules should not exclude certain types of information*

*Option 2: rules should exclude certain types of information*

9. There was general agreement that the monitoring mechanism should accept information from individuals as part of the information-gathering process. The mechanism should not, however, seek itself to resolve any complaints or disputes. It should rather consider the material as a source of information on areas relevant to its task.

31. There was general agreement that the advisory committee should have access to all sources of information and not just State-reports (see also I.a.1+2). One expert considered it in keeping with the framework Convention that all information should be transmitted to the Committee of Ministers first. Other experts did not share this view of the framework Convention and considered such a procedure impracticable.

*Option 1: Rules to require all information to be communicated to the Committee of Ministers first*

*Option 2: not such a rule*

#### **4. Processing of information**

*Q. if other sources of information than the State-report can be taken into account, which means could be employed to resolve questions of contradictory information?*

10. It was suggested that the monitoring mechanism could request additional information from governments and from others where information was incomplete, contradictory or both.

*(options: see below paragraph 33)*

11. It was suggested that such requests could be made in written form as well as in confidential oral communication with the Contracting Party.

*(options: see below "C. Hearings")*

13. It was suggested that as a last resort fact-finding visits in situ could be undertaken.

14. In this respect it was pointed out that much information is available from other international organisations, supervisory bodies (UN, OSCE, the High Commissioner on National Minorities) and independent bodies.

15. However, it was also pointed out that the monitoring mechanism would have to use its own yard-stick (i.e. the framework Convention) and for this could not rely so much on the work carried out in other international organisations or supervisory bodies.

16. It was suggested that the monitoring mechanism could prepare an outline for the reports to be submitted by the Contracting Parties.

*(see also paragraph 29 above)*

32. There was general agreement that it was for the advisory committee to process information, which would include the clarification of contradictory information.

33. There were differing views as to the means that the advisory committee could employ in carrying out this function. A number of experts considered that the advisory committee

should be given a general mandate permitting it to request further written information from the Contracting Party and others. Other experts considered that the advisory committee would have to request a specific mandate from the Committee of Ministers every time it would wish to make such a request.

*Option 1: possibility for the monitoring mechanism to request additional information*

*sub-option 1.1: rules to give advisory committee a general mandate to request further written information from a Contracting Party and others.*

*sub-option 1.2: rules to provide that advisory committee request a specific mandate from the Committee of Ministers every time it would wish to request further information from a Contracting Party or others.*

*Option 2: no possibility to request additional information*

34. Also concerning the possibility of organising hearings or making fact-finding visits in situ some experts favoured giving a general mandate to the advisory committee, whilst others preferred the approach of the advisory committee requesting specific mandates. Concerning visits in situ it was noted that these would in any case require the consent of the contracting Party concerned.

*(see also below "C. Hearings")*

35. It was suggested by several experts that the advisory committee should be able to open a channel of confidential dialogue with a Contracting Party and other sources of information.

## **5. Conclusions<sup>2</sup>**

36. There was general agreement that the advisory committee should prepare draft conclusions (findings of fact and evaluations) for the Committee of Ministers.

17. There was general agreement in the CAHMEC that the final conclusions of the Committee of Ministers should be published (possibly following a period of reflection). There were differing views as to what these conclusions should consist of and whether publication of preparatory documents (e.g. State-report, reports of the advisory

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<sup>2</sup> The CAHMEC uses the word conclusions to cover findings of fact and evaluations. Thus conclusions are distinct from recommendations or other follow-up measures.

committee, records of the procedure) should be envisaged at a certain point in time or not at all.

<i>making public<sup>3</sup> conclusions of Committee of Ministers</i>	<i>Option 1:</i>	<i>never</i>
	<i>Option 2:</i>	<i>at time of adoption</i>
	<i>Option 3:</i>	<i>at a later date</i>
<i>making public conclusions prepared by the advisory committee:</i>	<i>Option 1:</i>	<i>never</i>
	<i>Option 2:</i>	<i>at the same time as the Committee of Ministers</i>
	<i>Option 3:</i>	<i>other arrangement</i>
<i>making public "state-reports" and other preparatory documents</i>	<i>Option 1:</i>	<i>never</i>
	<i>Option 2:</i>	<i>together with conclusions prepared by the advisory committee</i>
	<i>Option 3:</i>	<i>together with the conclusion of the Committee of Ministers</i>
	<i>Option 4:</i>	<i>at a later date</i>

## 6. Follow-up

*Q. what form(s) could or should the follow-up take and what modalities should be envisaged ?*

*Q. what should be the arrangements for monitoring the follow-up ?*

18. There was general agreement that the Committee of Ministers would be responsible for making or adopting recommendations.
19. These recommendations could be of a general as well as of a specific nature.
20. Concerning the modalities of possible follow up it was suggested that this should be done in a spirit of co-operation in the framework of the established procedures.
21. It was pointed out that in considering the question of monitoring the follow up inspiration could be drawn from other practices of International supervision, whilst bearing in mind that the monitoring of legally binding commitments under the framework Convention has its own unique character and should not be confused with systems dealing with individual complaints or with monitoring exercises of a more

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<sup>3</sup> "Making public" in these options is used to indicate making public by the monitoring mechanism.



general nature.

37. There was general agreement that the advisory committee could prepare draft recommendations for the Committee of Ministers.
38. It was suggested that:
- the advisory committee could prepare general comments on the framework Convention.
  - the advisory committee could recommend to offer technical assistance to the Contracting Parties.
  - the advisory committee could undertake ad-hoc surveys at the request of the Committee of Ministers or at its own initiative.
  - the Committee of Ministers, following receipt of the report of the advisory committee could request it to consider certain questions in more detail.
  - the advisory committee should be able to make any other suggestions it deemed appropriate to the Committee of Ministers.
39. Regarding the monitoring of the follow up a number of experts considered that the advisory committee should be given a general mandate to perform this task, whilst others thought this should be decided on an ad hoc basis.

*Option 1: Rules to give the advisory committee a general mandate to monitor the follow-up*

*Option 2: Rules to provide that the advisory committee be involved in monitoring the follow up on an ad-hoc basis*

*(see also paragraph 26 above)*

40. The issue of ad hoc reports is dealt with below (II.b.2).

## **B. Hearings<sup>4</sup>**

*Q. should there be the possibility of hearings?*

12. It was suggested that as part of the monitoring procedure hearings could be held to enhance the character of an open dialogue. These hearings need not necessarily be held in public.

*Possibility<sup>5</sup> 1: hearing by the advisory committee with governments*

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<sup>4</sup> **Hearings should be distinguished from requests for further information in written form and from confidential dialogue. The latter would take place on the basis of conclusions, whilst a hearing would take place in preparation of conclusions.**

*Option 1: no hearing*

*Option 2: some kind of hearing*

*options under 2:*

- 1. in closed session*
- 2. in open session*
- 3. with invited observers*
- 4. flexible arrangements with respect to 1-3*

*options under 4:*

- 1. discretion of the advisory committee (general mandate)*
- 2. no general mandate*

*options under 2:*

- 1. ad hoc mandate to be requested every time*
- 2. general mandate for some forms of hearing, ad hoc mandate required for others*

*Possibility 2: Hearings with others than the Contracting Party concerned*

*Similar set of options*

**C. Order (sequence) of the monitoring procedure**

*Q. what will the order (or sequence) of the monitoring procedure be?*

**D. The periodicity of the procedure**

*Q. what will the periodicity of the monitoring cycle be?*

41. All experts agreed that it was for the Committee of Ministers to decide the further arrangements under Article 25 of the framework Convention.
42. There were differing views as to the meaning of the words " on a periodical basis" in Article 25 of the framework Convention. A number of experts considered that a period of time should be fixed, although the Committee of Ministers would be free to adapt it in the light of subsequent experience. Such a period should apply equally to all contracting Parties. Other experts considered that Article 25 did not require the fixing of a period of time. Thus the Committee of Ministers could decide in each case when further information should be provided.

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<sup>5</sup> **possibilities are, unlike options, not mutually exclusive**

*(options: see below paragraph 43)*

43. Concerning the length of a possible fixed period of time the possibility of 3, 4 or 5 years were suggested. In relation to these options the following considerations were put forward: the urgency of the matter of protection of national minorities, the workload for national administrations bearing in mind other reporting duties and the workload, effectiveness and efficiency of the monitoring mechanism.

*The words "on a periodical basis" in article 25 of the framework Convention are to be understood as:*

*Option 1: requiring the determination of a fixed period of time, equal for all Contracting Parties*

*Sub-options: 3, 4 or 5 years*

*Option 2: not requiring the determination of a fixed period of time equal for all Parties, leaving the period of time between two reports to be determined by the Committee of Ministers in each case*

44. In discussing these questions the Committee also touched upon the question of content of the information to be provided. Some experts considered it inappropriate to speak of reports as this word does not appear in the framework Convention. Others pointed to the use of this word in the explanatory memorandum and questioned whether there was really a distinction between providing information and making a report.

*Option 1: to use the word "State-report" to refer to "full information on the legislative and other measures taken to give effect to the principles set out in this framework Convention" (Article 25, para. 1) and "further information of relevance to the implementation of this framework Convention" (Article 25, para.2)*

*Option 2: not to use the word "State-report"*

*(suboptions:?)*

45. Several experts considered that following the provision of full information in the first round, subsequent information would have the character of an up-date and not a full report. Other experts consider that this distinction was more of a semantic nature as subsequent information (or reports) could always refer back to prior information (or reports).

46. Regarding the content of the reports it was also suggested that the Committee of Ministers could decide to focus on specific Articles of the framework Convention.

*(see also below paras. 47-49 on ad hoc reports)*

*Q. should arrangements be made concerning ad-hoc reports ?*

47. The CAHMEC had already touched upon questions concerning ad hoc reports under earlier questions. It is clear that ad hoc reports are possible under the framework Convention. It was considered undesirable to suggest rules for the Committee of Ministers to ask for ad hoc reports. It was agreed that ad hoc reports could concern just one issue or one country as well as several issues or several or all contracting States.

48. It was suggested that the advisory committee should be able to suggest to the Committee of Ministers that it request an ad hoc report.

49. It was suggested that in examining the ad hoc reports the role of the advisory committee should be the same as with other reports.

*(see also para. 26 above)*

## **II. THE COMPOSITION OF THE ADVISORY COMMITTEE**

### **A. Qualifications of the members**

*Q. what additional qualification concerning the members of the advisory committee, if any, should be stipulated?*

50. All experts agreed that the qualification mentioned in Article 26 (1) of the framework Convention was the most important one.

51. A number of experts were in favour of mentioning some additional qualifications, whilst others were not.

52. Regarding the advisory committee as a whole the following were suggested :

- equitable gender distribution;
- variety of professional backgrounds;
- variety of cultural and geographical backgrounds;
- geographical distribution;
- representation of national minorities;

*(Options: see below under paragraph 53)*

53. As possible additional qualifications the following were mentioned:

- expertise in the field of human rights;
- high moral character;
- political wisdom;
- not holding a position incompatible with the impartiality.

*Option 1: Rules to contain additional qualifications concerning the advisory committee as a whole and/or concerning the members*

*Option 2: Rules not to contain any additional qualifications of the committee as a whole or concerning its members*

## **B. Number of members**

*Q. what should the number of the members of the advisory committee be ?*

54. Concerning the number of members of which the advisory committee should consist a majority of experts favoured a number that would not necessarily be equal to the number of Contracting Parties. Different numbers were suggested, ranging from 6 to 20, but all proposed a number smaller than the (expected) number of Contracting Parties. It was considered that such a number would enhance the efficiency of the work. It was also suggested that the number of members could be increased if the number of contracting Parties significantly increased. A table of numbers could be developed for this.

55. Other experts favoured a number equal to the number of Contracting Parties, with one member emanating from each. The concern was expressed that a limited number would discourage ratification. It was pointed out that given the specificity of the framework Convention, the efficiency of the Advisory Committee should not necessarily be linked with the limited number of members of the Advisory Committee.

*Option 1: a number of members not necessarily equal to the number of Contracting Parties (various sub options)*

*Option 2: a number of members equal to the number of Contracting Parties, with one emanating from each*

56. For many experts the question of the number of members was linked to the question of the capacity in which the members would sit.

## **C. Capacity of the members**

*Q. what, if anything, should be provided concerning the capacity in which the members of the advisory committee sit ?*

57. The majority of experts considered that the members of the advisory committee should sit in an individual capacity. A number of experts envisaged the members to be governmental experts.

*Option 1: members sit in an individual capacity*

*Option 2: members sit as experts under instruction from their governments*

#### **D. Procedure for appointment/election of the members**

*Q. what should be the procedure for the appointment/election of members ?*

58. Most experts considered that the members of the advisory committee should be elected or appointed by the Committee of Ministers. Nominations would be made by the Contracting Parties. Some experts favoured the nomination by the Parliamentary Assembly. A number of experts favoured election of members by the Parliamentary Assembly.

*Nominations for election:*

*Option 1: by the Contracting Parties*

*Option 2: by the Parliamentary Assembly*

*Election:*

*Option 1: by the Committee of Ministers*

*Option 2: by the Parliamentary Assembly*

59. It was proposed that in order to ensure regular rotation of membership the terms of office of the first members to sit on the advisory committee could be varied.

*Q. substitute members and ad hoc members*

60. Most experts were not in favour of the possibility of substitute members. A number of experts favoured the idea of ad hoc experts being involved in the examination of a report from a country that had not nominated a member of the advisory committee.

*Q. term of membership/re-election*

61. Experts proposed terms of membership ranging from 4 to 6 years. They were divided as to the question whether it should be possible for a member to be re-elected.

### **III. PARTICIPATION OF NON-MEMBER PARTIES IN THE MONITORING MECHANISM**