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**The work of the Advisory Committee on the Framework Convention  
for the Protection of National Minorities on thematic commentaries,  
and the potential impact of these commentaries**  
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*The views expressed are those of the author only*

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## **1. Introduction: Purpose of this discussion paper**

This paper pursues a double purpose: To review and reflect on the process by which the ACFC prepares, adopts and disseminates its commentaries, and to present some thoughts on their potential impact. The two issues are interlinked: The impact is likely to be affected by the process of preparation and the assessment of the impact is likely to influence the future preparation of commentaries..

This paper is intended to serve as a basis for discussion on future work regarding commentaries, including not only possible topics for further commentaries but also on how to improve the impact of those that have been adopted and those to come. It is at this stage – for obvious reasons –based not on much empirical data but on comparisons with similar activities elsewhere and on speculations about the future developments.

I am here addressing the *potential* impact. Only two commentaries have so far been adopted; the first (on education) adopted in 2006, presented to the CM and launched on the website of the FCNM. The second commentary (on participation) was adopted in February 2008. It will be officially launched this week and posted on the website. Since both are so new, we know rather little at this stage about the impact they have had so far, though some experience with the commentary on education does exist already and will be reviewed below.

The term '*potential impact*' has two nuances: The *probable* and the *possible* impact. The probable impact requires speculations about what is likely to happen if the involvement of the ACFC and its secretariat ends with the adoption of the commentaries and their placement on the ACFC website; the *possible* impact would depend on which further, purposeful actions are taken by the ACFC, its secretariat and the Council of Europe to make the commentaries used in practice in appropriate contexts.

## **2. Commentaries and general comments in the practice of treaty monitoring bodies**

### ***2.1. The origins of general recommendations or general comments***

In exploring the origins of the commentaries, we should keep in mind that the ACFC is a treaty monitoring body. While it differs in some respects from other international treaty monitoring bodies, it has also much in common with them. At the time when the FCNM entered into force and the ACFC was established, the UN treaty bodies had already a long practice behind them in preparing what was first called 'general recommendations', later 'general comments', and much can be learned from the origin, experience and problems connected with those documents.

The Committee on the Elimination of Racial Discrimination was the first human rights treaty monitoring body. It started already in the 1970s to adopt brief recommendations, usually only of a few lines, mostly dealing with procedural and reporting duties though also sometimes calling for better implementation of particular provisions in the convention. In later years it has elaborated much more comprehensive 'general recommendations' influenced and inspired by

the work of the Human Rights Committee and the Committee on Economic, Social and Cultural Rights.

The real pioneer of General Comments in the sense we know them now was the Human Rights Committee which started its monitoring of the implementation of the Covenant on Civil and Political Rights in 1976 but was quickly facing severe divisions concerning its functions, deeply influenced by Cold War ideological controversies. For several years it was impossible to obtain consensus on the preparation of concluding observations (opinions) addressed individually to the State Parties. Initially as a substitute for country-specific findings, the Committee started to adopt General Comments which were not targeting particular states but elaborating on its interpretation of particular provisions in the Covenant or on broader issues relating to the implementation of the Covenant on Civil and Political Rights. Later, when the practice of adopting country-specific Concluding Observations, the practice of preparing General Comments was maintained but now with a broader and more comprehensive content.

The practice of General Comments was followed up by the Committee on Economic, Social and Cultural Rights, which was established by ECOSOC as a treaty monitoring body composed of individual experts in 1987 after a preceding period of discredited and useless work by a working group of government experts.

## ***2.2. General Comments of the UN treaty bodies: Purposes and problems***

In the words of the first President of the Committee on Economic, Social and Cultural Rights, Philip Alston, the Committee has used the General Comments methodology as a means of laying down some solid foundations for the future development of its jurisprudence.

Path breaking in many respects was its third General Comment, which constitutes an explicit statement by the Committee of what it considers to be the nature of States obligations with particular reference to Article 2.1 of the Covenant. 'As such it provides the intellectual and legal framework with which the Committee can begin to interpret the normative implications of each of the specific rights recognized in the Covenant'. (Alston. *The United Nations and Human Rights: A Critical Appraisal*, Clarendon Press Oxford 1992 p. 473)

The Committee has identified the purposes of its General Comments to be (1) to make the experience gained so far through the examination of States report available for the benefit of all State Parties in order to assist and promote their further implementation of the Covenant; (2) to draw the attention of the States Parties to insufficiencies disclosed by a large number of reports, (3) to suggest improvements of the reporting procedures and (4) to stimulate the activities of the State Parties, the international organizational and the specialized agencies concerned in achieving progressively and effectively the full realizations of the rights recognized in the Covenant. (Report of its Fourth Session, E/1990,23 para, 39)

The Committee members of the treaty bodies have recognized the difficulties inherent in making these general comments. Paul Hunt, a long-standing member of the UN Committee on Economic, Social and Cultural Rights and who played a major role in formulating its General Comment 12 on education, has described the difficulties in stark words:

‘What these General Comments are trying to do is complex and controversial. They are trying to outline the normative content of complicated ESC rights, as well as the obligations arising from these norms. They are also trying to identify ways by which these norms and obligations can be monitored by states, civil society and others. Moreover, they are trying to do all this in a way which is meaningful to rich and poor states alike..... Further, as is well known, the national legal tradition of ESC rights is not as rich as the national legal tradition regarding civil and political rights and thus it provides fewer precedents to help international work on ESC rights. In summary, the challenge is to identify the contours and content of specific international ESC rights, and also to establish the conceptual tools by which this can be done. By any standards this is a difficult and ambitious undertaking’ (Quoted in Steiner and Alston: International Human Rights in Context, 3<sup>rd</sup> edition. Oxford University Press 2008, p. 359)

Much of this is relevant also in the preparation of commentaries on the FCNM. The situation within the different states varies greatly. Some have during the last 18 or so years passed through complex processes of transition both constitutionally, demographically and economically, while others have a much longer history of gradual change and reciprocal adaptation between the groups. The provisions of the FCNM are often vague due in large part to the variations in situations.

When all this is said, however, there is no doubt that the General Comments of the UN treaty bodies have served a very important and constructive function. The adoption of General Comments is now a standard practice of all UN treaty monitoring bodies, and they have evolved into broad thematic commentaries. Many of them take a particular provision of the respective conventions as the starting point, elaborating on the interpretation of the terms of the provision, but broadening it into a detailed presentation of the functions of the particular rights or provisions in its wider context, and recommending guidelines or suggestions for an optimal realization of the concerns underlying the provision in question. As examples, both the Committee on Economic, Social and Cultural Rights (in its General Comment 13, adopted in 1999) and the Committee on the Rights of the Child, in its General Comment 1, adopted in 2001, have addressed the right to education and devoted considerable space to the functions and multiple dimensions of education as a human right. These general comments often include a recommendation to States to adopt a plan of action for the implementation of the right in question, and give some guidance concerning the contents of such plans.

### **3. Commentaries produced by the Advisory Committee: what, why and how**

#### ***(i) Origin, content and purposes (value added).***

When the ACFC started its work in 1998, the UN treaty monitoring bodies had already firmly established the dual practice of adopting country-specific ‘concluding observations’ and general comments. Controversies over such activities had been laid to rest, and similar controversies would not surface in the monitoring role of the ACFE.

The most immediate task for the ACFC was to develop the procedures for the preparation and adoption of its opinions on each state report, as requested by CM resolution 97/(10) para. 23. These opinions have turned out in most cases to become much more comprehensive than the

corresponding ‘concluding observations’ of the UN treaty bodies. The processes by which they are prepared were from the beginning highly innovative compared to the UN bodies. The most important innovation was the initiation of the practice of visits to the reporting countries by the respective working groups of the ACFC, a practice which has remained a major element in its work.

Not only was the initiation of such visits an innovation, but their scope has been surprisingly comprehensive: The working group meets not only with representatives of the government, but with parliamentarians, national ombudspersons and judges, and also – and most importantly – with representatives of the national minorities and relevant nongovernmental organizations. This has had several important consequences: The ACFC and its subsequent opinions has become much better known by those most concerned, and a much better and realistic understanding of the situation on the ground has been obtained than through the normal examination of state reports in the UN treaty bodies. Highly significant are also the follow-up national seminars after the adoption of the opinions and the corresponding resolution by the CM. The nature of this process has significant consequences for the potential impact of the thematic commentaries.

While work on the preparation of opinions had to be given primary attention, discussions were nevertheless held at an early stage to the preparation of thematic commentaries. In 1999, a provisional list of ten possible themes for future commentaries was drawn up:

- Non-discrimination, Article 4
- Effective equality, Article 4
- Freedom of association, expression and religion, Articles 7, 8, 17 and 19
- Promotion of culture, religion, languages, religion and traditions and the prohibition of assimilation against the will of the minorities (Article 4.2 and Article 5)
- Tolerance and intercultural dialogue (Article 6)
- Access to media, Article 9
- Educational rights of minorities, Articles 12, 13 and 14
- Linguistic rights of minorities, Articles 10 and 11
- Effective participation, Article 15
- Contacts across frontiers, Article 17

Clearly there would have been many overlaps between these. It has since been recognized that each commentary has to take into account the interrelationship between different articles of the FCNM, even where the main focus is one article, such as the commentary on participation where article 15 is the core provision.

It was recognized that more experience needed to be gained through the examination of state practice before general commentaries should be drawn up. Five years after the entry into force and the establishment of the ACFC, at the ‘Filling the Frame’ conference in 2003, it was recommended that the work in thematic controversies should now be started.

Three themes were subsequently selected by the ACFC in November 2003: participation, education and the media. Provisionally, rapporteurs were selected for each of the theme. The

ACFC decided to go into depth with one of these, that on education. Athanasia Spiliopoulou Åkermark, the then vice-President undertook to serve as the main drafter and rapporteur .

The Commentary on Education under the FCNM sought to cover five distinct but interrelated issues: (i) Summarizing the experience of the Advisory Committee in working with and for education rights (mainly Articles 12-14 of the Framework Convention) and with the role of education in promoting a spirit of tolerance and intercultural dialogue as envisaged in Article 6 (1) of the Framework Convention, (ii) synthesizing the wealth of information in State Reports and the broad spectrum of solutions used in different contexts; (iii) identifying issues which require more attention in the future both in the work of the Advisory Committee, in the implementation of the Framework Convention and the reporting by State Parties as well as in the activities of other actors, including non-governmental organisations and academics, (iv) situating the work and the views of the Advisory Committee within a broader international discourse, and (v) highlighting the tensions and dilemmas encountered by the ACFC in the field of minority and intercultural education, presenting choices that need to be made by actors involved, including State Parties and their governments, minorities, parents and students/pupils.

The focus of the Commentary on education is placed on the role of the Framework Convention in the task of balancing, on the one hand, the maintenance and development of the culture and the essential elements of the identity of persons belonging to national minorities and, on the other hand, their free integration and participation in the societies where they live.

In the Commentary, the ACFC expresses the hope that the Commentary can be used as a tool in the design and implementation of relevant educational policies in State Parties and also as an additional element in the constructive dialogue it has developed during the first cycle of monitoring with State Parties. It hopes that the Commentary gives practical guidance to State Parties to the Framework Convention and to other actors involved in education related activities. The Commentary identifies those actors to include educators, pupils or students and their parents, minorities and their organisations, central, local and regional authorities.

The Commentary points out that it cannot be used as a set of rigid guidelines. Education has many and sometimes contradictory aims and the situations vary enormously within the State Parties.

The Commentary on Education was adopted on March 2, 2006. It is not subject to approval by a higher body and was not formally presented to the CM, but it was appended to the Activity report presented at the end of 2006.

The purpose given for *the Commentary on the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs* is to set out the Advisory Committee's interpretation of the provisions within the Framework Convention relating to the effective participation of persons belonging to national minorities, drawing on the Advisory Committee's country-specific Opinions adopted between 1999 and 2007. The Commentary aims to provide a useful tool for State authorities and decision-makers, public

officials, organisations of minorities, non-governmental organisations, academics and other stakeholders involved in minority protection.

While the Commentary primarily focuses on participatory mechanisms at the domestic level, it is crucial that persons belonging to national minorities are also involved at all stages of the monitoring and implementation process of international instruments, and in particular the Framework Convention, in order to achieve a balanced and quality outcome.

*Added value.* It follows from the above what are the added values of the commentaries, as compared to the country-specific opinions. On education, the commentary provides a summary of the experience of the ACFC and thereby also synthesizes the conceptions of the Advisory Committee on how educational issues should be handled under varying circumstances, drawing on the experiencing of the states as reflected in their state reports, and situating the educational issues concerning minority situations into the wider international discourse on education. On that basis the Commentary identifies issues which need to be given more attention in the further work on country situations.

The area of effective participation also shows the complexities and the need for balancing conflicting concerns, such as the relative weight of the effective participation in institutions that are common for the majorities and minorities, and on the other hand the degree of self-government or autonomy for minorities in matters of concern mainly for themselves or in territories where they live compactly together. These dilemmas also apply to participation in economic and social life, as pointed out below.

It is this combination of awareness of variations in minority situations combined with the need to keep basic principles in mind, which make it desirable to elaborate thematic documents; these complexities cannot be satisfactorily addressed in country-specific opinions. .

***(ii) Preparation, sources, and consultations.***

*The commentary on education* was drafted by one member of the FCNM, Athanasia Spiliopoulou Åkermark. She did a penetrating conceptual and analytical work on the multiple aspects of education in relation to minority situations. In this she was greatly helped by the Secretariat which reviewed and analyzed the sources used. ACFC opinions, State reports and *travaux préparatoires* of the Framework Convention were examined and analyzed, and the summary of its main findings were presented in a check-list. The Secretariat also carried out research on what type of thematic work had been done by UN and other organizations and by Council of Europe bodies such as the Venice Commission.

The first drafts by Sia Åkermark were examined and discussed in the plenary sessions of the ACFC. At a second stage, the ACFC convened a meeting with experts dealing with educational issues from or recommended by other services within the Council of Europe, including the division on language policies and an expert on the European Charter on Regional or Minority Languages. A representative of the OSCE High Commissioner on National Minorities also attended the consultation.



*The commentary on participation* was a more collective exercise. Initial drafters were the then Vice-President, Lidija Basta Fleiner (on participation in public affairs) and the then President, Asbjørn Eide (on participation in economic and social life). When the terms as members of the ACFC of these two experts expired in 2006, other members continued the work. The Secretariat played an active role. It reviewed mainly the ACFC opinions and also some of the state reports, preparing on that basis a background document of 20 pages on the main findings structured under headings concerning the political participation on the one hand and participation in economic and social life on the other. The Secretariat also prepared for the Commentary an introductory part and a theoretical part explaining the approach of the ACFC.

Apart from discussions within the ACFC, the second draft of the commentary was sent out for written consultation mainly to minority organizations in different countries. Following their written comments, selected minority organizations (nearly 30) and other experts were invited to a consultation held with members of the ACFC in Bolzano in October 2007. The draft was in general well received, which confirmed to the ACFC that the main problems and issues had been covered in the draft. The thorough discussions at that consultation and the fact that a number of comments by the minorities were taken into account in the final drafting of the commentary proved that the consultation was truly participatory.. Written comments were also given by the High Commissioner for National Minorities.

Having gone through a number of revisions, the Commentary on the Effective Participation of Persons Belonging to National Minorities in Cultural, Social and Economic Life and in Public Affairs was adopted by the ACFC on 27 February 2008.

#### **4. A note on substantive issues involved**

The purpose of this paper is not to go into the contents of the Commentaries, but it is useful to keep in mind that the preparation of Commentaries on the FCNM makes it necessary to face a number of difficult, substantive issues.

Most important is the fact that there are a number of different aims or concerns underlying the provisions of the FCNM. Some may appear contradictory and have to be balanced. The appropriate balancing act would in each case by necessity depend considerably on circumstances which vary greatly from country to country. Both commentaries point out that an approach which would be satisfactory in one country or one setting might not be so in another due to the differences in the minority situation. Such differences would depend partly on which type of minority is involved. It is mentioned, among others, that the particularly disadvantaged position of the Roma and Travellers needs to be taken into special account, and that indigenous peoples require a separate approach due to their concern with the land which is the basis for their culture and livelihood. They would also depend on the pattern of settlement of the minority concerned (compact versus dispersed), its numerical size, the recent historical context (countries in transition versus countries where group relations have become more stable) and the future expectations.

This has been handled in the commentaries by identifying the underlying aims and the core considerations that should guide the interpretation of the relevant provisions. Taking the

Commentary on Education as example, the aims of education are several and do not always point in the same direction. Some aims are primarily instrumental, such as the development of the linguistic capabilities and other skill, where the education is seen as a tool for the achievement of other goals (e.g. finding employment, or participating in decision-making). Emphasis on these skills is important in order to create the conditions for effective equality for persons belonging to minorities in the common arena in society, as required under Article 4.

Other aims of education are perceived as primordial in that they are felt as important for the maintenance of the culture and tradition of the minorities, through the learning of own language even when there will not be an extensive need for small languages in the wider market in society or internationally.

These considerations can give rise to controversies over the choices to be made, and there can be different actors involved with opposing views. As noted in the Commentary, our present understanding of the child as an individual with independent needs and capabilities has reshaped the priorities among the needs of different actors involved in education. While all education programmes need to take into account both types of aims, this should be done in ways which ensures the best interest of the child as provided in the UN Convention on the Rights of the Child.

There are, however, ways to reconcile the opposing views by finding solutions that can enhance both concerns, and the Commentary on Education gives examples of how that can be done.

Another major concern in the Commentary on Education was the balancing act between measures to ensure education for the child of its own language (Article 14), its own culture and tradition including the minority's conception of past history (which is implied in Article 5), and on the other hand to ensure inter-cultural education both among majorities and minorities as required under Article 12.1 and 1.2 and to promote tolerance in accordance with Article 6 and in order to strengthen social cohesion

Comparable illustrations could be given regarding the right to effective participation. Where minorities live compactly together in a particular region of the country, an application of a territorial principle through decentralization and more or less extensive autonomy is a possibility, but when that goes too far it can cause problems for tolerance and social cohesion and also for those persons who belong to the minority but who live outside the territory where the minority has a majority.

Another example concerns effective participation in economic and social life. The dominant market economy with its own regulations has its own cultural features which may not correspond with cultural preferences for some of the minorities. It can therefore be necessary to have special approaches to some minorities in order to combine the concern for effective equality with the concern for the maintenance of their separate culture. This issue has, as previously pointed out, been addressed by both commentaries in regard to the Roma and the Travellers and to some extent also with regard to the indigenous populations.

## 5. Potential impact

What follows is a discussion of their *potential* impact, since little is known about the impact they have had until now. Both commentaries have already seen some use, however, both internationally and nationally. Members of the CM have occasionally referred to them. As an example, one State party described the Commentary on participation as a useful instrument for State parties to interpret and implement the FCNM and to enhance the protection of minorities. Other representatives of State parties have noted that this Commentary gives them a wide range of possible approaches to implement the FCNM

The Commentary on education is also more and more often used as a reference by the CM as such, e.g. in its replies to the Parliamentary Assembly.

The Commentary on education has been translated to Russian for a conference on minority education held during the Russian Presidency of the CM. It has also on request been translated into Azeri for a conference on education held in that region, and there are plans for a translation into Hungarian.

Since the participation commentary has not yet been published, there is no similar evidence of its actual use at this stage, although there are plans by the CoE to translate and use the Commentary on participation in a project of capacity-building and training of the newly established Council of Minorities of Bosnia and Herzegovina.

What can be expected to be the future use and impact of the commentaries, and how can it be strengthened? In seeking to respond to that question, account should be taken of the expectations expressed by the ACFC itself regarding the future uses of the commentaries.

In the Commentary on *Education*, the ACFC expresses the hope that the Commentary can be used as a tool in the design and implementation of relevant educational policies in State Parties and also as an additional element in the constructive dialogue it has developed during the first cycle of monitoring with State Parties. It further hopes that the Commentary gives practical guidance to State Parties to the Framework Convention and to other actors involved in education related activities. The Commentary identifies those actors to include educators, pupils or students and their parents, minorities and their organisations, central, local and regional authorities. (Commentary on Education part 1.1)

The Commentary hopes to influence those who are involved in the making and implementation of educational policies affecting minorities and minority situations to take into account three basic questions: (i) which are the precise goals of educational policies – the duality of protection of minority culture together with the requirements of intercultural education; (ii) awareness of the involved and concerned actors, both those who are the targets or recipients of education and those who are involved in construing and implementing educational policy and practice at different levels, and (iii) to recognise the variety and appropriateness of different tools and mechanisms for education, such as the choices between different versus common schools and classes, and the training of bilingual or pluri-lingual teachers. (Commentary on Education Part III).

As stated in its executive summary, the Commentary on *Participation* aims to provide a useful tool for State authorities and decision-makers, public officials, organisations of minorities, non-governmental organisations, academics and other stakeholders involved in minority protection. It points out the crucial importance of the involvement of persons belonging to national minorities at all stages of the monitoring and implementation process of international instruments, and in particular the Framework Convention, in order to achieve a balanced and quality outcome.

Based directly and indirectly on the country-specific work of the Advisory Committee, the Commentary on Participation points out that it is providing decision-makers, public officials, non-governmental organisations, academics and other stakeholders, not least among minorities themselves, with an analysis of possible options to enable them to make adequate and informed choices when designing legislation and policies to improve minority participation. Choices to be made should be agreed upon by the authorities and the national minorities if they are to be sustainable. It is also important that they take into account the views of the majority population and the type of relations prevailing among various groups in society. ( Framework Commentary on Participation para 147)

The Commentary reminds the readers, including public authorities and minorities, that different solutions can be applied to different national minorities as well as to different situations prevailing in the State Parties, and that measures taken in some State Parties which have been considered by the Advisory Committee as an adequate implementation of Article 15 in given circumstances, measure that leads to effective participation in one State Party does not necessarily have the same impact in another context. The Advisory Committee's objective is therefore to highlight those experiences out of which meaningful conclusions can be drawn for the benefit of all State Parties, while recognising that State Parties need to assess, in the light of their own domestic situation, the applicability and effectiveness of measures that have, elsewhere, resulted in increased participation of national minorities.

Similar qualifications are expressed in the Commentary on Education, which points out that in view of the multiple aims of education and the multitude of factual situations, there are no 'one-size-fits-all-solutions' in this field.

In exploring the potential impact, it is therefore important to take into account that the commentaries provide broad guidelines and a range of options, but not very precise directives for action. Of paramount importance is it to explore how they in the future are going to affect the domestic discourse on minority policies and their practical implementation in the fields covered by the commentary.

One important step has already been taken: Both of the commentaries are now already made use of in the 3<sup>rd</sup> cycle Outline for State reports, and States are requested to pay particular attention to their content while preparing their reports. This implies that State parties from now on can be expected to familiarise themselves with the content of the commentaries. Assuming that there is also, in the preparation of the reports, a consultation with the national minorities concerned, these would also become familiarized with the commentaries. That

should hopefully imply that the commentaries will become significant reference texts in the discourse between the minorities and the relevant government officials.

While the direct impact on the domestic discourse regarding minorities and thereby on policy formulations and implementation is the most important aspect to watch, the Commentaries are likely to have other effects which in turn will lead to a further and more enhanced domestic impact.

Some lessons can here be drawn from the adoption of the General Comments of the UN treaty bodies. A cursory review of textbooks on human rights shows that the General Comments are given a prominent place in the interpretation and description of the jurisprudence (practice) of the treaty bodies. The General Comments increasingly influence scholarship and thereby the dynamic evolution of the understanding of the human rights instruments. Examples can be found in leading textbooks such as Steiner, Alston and Goodman: *International Human Rights in context* (Oxford University Press, 3<sup>rd</sup> edition 2008), or in Eide, Krause and Rosas: *Economic, Social and Cultural Rights – a Textbook* (2<sup>nd</sup> edition, Martinus Nijhoff Publishers 2001). Undoubtedly we will see the same impact in forthcoming scholarship on minority protection

We should take into account that human rights treaties, including the Framework Convention, are living documents in the sense that their content, interpretation and application unfolds over time, through a dynamic process of multi-dimensional dialogue with many actors involved. At the core are on one hand the State Parties and on the other hand the ACFC, the CM and the professionals in the Secretariat. Surrounding these actors are others such as the national minorities of each country, international NGOs focussing on minority rights, and the wider network of scholars or experts' and their evolving understanding of the issues. The thematic Commentaries play an important role in this process, constituting a degree of abstraction, systematisation and construction derived from this unfolding practice, recognising that things and understandings change. The drafters of the Commentaries are themselves affected by the discourse in the literature by drawing on good scholarship, and also by the practice of other bodies or agencies dealing with minority issues. It is in this dynamic interaction between many actors that the dynamic impact of the Commentaries is likely to be felt.

## **6. Conclusions and some points for discussion.**

This paper has examined the process of selection and preparation of thematic Commentaries and has briefly reviewed some of the substantive issues faced in the process, followed by a discussion of the potential impact. .

The main sources of the Commentaries are the opinions by the ACFC and the information contained in the State Reports, but the practice of relevant international agencies and scholarly literature is also taken into account. Through consultations with other experts, national minorities and international non-governmental organisations before the finalisation, the Commentaries are further strengthened.

Points for further discussions in this regard are twofold. Firstly: Is the selection and analysis of the sources satisfactory? This paper has not explored this issue in depth. In my view, however,

the main source should be the opinions of the ACFC as it has been, but somewhat more attention should probably be given to the reactions of the State parties, and by minorities, to the opinions adopted.

It notes that the drafting of the Commentaries has been made through collaboration between some members of the ACFC who have served as rapporteurs on the particular thematic issue involved, and professionals of the Secretariat.

In this connection it needs to be recognised that the preparation of the Commentaries require not only the use of the sources, but also considerable conceptual work. To a considerable degree new grounds have to be broken. This requires independent thinking, but it must also be possible to reach consensus within the ACFC and to be reasonably acceptable to the State parties and to the minorities. This is achieved through discussions within the ACFC and with the Secretariat professionals as well as through consultations with minorities and with relevant experts.

*Which themes should be selected for future Commentaries?* I shall here only mention a few possibility, without entering into a discussion for or against any one of them.

Minorities and the media is a theme that repeatedly has been mentioned. It has many dimensions. One is the access of the minorities to the media and to have their own media in their language. Another is the question of the way the media deals with minority questions, which is particularly important in regard to Article 6.

An increasingly important, but controversial issue is to take up the problem of ‘new’ minorities and the minority rights of non-citizens. Much work in this regard has been done by the Venice Commission, the High Commissioner on National Minorities and relevant UN bodies. It might be desirable to start exploring it from the perspective of the FCNM.

A third and complicated issue is to spell out more fully the relations between measures for the implementation of Article 4 (non-discrimination, effective equality) and Article 5 (right to preserve own culture, identity), seen also in conjunction with 6. This has been touched upon in both of the adopted Commentaries, particularly in regard to education, but it could benefit from a full, separate treatment

An ever recurring issue is the implementation of the minority rights for Roma and Travellers. Both Commentaries have mentioned it, but again it might be useful to have a full and separate treatment of all aspects of that issue. In this connection, consultations with the EU’s Fundamental Rights Agency and with the High Commissioner on National Minorities would be important. Much work on this has also been done by the UN Committee on the Elimination of All Forms of Racial Discrimination, the OSCE/ODIHR, the Department at the CoE specifically dealing with Roma and Travellers’ issues, and the CoE Commissioner on Human Rights.

Another possible theme could be on language rights and language use, taking into account also the recent work of the HCNM in updating the Oslo recommendations on the linguistic rights of minorities.

It might be useful also to prepare a commentary on the kin state/ home state roles and on the right to contacts across frontiers, also here taking into account the work of the Venice Commission, the DH-Min, and the HCNM. To examine it from the perspective of the FCNM could make it possible to highlight the positive gains from home state/ kin state relations, a matter which often have focused on the conflict- generating aspects of the relationship.

Apart from the issue of themes to be selected, other points for discussion could include these:

Whether and how to enhance the process of consultations with relevant governmental experts, relevant minority representatives and independent experts midway in the process (not during the initial stages, but sufficiently early to make it possible to make extensive use of the observations)

Whether and how to enhance the process of consultation with relevant EU bodies, including the Fundamental Rights Agency which in its Multi-Annual Framework from 2008 deals among others with racism, xenophobia and related intolerance; discrimination based on sex, race or ethnic origin, religion or belief, disability, age or sexual orientation and against persons belonging to minorities and any combination of these grounds (multiple discrimination); the rights of the child, including the protection of children –which would also extend to minority children. If the ACFC should seek to explore the issues related to ‘new minorities’ the Fundamental Rights Agency would be an important partner since it deals also with issues of asylum, immigration and integration of migrants.

*Turning now to the question of impact:* The Commentaries are quite new, but the conclusion can quite safely be drawn that the Commentaries are very useful and are likely to have a considerable impact, through their dynamic role in the national and international discourse on minority policies and practice. This paper has shown through which processes the impact is likely to be realized.

There should nevertheless be a discussion on how to enhance the follow-up activities once the Commentaries have been adopted and made public. Is the dissemination sufficient? Should more efforts be made to ensure that the relevant users are aware of and have access to the Commentaries? Can they be made available, preferably electronically, in languages other than English and French?

Can there be a more systematic use of the Commentaries in the future work of the ACFC, beyond what already exists (which now includes use of the Commentaries in the the 3<sup>rd</sup> cycle Outline for State reports). Could they be used more frequently as a reference for the ACFC itself in its country-specific work? Could national and regional seminars with a thematic focus be held with the government representatives and minority representatives that are particularly relevant for the particular theme?