In response to the State Report by the United Kingdom under the 3rd Reporting Cycle of the Framework Convention on National Minorities.

1 The Muslim Research and Development Foundation (MRDF) is a cooperative venture run by a number of leading Muslim scholars, Imams and professionals from a variety of backgrounds. With its two main fields identified as research and development, the foundation commenced its operation in 2002 and was awarded official charity status in 2007. The foundation strives to articulate Islam in a modern context and address the unique situation and challenges faced by Muslims in the West. An integral focus as a means to this end is the study, analysis & presentation of classical Islamic scholarship and its contemporary application. With its endeavours firmly rooted in furthering the progress of Muslims in the West, the foundation has dedicated a great deal of its work to research and development. Aiming to impact public opinion about the role of Islam in society, MRDF has developed structured activities and research techniques that are paving the way for Muslim thinkers and professionals to gain the credibility which is worthy of them. This in turn will facilitate and administer a healthy incorporation into wider society allowing positive influence.

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I. Introduction

1. We begin by conveying our deepest concern regarding the UK’s position on the applicable scope of the Framework Convention on National Minorities (FCNM) to only “racial groups” as defined under the Race Relations Act 1976 (RRA) and its consequent effect on religious minorities. The situation of Muslims is especially acute and the current national legal framework inadequate owing to a number of reasons. Among these are the sociological trait prevalent amongst Muslims to primarily or solely self-identify as religious minorities as opposed to ethnic or linguistic minorities; their ethnic heterogeneity; and anti-terror legislation perceived amongst the Muslim minority as profiling and targeting only them.

II. Rationale

2. The principle aim of this Shadow Report is to argue for the inclusion of Muslims within the FCNM’s scope of application on the basis of their religious identity. Official recognition by the State is then essential as a means to claiming the specific religious and general rights under the FCNM.

3. It should be highlighted that recognition by the State is an end in itself as even a partial denial of identity leads to a compromising of dignity - the very essence of all international human rights law. Secondly, the cultural identity of a group by its very nature is a joint exercise and can only be enjoyed “in community with others”. It is these rights related to cultural identity expressed as a group, which underpin all developments of minority rights law and are encapsulated in Article 3 of the FCNM.

4. The UK denies these rights to Muslim and other religious minorities by limiting the scope of application to only “racial groups”. Hence, MRDF believes that until the UK complies with Article 3, Muslims and other minority groups will not be able to avail the remainder of the rights in the FCNM as they all depend and emanate from Article 3.

5. Therefore, this Shadow Report’s focus on the UK’s compliance with Article 3, particularly in relation to Muslims, should not be construed as indicating that there are no other grievances against the State – in fact there are numerous. However, at the root of most is the non-

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3 Henceforth “racial group” shall mean, as defined under the Race Relations Act 1976.
4 Acknowledged by the Advisory Committee (henceforth “Committee”) at para. 34 of its 2nd Opinion, adopted on 6 June 2007 (ACFC/OP/II(2007)003).
5 This means that Muslims are more likely to outwardly manifest their religious identity through dress and symbols and so more likely to be discriminated against or face prejudice due to their religion then their ethnicity.
6 See e.g. ethnic homogeneity of Jews (Seide v Gillette Industries Ltd [1980] IRLR 427) and Sikhs (Mandla v Dowell-Lee [1983] 2 AC 548).
7 See judgment of ECHR on the illegality of power to stop and search without any suspicion under Section 44, Terrorism Act 2000 and its disproportionate effect on Muslim ethnic minorities: Gillan and Quinton v. UK, (App no. 4158/05), 12 January 2010.
8 See Preamble and Article 1 of Universal Declaration of Human Rights 1948.
9 Explanatory Report to FCNM, para. 37.
applicability of the FCNM’s scope to Muslims. These other grievances are then symptoms of the underlying problem.

6. We remain optimistic that engaging proactively and positively with the work of the Committee will enable us to present it with a clearer picture of the state of British Muslims. We also hope to be afforded an opportunity to enter a genuine dialogue through consultations with relevant UK Government Departments on its policies and rationale behind laws that govern the relationship between Muslims and the State. We remain confident that through such consultations, Muslims can be included within the FCNM’s scope and any obstacles to the realisation of such a goal removed; thus organically leading to related discussions about consequent rights and entitlements.

III. Establishing Muslims as a de facto minority

7. Article 3 states:

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

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

8. It is inherent within Article 3 that the question of the existence of minorities within the territory of a State is a matter of fact and not law. In practice, this means the existence of a minority depends on factors – subjective and objective - which are wholly unconnected with the State’s views or context.

9. In relation to the subjective element, the Explanatory Report of the FCNM states about Article 3(1): "This provision leaves it to every such person to decide whether or not he or she wishes to come under the protection flowing from the principles of the framework Convention."\(^{10}\) The inherent principle of self-identification is rendered meaningless, if the minority group is not able to ascribe to whichever identity they so choose. Identity by its very nature must emanate from the self and defies imposition.

10. At the same time, we acknowledge that the subjective element is not absolute and “does not imply a right for an individual to choose arbitrarily to belong to any minority. The individual’s subjective choice is inseparably linked to objective criteria relevant to the person’s identity."\(^{11}\) Consequently, the freedom to choose one’s group identity is not absolute but must be within the categories envisaged by the FCNM.

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\(^{10}\) Explanatory Report to FCNM, para. 34.
\(^{11}\) Explanatory Report to FCNM, para. 35.
11. While there is no definitive definition for “national minority” under the FCNM, we observe that it protects and preserves ethnic, cultural, linguistic or religious identity.\textsuperscript{12} Hence, religious minorities are explicitly included within the objective scope of the FCNM with provisions that lay out specific rights for them.\textsuperscript{13}

12. The above shows how the existence of Muslims as a religious minority under the FCNM can easily and uncontroversially be established based on subjective and objective criteria laid out by the Explanatory Report of the FCNM. Thus, when established, such status is a matter of fact notwithstanding official recognition under national law.

\textbf{IV. How does the UK justify excluding religious (Muslim) minorities?}

13. This being the case, we need not concern ourselves with if Muslims are a minority and within the potential scope of the FCNM, but rather why and how official recognition is denied by the UK and whether this is permissible under the FCNM itself and international law.

14. In its 2\textsuperscript{nd} State Report, the UK went to the extent of not recognising any groups as “national minorities”. This was evident in its near-complete rejection of the term and the notion: “The term ‘national minority’ has no legal meaning in the UK and so there is no mechanism under any of the UK’s legal jurisdictions to grant ‘national minority status’ to any particular group nor is it proposed to introduce such a mechanism.”\textsuperscript{14}

15. It is troubling that the UK has sought to limit the application of the FCNM in all reporting cycles to only “racial groups” as understood under the RRA. This is despite the Committee’s recommendations in its 2\textsuperscript{nd} Opinion, which we welcome, to widen this scope: “certain groups have not (or have not yet) been included in the definition of ‘racial group’, including Muslims and other religious groups.”\textsuperscript{15}

16. As the Committee has observed, overreliance on the “racial group” criterion, even if open to the national courts’ interpretation, “may result in exclusions from the Framework Convention’s scope of application of groups that have legitimate claims to be covered.”\textsuperscript{16} The Committee consequently recommended that “The Government should consider supplementing its current criterion based on recognition as a ‘racial group’ in case law with additional criteria to ensure that the Framework Convention is applied in a fair and consistent manner.”\textsuperscript{17}

17. However, in its Comments on the 2\textsuperscript{nd} Opinion, the UK outrightly rejected the Committee’s recommendations stating that its position on scope of application remains unchanged to that set out in paragraphs 16-19 of its 2nd State Report.\textsuperscript{18}

\textsuperscript{12} FCNM Arts. 5, 6 & 7.
\textsuperscript{13} FCNM Arts. 7, 8 & 12.
\textsuperscript{14} 2\textsuperscript{nd} State Report, p. 8.
\textsuperscript{15} 2\textsuperscript{nd} Opinion, p.9.
\textsuperscript{16} 2\textsuperscript{nd} Opinion, p.9.
\textsuperscript{17} 2\textsuperscript{nd} Opinion, p. 10.
\textsuperscript{18} 2\textsuperscript{nd} Comments, p.3.
18. In the 3rd State Report, the UK devotes only two paragraphs to the issue of scope and only to reiterate that it has not shifted its position at all since its 2nd State Report and Comments:

As the Government explained in its Comment on the Committee’s Opinion on the UK’s second report, the Government’s position on the scope of application of the Framework Convention was clearly set out in the second report and the Government has no plans to extend it further.19

19. What is more striking is that not only does the UK consistently reject the Committee’s recommendations but also ensures that its position remains fixed indefinitely. In the 2nd Report, the UK stated that no mechanism existed to afford recognition to some groups as national minorities “nor was it proposed to introduce one.”20

20. Such outright rejection clearly goes against the spirit of dialogue, cooperation and good faith21 upon which the State parties ratify the FCNM, especially when in the 3rd State Report, we find the same limiting of scope and a refusal to engage with the Committee’s recommendations, when the UK maintains that “the Government has no plans to extend it further.”22

V. Why such a rigid approach to scope?

21. The UK has discussed and even adopted the Committee’s recommendations on issues such as the forthcoming Census and reforming non-discrimination legislation. However, when it comes to the scope of application, there has been no shift or even discussion of the UK’s position.

22. It remains difficult to decipher why the UK takes such a rigid approach to the question of scope. Its inflexibility is remarkable and consistent throughout all reporting cycles, to the extent that it even rules out any future discussion on the matter or to consult Muslims and other religious minorities. On this particular issue, it seems strange that the UK denies the essence of a treaty it has ratified and refuses to engage with the recommendations of a Committee, whose oversight it has submitted to.

23. It appears, the UK feels justified in rejecting the Committee’s recommendations based on their interpretative declaration on ratifying the FCNM: “The UK ratified the Framework Convention on the understanding that it would be applied with reference to members of ‘racial groups’ within the meaning of Section 3(1) of the Race Relations Act 1976, i.e. any groups defined by “colour, race, nationality or ethnic or national origins.”23

24. It is conceded that an interpretative declaration at the point of ratification is a valid means by which to restrict the application of a treaty. However such a right is not absolute nor of indefinite effect. Furthermore it must comply with and is governed by general international law.

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23 2nd Comments, p.3.
25. Hence, if the interpretation rendered is so narrow as to threaten the object and purpose of the treaty, then it is incumbent upon the State, following ratification, to do all it can to bring itself in line with the recommendations of the Committee with each subsequent reporting cycle. Instead the UK sees its interpretive declaration as an absolute ground to consistently reject the Committee’s recommendations on widening the scope of application.

26. The interpretative declaration does not provide the UK with an unqualified licence to disengage with the Committee’s recommendations on scope. In fact, precisely the opposite is the case, especially when the legal effect of such a declaration is considered. The declaration risks not only limiting the treaty from having its full intended effect but threatens to render it redundant de jure through compromising its object and purpose.

VI. Object and Purpose of FCNM

27. The essence of all normative minority rights development has been premised on the fundamental principle of preservation of group identity and the enjoyment of their culture. The FCNM sets out this essential purpose in its Preamble: “a pluralist and genuinely democratic society should not only respect the ethnic, cultural, linguistic and religious identity of each person belonging to a national minority, but also create appropriate conditions enabling them to express, preserve and develop this identity.” Elaboration of this preambular aspiration is to be found in Section I of the operative part, which “contains provisions which, in a general fashion, stipulate certain fundamental principles which may serve to elucidate the other substantive provisions of the framework Convention.” Therefore while the specific principles enumerated in Section II may be subject to a measure of discretion, violating any of the fundamental principles of Section I would be incompatible with the object and purpose of the FCNM. A contention corroborated by the fact that while the FCNM “contains mostly programme-type provisions” asking, for example, “The Parties to undertake...” Article 3(1) remains the only substantive provision to carry the wording “shall have”.

28. The Explanatory Report to the FCNM states that “a choice was made for a framework Convention which contains mostly programme-type provisions [...] which [...] leave the States concerned a measure of discretion in the implementation of the objectives which they have undertaken to achieve.” Notwithstanding its programmatic nature and in-built State discretion, the FCNM remains “the first legally binding [italics added] multilateral instrument devoted to

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25 FCNM Preamble.
26 FCNM Arts. 1-3.
27 Explanatory Report to FCNM, para. 15.
28 FCNM Arts. 4-19.
29 Explanatory Report to FCNM, para. 11.
30 FCNM Art. 4.
31 Explanatory Report to FCNM, para. 11.
the protection of national minorities. Thus the UK, in excluding from the FCNM’s scope religious minorities raises serious questions as to the validity and viability of such an interpretation.

29. The VCLT states that parties are bound by the treaties they enter and obliges their performance in good faith. An interpretative declaration cannot alter or modify obligations under a treaty to the extent that they become incompatible with the object and purpose of the treaty.

30. The UK’s limiting of the FCNM’s scope to only protecting against racial discrimination, resulting in the exclusion of religious and linguistic identities explicitly protected under the treaty, constitutes a substantial modification of its obligations. Therefore we must determine whether these modifications compromise the object and purpose of the FCNM.

31. Not only is the FCNM programmatic in nature but it desists from defining “national minority”. The resultant discretion available to States, to interpret the FCNM to fit their specific contexts, though extensive, can by no means be absolute. While the term is elastic and has been interpreted by many States to exclude some minorities, such a narrowing of scope must not encroach on the FCNM’s object and purpose. Hence, the available discretion cannot extend beyond the point where a State’s interpretation is incompatible with the object and purpose of a treaty. Therefore, the discretion available under the FCNM is limited by its object and purpose especially as the aim of such discretion is to facilitate and prioritise “implementation of the objectives”.

32. Such an interpretation renders redundant a number of provisions of the FCNM and furthermore negates the fundamental core of the FCNM: Article 3, which has two elements, the first is self-identification and the second is the enjoyment of rights in community with others.

VII. Effect on self-identification

Article 3 (1) states

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

33. As stated above, the principle of self-identification is deferential to the self-perception of the minority group as long as it is within the objectively discernable bounds envisaged by the FCNM. The UK limits the identities that may come within the scope of the FCNM to “racial groups”.

32 Explanatory Report to FCNM, para. 10.
33 VCLT Art. 26.
34 VCLT Art. 19.
36 Explanatory Report to FCNM, para, 11.
defined under RRA i.e. to “colour, race, nationality or national or ethnic origin”. This denies the right of religious and other excluded minorities to identity directly and indirectly.

Direct effect on self-identification

34. Those who self-identify as linguistic, religious or cultural minorities cannot lay claim to the FCNM.

35. While the UK may prevent religious minorities from recognition as ethnic minorities, based on objective grounds,\textsuperscript{37} it cannot not exclude them on the basis of a blanket non-recognition of all religious groups.

Indirect effect on self-identification

36. Furthermore by denying religious identity and offering a less robust framework for protecting against religious discrimination, the UK is infringing on the right to self-identify implicit in Article 3(1) by failing to provide conditions where “no disadvantage shall arise from the free choice it guarantees”.\textsuperscript{38} The UK is obliged under the FCNM to allow Muslims to self-identify as a religious minority and secondly to avail to them the specific rights that flow from such recognition.

37. Due to religious (and linguistic) minorities falling outside the applicable scope of the FCNM, such groups are coerced into self-identifying as ethnic minorities. Either religious minorities who also happen to be ethnic minorities will seek protection from discrimination on the basis of their ethnicity even if they have greater affinity with their religious identity or they will argue for the inclusion of their religious identity within the scope of “racial group” under the RRA. The Jews and Sikhs have succeeded in this, due to their ethnic homogeneity, while the Muslims have failed due to their ethnic heterogeneity.\textsuperscript{39}

38. This constitutes an indirect erosion of the principle of self-identification, which becomes somewhat illusory when groups are offered a choice between their genuine identity, while being disadvantaged in the non-discrimination framework, but rewarded for self-identifying as other then what is genuinely felt.

39. Thus, restricting the choice of identity to ethnicity is irreconcilable with the principle of self-identification. Religious minorities feel compelled to identify as “racial groups” restricted to rights of non-discrimination, when their true identity and group needs are religious in nature. The UK’s interpretation in reducing the FCNM’s scope to only “racial groups” is therefore incompatible with the right freely to choose as specified under Article 3.

\textsuperscript{37} As established in Mandla v Dowell, cited above.
\textsuperscript{38} Explanatory Report to FCNM, para. 36.
\textsuperscript{39} In Nyazi v. Ryman\textsl{s} Ltd (1988), ethnic status was denied to Muslims on the basis that they include people of many nations and colours, who speak many languages and whose only common denominator is religion and religious culture.
Inclusion of religious minorities as “racial groups” insufficient

40. An important caveat is needed here; that having a valid claim to recognition as a “racial group” should in no way lessen or affect a separate and additional claim to recognition as a linguistic or religious minority, particularly in the case of Muslims, many of who solely or primarily self-identify along religious lines and have related needs.

41. In this regard, the Committee made some positive observations in their 2nd Opinion. They acknowledged the claim of Muslims to be recognised as a minority group under the FCNM and highlighted the inconsistency of such a system in that converts to Islam who are not ethnic minorities enjoy no protection under the FCNM and secondly that “many Muslims consider that their religious identity, rather than their ethnic identity, should be the basis for their inclusion.” They also questioned the justification for such exclusion, while other religious minorities like the Jews and Sikhs were included within the scope of the FCNM.

42. However the lack of clarity in some observations made by the Committee at paragraph 34 of its 2nd Opinion, risk being misconstrued and detrimental to the situation of Muslims in the UK.

43. The Committee twice at paragraphs 27 and 34 of its 2nd Opinion notes that “as most Muslims in the United Kingdom are also members of minority ethnic communities they are in practice already largely covered by the Framework Convention”. This, we fear, may be read as the inclusion of the Muslim minority on the basis of one aspect of their identity (ethnic) weakens their claim to be included on the basis of separate and distinct identity (religious), which happens to be the predominant of the two.

44. Firstly, such a misunderstanding garners support from the statement that follows: “Nevertheless, a percentage of Muslims are British converts to Islam, who are not covered”. This may be taken by some to support the UK’s claim that racial non-discrimination is able to deal with all minority grievances and claims. We would like to clarify that in our view, even if all religious minorities were also ethnic minorities, it would not diminish from the arbitrary and unjustified distinction of only considering “racial groups” within the scope of the FCNM. Protection from racial discrimination will not in any way lessen the harm to a Muslim’s dignity and self-worth, when he/she is discriminated due to their religion or is denied the enjoyment of their religion.

45. Secondly, the Committee “notes” that Muslims who also form ethnic minorities are “in practice already largely covered” and points out the inclusion of Jews and Sikhs. This may be misunderstood as there being rights due to these groups related to their religious identity. This is not the case, as their inclusion is purely on the basis of constituting ethnic minorities and not religious minorities. The same is true for Muslims who are said to be within the scope of the FCNM, which is based on their various ethnic identities due to their countries of origin. The only difference is that Jews and Sikhs are able to access the higher non-discrimination protections. The fact remains that they are unable to lay claim to minority rights specific to their religion e.g. establishing places of worship or schools.

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36. Thirdly, we are dissatisfied and offended with the language employed to refer to Muslim converts. Why are Caucasian (or those not from minority ethnic communities) converts to Islam described as “British converts”? Are non-Caucasian (or those from minority ethnic communities) born-Muslims not considered British? We understand the good will sentiments and well meant intent behind the Committee’s observations but would nonetheless highlight the inevitable sensitivity of British Muslims, when it comes to discussing identity/citizenship and inadvertently excluding them from a national identity that they themselves identify with and hold dear.

VIII. Effect on joint exercise of rights related to religion as a community

Article 3(2)

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

47. With regards to Art. 3(2), if one is to access positive rights which have a community dimension, the rights available must go beyond merely non-discrimination and allow for minority groups to express and enjoy their culture, whether that is their language or religion. Such considerations fall outside the ambit of protection against discrimination.

48. The UK maintains that it’s “discrimination laws protect all individuals from discrimination on racial grounds, whether they belong to a “minority” group or a “majority” group. Any individual who believes himself or herself discriminated against can bring proceedings against the alleged discriminator.”41 Applying the FCNM to only “racial groups” and limiting the rights available to only those of non-discrimination is indicative of the fact that the protections afforded in the UK under the FCNM cannot, in reality or substance, be considered minority protections as they do not extend to rights related to the identity of minorities nor do they attach to all minority groups. In fact stating that national laws are applicable to minority and majority groups equally betrays a misunderstanding by the UK of the essence of the FCNM and minority rights in general; that they attach specifically to minorities.

IX. Limiting international law with national law

49. The Committee recommended in its 2nd Opinion that the UK should apply the FCNM in a “fair and consistent manner” by supplementing the “racial group” criterion.42 Therefore, it would be impossible to apply the FCNM in fair and consistent manner without departing from the “racial group” criterion as understood under national law and as interpreted by national courts.

50. In response, the UK claims in its 3rd State Report:

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42 2nd Opinion, p. 10.
The Government believes that using the definition from the 1976 Act has two substantial benefits. First, it ensures that the UK complies with the Advisory Committee’s statement that “implementation of the Framework Convention should not be a source of arbitrary or unjustified distinctions”. Second, it means that the UK’s approach is not static. As and when the courts make judgments, different groups can fall under the scope of the Framework Convention.  

51. For the UK to claim that it is through the “racial group” criterion that it has complied with the Committee’s recommendation, when it was actually the source of original criticism is an absurd position and insults the intelligence of the Committee and minority representatives. 

52. Furthermore, the FCNM cannot be applied in a fair and consistent manner, if the interpretation is left to the discretion of the State’s courts and not the Committee, by restricting application of international law by national law. The fundamental purpose of oversight of international human rights instruments is for them to be a check against the unfairness and inconsistency of States. Thus a State cannot be a check against itself.  

53. The UK’s assertion that the “racial group” criterion is not static dependent on interpretation by the national courts does not help Muslims come within the scope of the FCNM. Furthermore, MRDF is of the view that even with the inclusion of Muslims as a “racial group”, entitlement to rights that attach to their religious identity and are guaranteed by the FCNM would still be denied. Instead, like the Jews and Sikhs, it would only go as far as securing a higher level of protection from non-discrimination. The Jewish minority has in fact, as a result, been unable to establish educational institutions in accordance with their own orthodox doctrine.  

X. No Added Value of FCNM – de jure redundant  

54. By denying the essence of the FCNM, which is encapsulated in Article 3, by limiting its application only to “racial discrimination”, the UK evades any additional obligations that it is not already subject to under ICERD. The UK’s interpretation not only excludes these other heads by only recognising “racial groups” but more importantly denies rights related to expressing or enjoying culture, whether it is linguistic or religious. Despite the FCNM being drafted to grant precisely such rights and the UK having ratified it, these rights remain inaccessible due to the UK’s skewed interpretation. 

55. In this regard, we would refer the Committee to the latest State Report submitted to the CERD.  Therein the Committee will note that most, if not all, of the 3rd State Report under the FCNM has

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44 See VCLT Art. 27. 
45 Nyazi, cited above. 
46 FCNM Arts. 7, 8 & 12. 
47 R. (on the application of E) v JFS Governing Body Court of Appeal (Civil Division), 25 June 2009. 

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been lifted directly from its submission to the CERD. Of special concern is the verbatim copying and pasting of paragraphs 2-36 of the 3rd State Report from the CERD submission\textsuperscript{50}.

56. We find it totally contrary to the good faith compliance with the FCNM that the UK is not even willing to expend the limited time and resources needed to draft a separate report meeting the unique obligations under the FCNM. This further highlights the UK’s reluctance to genuinely engage with the Committee’s work and to widen the scope of the FCNM so as to give effect to the principles and rights that are unique and fundamental to the FCNM.

\textit{XI. Duty to Consult}

57. Lastly and of great importance is the fact that the UK has failed to give proper effect to the Committee’s call to examine the question of scope in consultation with minorities concerned.

58. The Committee “considered that there remained scope for covering further groups in the application of the Framework Convention and called on the authorities to examine this question in consultation with the persons concerned.”\textsuperscript{51} It further encouraged the UK to “launch consultations with representatives of the Muslim population in order to address their concerns regarding the Framework Convention’s scope of application.”\textsuperscript{52}

59. If the UK is at odds with the Committee or minority group representatives about the scope of the FCNM and granting certain due rights, then at the very least, it has a duty to engage in an open and transparent dialogue about the issues of concern to them.

60. Despite no process yet being initiated by the UK; we would still welcome such a positive development, facilitated by the Committee, through the follow-up mechanism.

\textit{XII. Conclusion}

61. In summation, we would humbly request the Committee to determine in its forthcoming 3rd Opinion, that while interpretation of the scope of application may vary between member-States, it cannot limit the scope to the extent of undermining the object and purpose of the treaty.

62. It is agreed that under international law that the existence of a minority is a matter of fact and precedes official State recognition, which is a matter of law, necessary in order to access related rights.

63. In limiting the scope of the FCNM to just “racial groups” as defined under RRA, the UK is applying the FCNM, an instrument drafted for the benefit of “national minorities”, to only one type of group i.e. “racial groups” to the exclusion of all other minorities, such as religious, linguistic or

\textsuperscript{50} The section copied from the CERD submission were paragraphs 1-15, 43-64 and most of the section on Wales.

\textsuperscript{51} 2nd Opinion, p.8

\textsuperscript{52} 2nd Opinion, p.10.
cultural. This is unacceptable as the UK does not furnish any valid justifications for the arbitrary distinction between “racial groups” and other groups. Such a blanket scheme of exclusion from the FCNM’s scope severely encroaches on all these other minorities’ right to self-identity through recognition. This means unrecognised minorities either attempt, through the national courts, to seek inclusion within the definition of “racial group” or resort to claiming minority status through their ethnic identity, even though given a free choice they would opt to identify along religious, linguistic or cultural lines. As such those religious minorities who are predominantly ethnically homogenous are inevitably privileged over those who are ethnically heterogeneous. This distinction once again has no basis and if anything is itself racist in nature. Thus the exclusion of other than “racial groups” from the scope of the FCNM, which are explicitly included in the FCNM and consequent nullification of their right to self-identify are sufficient in themselves to render the UK’s interpretation incompatible with the object and purpose of the FCNM.

64. Furthermore, the contention is bolstered by the second element of the UK’s interpretive declaration in that the FCNM only protects against racial discrimination. This makes axiomatic the UK’s interpretation’s incompatibility with the object and purpose of the FCNM. Firstly minority rights generally and the FCNM specifically were developed precisely to supplement non-discrimination regimes and resulted from their inadequacy in addressing tensions involving minorities that had led to violent and bloody conflicts as starkly illustrated by the disintegration of former Yugoslavia. Hence minority rights built on non-discrimination norms with rights of identity and subsequent group rights related to culture such as religious and linguistic. However it is these very cultural rights that are completely precluded from the scope of the FCNM by the UK in only dealing with racial discrimination.

65. Therefore such an interpretation not only denies the very object and purpose of minority rights, which, put simply, is for minorities to be recognised by States in line with their self-assumed identity and consequently to be able to express that identity through the associated culture, whether religious or linguistic. Only giving effect to the inherent and presumed non-discrimination measures, the FCNM de jure can provide no added value in the UK, as the obligations to protect against non-discrimination are already assumed under ICERD. An observation astonishingly evident in the wholesale copying and pasting of passages from its 18th & 19th State Reports to the CERD.

66. Another corollary that severely undercuts the legal effect of the FCNM is the UK’s interpretation limiting the obligations under the FCNM with domestic law. This means that the international law, in this case the FCNM, is subject and deferential to the domestic law (RRA). This goes against general international law as the whole purpose of international human rights treaties is to provide oversight and compliance of domestic law with international obligations. This is why such a practice defies logic and is impermissible under VCLT Article 27.

67. Indeed it seems to defy sense that the UK addresses the Committee’s concern that “implementation of the Framework Convention should not be a source of arbitrary or unjustified distinctions”, by stating that using the “racial group” criterion and having the national courts to
interpret its meaning resolves this, when it was this very criterion that led to the Committee’s original criticism.

68. Furthermore the power of interpretation of the Courts is limited and subject to the RRA. To suggest that reliance on them could open up the scope for religious or linguistic groups is simply untrue. Most importantly though, no matter how wide the scope of “racial group” becomes under the national courts, it will never go beyond providing protection from racial discrimination.

69. Additionally in the face of recommendations made by the Committee on expanding the FCNM’s scope, the UK in its 2nd and 3rd State Reports, not only rejected them outright but went further to even blocking any future discussion on the matter. Further still, the UK has not even sought to consult the Muslim minority on the issue of scope.

70. This stark contrast between the flawed nature of the UK’s interpretation and its sheer adamance not to shift its position even in the slightest for an indefinite period is in our view untenable. The UK has little excuse for refusing to, at the very least, engage with the Committee’s observations and recommendation on widening the scope and allowing for representatives of the Muslim and other minorities to make representations in this regard through an open, genuine and inclusive consultation process.

71. The interpretative declaration only shows the UK’s position at the point of ratification. It does not provide it with an unqualified and indefinite right to maintain an interpretation of the FCNM, which jeopardises its object and purpose.

72. We remain cognisant and sympathetic that the Committee lacks the power of adjudication and enforcement of a conventional court such as the ECHR. However this does not detract from its nature as a Committee mandated and empowered to interpret the FCNM and monitor State-parties’ compliance with it.

73. Despite the lack of enforcement mechanism, if the Committee makes a legal pronouncement or determination as we request regarding the threat posed to the FCNM’s object and purpose by the UK’s interpretation, representatives of the Muslim minority can then rely and build on these statements through litigation, lobbying and campaigning as a means by which to bring the UK to the table to discuss the matter.

74. In this regard, we are highly indebted to the Committee for all the effort exerted to persuade the UK to widen its scope and for the realisation of official recognition and related rights for Muslims and other minorities. We also understand that the approach of the Committee is one underpinned by dialogue and diplomacy, but such flexibility must fall with the ambit of the discretion allowed by the FCNM and embarked upon on behalf and for the betterment of the aggrieved minority groups.

75. In this regard, while the Committee has repeatedly advocated for the widening of the scope, the UK has not only rejected such recommendations but has said the issue of scope is not even open
for discussion. There is thus the risk that the Committee’s observation may be mistakenly read as giving credence to the validity of the UK’s interpretation under the FCNM’s wide discretion.

76. Furthermore, even with the lack of enforcement, we are very disappointed to observe that despite the Committee’s repeated insistence for the widening of scope, the issue has not been carried through in either of the two resolutions adopted by the Committee of Ministers. We urge the Committee to exhaust all possible means at their disposable for the forthcoming 3rd Resolution to carry a clause on the tenuous nature of the UK’s interpretation and its detrimental effect on religious and other minorities and their subsequent rights of identity and culture.