

26 November 2014

Mr President of the Human Rights Council

Mr Chairperson of this Forum

Special Rapporteur Ms Rita Iszak

1. I would like to thank the organisers of this Seventh Session of the Forum on Minority Issues for inviting me to address this session of the forum: **“Avoiding renewed violence-building peace and managing diversity”**.
2. In the context of my work over the last twenty years as a Commissioner in both the South African and Sierra Leonean Truth and Reconciliation Commissions as well as a member of the Panel advising the Secretary General on war crimes in Sri Lanka I have had to deal with violations amounting to crimes against humanity which have been perpetrated by both state and non-state actors against minority communities. These crimes have included extra judicial killings, torture and sexual violence , enforced disappearances, displacement, the deprivation of opportunities and a range of socio-economic rights violations including the seizure of land and property, economic marginalization, the prohibition of community organization, dismantling of political structures and deliberate forms of assimilation. At the heart of the violations against minorities is exclusion, dehumanization, hate, discrimination, marginalisation and inequality.
3. In all these contexts women and girls have had to bear the brunt of the violence and crimes particularly sexual violence although in my most recent work, I have witnessed a rise in sexual violence against both men and boys. In most of our society’s rape and sexual violence are silent crimes with those responsible rarely held accountable? Many of the victims testified to how sexual violence was used to instil fear, humiliation and ultimately achieve complete subjugation. For many families, their pain and suffering is exacerbated by the fact that they live in a twilight zone not knowing if a loved one is alive or dead. Many are not allowed to mourn and conduct the sacred ceremonies for the dead.
4. In post-conflict societies, histories of exclusion, racism and nationalist violence often create divisions so deep, that reconciliation seems impossible. This is compounded by the fact that minority communities usually live under a pervasive sense of threat or fear of attack, dehumanizing myths about the minority are spread by nationalist leaders, political groups and religious leaders for their own political ends. Mistrust is a common factor particularly when

the discrimination continues to be officially sanctioned and where there is a complete lack of recognition of the human dignity of the other as well as identity. For many minority communities, justice and accountability remain an illusion as impunity continues to flourish.

5. It is against this backdrop that I welcome the concept note and the draft recommendations particularly recommendations 67 to 70 which deal with how transitional justice can contribute to national reconciliation and sustainable peace for minority communities.
6. Transitional justice has been implemented in many countries in order to redress the legacies of massive human rights abuses. The Guidance Note issued by the UN Secretary General in March 2010 called upon the United Nations under principle 9 to “strive to ensure transitional justice processes and mechanisms take account of the root causes of conflict and repressive rule, and address violations of all rights, including economic, social and cultural rights.”
7. The four pillars underpinning transitional justice include the right to truth at both an individual and societal level, the right to justice, the right to reparations and the guarantee of non-recurrence. Measures or instruments include truth commissions, Commissions of Inquiry, Mapping processes, memorialisation, criminal justice options, security sector reform and reparations. Any transitional justice measure must be taken in consultation with the minority community affected and must provide for the full participation of such communities.
8. Recommendation 69 reinforces this point. However it could do with the addition that to be effective, transitional justice measures adopted must be sensitive to the ways in which the deliberate targeting of people on the basis of their ethnic or religious identity may cause distinctive harms and, second, to clarify the difficult political challenges that arise in societies where communities are not ready to cooperate, or even agree on a definition of who the victims are. Ensuring that data is disaggregated is crucial.
9. Truth Commissions in particular have the potential to provide minority communities with the opportunity to uncover the facts about the violence and crimes committed, to determine patterns and trends and to identify those whose rights are violated as well as to identify those who bear responsibility at both an individual and structural level. Documenting the violations is recognised as an important first step. For minority communities whose rights and who experience mass atrocity crimes, documenting and creating an archive is an important step in building the collective memory of the past. While one’s land can be taken and possessions destroyed, the memory of who and where we came from as well as the violations committed should never be taken away

10. John Paul Lederach, the Mennonite peace builder makes the point that “socioeconomic justice is also critical to peace. He identifies what he calls the “justice gap” in peacebuilding: “we have not adequately developed a peace-building framework that reduces direct violence and produces social and economic justice”. As a result, he advocates a broadening of our understanding of peacebuilding to include conflict transformation, restorative justice and socio-economic development.
11. Truth Commissions play an important role. Reparations at both an individual and community level are critical to providing recognition that minority communities matter and are an acknowledgement of the wrongdoing. The fourth pillar, the guarantee of non-recurrence, deals with institutional reform and the restoration of civic trust in the institutions of the state.
12. Dealing with the root causes of the conflict includes dealing with the structural questions underpinning the violence. This includes examining the conduct of state institutions, particularly the security forces and the judiciary which often become compromised in the conflict.
13. Above all, accountability requires that those responsible for grave crimes and mass atrocities are held criminally accountable as this reinforces the notion that minorities matter and that the institutions of the state work for them as well.
14. In this regard, the recommendations could do with a recommendation which spells out what accountability means for the crimes committed against minority communities. It should also set out clearly that States have obligations to address the question of impunity.
15. Finally, the recommendations could do with a paragraph which deals with the complex issue of reconciliation. Reconciliation is a necessary process through which a society moves from a divided past to a shared future. It includes the search for truth and justice and also requires that former enemies find ways of co-existing side by side. It is both a process and a goal but it should never be an excuse for impunity.