Ladies and gentlemen, your excellencies,

First, I would like to thank the Special Rapporteur for having invited me to this prestigious event, it is quite an honor to be here.

On Monday, we have, in detail discussed a Draft Recommendation on Minorities in the Criminal Justice System. Once finalized, submitted and adopted, it, I am sure, will serve as an invaluable instrument for the protection of minorities in the criminal justice system and beyond.

Among the various important issues raised in the document and the interventions heard yesterday and today, I will only highlight two, which I find worthy for consideration in the Forum.

The first concerns dilemmas pertaining to data collection and underlying definitions and classifications of minority communities, as well as membership within the groups, and the second pertains to the definition of hate crimes.

I would like to emphasize in the outset that discrimination in the criminal justice system, and policing in particular, can occur both in the form of OVER AND UNDER POLICING OF MINORITIES.

The first question I would like to address concerns classification and data collection.

We see a well-documented, and often historically rooted and, thus, understandable reluctance on behalf of many states to collect data on ethnicity and race.

Besides political, data protection and privacy concerns, another reason for this lies in the fact that the definition of both minority communities, and group membership, is ambiguous and even arbitrary, and it requires an often controversial political commitment by the state to engage in such legislation.

There are several options for definition and classification: one can rely on the self-declaration of the identity of persons concerned; can choose to follow the perception of outsiders, often the majority; can follow identification by the communities; or apply so called "objective criteria", for which, among others, the following markers can be used: name, skin color, diet, clothing, citizenship, place of birth, country of origin, language, meaning mother tongue or language used, religion, parents' origin, etc.

We can see why states are unwilling to enter this conceptual and political minefield. However, experience shows that a misguided approach to data protection and the lack of proper legal definitions and classifications lead to the failure to prosecute racially motivated hate crimes. Here the phenomenon of underclassification happens, when these incidents are categorized as simple assault, homicide or vandalism. In this form of underpolicing, society fails to send the political and moral message to victimized minorities that it condemns such behavior as firmly and directly as possible.

The lack of data collection also provides obstacles to monitor overpolicing, for example in regards to ethno-racial profiling and other potential forms of discrimination in the criminal justice system, such as disparities in sentencing, pretrial detention, etc.

Also, this allows the existence of the phenomenon often referred to as "ethno corruption," that is using diversity measures by the majority.
All of these lead to the further marginalization of disadvantaged minority communities.

In sum, not combatting the inherent a**mbiguity and political sensitivity involved in defining minority groups and membership criteria, both impedes** prospects for minority **protection** (in the case of victims of hate crimes and discrimination) and risks **reaching** target group for diversity policies.

The second issue I would like to raise, concerns a special form of OVERPOLICING minorities in prosecuting HATE CRIMES.

The issue concerns the, at first glance theoretical, but also very practical question of what are hate crimes? Identity-, or minority protection mechanisms?
In other words, can and should any group be protected as a hate crime victim, or only members of discrete and insular, underprivileged, vulnerable communities who lack sufficient numbers or power to seek redress through the political process or may face discrimination because of their inherent (unchangeable, fundamental, immutable) characteristics?
The past years in legislation by international and national organizations brought a proliferation of protected grounds, and has been extended to basically any socially recognized identity, and often even open ended lists are used, making reference to "any other status."

Based on my experiences as a human rights lawyer, even contrary to commitments made by international organizations such as the OSCE and the EU FRA, I argue that the concept of hate crimes should be limited to hate incidents committed against members of minority communities.

I see a substantive d**ifference from anti-discrimination legislation, where "**the more the better"-principle is in place. Here, less is more!

In several countries, Hungary is one of them, in line with the above commitments, hate crime (and hate speech) legislation, and practice have been used to **protect the majority from the minority**. In several cases of violent conflicts, members of minority communities have systematically been charged with racially motivated hate crimes committed against the majority.

These happened even if prosecutions when racially motivated hate incidents target minorities are rare, and even in cases, and this is particularly alarming, if actually members of racist **hate groups are the victims of the incidents.**

Based on these, by far not isolated, experiences, I hereby propose to change the trend and restrict the concept of hate crimes to victimization of members of communities that bear the stigma of social inferiority, face some sort of social marginalization, discrimination, persecution, **or a history of oppression.**

I propose for international instruments to identify and declare hate crimes as specifically minority protection mechanisms and install the requirement of vulnerability, the threat of potential or actual exclusion or marginalization in the concept.

Otherwise, this institution, too, can be used in a way to systematically disfavor minorities.