14th Session of the United Nations Forum on Minority Issues
Item 3 | *Legal and institutional framework:*
the human rights of minorities and conflict prevention

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Thank you, Madam Chairperson. Let me also thank Mr. Fernand de Varennes, Special Rapporteur on minority issues for inviting me as a speaker. Thanks also to his team for all the background work.

(1) Group Rights: In 2019, Minority Rights Group International conducted a major global study on 'Peoples under Threat'. The data-set reveals that of the 115 countries that the study ranked by level of threat, all but 43 faced conflicts involving claims to self-determination.

The traditional human rights framework, primarily focused on individual rights, is not always equipped to address and accommodate these demands for self-determination, even within the territorial confines of the existing state.

But we need to note that mere absence of individual human rights, however important, does not lead to the demands for self-determination. Mere guarantee of individual rights would not mitigate those demands either. Even in some advanced Western democracies, where there is robust legal architecture guaranteeing individual freedom, equality, and non-discrimination, groups continue their demand for self-determination, or even, secession.

Invariably all Peace Accords, in the aftermath of violent ethnic conflicts, are premised upon a series of political arrangements, including power-sharing, consociational democracy, federalism, and so on. These measures are the direct outcome of prolonged violent conflicts and are driven by pragmatic needs. Numerous studies suggest that incorporation of these measures beforehand can indeed prevent the likelihood of those violent conflicts.

Since the theme of this year's Forum is conflict prevention, my first recommendation would be a more robust and sincere engagement with group rights by re-imagining the dominant liberal individualist framework of human rights.

(2) Colonial Legacies in Legal and Institutional Frameworks: The global study, which I mentioned earlier, also finds that all but a handful of the countries in the list of countries at risk are postcolonial states.

The problem largely remains in three key elements of ethno-nationalist politics in postcolonial states: the modernist response to primordial attachments in the process of nation-building, the active role and passive consequences of colonialism, and the influence of bourgeois and petty bourgeois classes.

To mitigate the problem of ethno-nationalism in general and minorities in particular, the postcolonial state itself then operates as an ideology, claiming that the unified homogeneous national state, its liberal constitutional structure, and the developmental agenda will solve the minority problem.

As ideologies, the national, liberal, and developmental visions of the postcolonial state inflict various forms of marginalisation on minorities but simultaneously justify the oppression in the name of national unity, liberal principles of equality and non-discrimination, and economic development.

International law, as a core element of the ideology of the postcolonial state, contributes to the marginalisation of minorities. It does so by playing a key role in the ideological making of the postcolonial 'national', 'liberal', and 'developmental' states in relation to: continuation of colonial boundaries in postcolonial states, internal organisation of ethnic relations within the liberal-individualist framework of human rights, and the economic vision of the postcolonial state in the form of 'development' that subjugates minority interests.

Thus, my second recommendation is: when it comes to legal and institutional frameworks for minority protection, the unique position and conditions of postcolonial states and minorities therein must be acknowledged. I therefore welcome the regional approaches taken by the Minority Forum, and encourage the Special Rapporteur to explore possibilities of sub-regional studies given the diversity and complexity in each region.

(3) Capitalist exploitation: Minorities are routinely the foremost victims of development activities, as various atrocities against minorities are justified in the name of economic growth and development. Gross violations of human rights and the destruction of life and nature take place in the name of market liberalisation, privatisation of lands, increased connectivity with regional and global markets, and the promotion of foreign direct investment.

The incessant demand for more lands and natural resources to feed the neoliberal economic needs resulted in the development-led forced displacement of many minority groups from their ancestral lands. Such violent expulsions are a global phenomenon. Thus, development-induced persecutions of the minority, and the legal and institutional framework to protect them, cannot be fully addressed in isolation from the existing hegemonic neoliberal economic structure at the global scale.

The reckless exploitation of natural resources is also disastrous for the climate, as is now well accepted. Here again, minorities and indigenous peoples are also the primary victims of the damaging impact of environmental catastrophe.

Minority rights discourse should, therefore, build on the global momentum for climate justice, and offer a powerful narrative to articulate the point that issues of climate justice cannot be separated from justice for minorities in both political and economic domains.

In this regard, it is also essential to problematise and challenge the dominant idea of 'development' as the teleological end of human progress, to counterbalance its tendency to commodify, and to expose its capacity to articulate state power in terms of economic growth rather than welfare.

(4) Beyond the Vulnerability Framework: The dominant discourse on the future direction of minority rights in international law largely revolves around the integration of minorities within the state they live in. At the same time, the majoritarian suspicion about the minority's allegiance to the state remains unabated, as minorities keep challenging the legitimacy of the existing territorial, political, and economic structures of the state.

Since the birth of modern statehood in Westphalia, whenever states have been re-organised, the minority question re-appeared in relation to the very political organisation of the state: how to deal with the leftover population (minorities), who have been denied their own 'state'?

This underscores the *sui generis* nature of minorities, compared to other vulnerable social groups – based on gender, sex, or age – that too routinely face discrimination but generally do not question the legitimacy of the state itself. Within the traditional vulnerability framework minorities are generally understood as mere subjects of oppression; this in turn makes them the individual objects of international human rights discourse along with other oppressed social group members.

While this traditional framework will continue to have its relevance, it is far from adequate to fully grasp the peculiarities of minority groups as political entities and their particular needs within the state they find themselves in.

In other words, a normative argument for a more effective regime for minority protection under international law must go beyond the vulnerability framework and re-conceptualise the minority as an organising element of the state *and* also by ensuring more visibility of minority groups in international decision-making. This is an important step to take if we are serious about fixing the problem of democratic deficit in international law.

Thank you!