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Draft recommendations on preventing and addressing violence and atrocity crimes targeted against minorities*

* Late submission.

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Contents

	<i>Paragraphs</i>	<i>Page</i>
I. Introduction	1–6	3
II. General considerations	7–11	4
III. Recommendations	12–80	5
A. Recommendations to prevent violence and atrocity crimes.....	12–40	5
B. Recommendations to address ongoing violence	41–60	8
C. Recommendations for post-violence situations	61–80	10

I. Introduction

1. In accordance with Human Rights Council resolutions 6/15 and 19/23, the present document contains the draft recommendations that will form the basis for discussions at the seventh session of the Forum on Minority Issues. The seventh session will consider the theme of “Preventing and addressing violence and atrocity crimes targeted against minorities” and will seek to provide all participants with substantive and tangible outcomes in the form of thematic recommendations. The draft recommendations contained in the present document are intended to guide the Forum discussions with the objective of further strengthening and developing their content. The recommendations will be presented by the Special Rapporteur on minority issues to the Human Rights Council at its twenty-eighth session.

2. The draft recommendations are primarily based on the provisions contained in the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. The Declaration sets out the fundamental international human rights standards pertaining to the promotion and protection of minorities and recognizes that minority rights protection contributes to the strengthening of friendship and cooperation among peoples and States. Moreover, the promotion and protection of minority rights contribute to political and social stability and peace, as universally recognized in the 2005 World Summit Outcome. The draft recommendations are also based on other existing international and regional human rights standards, principles and guidelines concerning the promotion and protection of minority rights, including the jurisprudence and general comments of different United Nations treaty bodies and relevant reports and recommendations from different special procedures mandate holders, including the work of the Special Rapporteur on minority issues. In that context, the draft recommendations recognize that comprehensive implementation of minority rights and the existence of adequate institutional and policy frameworks can effectively contribute to the prevention and response to violence and atrocity crimes targeted against minorities.

3. The Convention on the Prevention and Punishment of the Crime of Genocide and its provisions recognizing genocide as an international crime have also informed the drafting of the recommendations. Similarly, Human Rights Council and Security Council resolutions on the prevention of genocide and the analysis and review of the work of the Secretary-General and the Office on Genocide Prevention and Responsibility to Protect further informed the draft recommendations. The draft recommendations take into account the principle of responsibility to protect and the three pillars of that principle, notably: the State carries the primary responsibility for protecting its populations from genocide, war crimes, ethnic cleansing and crimes against humanity and from incitement to those crimes; the international community has the responsibility to encourage and assist States in fulfilling that responsibility; the international community has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means to help to protect populations from atrocity crimes, as stipulated in the 2005 World Summit Outcome (General Assembly resolution 60/1).

4. As recalled at previous sessions of the Forum on Minority Issues, it is important to underline that the range of issues covered by the recommendations is not exhaustive. The secretariat strongly hopes that the recommendations will be improved by participants in a constructive manner, in a spirit of cooperation and open dialogue.

5. The work of the Forum on Minority Issues takes into account the great variety of country and minority situations and the fact that, consequently, different measures may be required to prevent and address violence and atrocity crimes targeted against minority groups within a given State. At previous sessions, Forum participants have reiterated that

such measures ought to be monitored and reviewed on a regular basis to ensure that they achieve the required objectives. In previous sessions of the Forum, it has also consistently been emphasized that homogeneous solutions to various challenges are generally neither possible nor desirable, and that the recommendations should therefore be used with that in mind. It is to be noted that, although the recommendations are not exhaustive and are phrased in broad terms, they identify and address a wide range of situations in which violence against minorities occurs, and they should be implemented in countries with diverse political, religious, historical and cultural backgrounds, in full respect of universal human rights standards. The duty of States to protect their populations from violence and atrocity crimes, irrespective of national, ethnic, religious, linguistic or other identity, transcends any specific State ideology, religion or value system, and is entrenched in universally accepted human rights instruments.

6. The present session of the Forum on Minority Issues is an opportunity for all stakeholders to share their views on existing practices, approaches and mechanisms that could be replicated in other countries. In that regard, the present draft recommendations provide State authorities, decision makers, public officials, minority groups, non-governmental organizations, academics and others, including media, with an overview of practice and concrete solutions to prevent violence and atrocity crimes targeted against minorities, as well as appropriate responses thereto at the national, regional and international levels. The final recommendations should serve as a resource for all participants and relevant stakeholders to make appropriate and informed choices when addressing and responding to violent situations affecting minorities, including for minority groups themselves to guide them in their efforts to improve their situation and facilitate constructive dialogue and exchanges with all relevant actors.

II. General considerations

7. The recommendations proposed in the present document should be read in conjunction with the substantive and action-oriented recommendations formulated at the six previous sessions of the Forum on Minority Issues as they also apply to situations where targeted violence against minorities is to be prevented and addressed.

8. In their efforts to prevent and address violence and atrocity crimes against minorities, all stakeholders are strongly encouraged to build their initiatives upon the four key pillars of minority rights protection: protection of existence; protection and promotion of minority identity; equality and non-discrimination; and the right to effective participation in all areas of civil, political, public, economic, social and cultural life.

9. It is important to recall that in any measures aimed at implementing the recommendations, systematic consideration should be given to the specific conditions, situations and needs of women belonging to minorities, resulting from multiple and intersecting forms of discrimination.

10. All measures taken with a view to implementing the recommendations should be, to the fullest extent possible, developed, designed, implemented, monitored and evaluated in consultation with, and with the effective participation of, minorities including women.

11. Recognition of minority status is not solely for the State to decide. As per the authoritative interpretation by the Human Rights Committee of the United Nations, the existence of minorities should be established by objective criteria. All efforts should be made to ensure that the principle of self-identification is respected.

III. Recommendations

A. Recommendations to prevent violence and atrocity crimes

1. Recommendation to States

12. As an essential violence prevention measure, States should comply with international standards of minority rights protection, equality and non-discrimination, and implement the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities and other relevant regional and international standards in full.

13. Gross and persistent inequalities may create the conditions under which minority communities are made vulnerable to violence. It is necessary to understand and address the dynamics and the impact of discrimination, exclusion and inequalities, including intersecting forms of discrimination, in order to reduce the exposure of poor and marginalized minorities to violence. States should encourage effective participation and promote equality and the constructive integration of persons belonging to minorities in the political, socioeconomic and cultural life of society. Special measures should be taken for the benefit of the most economically disadvantaged communities.

14. States must adopt the necessary national legislation prohibiting and punishing discrimination on the ground of nationality, ethnicity, religion and language. States should ensure that attention is paid to minority issues in the designing, planning, implementation, monitoring and evaluation of development policies and programmes, including in the context of the post-2015 development agenda as a means to strengthen good governance and reduce inequalities.

15. Legislation should be introduced prohibiting incitement to hatred and violence and ensuring appropriate penalties, in line with international standards, including in relation to freedom of expression and hate speech. States should take measures to monitor hate speech and incitement to violence, including in the media and social media, and respond appropriately, including by prosecuting perpetrators.

16. States should avoid the creation or persistence of statelessness, denial or deprivation of citizenship for persons belonging to minorities, as that leaves minority communities vulnerable to violence and other rights violations, with only weak protection by State authorities who may not recognize them as citizens or nationals whose rights must be protected. The citizenship application process must be fair, transparent and non-discriminatory towards all minorities.

17. States should take concrete steps to ensure good and inclusive governance and the participation of minorities at all levels of politics and in decision-making bodies as an essential means of ensuring that the issues and concerns of minorities, including the threat of violence, are recognized as early as possible and are appropriately addressed by government and public bodies. The electoral system of States should ensure fair representation of all minority groups, especially smaller underrepresented ones.

18. Education has a key role to play in preventing violence and promoting understanding among communities. Teaching of the principles of human rights, minority rights, equality and non-discrimination and of the positive contributions of minorities to societies should be integrated in formal and non-formal education, with a view to promoting dialogue, understanding and tolerance between different groups in society. The teaching of languages, culture, religion and history of different groups should be encouraged throughout the education system, including in minority or multilingual educational institutions.

19. Particularly where historic tensions have existed, or violence has previously taken place, States should consider specific programmes and initiatives intended to prevent violence and intercommunal tensions based on inclusion, consultation and participation of minorities.
20. States should identify and implement early warning indicators to assess the existence of factors potentially leading to violence and to allow authorities to immediately take the appropriate action to prevent violence. Indicators should include those relevant to minorities and be assessed in consultation with minority communities.
21. States should consider establishing dedicated institutions or dedicated units or departments within existing institutions, including in ministries in charge of minority rights protection and promotion, and include staff members from minorities and with expertise on minority issues. Such institutions or departments can take the lead in designing and implementing policy, mainstreaming attention to minority issues, monitoring the situation of minorities, establishing complaints mechanisms, setting up instruments of dialogue to promote consultation, conducting research and investigating human rights abuses, threats and minority rights violations. They should have a clear mandate, authority and allocated budget to operate efficiently. In some situations where tensions exist or violence has previously occurred, minority issues should be taken up at the highest government levels to ensure adequate institutional and policy frameworks to manage diversity.
22. States should collect data disaggregated by, inter alia, gender, age, ethnicity, religion, mother tongue and geographical location, as a violence prevention tool providing a better understanding of the size and status of minorities. Such data should be based primarily on self-identification, and civil society and minority groups should be involved throughout the process from design to collection, in order to improve accuracy and consistency of data collection and analysis. Such data, analysed in combination with socioeconomic indicators, provide factual grounds for the identification of the causes of inequalities and exposure to violence.
23. Data collection procedures must fully comply with international standards of personal data protection and use, in order to avoid data being misused to target a specific minority. Minorities should be fully consulted regarding the collection and use of data as confidence-building measures, particularly where violence has occurred before. As a practical measure, persons from minorities should be trained in data collection methodologies and engaged in data analysis.
24. As an essential element to preventing violence against minorities, States should adopt holistic, inclusive and proactive security and policing strategies and incorporate positive practices into wider law enforcement and protection strategies. Consultation with minority communities and their participation in violence prevention measures are essential.
25. To avoid biased behaviour towards minorities leading to confrontational behaviour and intercommunal tensions or violence, States should ensure that minorities are adequately represented in law enforcement and security sector bodies at all levels. Affirmative action measures should be implemented, such as outreach to minorities and transparent recruitment processes based on principles that include fair and equitable representation of all minority groups in law enforcement bodies, including at senior levels.
26. Particularly in societies in which violence or conflict have previously broken out, risk assessment methodologies should be employed, built upon analysis of past violent events to assess the extent to which certain communities may face renewed threats of violence. Events or situations such as elections or periods of political or social unrest that feature or might exacerbate divisions based on national, ethnic, religious or linguistic identity should be carefully monitored to prevent possible violence.

27. In situations of emerging tensions, authorities should ensure that law enforcement bodies are appropriate and well prepared for the situation at hand, including the deployment of ethnically and religiously mixed personnel to areas of intercommunal tension. Practices including the establishment of neighbourhood watches or similar mechanisms should be considered in order to identify threats and alert law enforcement bodies should violence be threatened or take place.

28. Oversight bodies should be established to ensure independent examination of police policy, programmes, recruitment and other policing activities. Oversight bodies should include members of minorities and have the mandate and technical capacity to address complaints of unfair treatment and abuse against minorities

29. Training of law enforcement bodies in human rights and minority rights is an essential element of appropriate policing practice and should be designed to foster greater tolerance and respect for diversity, including the integration of gender issues in all aspects of the security and policing sectors.

2. Recommendations to non-State actors

30. Minority community associations, non-governmental organizations and community leaders should be constantly engaged in detecting the early signs of potential violence, and maintain channels of communication with all relevant authorities in order to identify concerns and threats and allow authorities to respond rapidly to situations of emerging tension.

31. Community and religious leaders should initiate and maintain constructive inter-ethnic and interreligious dialogue and should consider intercultural and interfaith initiatives, including youth initiatives, in order to promote harmonious relations and prevent violence against minorities potentially undertaken by terrorist or extremist nationalist, ethnic or religious actors.

32. Non-State actors and business enterprises should, in line with the Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework, promote and respect human rights in the environments in which they operate, and refrain from any action which may create tensions between groups or directly or indirectly lead to violence targeted against minority groups, for example regarding land and access to resources or national development projects. Consultations with minorities should take place before pursuing any activity that may result in negative impacts on minorities and their environments or create tensions between their communities.

33. Minority groups and majority communities should give special attention to the situation and perspectives of young people. Youth initiatives should be developed to promote understanding, tolerance and mutual respect across communities as well as to eliminate the possible recruitment or exploitation of young people by groups that promote or incite violence.

34. National human rights institutions should consider special units, sections or expertise on minority issues within their structures to ensure engagement with minority communities and monitoring of situations of potential threats and to support the implementation of human rights programmes in close contact and consultation with minority communities. National human rights institutions should be empowered to establish complaints mechanisms accessible to persons or groups belonging to minorities under which violence or threat of violence may be addressed.

35. Media bodies and sources should ensure that they do not contribute to or allow hate speech and incitement to hatred or crimes of violence. Independent media monitoring

bodies should be established to monitor media output and, where necessary, raise concerns with appropriate national authorities relating to incitement to violence.

36. Minority groups and national non-governmental organizations should be aware of existing regional and international mechanisms in place and their potential role in preventing violence against minorities; civil society should bring issues of emerging national concern to the attention of regional bodies and the international community.

3. Recommendations to regional and international actors

37. Regional human rights bodies should systematically pay attention to minority issues and potential threats to specific minorities within their work, including in the context of their monitoring of the implementation by States of regional and international standards. They should address specific questions to States on the situation of minorities and engage States on the nature of alleged threats or violence against minorities and on constructive ways of managing diversity as a preventive strategy.

38. Regional bodies should consider establishing specific regional mechanisms for the consideration of minority issues, including working groups, rapporteurs or other appropriate mechanisms with powers including undertaking country visits and analysing situations where minority rights concerns exist. Coordinated regional early warning and urgent action mechanisms should be established in order to respond quickly and appropriately to emerging situations of tension, conflict or violence.

39. International and regional organizations should increase their capacity to provide technical assistance to States, including in the fields of minority issues, non-discrimination, prevention of conflict and violence, and training of officials and law enforcement bodies. They should foster close diplomatic relations with States in order to promote the delivery and implementation of such technical assistance.

40. The United Nations and its regional and subregional partners should improve their collective response to future risks of serious violations of minority rights, as stated in the Human Rights Up Front initiative, including strengthening cooperation in respect of information gathering and sharing, and improving expertise, exchanging assessments of situations of common concern, as well as mediation, diplomatic and dialogue initiatives to develop a common understanding of emerging security concerns, and to ensure a timely and coordinated response.

B. Recommendations to address ongoing violence

1. Recommendations to States

41. States must respect and ensure implementation of international human rights and, where armed conflict is occurring, humanitarian law, regarding the protection of persons belonging to minorities who are at risk of or have experienced violence.

42. States have the primary responsibility to protect their populations from violence and atrocity crimes irrespective of national, ethnic, religious, linguistic or other identity, and should take immediate action in compliance with national and international law to stop violence as rapidly as possible and by all appropriate and proportionate means.

43. States must ensure that minorities affected by violence, including the most marginalized groups and those affected by conflict in which they are not combatants, have access to immediate humanitarian aid and relief such as water, sanitation, food, shelter and health care and other essential services.

44. States must recognize that women belonging to minorities may be exposed to gender-specific forms of violence and must take appropriate measures to protect women from the risks and threats of such violence, including deliberate targeting for rape and sexual assault used as a “weapon” in conflict situations.

45. States must take all feasible measures to ensure protection and care of children belonging to minorities who are at risk of or have experienced violence, in accordance with the Convention on the Rights of the Child and international humanitarian law.

46. States should establish effective policing and security mechanisms capable of immediately stopping violence against minorities when it breaks out. They should establish and maintain strong and efficient channels of communication between communities and law enforcement bodies to enable communities under attack to quickly contact State authorities and trigger security responses.

47. Law enforcement personnel must be objective and professional, and act appropriately and without prejudice to protect minority communities. Positive practices include: rapid deployment of ethnically and religiously mixed personnel to areas of intercommunal tension and violence and appropriate command structures being put in place to enable officers on the ground to take operational decisions required to protect or defend communities experiencing violence.

48. Where appropriate, States should ensure that law enforcement responses to violence include deployment of female officers and other personnel who, where possible, are trained in dealing with women who may be victims of rape and other forms of gender-based violence.

49. States must ensure that minorities are not forced to leave their homes. In situations where minorities are forcibly displaced for security reasons, the authorities concerned should involve those affected, including women, in the planning and management of their relocation. Displacement locations should not expose minorities to additional risks, including those faced by women who may have to leave secure environments to collect food and water, essential medical services and sanitation or other basic supplies. States should protect the property rights of minority groups and members of minorities, as well as their places of religious worship and cultural heritage.

50. Where possible, States should rapidly collect reliable data to establish and evaluate the impact of ongoing violence on minorities, including the number of deaths, injured persons, persons deprived of their liberty or displaced, and incidents of gender-based violence.

2. Recommendations to non-State actors

51. Other parties to armed conflicts, in particular armed groups, must comply with international humanitarian and human rights law and should take all measures to ensure that the rights and security of minorities are adequately protected in areas under their control. Non-State armed groups should take part in interactive dialogue and a mediation process within the framework of peace negotiations to ensure protection of civilians, in particular minorities specifically facing atrocity crimes.

52. National human rights institutions should play a role in stopping violence, including by publicly denouncing violence, offering to act as impartial mediators in conflict situations, designing and implementing policy and programmes in emergency situations, monitoring, investigating and reporting episodes of targeted violence against minorities including, where necessary, to regional and international bodies.

53. National human rights institutions should promote consultation and dialogue with all parties to the conflict and conduct research and fact-finding missions in order to investigate

incidents of violence against minorities. The role of national human rights institutions may be particularly important in mediation and independent investigation, particularly where the State and/or law enforcement bodies are perpetrators of, or implicated in, violence.

54. National human rights institutions or ombudsman's offices may consider establishing local offices or deploying staff to localities in which violence has taken place or is ongoing in order to closely monitor and report on situations.

55. Community and religious leaders should maintain inter-ethnic and interreligious dialogue when violence has broken out in order to help end violence and initiate action to protect minorities from continuing violence and possible atrocity crimes.

56. Media should report impartially and objectively on ongoing violence against minorities or conflict, using neutral language that does not aggravate tensions or increase the exposure of minorities to further violence.

57. As appropriate, non-governmental organizations and humanitarian actors should deploy staff and resources to provide assistance to minorities affected by violence. In the delivery of assistance, such actors should ensure that their operations do not expose their staff or any recipient of assistance to potential further violence.

3. Recommendations to regional and international actors

58. United Nations and regional human rights monitoring mechanisms should promptly monitor deteriorating situations of violence, support initiatives in the area of humanitarian access and seek to employ all procedural and diplomatic means at their disposal to rapidly contribute to ending violence, for example by undertaking fact-finding missions to investigate atrocity crimes that may have been committed.

59. The Human Rights Council, special procedures, the Special Adviser to the Secretary-General on the Prevention of Genocide and other relevant mechanisms should consider ways of strengthening the processing, management and evaluation of information on ongoing serious violations of minority rights and bringing information rapidly to the attention of relevant United Nations decision-making bodies, including the General Assembly and the Security Council.

60. As appropriate to the circumstances and the nature and extent of the violence being perpetrated, and in conformity with international law and standards, including the principle of the responsibility to protect, the international community should consider all means necessary to end acts of violence targeted against minorities. While diplomatic, mediation and assistance measures should be prioritized, the international community must be prepared to take collective action, in accordance with Chapter VII of the Charter of the United Nations, if a State is manifestly failing to protect its populations.

C. Recommendations for post-violence situations

1. Recommendations to States

61. In immediate post-violence settings, States should establish and implement effective communication strategies to assist in monitoring the situation and immediately open constructive dialogue with minority community leaders to hear their concerns, immediate needs and to help to build or restore trust and confidence.

62. Assessment of ongoing and urgent security and humanitarian situations should be undertaken to identify immediate and medium to longer term needs and risks posed to different minority communities, particularly where displacement has occurred, livelihoods have been affected and rapid return to places of origin is not possible.

63. In the immediate aftermath of violence or conflict, States should respond coherently, rapidly and effectively to provide basic safety and physical security to minorities, including the provision of basic services such as shelter, water and sanitation, health care and primary education.

64. Following incidents of violence or conflict, minority women and girls may be at particular risk of gender-based violence. States should pay particular attention to the situation of women belonging to diverse ethnic, national, religious or other minorities, who are often a target in post-violence scenarios as symbolic representatives of their community. Where women in post-violence situations have taken on household and community leadership roles, those roles should be recognized and fully integrated into post-violence decision-making processes.

65. States should pay particular attention to the situation and security of minorities affected by conflict in which they have been caught up, but to which they are not parties, including by protecting minorities from violence and from forced co-optation by the main parties to the conflict.

66. In conformity with the Guiding Principles on Internal Displacement, States should pay particular attention to communities that have been internally displaced in the aftermath of violence or conflict. States should assess their needs and, where appropriate, ensure the secure, sustainable and voluntary return to their places of origin. Any decision upon their return or resettlement must be taken in consultation with communities, and where secure return is not possible, appropriate short, medium and long-term solutions should be considered to avoid extended displacement.

67. States should conduct in-depth analysis on violence and conflict to uncover their underlying causes and to prevent violence reoccurring or developing into full-scale conflict. To that end, any conflict analysis framework should incorporate indicators on minority rights.

68. Fact-finding and investigations into violence should be undertaken at the earliest possible stage, including investigation of deaths and injuries and other serious violations and acts of violence against individual members of communities. Fact-finding should include an assessment of whether an ongoing or continuing risk of further violence exists. Where the threat of continuing violence exists, an appropriate law enforcement response should be ensured either via the maintenance or strengthening of a law enforcement presence.

69. Post-violence truth, justice and reconciliation programmes should be designed with the full participation of the minority communities affected and should aim at empowering minority victims and providing justice and reparations, as well as restoring their dignity and life chances. Recovery and peacebuilding programmes and strategies in post-violence settings should be designed to reflect the interlinked and mutually reinforcing nature of development, peace and security and human rights issues affecting minorities.

70. Transitional justice mechanisms should be accessible, independent, impartial and effective for receiving, investigating and adjudicating complaints arising from an individual or groups of individuals belonging to minorities. States should remove de jure and de facto obstacles to the right to redress for persons belonging to minorities, including onerous and discriminatory rules of evidence and procedural requirements, amnesty and immunity provisions.

2. Recommendations to non-State actors

71. Humanitarian actors in post-conflict and post-violence settings should pay particular attention to ensuring that assistance reaches affected minority communities and that no

discrimination or exclusion in access to assistance is experienced by minorities. In delivery of assistance, humanitarian actors should ensure that their operations do not expose any recipient to potential further violence.

72. All actors conducting needs assessments on post-conflict or post-violence should be aware of political and security dimensions affecting minorities and should enable effective minority engagement with political and security actors present on the ground. Needs assessments should be undertaken by teams equipped with appropriate expertise in minority rights, using assessment tools designed in consultation with minorities.

73. Minority communities should build or renew communication inside the communities of victims, and where possible with other communities, including those that may have been perpetrators of violence. To that end, community leaders may consider engaging in programmes for dialogue and mutual trust.

74. Media can play a significant role in promoting interfaith and intercultural dialogue among communities and in enhancing the development of a culture of peace and dialogue, including through independent and impartial coverage of events and post-violence or post-conflict peace processes.

75. Young people belonging to minority and majority groups affected by violence or conflict, either as victims, perpetrators or having played no role in the violence, should be encouraged to engage in face-to-face dialogue, identifying shared values, exploring cultural differences and discussing the issues of peace.

76. National human rights institutions should participate fully in the restoration of a strong human rights culture, including by focusing on training, education and public awareness programmes aimed at ensuring that minority rights are both understood and respected. They should monitor, inform and advise State authorities on specific post-violence issues affecting minorities and follow up on the integration of the rights and perspectives of minorities in any of the post-violence and reconstruction agendas.

3. Recommendations to regional and international actors

77. Regional organizations should maintain close and ongoing communication with national governments where violence has taken place and where necessary to support mediation, security, human rights and humanitarian responses.

78. As appropriate and in conformity with existing procedures and mechanisms, the United Nations should consider establishing commissions of inquiry comprising international experts to independently examine incidents of violence and accountability for atrocity crimes, and make recommendations based upon their assessments. States under investigation should cooperate fully with such inquiries and should provide full and unfettered access to commission members.

79. Relevant field-based United Nations bodies, mechanisms and specialized agencies should ensure that they have sufficient dedicated expertise on minority rights to promote and coordinate peacebuilding capacity development efforts in countries where intercommunal violence has been experienced.

80. As appropriate and in conformity with international law, the international community may consider supporting recourse to the International Criminal Court when States are unwilling or unable to prosecute the perpetrators of atrocity crimes against minorities.