

# report

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international

## Minority Rights: The Key to Conflict Prevention

By Clive Baldwin, Chris Chapman and Zoë Gray





Palestinian woman surveying the damage to her family home in Khan Younis following an attack by the Israeli army  
Brendan Corr/Panos Pictures

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#### Minority Rights Group International

Minority Rights Group International (MRG) is a non-governmental organization (NGO) working to secure the rights of ethnic, religious and linguistic minorities and indigenous peoples worldwide, and to promote cooperation and understanding between communities. Our activities are focused on international advocacy, training, publishing and outreach. We are guided by the needs expressed by our worldwide partner network of organizations, which represent minority and indigenous peoples.

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# Executive summary

Chechnya, Darfur, Kashmir, Kosovo, Sri Lanka – just some of the world's long running conflicts. All fuelled and fought over ethnic, linguistic, religious and cultural issues. All concern minority groups. But despite the fact that a disregard for minority issues lies at the heart of these conflicts, minority rights have been marginalized in international conflict prevention. Too many conflicts that have minority rights at their centre are not being understood as such. The result? Conflicts that could have been prevented flare up, as warning signs provided by minority rights violations go unheeded. Attempts to end violence only sow the seeds for more violence in the future, as peace settlements simply become ceasefires.

Too often, separating groups along ethnic, religious or linguistic lines has been seen as a way of upholding minority rights and keeping peace between groups. While such solutions might be an easy option in the immediate aftermath of conflicts, long term these divisions can entrench old hatreds and wounds. Such has been the case in Kosovo, where after seven years of international rule, society is deeply segregated and the threat of another ethnic conflict remains very real.

But the protection of minority rights began with the aim of preventing conflicts. These rights were not designed to separate people, nor are they meant to support secessionist movements, as some governments today fear. They aim to protect groups, and individuals within those groups, such as women, who lack power. Minority rights fall into four main categories:

- **Existence:** for example the Turkish state currently denies that Kurds are a minority, and for many years the government policy was to refer to them as 'Mountain Turks';
- **Identity:** in Iraq, minority communities such as Christians and Turkomans are targeted for violence because of their religious and ethnic identities;
- **Discrimination:** in China, well-qualified members of minority communities such as Uyghurs face discrimination in employment because they are not Han Chinese; and
- **Participation:** political and economic. In Sudan, national identity is defined in terms of one or a small, restricted, number of ethnic/religious groups, and other groups that form part of the country are implicitly or explicitly excluded from political life. The source of the Darfur crisis lies in economic exclusion and competition over scarce resources, exacerbated by

the historical discrimination of minorities and neglect of the area by successive governments.

When minority rights are enshrined in constitutions, and implemented through electoral, justice and education systems before a conflict has the chance to fester, there is a chance that conflict might not occur at all. Each of these systems can either promote peace or deepen minorities' sense of alienation from mainstream society. Post-apartheid, South Africa's electoral system has steadily promoted more representative participation of a range of black linguistic minority groups, white, Indian and Coloured people in the National Assembly. In contrast, minorities in Bosnia who are not considered 'constituent peoples' such as Jews, Roma and a dozen more communities, cannot vote, stand for election in the House of Peoples or run for the Presidency unless they compromise their ethnic or religious identity. This directly contravenes their right to take part in the economic and political decisions that affect them. Justice systems can offer minorities the chance to see violators of their rights brought to account and punished, whether the crime is violent or whether it is discrimination. Such justice is particularly important after mass crimes against a group of people – such as the genocide of Jews, Roma and others in the Second World War, or the expulsion of indigenous peoples from their historic lands. Education systems can combat or condone hate speech, can erode or support minority languages, and have a direct impact on building understanding between minority and majority cultures and religions that can create firm foundations for tolerant societies.

Conflict early warning systems are therefore more effective when they take a clear note of minority rights violations. Incorporating and analysing patterns of discrimination and exclusion, such as the systematic denial of the existence of particular groups or noting a lack of legislative framework to prevent racism and punish it, are vital in tracking the rise of tension that could lead to violence. Currently, such systems do exist but few have minority rights at their heart, others do but are criticized for being inconsistently applied. A more coherent and coordinated system that draws together national and continental expertise and highlights this at the international level, especially in the United Nations (UN), could have caused an intervention in Darfur at a time when the government might have been more accommodating to minority concerns. Instead, since 2003, at least 200,000

people have died, 2 million are displaced and thousands of women and girls have been raped.<sup>1</sup>

Minority experts should exist in key UN bodies that deal with conflict, including the Office for Co-Ordination of Humanitarian Affairs, the Peace Building Commission and the country missions.

Segregation, or the creation of ethnically or religiously 'pure' countries or regions, must not be the only post-conflict solution if sustainable peace is the genuine aim.

A greater commitment to understanding and implementing minority rights at local, national, regional and international levels, with the full inclusion and participation of minority groups, is imperative to conflict prevention. Where conflict has occurred, such knowledge and participation is critical in peace building, not least so that minorities who are caught up in violence between other groups have their voices heard.

# Introduction

## Background

In 1914, the problems of minorities in South-East Europe proved to be one of the major triggers of the First World War.<sup>2</sup> When this war ended, the world's most powerful leaders determined to create a new international society where the rights of minorities would be protected; this, it was believed, would remove one of the fundamental causes of conflict. One of the main areas of activity of the resulting League of Nations<sup>3</sup> was the protection of minorities in certain countries. The protection of minority rights then, began with the aim of preventing conflict. Indeed, this international protection of minority rights led directly to the development of the protection of human rights by the UN and other international bodies.

Today, the number of violent conflicts in the world that have a major underlying cause involving ethnicity, culture or language remains extremely high. The vast majority of these types of conflicts concern minority groups. It is the conflicts involving minorities that seem to last the longest and often cause the most bitterness and damage. Just a few examples of minorities involved in conflicts would include: Chechens, Darfurians (for example, Fur), Kurds, Palestinians, Roman Catholics in Northern Ireland, Serbs and Tamils.

And yet, despite minority issues being at the heart of many conflicts, the priority given by those who seek to end and prevent conflict to understanding minorities and minority rights is lower than it was in 1919. Although minority rights as such have developed significantly since 1919, they have largely been marginalized within the international protection of human rights. Among those working on conflict prevention, notably the UN, there are few or no specialists working on minority rights, (with the notable exception of the Organization for Security and Cooperation in Europe [OSCE] High Commissioner on National Minorities [HCNM]). Too many conflicts that are essentially about minority rights are not being understood or addressed as such. The result is that the same mistakes are made time and again, conflicts break out that could have been prevented, and attempts to end violence only sow the seeds for future conflicts.

Our basic proposition is that an understanding of minority rights is essential for anyone dealing with conflict prevention and resolution. MRG has been working on minority issues for 40 years in all parts of the world.<sup>4</sup> This report draws in particular on recent research carried

out in China, Darfur and other parts of Sudan, India, Iraq, Kosovo and Nicaragua, and thematic studies on electoral systems and genocide prevention, but also more broadly on MRG's experience worldwide. Our evidence is that the violations of minority rights are very often a warning sign of an approaching conflict. Such conflicts can be prevented if action is taken to protect the rights of minorities at an early stage. Equally, when attempting to resolve ethnic- or religiously-based conflict, an understanding and application of minority rights for all communities is vital. Without addressing the underlying causes of the conflict, what purport to be peace settlements are often simply ceasefires.

### Definitions

When referring to 'conflict' we are referring to violent conflict, largely (but not exclusively) within states, involving minorities.

The term 'minority' is still often portrayed as one that is controversial, with many governments continuing to deny that minorities exist or pretending that there is no agreement on who or what is a minority. Yet, the international understanding of who is a minority is quite straightforward – it is a group of people who believe they have a common identity, based on culture/ethnicity, language or religion, which is different from that of a majority group around them. A minority is often, but not always, defined as such with reference to their position within a country, but can also be defined with reference to a wider area (e.g. regional) or narrower area (e.g. by province). What matters is whether the minorities lack power – i.e. the ability to affect the decisions that concern them. It is those minorities that minority rights are designed to protect.

'Minority rights' is an international legal term. It refers to the rights of minorities as groups, but also the rights of those individuals within them. Minority rights derive from basic international law on human rights, as well as specific treaties and declarations on minority rights, notably the UN Declaration on the Rights of All Persons Belonging to National or Ethnic, Linguistic and Religious Minorities (UNDM).

Minority rights fall essentially into four main categories: existence, identity, discrimination and participation.

### Existence

Minorities have the right to exist, and to be recognized as the groups they define themselves to be. Genocide, the attempted destruction of a group, is the ultimate violation of this right.<sup>5</sup> But groups can also be threatened by the simple denial of their existence, especially when such a denial is official state policy (e.g. for many years the Turkish government policy was to refer to Kurds as 'Mountain Turks' and even today the Turkish state denies that Kurds are a minority).

### Identity

Toleration of the existence of minorities is only the first step. Minorities are also entitled to full protection of their identity. This means for groups, that the identity they choose is fully recognized, in particular that their culture, language and religion can be freely practised, and indeed is recognized and supported by the authorities. But also, there is an individual right of identity. Individuals have the right to choose their identity or identities, and not suffer any detriment for doing so. Indeed it is often attempts to rigidly divide society and individuals into pre-determined groups that leads to conflict, as in Bosnia, India and Rwanda.

### Discrimination

Discrimination affects people on many different grounds. A person can be discriminated against due to their ethnicity as well as their religion, and also due to their gender, age, disability or other grounds. This is often referred to as multiple or intersectional discrimination.

One of the major problems suffered by minorities is persistent and systematic discrimination, in which they are treated differently (i.e. worse) due to their ethnicity, religion or language (often along with other forms of discrimination). Or being treated the same in theory as everyone else, but in practice, their language or religious or cultural practices are not recognized (e.g. being required to work on a religious holiday). Discrimination affects people on many different grounds, but persistent and systematic discrimination is one of the major causes of conflict, causing groups and individuals to feel excluded and divided.

### Participation

This is the right of everyone to influence the decisions that affect them. It is of particular importance to minorities. The essential issue of why minorities matter, apart from their distinct identities, is their lack of power. With lack of power comes a feeling of exclusion, which can easily lead to violence being seen as the only option to attain

their needs. Minorities have a right, like all people, to participate in the political and economic decisions that affect them, but given their lack of power, particular care and measures are needed to ensure that they can. While this is an issue for minority men and women, minority women tend to have even less influence on decisions affecting their lives than minority men.

## Violence

Violent conflict involving minorities appears to come in two main forms: attacks on minorities and minorities resorting to violence.

### Attacks on minorities

This is where the violence is largely directed at minorities, sometimes because the minorities are scapegoated for other problems in society, sometimes because authorities want their land or other possessions, or simply because they are 'different'. Such violence may be carried out directly by government agents or it may be done by third parties, but almost always with government connivance. This type of violence, if left unchecked, can easily escalate. Minorities may retaliate, or the violence against them may worsen, sometimes culminating in mass killing, rape and other atrocities.

### Minorities resort to violence

The other type of violence is when it is resorted to by members of minority groups. This is often because many members of the minority community feel they are under threat and have nothing to lose from violence. Often, the minority community has suffered years of discrimination and denial of its identity. What may spark the violence may be a relatively minor incident, but based on years of discrimination and exclusion. But again violence, once started, may easily escalate and violence can continue for generations.

Both types of violence can be used for other ends by parties without a direct interest in the minority concern – such as agitators, governments and neighbouring states. But even when the violence is used for other purposes, it is often based on real concerns. However, ethnic and religious conflicts often last for decades, sometimes long after the initial grievances have been remedied. For example, the violence associated with Euskadi ta Azkatasuna (ETA) in the Basque region of Spain began at a time when the Basque identity (including its language) was being strongly suppressed by Madrid. Today, while the problems remain, the Basques have great freedom to practice their language and a large degree of autonomy and participation in the decisions that affect them, yet the violence continues. It is clear it is much better to prevent conflict before it begins.

This report is a practical guide on the essential elements of minority rights that are vital in conflict prevention. We have set out five broad themes – identity, the ability of minorities to participate in both political and economic rights, land rights and justice. The violation of these rights that have come up time and again as causes of conflict involving minorities and

we believe general lessons can be drawn in all five areas from experiences around the world. We also show how applying minority rights can (and indeed has) prevented conflicts from becoming violent. The report also gives an overview of how the international community responds to crises, and concludes with practical recommendations and a checklist.

# Identity

Identity is a key factor in most conflicts involving minorities. In genocides and 'ethnic cleansing', people are targeted because of their ethnic, religious or linguistic identity. Groups struggling for political control often base their claim to be the legitimate governors on their identity, and may argue that other groups are of a different, less legitimate (i.e. possibly 'foreign') origin and therefore have no right to govern. In psychological terms, people who are attacked (physically or otherwise) on the basis of their identity, will feel that their sense of self and their place in the world is being questioned, which explains why attacks of this type elicit such a strong reaction.

This section will look at a number of key issues with regard to identity and conflict: the role played by identity in conflict; how the national concept of identity is defined; education, language and religion; hate speech; and how conflict impacts on minorities' sense of identity. It will then propose some conclusions and ways forward.

## The role of identity in conflict

In conflicts which are mainly about an issue not directly related to identity, such as control of resources, one group or leader may use identity issues to mobilize people against another group. The phenomenon of 'ethnic entrepreneurs' (someone who uses issues of ethnicity for their own ends, particularly the threat of violence) has led many conflict theorists to conclude that identity is merely used and manipulated by leaders, and is not an issue in itself that is relevant to conflict. It is true that ethnic or religious identities are not everyone's primary reference in their sense of self, and nor do they condemn one to always fight against the other, but it would be wrong to argue that identity plays no role in ethnic/religious conflicts. Ethnic entrepreneurs would not be able to mobilize communities if there was no shared sense of identity and, above all, if there were no grievances to build on. Group identity exists regardless of state acceptance or denial of these groups, so there are major dangers in ignoring its relevance:

*'It...has been argued that the nonethnic character of Yugoslav politics actually led to its strengthening as a vehicle for the political opposition and made it possible for Serbs to gain control over the armed forces and state bureaucracy: since political ethnicity officially did not exist...there were no institutionalised ways of preventing one group from dominating the public sector'.<sup>6</sup>*

While identity may be the main, or at least the most evident factor in tensions between minorities and majorities, often other factors such as political and economic participation come into play. In Latvia, for example, restrictive citizenship and language policies in the 1990s – essentially targeting and affecting ethnic Russians – resulted in their large-scale economic marginalization. At a time of economic transition, while ethnic Russians comprised 40–45 per cent of the population, they held less than 10 per cent of the jobs in the relatively large civil service.<sup>7</sup>

## How nations define identity

The causes of the conflict that erupted on the Nicaraguan Atlantic Coast in the 1980s can in part be attributed to the Frente Sandinista de Liberación Nacional (FSLN)'s heavy-handed approach to the identities of the coastal communities. Decades of neglect by previous regimes had encouraged the development of a completely separate identity.<sup>8</sup> Coast communities 'did not identify themselves as Nicaraguans, and...referred to *mestizo* Nicaraguans as Spaniards'.<sup>9</sup> When the FSLN introduced an educational policy of teaching basic literacy skills in Spanish, the indigenous organization MISURASATA defied the government and ran the campaign in the Miskito language.<sup>10</sup> While the intentions of the FSLN appeared to be to bring development and education to the coastal communities, their assimilationist approach caused grievances and suspicion, which led the coastal communities to demand autonomy.

*'Boxed in by a Marxist ideology that could not comprehend indigenous identity and mobilization, the Sandinistas viewed such demands as part of the counter-revolution and labelled MISURASATA leaders as contras (opposition forces fighting to reinstate the previous regime) and the scene was set for conflict.'<sup>11</sup>*

The autonomy law which brought an end to the conflict in Nicaragua contained very positive language on ethnic identity, suggesting that in order to successfully bring such conflicts to an end, key legitimate grievances need to be addressed:

*'[T]he process of Autonomy enriches the national culture, recognizes and strengthens ethnic identity; it respects the specificities of the cultures of the commu-*

*nities of the Atlantic Coast; it redeems the history of the same; it recognizes property rights to communal land and repudiates any type of discrimination; it recognizes religious freedom and without deepening differences it recognizes distinct identities as coming together to build national unity'.<sup>12</sup>*

Divisive appeals by ruling parties to the majority had a devastating impact on community relations in the Punjab in India:

*'Had the Congress Party retained the support of low-caste and poorer segments of Sikhs, and refrained from making sectarian appeals, militants would have had a hard time unifying the community behind their cause. Appeals to communal sentiments by ostensibly secular Congress leaders destroyed the only alternative for inter-ethnic cooperation in Punjab. Once the region became polarized along religious lines, voluntary organizations and grassroots leaders lost any leverage they might have had against advocates of violence'.<sup>13</sup>*

Denial of citizenship (see also the section on political participation) to a group of people based on their belonging to a minority community will also have a significant impact on their sense of identity, and also results from how the nation defines itself. Identity is as much about a sense of belonging to a place as to a group, and the state is sending a clear message – i.e.: 'You do not belong here.' This can have far-reaching ramifications in terms of ethnic or religious conflict. As the former OSCE High Commissioner on National Minorities, Max van der Stoep, pointed out, based on seven years' experience of working with governments and minority groups to reduce tensions between them:

*'[A] minority that has the opportunity to fully develop its identity is more likely to remain loyal to the state than a minority who is denied its identity'.<sup>14</sup>*

Even the declaration of principles in the Nicaraguan autonomy law, regarding the promotion and protection of identity, which has yet to be fully implemented, seems to have played a significant role in ending the conflict.

Denial of citizenship can be used by the state to attempt to sidestep its obligations to promote and protect the specific identity of groups.

The problems of identity often stem from the lack of official recognition. Signs of problems within a state can be when the official (constitutional or otherwise) definition of a state is one based on ethnicity, language or religion.<sup>15</sup> This means that all other ethnic/cultural, lin-

guistic or religious identities are to be at best, second class, and at worst providing a strong justification to the state to suppress such identities. In response, many minorities, for example in Iraq, wish to see official recognition by naming all groups in the Constitution. Unfortunately there is no guarantee that even this will lead to concrete measures to promote and protect identity, and there may be debates as to who should and who should not be included. The recognition of groups may be a significant first step towards realizing the protection of their identity, and also sends a signal of goodwill to those groups. But such recognition should be backed up by strong guarantees of specific rights protecting identity in the Constitution or other laws in secondary legislation.

## Education, language and religion

All aspects of identity are important to minorities but two that are often at stake in situations of violent conflict are language and religion. In Kosovo:

*'little has been done to stop third parties restricting persons' right to use their language in public, including the destruction and removal of signs, and even threats and violence against persons speaking the "wrong" language in public. This has been essentially a security issue, but an attempt to require municipal authorities to protect signs was removed from the 1999 Regulation at the drafting stage'.<sup>16</sup>*

In Nicaragua, as mentioned above, the imposition by the FSLN of Spanish exacerbated tensions with the Atlantic region. Unfortunately, despite the autonomy arrangement, which enshrines the right to be educated in one's own language,<sup>17</sup> education in Spanish still dominates on the Atlantic Coast. It is very common, for example, for Creoles not to be able to write Creole English, although it is the language they speak at home. Languages of smaller communities such as the Rama are under threat of complete disappearance.<sup>18</sup>

Religion is another aspect of identity that can give rise to intense conflict. In China the issue is exacerbated by the government's perspective that religious expression outside of strictly-defined parameters should be interpreted as a security threat:

*'religious establishments are under state supervision and control, and non-state-sanctioned religious expression is equated with separatism, which is used as a pretext to crack down on such expressions, most recently in the Uyghur context'.<sup>19</sup>*

This is also problematic in the Tibetan context, where ‘historically, religious leaders had also been political heads of state, while today, expression of political rights is synonymous with religious freedom for many Tibetans’.<sup>20</sup> In the case of the Uyghurs, this situation has led to conflict with the state and secessionist claims.

The school curriculum is a key mechanism. A positive curriculum, in history and other subjects, can promote mutual and positive understanding of different minority cultures and their contribution to national identity. It

then becomes much more difficult for nationalist leaders to incite hatred against other groups. Unfortunately such curricula are still rarely implemented, even where they have been agreed to in theory. In China:

*‘Ethnic elements are rarely incorporated in the school curricula of either regular or ethnic schools in ethnic autonomous areas, although such provisions are enshrined in law’.*<sup>21</sup>

In fact, the central government monitors teaching materials closely to ensure that they incorporate ‘the proper understanding of nationality relations and advanced socialist thinking’.<sup>22</sup> A sign of a community that feels its identity to

be under threat is when leaders and parents demand separate schooling, usually on religious or linguistic lines. Such separation is rarely helpful in terms of integration and promoting understanding between communities, particularly in situations where there is real or potential violent conflict. Authorities responsible for such systems need to be aware of the genuine need for parents and others to ensure their children can grow up understanding their culture (including language and religion) combined with the need for the understanding between communities.

In China, various factors are contributing to the erosion of minority culture, including Han Chinese migration into minority areas, and decreased use of local languages in the public sphere. In some areas, ‘businesses are Han-dominated, making knowledge of Mandarin a prerequisite for employment’.<sup>23</sup> But a critical factor seems to be an education system imposed by central government that initiates:

*‘patriotic and Chinese nationalist education campaigns in religious forums and in primary and secondary schools, in an attempt by the state to strengthen minority individuals’ sense of loyalty to the Chinese state’.*<sup>24</sup>

## Hate speech

Hate speech publicly incites people to hatred and/or violence against minority communities and individuals, on the basis that they belong to a minority community. Hate

speech, whether carried out directly by government authorities or by third parties (particularly the media), is a major sign of a society which does not tolerate diversity and different identities. Hate speech, which can continue over many years, plays a role in building up support for violent attacks on minorities, and can lead to genocide. MRG’s Darfur study notes that in inter-ethnic fighting in the region in the 1980s:

*‘an “Arab Alliance” emerged, which unified Arab tribes in pursuit of an Arab supremacist agenda and against a Fur-dominated regional government...The government assisted Arab tribes, and the Arab Alliance invoked racially supremacist arguments in entreating this support.’*<sup>25</sup>

Particularly pernicious hate speech is that done systematically through the media or education systems. Those conducting hate speech through the media have been convicted of inciting genocide, such as in Rwanda in 1994 and the Nazi Holocaust in the 1940s.<sup>26</sup> Incitement to hatred was seen as a critical part of both genocides.

Hate speech often has a gender aspect, in particular in conflict situations, where military forces may be incited to commit sexual violence against minority women. Such hate speech is likely to exacerbate conflict, as minority men may be motivated by a need to avenge a perceived insult to the ‘honour’ of their community.

Recognizing in part the role hate speech has played in conflicts and genocide, both the International Convention on the Elimination of Racial Discrimination (ICERD) and the International Covenant on Civil and Political Rights (ICCPR) require all signatories to prohibit advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.<sup>27</sup>

In 2005 the UN Committee on the Elimination of Racial Discrimination (CERD) recognized the importance of hate speech when it developed indicators to help it to identify the early signs of genocide, when examining a government’s record towards eliminating racial discrimination. These indicators include:

*‘Systematic and widespread use and acceptance of speech or propaganda promoting hatred and/or inciting violence against minority groups, particularly in the media’, and ‘Grave statements by political leaders/prominent people that express support for affirmation of superiority of a race or an ethnic group, dehumanize and demonize minorities, or condone or justify violence against a minority’.*<sup>28</sup>

The CERD initiative in developing these indicators is very important. However, the UN, with its agencies that

operate on the ground in pre-, mid- and post-conflict situations, needs to do more to incorporate human rights indicators – particularly minority rights – into early warning and conflict prevention mechanisms in order to better identify the warning signs of ethnic/religious conflict.<sup>29</sup>

Governments have an important role to play in combating hate speech, and key to this is the promotion of understanding between groups.<sup>30</sup> Further, the Council of Europe (CoE) Framework Convention on the Protection of National Minorities (FCNM) obliges governments to promote such understanding.<sup>31</sup>

## Personal laws

Personal laws govern issues relating to family life such as childcare, custody, divorce and marriage, and play a key role in how communities can exercise culture and traditions. In some states, minorities are granted freedoms to implement personal laws in accordance with their cultures. On the other hand it is important that any such application of personal laws does not exacerbate division between communities. Understanding and applying minority rights will help minimize divisions.

Some states have opted for applying personal law according to territory, which can also be problematic for minorities. In Nigeria, violent conflicts have arisen over the application of shari'a law (which covers most aspects of personal law) in majority Muslim states where Christian minorities live. This illustrates the importance of protecting the rights of groups who become minorities when states devolve power to the regional level. Further, it is important to retain strong safeguards of individual rights, particularly women's rights, within personal law frameworks. On some occasions, personal laws have been applied to overly favour the position of males, on issues such as inheritance rights.

## How does conflict impact on identity?

Conflicts often accentuate the sense of identity of those involved, but at the same time make it narrower. If communities feel that they are threatened, the identity that is at the heart of the conflict – or which others place at its heart – may take on a greater significance for them than it previously had. In South Sudan:

*'the message of "we are all one as Southerners", pushed by the Sudan People's Liberation Army/Movement...was to some extent effective in unifying the south during war times'.<sup>32</sup>*

However, greater diversity within South Sudan has reasserted itself since the signing of the Comprehensive

Peace Agreement (CPA). This may be due to new grievances against decentralized power structures in the South, as 'resources and government in South Sudan are centralized in Juba'.<sup>33</sup> Women belonging to minorities may often feel this narrowing of identities most acutely, as they may be required to suppress their specific grievances (including repression from within the community) in the name of prioritizing the 'more pressing' conflict with the state.

Simplifying identities to bipolar opposites makes it easier for 'ethnic entrepreneurs' to rally support for nationalist platforms, demonize other groups and incite violence. In diverse societies not marked by recent conflict, it is common for individuals to have multi-faceted identities, and to empathize with, for example, others in their neighbourhood, or people of the same social class, just as much as with people of the same ethnic or religious group.<sup>34</sup> Nationalist leaders often seek to simplify aspects of belonging to ethnicity or religion. One way is through hate speech. Another is the dynamic of conflict itself. Research in ethnically-mixed regions of Croatia in the 1980s and 1990s showed how the emerging conflict and experience of atrocities forced people to reassess how they perceived neighbours of different ethnic groups – and their own identities.<sup>35</sup>

Ironically, power-sharing agreements that are intended to bring conflicts to an end may contribute to fixing and simplifying identities, and work against the multiple, cross-cutting identities that help to emphasize what people have in common rather than what divides them. As discussed below in the section on political participation, Bosnia and Herzegovina (BiH) is a case in point. Citizens are forced to identify in terms of one of three constituent peoples to have access to a range of rights. This is contrary to human rights law, which states that individuals must have the freedom to choose their identity and not suffer a detriment for doing so (see for example Article 3 of the FCNM). A hypothetical case illustrates the far-reaching impacts this may have in terms of integration and discrimination:

*'a well-qualified Bosniak woman could, for example, be rejected for a position [as a judge] with the newly established State Court because the Court had reached its quota of Bosniaks and is only seeking those from a Serb or Croat background. If this person sees herself primarily as a woman who happens to have Islam as her religion, it is not clear if this would amount to gender discrimination'.<sup>36</sup>*

The participation of the three constituent peoples is prioritized over guarantees for women's participation. However, as a judge with a more complex sense of self-identification

than just her ethnic belonging, she might bring a different perspective to cases coming before her, thus contributing to the promotion of a more diverse and integrative society.

Just as war hardens and simplifies identity, however, peace (at least relative peace) helps people to return to a more diverse self-view. In Nicaragua, there is evidence of more diverse political participation; the Miskito-dominated YATAMA party reached out to other communities more effectively in the 2006 municipal elections, fielding more diverse candidates, which also resulted in the party gaining more seats on municipal councils.<sup>37</sup> It was even possible for YATAMA to enter into a coalition with its enemy of the 1980s, the FSLN.

Where power-sharing agreements have been used to bring identity-based conflicts to an end, a period of peace may allow 'sunset clauses'<sup>38</sup> or reform of rigid power-sharing structures to be implemented, (as proposed below in the section on participation).

## Conclusions and ways forward

Repression of identity often leads to violent conflict, and the first step to preventing this is for states to institute strong guarantees of the right to practice identity in law and in practice, and to promote a concept of the nation that recognizes its full diversity. Schools also play a key role in promoting understanding of the diversity of identities within a state. Where the size of communities allows, minorities should have access to education in both the minority and national language. When members of minorities can speak both the minority and majority language, their employment opportunities improve. However, separate schools for minorities do not help to promote understanding between communities and should be avoided unless they are essential for pupils' security. It

is also very important, whether schools are integrated or not, that a common curriculum is developed for the whole country, to include positive teaching about the full diversity of communities in society. A nationally agreed history curriculum is particularly important as the propagation of historical myths, one-sided versions and exaggerations is a powerful tool in the hands of 'ethnic entrepreneurs'.

It becomes particularly difficult to resolve identity issues in situations of ethnic/religious tension, when hatred/fear of the other has become a part of the group's perceived identity. In such situations, a process of healing is necessary. There has been some success with workshops that bring together people of different groups to deconstruct their perceived grievances and perceptions of the other:

*'long-term resolution of such conflicts and reconciliation between the former enemies requires changes in the groups' national identities; in particular, they require a redefinition of each group's identity so that affirmation of its own identity is no longer predicated on negation of the identity of the other. Such identity changes are possible, provided they leave the core of each group's identity and national narrative...intact'.<sup>39</sup>*

Broad-based truth and reconciliation processes can also serve this purpose.

In the case of Indian communal tensions, civil society organizations have been able to build cooperative links across communities and have helped to prevent riots.<sup>40</sup> Where minority leaders lack legitimacy or represent only a limited conservative element of their communities – and whose main focus may be the kind of power-sharing arrangements that set in stone their own roles and powers – civil society groups may be a counter-balancing force.

# Political participation

When minorities are denied a say in political affairs, conflict often results because a political voice is the key to the enjoyment of all other rights. For example, exclusion from education/employment opportunities and land rights can result, as minorities fail to influence government policy and practice. Further, a strong signal is sent to minorities that the dominant community does not see them as belonging in the nation. In the face of such exclusion, a minority may see secession as the only route.

This section will look first at mechanisms to facilitate minority participation and their effectiveness, and then examine some of the issues affecting the participation process. Finally, it will present some conclusions and suggestions for ways forward.

## Factors affecting minorities' political participation

Minorities can be excluded from political participation for numerous reasons. In Nicaragua (before the civil war in the 1980s) and Sudan, central governments were founded on an exclusive concept of nationhood: i.e. national identity is defined in terms of one or a small, restricted, number of ethnic/religious groups, and other groups which form part of the country are implicitly or explicitly excluded.

To participate politically, minority representatives have to accept this concept, which casts doubt on their ability to truly represent their communities. In addition, some minority regions are geographically isolated from the rest of the country, and governments have maintained an attitude of neglect and disinterest towards them.

In China, autonomy arrangements have been set up for some minority communities, but the highly centralized government has shown itself to be intolerant of critical expression, and other problems. For example, the allocation of sufficient financial resources and the inadequate education provision have blocked effective functioning of the autonomies.

In India,<sup>41</sup> complex and innovative power-sharing agreements and affirmative action mechanisms have been developed, but obstacles have included central government interference in political appointments and manipulation of sectarian differences. In addition, in China, India, Iraq, Kosovo and Sudan, a poor security situation in some areas has hindered local political participation.

## Citizenship

Citizenship is key to full participation in political life. For example, in most countries non-citizens are not able to vote or stand for election. Whereas governments have the right to put in place mechanisms and legislation governing the process by which people can gain citizenship of the country, some may intentionally restrict certain groups' access to citizenship to exclude them from political participation – or from enjoying other rights such as access to public services, or land/property rights.

In the case of *Yean and Bosico vs Dominican Republic*, the Inter-American Court of Human Rights found that the government had unfairly denied citizenship to two women who were born in the Dominican Republic to one Dominican and one Haitian parent. As a result of their lack of citizenship, the women were:

*'unable to access other critical rights such as the right to education, the right to recognition of juridical personality, the right to a name, and the right to equal protection before the law, and they were "vulnerable to expulsion from their home country"'*.<sup>42</sup>

The state approach of excluding those of Haitian origin from citizenship has contributed to a feeling among majority Dominicans that people with a Haitian origin do not belong, and racism is prevalent. In the past three years, there have been several cases of mob violence, where entire Haitian communities have been attacked in retaliation for crimes allegedly committed by Haitian individuals.

Obstacles in accessing citizenship may also have gender elements, highlighting issues of multiple or intersectional discrimination. For example, it is reported that some Lisu women in northern Thailand have had to have sex with officials before they could get citizenship papers.<sup>43</sup> Latvia and Estonia are examples where tensions over citizenship – involving ethnic Russians – were to some extent resolved, partly through the 'good offices' involvement of international organizations such as the CoE, European Union (EU) and the OSCE.

## Mechanisms for minority participation

Mechanisms to promote minorities' political participation can be set up at the national or local level (the latter usually

in the case of territorially concentrated groups). They can be formal (often enshrined in the Constitution) or informal, and have an executive or merely consultative mandate.

### Electoral systems and reserved seats

At the national level, a common arrangement is to reserve quotas for minorities – these can be ministerial posts in government, and/or seats in parliament. In addition, certain electoral arrangements, such as block votes, closed or open list proportional representation, and transferable votes will not guarantee minority representation but under certain circumstances may promote it. Important issues here include the extent to which the minority representatives genuinely represent their communities (in particular the full diversity of those communities, including minority women), and the influence they have in practice, being one voice among many.

In India, 22 per cent of seats in the legislature are reserved for minorities, and the record in terms of preventing conflict has been mixed. But it is hard to draw conclusions about the precise impact of reserved seats in this case, due to the many and disparate conflicts in the country which are affected by both local and national conditions. However, the evidence from MRG's research shows that while devolved powers are important for promoting minority rights and reducing tensions, it is also important for minorities to be represented at the national level, and reserved seats can be important in this regard.

In Kosovo, there has been good practice in that the approach 'has gone beyond simple representation in assemblies and attempted to ensure minority representation in government'.<sup>44</sup> However:

*'the right to participate has largely been the right of minority leaders to participate... In 2003, the OSCE said that the elected minority representatives lacked accountability to their electorate'.<sup>45</sup>*

By increasing the number of minority representatives in legislatures, reserved seats can strengthen the voice of minorities in political life. Further, they signal goodwill on the part of the state and as such, can be important in creating an inclusive environment where minorities can identify with and feel part of the nation, thus reducing the likelihood of separatist tendencies. However, as with affirmative action measures in the economic domain (see later), there is always the danger that elements of the majority population will see them as 'unjustified' and 'discriminatory', thus potentially increasing tensions. For this reason, states must take care when introducing such measures, be aware of potential tensions and ensure that the measures are transparent. States must also give clear explanations as to why such measures are necessary and how

they can benefit the state as a whole. Most importantly, the actual causes of the lack of representation of minorities in the parliament, in particular systematic discrimination must be addressed. Reserved seats must not become an excuse for avoiding addressing the underlying problems. If an arrangement for reserved seats is agreed as part of a peace agreement, it may be possible to incorporate a clause replacing them with a more integrative arrangement after a certain number of years.

Minority women will not necessarily benefit from seats reserved for minorities (or those reserved for women). In Sudan, although the CPA mandates that 25 per cent of all political posts be held by women:

*'the reality is that out of 28 ministerial posts, only two are held by women. In 10 Southern Sudanese states, there is not one woman governor. There are no female community chiefs'.<sup>46</sup>*

On the other hand, in Afghanistan:

*'Under the SNTV system...the ethnic diversity of the nation was reflected in the 68 women MPs elected. This was a product of the geographic concentration of the Hazara, Tajik and Uzbek communities and the law which mandated that one or two women be elected from each of the country's 35 provinces'.<sup>47</sup>*

Minority women can play a role in peace-building by drawing attention to the many different identities that people have and therefore the commonalities they share across ethnic/religious divides.

Changing boundaries to create minority-dominated electoral districts can also be seen as a form of affirmative action, designed to ensure that minorities are elected in certain districts. However:

*'the creation of ethnically concentrated constituencies means not only more minority-dominated constituencies, but also more constituencies in which majority-group voters dominate and in which majority-group candidates do not need to worry about minority support or minority interests'.<sup>48</sup>*

Certain systems, under the right circumstances, can strengthen minority representation in legislatures and governments, and improve chances of preventing a relapse into war in post-conflict scenarios.<sup>49</sup> In New Caledonia, a system of power-sharing based on list proportional representation took:

*'the heat off inter-ethnic issues, enabled the emergence of smaller parties and, in 2004, paved the way to the*

*triumph of centrist parties which have shifted the political agenda away from the politics of ethnicity*.<sup>50</sup>

There is some evidence that list proportional representation systems are more successful than majoritarian systems in strengthening minority representation. However in India, which has a 'first past the post' system,

there has been some success in promoting ethnic cooperation, mainly due to the Congress Party's 'umbrella role for Hindus and Muslims...to unite under a national banner of the state, leading to a long period of elite accommodation'.<sup>51</sup>

MRG's report, *Electoral Systems and the Protection and Participation of Minorities*, lists nine common types of electoral system, and looks at cases where they have been implemented, analysing the impact on minority representation and reduction of communal tensions. While it does not conclude that any one system is always better for minority integration, emphasizing the importance of context in each situation, it does outline some general guidelines for designers of electoral systems.

### Minority-based political parties

Political parties based on minority identity may also provide a vehicle for minority voices to be heard. The Nicaragua experience shows that where ethnically-based political parties exist, there may be obstacles to their ensuring political participation for minorities.<sup>52</sup> YATAMA, a party with roots in the Miskito community and now reaching out to all minorities on the Atlantic Coast, was barred from participating in elections in 2000 by a Supreme Election Council resolution on the basis of the party having failed to meet a requirement of a sufficient number of signatures backing their candidates. The case went to the Inter-American Court for Human Rights, which found that the Nicaraguan state unfairly limited regional inhabitants' rights of political participation.<sup>53</sup> And while the proportion of minority representatives in the governing bodies of the two autonomous regions is staying the same or falling, that of *mestizos* (majority Nicaraguans) is increasing (to over 50 per cent in both regions). Further, four out of five deputies representing the regions in the National Assembly are *mestizo*<sup>54</sup> (representation at the centre to reinforce decentralized autonomy has also been crucial in India),<sup>55</sup> and in any case, the system is set up to minimize representation of the coastal regions at national level (the Southern Atlantic Autonomous Region has 88,574 habitants per national level deputy, as opposed to 34,145 in Grenada).<sup>56</sup> To remedy this, the Network of Coastal Leaders has demanded two reserved seats per ethnic group in the National Assembly and Central American Parliament.<sup>57</sup>

But do minority-based parties promote or hinder long-term democracy and peace-building?

As in the case with education, promoting separate political development for different groups will do little to promote long-term understanding and peace. Creating a political system where ethnicity and religion is the main or only criteria for power risks meaning that minority-based parties become seen as the only possible choice to protect a group's rights (as has been the case in Bosnia and Hercegovina [BiH] and Belgium). This risks all aspects of day to day politics, including disputes over the economy, taxation and spending, being seen through the lens of ethnicity or religion, making differences between groups much sharper.

However, minority-based parties may be genuinely desired by a community, particularly one that has long felt excluded. In India, '[t]he empowerment of the regional ethnic parties that broadly represented the ethnolinguistic identity of the majority Tamils fulfilled the first pre-condition for ethnic peace'<sup>58</sup> in Tamil Nadu. Given the right circumstances (and the same caveats regarding genuine representativity, inclusiveness and prohibition of hate speech apply to both majority and minority parties), they can provide an alternative to fixed allocations of seats and government posts. Given the freedom to set up parties, it will be minorities themselves who decide what their identities are and how they are represented.

### Consultative/advisory bodies

Consultative or advisory bodies advise government or parliament on minority issues without having executive power. They can vary greatly in their composition, working methods and focus. Their power may in practice be limited, and will depend, upon other things, on their perceived legitimacy (in the eyes of central government and their own community), and funding. Where legitimacy is high there may be considerable pressure on the government to implement their recommendations.

In Nicaragua there is an advisor to the president on Atlantic Coast issues, but he is not from a minority community, and this has affected the coastal communities' confidence in him. Kosovo boasts similar mechanisms at municipal level, with each authority required to set up a Communities Committee, but 'the effectiveness of these seems to have been very limited'.<sup>59</sup>

Nevertheless, in other countries, such as Croatia, Hungary and Singapore, there has been more success with such mechanisms and their flexibility and informality may allow them to play an important role in conflict management.

### Autonomy and federalism

In countries where minorities are concentrated in specific areas, arrangements for political decision-making to be

taken at the regional level may be set up. A common mechanism is autonomy, where an agreed set of powers (often covering culture, economy, education and religion) is ceded by the central government to a local government with jurisdiction over a specific territory (which may be inhabited by one or more minority communities). In federalism, the entire country is divided up into decentralized units, each enjoying devolved powers. Federal/autonomy boundaries may or may not be drawn based on the location of ethnic/religious communities. In the case of autonomies it is more usual for this to be the case.

Autonomy or decentralization can create new minorities in the regions to which power is decentralized. For example, if power over education or language is devolved to regional levels it will be the regional minorities whose rights will need to be protected on these issues, even where the regional minority may be a majority in the country as a whole. If there is a minority area which is poorer than the rest of the country, and powers over taxation and spending on social assistance, health etc are devolved to regions rather than being done nationally, the poorer minority region may find itself worse off with less tax revenue, but an increased need to spend on social assistance and health. If new municipalities or autonomies are created which are dominated by an ethnic, religious or linguistic community to the exclusion of other smaller communities, heightened population transfer may happen out of the area by these smaller excluded communities, thus leading to increased segregation.

Where a minority is not concentrated in one place, non-territorial autonomy (also referred to as cultural or group autonomy) is a possible arrangement. This involves granting decision-making powers to a minority community (often through a body such as a council) over specific areas which concern them directly, for example, culture, education, personal laws and religion. The autonomy body may have some tax-raising powers and/or receive subsidies from the central government. Current examples can be found in Estonia, Hungary, the Russian Federation, Slovenia and the provisions for Muslim personal laws in India.<sup>60</sup>

In Nicaragua, the autonomy arrangement agreed in 1987 succeeded in putting an end to the war between coastal communities and the Sandinistas. One reason for the success of the arrangement may be the broad-based consultative process:

*'a...working document...was presented to communities through a large-scale house-to-house community effort aimed at winning local approval for a broad-based autonomy package. Hundreds of civil society activists on the Atlantic Coast were trained to carry out door-to-door consultations as part of a major*

*social mobilization involving workshops, community assemblies, workplace meetings and broad participatory meetings with churches and other local organizations.'*<sup>61</sup>

It is likely that another factor in the success of the autonomy arrangement is that it addressed the key issue of the Atlantic communities' identities, one of the initial triggers of the war.

Whether autonomy is good or bad as a long-term peace-building mechanism seems very much to depend on how it is implemented; however:

*'carefully designed autonomy and self-governance regimes can provide the institutional structures that offer sufficient space to non-dominant groups to experience genuine self-governance, while simultaneously making dominant groups less insecure about the future existence of the overall state.'*<sup>62</sup>

Various failings have prevented the full implementation of the autonomy on the Nicaraguan Atlantic Coast. While these do not appear at present to signal a return to violent conflict, they may offer lessons for governments and minority representatives negotiating on future autonomies. They include: domination of the political posts in the autonomous organs by *mestizos*; a failure to address conflicts over land – conflicts with the state, with companies, and with other coastal communities (a crucial law on land was not passed until 2003), and the central government bypassing the autonomy statutes to sign deals with private companies for natural resource exploration; and a lack of transparency around central budgets and decisions around budget allocations to autonomous organs.<sup>63</sup> In this respect the concerns with the Atlantic Coast autonomy are the opposite of the concerns cited by some observers<sup>64</sup> regarding the cementing of separation; here, minorities are not able to protect their cultures and interests sufficiently.

India offers an interesting contrast of a positive and negative experience with autonomy – that of Tamil Nadu with Indian Jammu and Kashmir (IJK). In Tamil Nadu, where Dravida<sup>65</sup> demands for a separate state dated back to before independence:

*'scrupulous observation of ethnic autonomy, adequate representation at state and national level, inclusion of smaller minorities through ethnic power-sharing and shared access to state benefits can turn a separatist movement into a force for democracy and a willing part of the state.'*<sup>66</sup>

In IJK, by contrast, the government granted a special status to the region but then 'gutted that promise of any real

autonomy'<sup>67</sup> by imprisoning the legitimate leader Sheikh Abdullah. Two wars between India and Pakistan 'had the most profound implications for the Kashmir dispute and for the rights of minorities and their demand for autonomy in IJK'.<sup>68</sup> But as well as external pressures, it appears that:

*'Sheikh Abdullah's actions did not help matters: he denied Praja Parishad, a Jammu Hindu party, the chance to put up candidates in elections to the first Constituent Assembly.'*<sup>69</sup>

As noted in the Tamil Nadu case, the protection of smaller minorities within autonomies is crucial. In this case, the failure to do so may have given the central government part of the pretext it needed to renege on its promises.

### Complex power-sharing

Finally, some experts propose complex packages of arrangements to ensure broad-based participation. These are often instituted as part of a peace-building process in the aftermath of a violent conflict. Two such packages are consociationalism and integrative power-sharing.<sup>70</sup>

Consociationalism, originally developed by Arend Lijphart,<sup>71</sup> involves power-sharing among communities in the executive, often through reserved ministerial seats, and autonomy arrangements, which allow 'segments' of society (for example minority communities) to take key decisions on matters concerning them. These arrangements are backed up by proportional representation (for example in public sector employment, funding, and/or political representation) and a mutual veto for each community on key issues affecting them. Integrative power-sharing is most commonly associated with the work of Donald Horowitz. Rather than setting up institutions that entrench powers for named communities, it favours electoral systems and preferential policies that encourage cooperation and alliances across ethnic/religious divides.<sup>72</sup> These may be backed up by a strong minority rights regime, including effective anti-discrimination laws, and effective enforcement mechanisms.

A number of cases show that consociational power-sharing arrangements may in the short term help a society to emerge from conflict; however, that this might be at the cost of freezing ethnic identities. The most extreme example of this is in BiH, where voters are required to identify themselves as one of the three 'constituent peoples'. This rules out mixed identities, and violates the minority right to be free to identify or not as a minority, and not to suffer advantage or disadvantage as a result of that choice.<sup>73</sup> (For further discussion of how this arrangement, and others like it, work to counter cross-cutting

identities and thus hinder integration, see the section on identity). Moreover, where such systems reserve fixed numbers of seats for communities, the distribution of seats may become rapidly outdated as demographics change. Observers point out that the Dayton agreement did serve its primary purpose – to bring the violent conflict to an end. But reconciliation between communities is not happening, and there is little indication that the country would be able to survive as a coherent whole without the current high level of international intervention. The short-term measures that may be considered necessary for a ceasefire often become frozen into the permanent settlement leaving little room to address the integration of all communities.

## Participation in peace processes

One of the major focuses of peace processes in ethnically- or religiously-divided societies is how the state will be governed in the future and what role the various communities will have in it. It is highly important for minority women and men to take part in such processes. However, in Darfur, Iraq and Kosovo, these processes have been dominated by a small number of groups, often those that were actively involved in armed conflict, leaving other groups with no voice. In Iraq:

*'The [Constitution] drafting effort largely represented a political pact between the Kurd and Shi'i leaders. To meet the constitutional deadline...the consensus-building process was moved from the all-inclusive Constitutional Committee to an informal forum of Shi'ite and Kurdish leaders, with some US-UN diplomatic mediation and influence.'*<sup>74</sup>

In Kosovo, similar secrecy-shrouded negotiations surrounded the drafting of the Constitutional Framework in 2001.<sup>75</sup> In 2006–2007, discussions on a future status of Kosovo only included Serbs and Albanians, with other groups being officially represented by an Albanian.<sup>76</sup> In Darfur, one of the key triggers in the escalation of the conflict there was the decision of negotiators at Naivasha (supported by the international community) to exclude Darfur and other areas from the inaptly named Comprehensive Peace Agreement.<sup>77</sup>

## Conclusions and ways forward

When devising mechanisms for minority participation to prevent violent conflict or build peace, one of the main debates can be reductively described as 'separation versus integration'. Where there are entrenched historical

grievances (often very recent), separate mechanisms for different groups either at the regional level (autonomies) or national level (power-sharing mechanisms with a distribution of posts, seats etc according to community), are more common than more integrative solutions focusing on incentives to politicians to reach out to all communities and guarantees of equal participation, which include strong anti-discrimination measures. Analyses of peace agreements indicate that consociational agreements may be needed in order to get parties to agree to a transition.<sup>78</sup> Historical grievances and lack of trust combine to ensure that leaders push for strong entrenched mechanisms, which specifically guarantee their voice in decision-making.

But such measures which should be temporary, rarely remain so. Political systems based on separation do very little to bring about the integration of different groups that is necessary for long-term peace between them. The 'separate' models rarely give a voice to the smaller, peaceful groups, such as the Roma, and give no roles to those with mixed identities. They do little to address the key underlying causes of violence, systematic discrimination and denial of identity.

The South African experience shows that it is possible to institute a mechanism whereby an initial power-sharing arrangement is reviewed after a number of years and replaced by a more integrative system (as proposed by the Lund Recommendations, see 'Relevant international instruments'). In a minor way, this has been done in Iraq, where the three-member presidency (with a Kurd, Shi'a, and Sunni representative), 'envisaged by the TAL [Transitional Administrative Law] as a consociational arrangement to constrain the tyranny of a simple majority',<sup>79</sup> has been carried over into the post-

TAL set-up for a limited four-year term. It is hard to get community leaders to give up mechanisms which cement their roles in place, but which are unlikely to be good for the integration and inter-community understanding needed if peace is to be sustainable in the long term. At the very least, reserved seat arrangements should be reviewed periodically to ensure that they continue to reflect changing demographics.

The only system that would appear to work in the long-term is one that does not create boxes which minority representatives have to fit themselves into, and which enshrines minority rights in the Constitution; operates affirmative action, but not rigid quotas, where necessary to overcome entrenched historic discrimination; promotes understanding and knowledge of all communities in society through the education system and media; and guarantees a voice to all parts of society, including minority women. This structure needs to be underpinned by strong anti-discrimination laws and enforcement measures, which make available effective and accessible channels to challenge discrimination in all its aspects, including discrimination in political participation.

In addition, mechanisms to facilitate dialogue between communities and the government established at the national level have often been instrumental in preventing conflict, and in dealing constructively and in a structured way with issues affecting minorities that may contribute to increased tensions. Such bodies can function effectively not only in decreasing tensions but also, in the long term, as a tool to manage diversity in society in informal ways. This function may be taken up by a standing consultative/advisory body of the type mentioned above, or as an *ad hoc* body set up for the specific purpose of managing tensions.

# Economic participation

Development and economic exclusion affecting ethnic, religious and linguistic minorities have been key features in conflicts in the Balkans, Kenya, Nigeria, Northern Ireland, Philippines and Sri Lanka, among others. Ill planned or intentionally discriminatory economic and development policies/programmes can deepen inequalities, entrench power and economic hierarchies, and stimulate or aggravate inter-ethnic tensions leading to conflict.<sup>81</sup> Development that clashes with the priorities and needs of minorities and indigenous peoples, such as through the appropriation of lands, can lead to 'development conflict' (see below). Aside from the effect that conflicts have on the people affected, development conflict or conflict involving economic inequalities/exclusion and/or competition over resources has a seriously negative effect on growth and poverty reduction. Yet genuine rights-based development and equitable policies that provide for economic participation, using the minority rights framework, can promote stability, sustainable development and even economic growth. This section will consider these two types of conflict and some of the means to help alleviate economic and development exclusion. It also proposes some conclusions.

Analysts and academics tend to argue that economic exclusion contributes to causing conflicts when it is combined with political exclusion of a group.<sup>82</sup> What is clear is that economic exclusion has been a major feature across many conflicts, and is so closely tied to other forms of social exclusion it can often preclude access to power, access to decision making or be partially caused by these. Analysts also regularly raise the case that a certain level of development is required for a community to be in a position to risk resorting to violence. However, where governments do not take action to promote and protect minority rights, the development of minority communities is neglected and the reality and perception of exclusion is increased. The solution is to work systematically towards improving the situation of the excluded, and to entrench inclusion economically, socially and politically. This includes taking additional 'special measures', when required, to guarantee minorities 'full and equal enjoyment of human rights and fundamental freedoms' as provided for in the UNDM<sup>83</sup> and the ICERD. Structural inequalities should be tackled to avert conflict. Failing that (and this is much more costly on all accounts), action to address these potential causes of conflict needs to occur early on in the gestation period of violence.<sup>84</sup>

## Factors affecting minority women and men's exclusion

Ethnic, religious and linguistic minorities are vulnerable to economic exclusion largely due to direct and indirect discrimination. Minorities, many of whom live in remote areas, will often also face barriers due to regional underdevelopment. Economic exclusion can mean minorities have inadequate access to markets, resources, services, socio-political institutions and technology. Factors causing this include barriers to citizenship; 'ethnically disqualifying' criteria for education and employment; lack of or inadequate implementation of anti-discrimination legislation; language barriers; and regional under-funding.<sup>85</sup> Minority women are particularly vulnerable as they face double discrimination as women and as members of minority communities. Minority women are susceptible to experiencing lower levels of education than minority men or majority women, and therefore they are less likely to speak the majority language when compared with men. These barriers in conjunction with discriminatory practices, prohibit women from political, economic and social participation. Minority communities in general tend to have fewer educational opportunities, higher mortality rates, higher rates of poverty, and higher unemployment than other poor groups.

Development, whether focusing on economic growth or poverty reduction, whether policy orientated or focused on an individual project, should have a redistributive effect. How this is applied is partly dependent on the political context, and 'ethnic politics intrudes on...development policy; rules are bent, project locations skewed, privatisations distorted'.<sup>86</sup> The exclusion and discrimination minorities face affects whether and how development reaches them. MRG has conducted research on the Poverty Reduction Strategy Papers (PRSPs) and Country Strategy Papers, and informally monitored other such documents, and has found that these do not adequately integrate minorities' needs from formulation through to implementation. MRG found that minorities were rarely invited to participate in the formulation of the PRSPs and when minorities were invited to participate their needs were not accounted for, their participation tokenistic and 'often deeply rooted' in the 'power differentials', i.e. that the outcomes did not tend to favour minorities' or women's needs.<sup>87</sup> Development projects are very rarely monitored with disaggregated data (by ethnicity and gender). The Mil-

lennium Development Goals (MDGs) intended to reduce poverty, do not include any specific reference to minorities, and therefore have rarely been monitored by ethnicity or religion. They cannot be considered genuinely rights-based. Although apparent progress towards the goals, which include halving extreme poverty, halting the spread of HIV/AIDS, promoting gender equality and reducing infant mortality, may be achieved in a country, the calculations used to monitor success can hide deepening inequalities across ethnic lines. By failing to heed inequalities and power differentials, the MDGs and their implementation are not conflict-sensitive.<sup>88</sup>

## How do development and economic exclusion contribute to conflict?

The *Carnegie Commission on Preventing Deadly Conflict Final Report*<sup>89</sup> found that:

*'The resentment likely to be induced by drastically unbalanced or inequitable growth may outweigh whatever prosperity that growth generates. In contrast equitable access to economic growth and, importantly, economic opportunity inhibits deadly conflict.'*

Economic exclusion can propel or maintain a minority community within a sub-status or cycle of deprivation. It can greatly impede minorities' ability to access their civil, political, social and cultural rights, and this can have enormous implications for their security, status and well-being. The UK's Department for International Development (DFID) report on *Preventing Violent Conflict*,<sup>90</sup> shows how important it is that development assistance is conflict-sensitive:

*'...until the genocide in 1994, Rwanda received more development assistance per capita than most other countries. Most of this aid reinforced the existing politics of exclusion and repression in the country and ignored many of the political and social tensions that set the stage for the killings. At the same time, on the traditional measures of success, Rwanda scored highly for its development achievements. These apparent "successes" were mis-diagnosed because the underlying conflict was ignored.'*

Even when there are attempts to address inequalities across ethnic, religious, or linguistic divides, inter-community tensions can be stirred up. Paradoxically, minorities being targeted as the beneficiaries of programmes can also lead to tensions, especially where the relatively less well-off feel that they will suffer as a result.

The system of Dalit reservations in India, which includes quotas in political appointments and in public sector employment, has led to Dalits being physically attacked. For example, in Tamil Nadu, there have been some violent incidents where other excluded communities have targeted Dalits:

*'There have been clashes between the Vanniyars and the Dalits or Dalits and Thevars. What is paradoxical is that some of these incidents were in response to improvements in the conditions of the Dalit community, their consolidation as a political force and their state-protected access to benefits under the "reservations" policies.'*<sup>91</sup>

This underlines that care needs to be taken in selecting the forms of targeted programmes and affirmative approaches to ensure that they do not increase resentment or conflict. Projects fostering inter-community relations, and public information/media campaigns, can be important in promoting understanding between communities to avoid such tensions. An overall approach to addressing discrimination is needed in development.

The way development is carried out can be closely bound up with identities, and potentially also stir up tensions, not least because it can affect ways of life. In China today, large projects in minority and autonomous regions carry slogans which promote the national identity, and in Nicaragua in the 1980s the feelings of isolation and economic deprivation contributed to the Atlantic Coast peoples' sense of not belonging to and not feeling acknowledged by the Nicaraguan state. North American companies on the Coast had provided jobs and this accentuated the Atlantic Coast peoples' feelings of having a separate, more 'anglo-affinitive' culture. In resolving the Nicaraguan conflict, considerable political and economic autonomy was key. However, the introduction of relevant legislation was slow. The central government has made deals with private companies to exploit natural resources on indigenous communities' lands against their wishes, a practice condemned by the Inter-American Court of Human Rights.<sup>92</sup>

## China's boom based on disproportionate distribution increases risk of conflict<sup>93</sup>

The striking economic growth in China over the last two decades is not trickling down to minority communities. This, combined with inadequate protection of identity; political marginalization; and militarization 'to curb internal and regional threats' in the Inner Mongo-

lian Autonomous Region (IMAR), Tibetan Autonomous Region (TAR) and Xinjiang Uyghur Autonomous Region (XUAR); is stirring up unrest and increasing tensions. China's macroeconomic policy has emphasized economic growth without considering the sustainability of development, and is largely driven by military and political considerations. Conducted as part of MRG's Conflict Prevention Programme, Human Rights in China (HRIC)'s research focuses on the situation of the Mongols, Tibetans and Uyghurs, it reveals how minorities are economically excluded and how tensions are increasing. Minority protection in domestic law is overridden by national security and unity concerns. Development is characterized by an exploitation of resources to the centre, inequality in the delivery of basic services and a lack of opportunities for minorities with their gross under-representation in employment. Lower educational levels (low enrolment, high drop-out figures), and widespread Mandarin fluency requirement are examples of prohibitive factors to employment, and this situation is worse still for minority women. Even minorities who are well educated are failing to get jobs as they face direct discrimination because they are not Han Chinese. Some Uyghur interviewees reported that when they have applied for jobs, prospective employers have said: 'We don't want you.' There have also been instances of discriminatory recruitment notices at job fairs saying: 'Uyghurs need not apply.'<sup>94</sup> Tibetans feel that they are excluded from the Han's networks and connections. In IMAR, Mongols have been blamed for overgrazing their animals and are being forcibly displaced without compensation, to 'restore the grasslands'.<sup>95</sup>

China launched the Western Development Strategy in 2001 to address inequalities across rural–urban divides (following considerable international pressure). In establishing the Strategy, China acknowledged the potential effect of inequality on instability, and the need to address this to promote stability and unity. Although there has been growth in some of the autonomous regions, the inequalities between the centre and periphery remain. Considerable mineral resources are extracted from the periphery and the vast employment benefits have gone to the autonomous regions' Han populations, rather than equally benefiting these regions' national minorities. The Xinjiang Production and Construction Corps, based in XUAR has a workforce of c. 2.5 million and the vast majority are Han Chinese, who currently make up approximately 13 per cent of the region's population. Han settlers are moving into the autonomous regions in large numbers to seek the new job opportunities, and demographics are altering. Minorities believe this internal 'colonization' to be intentional assimilation. Despite state control and suppression, incidents of violence across

China are on the rise according to official statistics. This is among both minorities and Han as dissatisfaction grows. The Han 'colonization' is stirring up resentment and tensions, and contributing to the current difficulties. There have also been some incidents between minorities, such as between Tibetans and Hui in Tibetan areas, due to the high competition over jobs.<sup>96</sup>

## Economic exclusion and competition for resources – a major role in Darfur

Darfur was long neglected by successive governments. In Darfur there is considerable competition over resources between agro-pastoral, sedentary and semi-nomadic farmers. Land access issues have been a long-term bone of contention for the communities (including Arab communities), and small-scale inter-tribal skirmishes were not unusual.<sup>97</sup> Competition increased with ecological crises in the 1970s. Tensions were further exacerbated in the following decades with influxes of semi-nomadic pastoralist Arabs from Chad, often armed, seeking land to sustain themselves. Over the 1980s and 1990s, these minor conflicts were increasingly polarized across 'Arab' and 'non-Arab', or 'African' lines, stirred up by the central government (and the central government also supported 'land-grabbing' by some groups). Territorial arrangements were designed to alter power relations and a supremacist ideology was promoted against the 'non-Arabs' and 'Africans'. Although the Darfur conflict and genocide have become more about the politics of the government in Khartoum exerting and further entrenching its power, the source of the crises is in economic exclusion and competition over scarce resources. Had the structural differences in the disputes over land, and the political exclusion and regional marginalization been tackled earlier and adequately, the source of the dispute would have weakened considerably, and it may have been difficult for government and insurgents to mobilize.<sup>98</sup> Resolution of the situation in Darfur will require a review of the May 2006 peace agreement and greater heed to the economic rights of all communities.

## Promoting economic inclusion can help diffuse tensions

There have been some cases where attention to addressing the root causes of economic exclusion or development exclusion in conflicts has had a positive effect. In Northern Ireland, a range of different mechanisms has reduced inequalities in education and employment, helping to provide support among the

Roman Catholic minority for a peace process. Efforts include The Fair Employment Act of 1989 outlawing indirect discrimination, providing a complaints tribunal, monitoring recruitment and employment, and limited affirmative action; and the establishment of The Equality Commission in 1998. Stewart describes how a reduction in inequalities across religious lines since the 1980s – including income and housing inequalities, improved access to higher education and some limited reduction in inequality in the police force – helps explain the ‘readiness of the Roman Catholic Community to bring the conflict to an end’.<sup>99</sup> In the Republic of Macedonia, the Ohrid Framework Agreement of 2001 ending the conflict between the majority Macedonians and minority Albanians includes considerable attention to economic inclusion, including in public sector employment. However, implementation is slow and there is a lack of adequate attention to the rights of other smaller minority communities, including the Roma. In her comparative study on horizontal inequalities in a number of countries, Stewart<sup>100</sup> points out that the poorest among the community who have been economically dominant may suffer as result of affirmative action policies. In both Macedonia and Northern Ireland there has been some resentment from the majority community. The considerable and transparent review process of the various mechanisms in Northern Ireland should help to alleviate this.

## Development conflict

UN Declaration on the Right To Development, Article 2.3:

*‘States have the right and the duty to formulate appropriate national development policies that aim at the constant improvement of the well-being of the entire population and of all individuals, on the basis of their active, free and meaningful participation in development and in the fair distribution of the benefits resulting therefrom.’*

‘Development conflict’ (or development-related conflict) is the term often used to explain conflict induced by development projects that are highly exploitative of the resources of minority and indigenous peoples, and at worst cause forcible relocation. Ill planned, top-down, resource extractive projects such as conservation and tourism projects, hydroelectric plants and large-scale dams, can have a major negative impact on minorities’ livelihoods and wellbeing, often eradicating their economic base and eroding their culture and traditions. MRG has been campaigning alongside partner organiza-

tions in Africa, Asia and Latin America, where violence has resulted from development initiatives (sometimes involving multinationals as well as the state) that violate the rights of the minority and indigenous peoples.

## Resource exploitation and conflict in the Philippines

‘Development conflict’ is a regular feature within the Philippines. The exploitation of communities’ resources has led to conflicts between communities, within communities, and between communities and corporations. One such case is that of the exploitation of the land of the Ata-Manabos, traditionally hunter-gatherer indigenous peoples of Talaingod of Mindanao. Within the Industrial Forest Management Agreement (IFMA) scheme for reforestation, Alcantara and Sons (Alsons) were granted a permit in 1989 to work on most of the land area of Talaingod town. Unknown to the Ata-Manabos, the mayor and some allies then agreed to permit Alsons to widen the land area, including Langilan (not traditionally part of Talaingod). The first the Ata-Manabos knew of this was in 1991 when the mayor called a meeting with them and Alsons. The Ata-Manabos were encouraged to become employees to plant trees. Despite the promises, wages were not paid and work was not available for all – including most of those from Langilan. The chief of Langilan had not agreed for the scheme to extend to his village and was angry. Soon after the Ata-Manabos were told they could not plant within the area and that they would be relocated to another area, and then the bulldozers arrived. In 1993 the Ata-Manabos declared they would defend their land to the death. They presented a resolution that Langilan was not a part of Talaingod but the pro-IFMA leaders refused. In short, in 1994 an army battalion marched in, houses were looted, harvests and animals destroyed. The Ata-Manabos took a peaceful protest to the city. With support from non-governmental organizations (NGOs) and advocates, agreement was reached that Langilan would not be included in the work and a survey would determine boundaries. However, no survey was ever carried out. As a result, the communities went to war, resulting in a number of deaths.<sup>101</sup>

## Land and property rights

As discussed above, at the heart of many conflicts involving minority rights lies land. This is hardly surprising, as land has historically been one of the key sources of conflict both between and within states. In terms of minority conflict though, land is both a cause of attacks on minorities, but also an issue for which minorities may often take up arms, often generations after they initially lost their land.

## Attacks on minorities

Land is coveted for many reasons. Not least of these are natural resources, such as arable land, fishing, minerals, oil, water, or in today's world, tourism. Sometimes the military or other state authorities may want particular locations for their bases.

While such valued land may occur anywhere, when it is occupied by minorities there is often an increased risk that it will be seized and the minorities expelled. The reasons are essentially due to minorities' lack of power. They are only rarely given legal rights over their land, and where these do exist on paper they are rarely enforced. So authorities, or the majority population, may end up encroaching on minority land or even expelling the whole community. This usually requires violence or the threat of violence.

Such expulsions have occurred throughout history. However, particular problems today have been caused by the seizure of lands from indigenous peoples throughout the colonial era, and subsequently. The colonial justification was often that the land was 'empty' (*terra nullius*), and could be seized by settlers or others, with no consideration as to the impact on the peoples concerned. Seizures of land and expulsion of peoples have been particularly damaging as the indigenous peoples often had a different concept of land ownership from that of individual title, (collective and/or nomadic) so their loss of land often destroyed the fabric of their society.

The other reason for seizing land is specifically to expel the minority or indigenous peoples, i.e. 'ethnic' or 'sectarian cleansing'. This is often done during wars and other violent conflict. At these times in particular, minorities may be seen as disloyal and expulsion may appear to be easy. Alternatively minorities, like others, may simply flee the war, but find their property and homes have been seized and it becomes impossible to return. Or minorities may find themselves in the middle of a war in which they are not directly involved, but where nevertheless their property is destroyed and seized (again often due to their lack of power). The Assyrian people of south-east Turkey in 1915 and again in the 1980s have been an example of this.

### The persistence of claims to land

Minorities, therefore, often lose their land, with much violence. What is notable is that the claim to land persists for many years, indeed generations, leading to conflict many years after the initial seizure. As previously mentioned, it is an issue for which many minorities are prepared to use violence. There are several reasons for this.

First, many places are of particular importance to a minorities' cultural or religious identity. Most religions have sacred sites or cities. One need only look at the history of Jerusalem, sacred to three major religions, to see

that people are prepared to kill and die for places they consider sacred. Much smaller communities may also have particular sacred locations. The culture, religion and traditions of the Endorois community in Kenya are centred around Lake Bogoria. The Endorois were expelled from the Lake Bogoria region in the 1970s but still maintain strong collective traditions centred on this lake. It seems that for particular important locations, as long as the community continues to exist, the traditions about their sacred homes will be passed down.

Linked to this is the sense of home. This can be a home as a community, or simply the actual houses that were lost. An example is the tradition among both Jews and Palestinians of keeping the keys to their ancestral homes for the day when they will return. Again this shows the importance of the particular place for the people.

But another reason for the link between land claims and violence is that minorities often recognize that the loss of land is the start of a dramatic downturn in their wellbeing. Once expelled from their homes, minorities may become refugees in other countries, in situations of extreme poverty and isolation, which often persist from generation to generation. Examples of this include the Jews in Europe, the Palestinians in many countries today, and the Chagossians in Mauritius and the UK. Indigenous peoples in particular can see the loss of their land, as the loss of a whole way of life from which they have rarely recovered (for example in Australia, the United States of America [USA] or Canada). In these circumstances, it is scarcely surprising that desperation may lead to desperate attempts to recover land, which may be seen as the only way to restore their former prosperity and way of life.

### Resolving land disputes

Given the importance and persistence of land as an issue in conflict, it is highly surprising that it is not addressed in a more systematic way. International law does give some protection. The right to property is acknowledged in many documents, including the right to compensation for loss of land and restitution of illegally taken land.<sup>102</sup> Recently, indigenous peoples have begun to have their rights to land formally recognized, notably in Australia, New Zealand, Nicaragua and the Philippines. In BiH, a very well funded project resolved property rights for over 90 per cent of the displaced people there.<sup>103</sup> The right of Kurdish refugees to have a property right over their traditional homes, even without written proof of ownership, has been acknowledged by the European Court of Human Rights. But the vast majority of minority land and property disputes throughout the world, remain unresolved and many could erupt into violence at any time. Even where tribunals have been set up on paper, as in Iraq, Kosovo and Nicaragua, in practice they have

either failed to even resolve the legal ownership of property, or certainly failed to physically return the property to the original owners. And minority women face additional difficulties in ownership of and gaining access to land or property. Trying and failing to resolve a property issue actually makes people more angry. The key to the failures to date to resolve the Cyprus dispute have largely lay in the failure to produce a settlement on property rights and return to homes that all sides feel respects their rights.

## Conclusions and ways forward

The examples in this report highlight how economic and development exclusion, and divisions over land, can raise tensions between communities and the state. Aside from international obligations to promote rights, they also illustrate the importance of development bodies (including national and local governments) considering the effects of development policies and programmes on relations between different communities in order to promote stability. Economic exclusion and exclusion from decision making tend to be bound up in tensions leading to conflict, so efforts to tackle economic inequalities will need to be taken alongside efforts to promote minorities' political participation. The recognition of minorities and protection of their identity need to be promoted to ensure that rights-based development is a reality.

These issues need to be acted upon to avoid tensions turning into causes for conflict. Further, monitoring development policies and programmes through ethnically- and gender-disaggregated data will be an important step. There needs to be real minority participation throughout development policies, programmes and projects, in the design, implementation and the benefits – to include both minority women and men. Programmes and budgets need to be monitored across geographical, ethnic and gender divides, with the involvement of minority women and men. Where a large-scale project affects a community, a just proportion of benefits should go to the minority or indigenous communities. When conflict has already occurred, such monitoring will continue to be essential, as will the development and implementation of mechanisms that tackle the inequality.

Functioning systems to punish and eradicate discrimination are essential and relatively uncontroversial, legal

provisions include the International Covenant on Economic Social and Cultural Rights (ICESCR) Article 2.2.<sup>104</sup> Where simply treating minorities in the same way as majorities will be insufficient to lift communities out of economic exclusion and discrimination, special measures will be needed to complement the anti-discrimination mechanisms. The form that positive or affirmative action should take will be context specific, tackling barriers such as low levels of education will often be very effective and least controversial. However, systems of 'affirmative preference' and reservations might be required in situations where inequalities are extremely high.<sup>105</sup> These should be reviewed periodically to ensure that when certain measures are no longer required that they will be no longer used. Majority communities also need to be educated to understand that work to promote minorities' economic inclusion does not privilege minorities – and that it ends as exclusion and discrimination is overcome.<sup>106</sup>

The basic principles of finding solutions to land disputes are relatively straightforward. The first step is to understand the different issues that can be involved in land disputes. The land issue may be a collective one (often the case for indigenous peoples) or one based on families or individual property. The position of women is particularly important. Then it is necessary to recognize there is both an economic issue about land, and one connected with identity. The economic one is about loss of property and requires compensation. The identity issue requires the restoration of property, no matter how long since it was gone, or at the very least, it requires free access to sacred places. Finally, solutions need to be complete and rapid. Particularly when property and land have recently been lost, restoration should be done as quickly as possible. The longer land is disputed the more difficult resolution becomes. And where a community feels there has been no final settlement, a sense of grievance will fester.

Solutions therefore require an overall settlement. For land rights a critical part of this resolution is legal – a settlement that recognizes the rights of those who have previously occupied land and been unfairly evicted. These rights can be collective, family or individual. Traditional ownership and not just registered title need to be recognized – but the particular status of women needs to be acknowledged. Where there is legal recognition of minority land rights, this needs to be implemented and land restored and protected.

# Justice

Where peoples and individuals feel a strong sense of injustice, violence is much more likely. Not only does the feeling of injustice greatly increase the peoples' feeling of alienation from the wider society; it often results in injustice being blamed on other peoples or religions. Relations between communities are poisoned, often for generations. Ongoing resentments help start conflicts, decades, even centuries, after the problem started. Injustice can be felt by both minority and majority communities. This section ends with several conclusions on these points.

## How injustice can lead to conflict

There appear to be two essential elements of injustice and conflict. First, that there has been an historic or ongoing massive violation of minority rights. Second, is the lack of any effective mechanism to address the injustice (i.e. to consider, evaluate it and provide a remedy).

### Historic injustice

The types of historic injustices that are likely to be important in collective memories are essentially those of mass crimes against peoples. These include memories of genocide and other attempts to destroy communities, for groups such as the Aborigines of Australia; the Armenians and others in the Ottoman Empire; or the Jews, Roma, Serbs and others during the Second World War. 'Ethnic cleansing' and expulsion from historic lands are also remembered for many years, as in the case of indigenous peoples across the world, the Acadians in Canada and, at different times, the Jews and Palestinians in Israel/Palestine. Other crimes that have affected many peoples, such as the transportation into slavery of millions of Africans, are also remembered centuries afterwards. In places such as Iraq or former Yugoslavia, the historic memory of many crimes committed against many peoples at different times can continue to poison relations between almost all communities.

What emerges from this is that the memory of such injustices can fester for generations and lead eventually to violence between peoples. While such resentment is particularly acute when the victims are still alive (which will be the case for decades after the event), many memories continue for centuries. This can be particularly acute in the case of loss of historic lands, as the lands remain, clearly identifiable, but under occupation by another peo-

ple. The loss of land is a crime like slavery and transportation, which is often perceived by a people as the cause of their poverty today. A crime may simply be so horrific that a people cannot forget it. Resentment may be increased though by attempts to deny or forget crimes, particularly by the state/people that had committed them.

Three issues can be seen as important in a collective memory of historic crimes leading to violence. The first is the sense that the historic crime has not been remedied, or, in many cases, even acknowledged. The second, linked to this, will be a tendency to blame entire peoples for the crimes, e.g. Arabs, Croats, Jews, Serbs. This is particularly the case when none or few individuals were actually brought to justice. Finally, there may be a tendency for a historically oppressed people to believe the crimes committed against them gives them the entitlement to compensation at the expense of another people, for example by seizing their land.

### Current injustices

Of a different order, but equally important, is a minority's collective belief that they are being unjustly treated today. Much, if not most, of the treatment that leads to ongoing feelings of alienation and anger is about what is now labelled as discrimination – that is, a community, and individuals within it, are treated significantly worse than others due to their race/ethnicity, language or religion. This is most important where the discrimination is widespread or systematic, and is generally in areas of day-to-day life – such as education, policing and work. Discrimination may be officially sanctioned, as in apartheid; may be a long-accepted way of life (as with the Dalits and Roma); or may be a new development such as the discrimination often experienced by new migrants. People may experience discrimination several times over, due to their age, caste, disability, ethnicity, religion, sex, sexuality, etc. Discrimination in society often begins with the Constitution or the structure of the political system. A state that declares itself to be 'of' a particular religion or ethnicity, or grants privileged status to certain groups in its political system, effectively condones day to day discrimination against the others. Or, in Iraq, the Constitution may clearly bias the justice system in favour of one religion or group.<sup>107</sup>

The feelings of unfairness and humiliation that such discrimination creates in those who suffer it can lead to violence. It alienates communities from the rest of society

and again leads to a tendency to blame other communities for this. Paradoxically, a slight improvement in the situation of a community (and also an increasing rise in communications with and knowledge of the rest of the world) may lead to a greater risk of violence, as the community realizes that its situation of second-class status is not tolerable.

### Lack of mechanisms to deal with injustice

Perhaps the critical factor that can cause violence where a community has suffered or is suffering from injustice, is when it believes there is no mechanism that can identify and remedy these injustices.

The basic remedy for injustice has been understood for centuries as a 'justice system', or what is often called the rule of law. For ongoing injustices, what is needed are clear laws that outlaw such practices (notably an anti-discrimination law) and a justice system that will apply such laws; i.e. it identifies such practices, ends them and provides remedies to those who have suffered from them. For criminal activities, the system should identify the perpetrators (and particularly the leaders and instigators) of such crimes, and prosecute and punish them.<sup>108</sup>

For historic crimes, the response begins with investigation and acknowledgement of what happened, and of the individuals responsible. Once this has been done, if the perpetrators and victims are still alive, prosecution and compensation are vital. If not, a system of fair compensation for a community is needed, whether financial or, certainly in the case of land, the possible restitution of what has been lost.

For minorities in particular, such mechanisms are crucial. Lacking power in political life, they need strong laws, and objective, strong judicial and other systems to enforce these laws on their behalf. But they will need particular help to use the laws – notably to be informed about them, and legal and other assistance, to use the system in litigation or prosecution. Further, ensuring groups can use their own language in the legal system is very important. Group actions need to be recognized and funded by the state or others seeking to prevent violence.

Discrimination within the justice system itself is one of the most obvious areas where minorities can feel day to day grievances. In the criminal justice side, it is very often minorities who suffer when it comes to being stopped, arrested, prosecuted, convicted and sentenced; and who do not get a fair investigation of crimes against them. Minorities may feel that they cannot expect anything from a justice system biased against them at all levels. And minorities, lacking economic resources and often unable to speak the majority language, may have no access to justice. Where the justice system is seen as inherently biased against minorities, high-profile initiatives to investigate

such in-built discrimination and propose radical changes, such as the Stephen Lawrence inquiry in the UK, may be the only way to begin to restore confidence.

Yet, despite the importance of this issue, it is still not playing an essential role in conflict prevention. Traditionally, the rule of law has not been seen as of major importance after conflicts, as opposed to say, elections or economic development. This has changed to a degree,

with the UN now having a rule of law unit in the UN Department of Peacekeeping Operations (DPKO), and the creation first of the tribunals on former Yugoslavia and Rwanda, and now the International Criminal Court (ICC). The tribunals and ICC are mandated to deal with the most serious crimes, largely against minorities. The South African Truth and Reconciliation Commission has been upheld as a model in this regard.

What has been done has been largely limited to criminal law, and even then to high-profile cases. Investigations and trials have taken an inordinate length of time, making justice and reconciliation very difficult. Most notably the trial of Slobodan Milosevic, despite his ill health, lasted four years, and no justice was achieved due to his death; whereas the trial of the most important Nazis at Nuremberg took approximately one year.

While there have been some moves towards more comprehensive and effective anti-discrimination laws, particularly in Europe and South Africa, it is still not being seen as one of the vital steps in conflict prevention.<sup>109</sup> This is despite the prohibition of discrimination being a fundamental requirement of international law. Compared with the large amounts of money spent on elections and democratization, very little money has been spent on giving minorities access to justice, such as support for litigation.

Conflict prevention work still rarely deals with a systematic approach to justice for minorities, an approach that deals with both existing and historic injustices. Justice needs to be implemented at the most local level possible to ensure that, for minorities, justice is not only done, it is seen to be done. But in many countries justice systems do not implement their rulings, and at best minorities have to use international courts, as some are increasingly doing. For example, in Nicaragua minorities have had to go to the Inter-American Court of Human Rights due to the failure to achieve justice on land rights and political participation.

## Conclusions and ways forward

A functioning justice system is vital to address the underlying problems experienced by minorities. Most importantly the justice system needs to address the following issues, especially after a violent conflict.

## Crime

It is vital that the state can and does deal with day-to-day crimes against minorities, particularly those of a violent nature. The justice system must be accessible and unbiased, both when minorities are victims or suspected perpetrators.

## Discrimination

This is still a largely ignored area, but there needs to be comprehensive and accessible, easy-to-use law to provide remedies for grievances, particularly where the discrimination is widespread or systematic. Minorities need to be fully aware of this and supported in bringing test litigation.

## Land and property

There should be clear recognition and protection of land ownership by minorities, which meets their needs and way of life (including recognition of collective and other traditional forms of ownership).

Addressing historic injustice claims needs a separate approach, possibly with a special body being set up. 'Truth and reconciliation' will only work if there is reconciliation based on peoples' rights.

# International responses

The lack of comprehensive and enforceable minority rights can exacerbate inter-ethnic tensions, as has been illustrated throughout this report. The minority rights framework offers governments and international bodies the ‘how to’ to create and maintain multicultural, just and peaceful societies; societies that are inclusive yet acknowledge and protect peoples’ differences. Suppression of identities, and exclusionary and discriminatory practices, do not foster stable societies or durable peace. The four pillars of minority rights, i.e. protection of identity, protection of existence, non-discrimination (including measures to prevent/tackle discrimination, and affirmative action) and participation, are the means to achieve inclusive and tolerant societies. Monitoring minority women and men’s situations provides a good indicator of the health of a country, a means of establishing the extent that a country applies genuine good governance. Conversely, violations of minority rights such as hate speech, political exclusion or territorial ‘ethnic engineering’ can provide early warning signs that a country is at risk of erupting into a conflict. By addressing these issues, tackling the root causes, conflict can be averted or a recurrence prevented. Despite the strong role that minority rights can play in conflict prevention (and post-conflict), this is not heeded sufficiently in practice either by governments or international bodies.

With a rise in conflicts within state borders there has been a movement toward international accountability for violations of rights and crimes against humanity. There has also been a movement towards the acknowledgement of the need for a culture of prevention of conflict and codification of a graduated system of prevention, with international collective action as the last resort. The establishment of the ICC and the Rwanda and Yugoslavia tribunals are very important steps. In 2005 the UN member states agreed to the ‘Responsibility to Protect’, and African countries integrated it into the African Charter on Human and Peoples’ Rights – that the international community has a responsibility to protect populations from genocide, ethnic cleansing, war crimes and crimes against humanity when a state cannot or will not protect them. With UN reform and efforts to codify the responsibility to protect, this is a prime time in which to integrate attention to minority rights within conflict prevention.

The international community has a key role to ensure that national governments can put in place legislation and mechanisms to promote and protect minority rights, and it needs to improve its own mechanisms of conflict pre-

vention in this respect. This section sets out some of the international community’s mistakes, and some lessons on minority incorporation at the various stages of conflict prevention.

## Marginalization and misunderstanding of minority rights

There is a range of internationally agreed standards providing legal protection for minorities. These include the ICCPR (Article 27) and the UNDM. Yet MRG has found throughout its work that minority rights tends to be marginalized within human rights. There is a lack of understanding on the usefulness of minority rights and how it can help accommodate diversity. There is a lack of understanding on what a minority community is, despite internationally agreed characteristics. Further, some governments use the argument, at times successfully, that promoting minority rights will promote secession. However, this has not proved to be the case,<sup>110</sup> and this is underscored by the Preamble to the UNDM:

*‘[...] the promotion and protection of the rights of persons belonging to national or ethnic, religious and linguistic minorities contribute to the political and social stability of States in which they live.’*

Within conflict prevention, this marginalization of minority rights is evident in a lack of attention to and at times misapplication of minority rights. In BiH, the provision of political participation to some communities has been at the complete exclusion of smaller ‘non-constituent peoples’. However, there has been some recent acknowledgement<sup>111</sup> of the links between ethnic rights violations and conflicts.

There are some important mechanisms although these have limited political support and capacity, despite their potential and cost effectiveness. The Convention on the Prevention and Punishment of Genocide in 1948, criminalizing genocide, was an important step but there has been some confusion regarding the use of the term genocide. One misinterpretation is that a situation needs to be officially declared genocide for intervention to occur to protect threatened peoples. Recently a Special Advisor to the Secretary General on the Prevention of Genocide

(SAPG) was established. However, the office is part-time and under-resourced. Additionally an Independent Expert on Minority Issues (IEMI) was established and the post-holder has undertaken to include within her work considerable attention to minority rights and conflict issues, but this is one aspect of the post and it is also part-time.

## Structural prevention and minorities

Structural prevention refers to the prevention of conflict through tackling systems, hierarchies and inequalities in order to promote a long-term peace. The *Millennium Summit Outcome Document 2005* has a section on the 'Responsibility to Protect', an extract reads:

*'We also intend to commit ourselves, as necessary and appropriate, to helping States build capacity to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity and to assisting those which are under stress before crises and conflicts break.'*

Despite the emphasis in the Responsibility to Protect on the need for and commitment to conflict prevention, thus far, the emphasis has been on crisis management, on reacting. Prevention is a 'hard sell' it is difficult to establish when a conflict has been averted, and a positive outcome achieved.<sup>112</sup> There is considerable scope for integrating conflict prevention within development projects by ensuring ethnic, religious and linguistic inclusion, so that the benefits meet the needs of all communities. See the previous sections in the report for highlighting the dangers that structural inequalities bring and some alternatives to tackling them within the minority rights framework.

## Early warning, early action and minorities

Early warning systems aim to prevent conflict by recognizing signs that tensions are rising and that conflict is a serious risk. Well-designed systems should raise the alarm early, provide a holistic analysis on the causes and trigger appropriate early action. Early warning systems need to incorporate an analysis of patterns of discrimination and exclusion in order to provide an holistic picture of causes and means to address differences.

Early warning systems have been developed since the 1990s but many are in the early stages of design. The early warning unit of the UN Office for the Coordination of Humanitarian Affairs (OCHA) set up in 1993

monitors approximately 30 countries considered at risk.<sup>113</sup> Indicators used by the UN include some on human rights, such as imprisonment of human rights defenders, and some on inequality. However these are not designed to specifically consider minority rights violations. In Africa, several early warning mechanisms have been set up: Continental Early Warning System for Africa (CEWARN), Economic Community of West African States (ECOWAS)<sup>114</sup> and The Southern African Development Cooperation. Most are in their infancy. The European Commission Check List for Root Causes of Conflict includes indicators attending to economic and political exclusion, equality of all citizens before the law, and respect for religious and cultural rights. According to critics the Check List is desk based and it is not prioritized among Commission staff due to a lack of capacity, and therefore is inconsistently applied.<sup>115</sup> CERD has developed indicators (with support from MRG) to be used in early warning systems that specifically include minority concerns, including: the lack of a legislative framework and institutions to prevent racial discrimination and provide recourse to victims of discrimination; and systematic official denial of the existence of particular distinct groups.<sup>116</sup>

While there is no absence of early warning systems, despite their infancy, there is scope for better coordination and greater heed to minority rights, especially within the UN. This need not necessarily be in the form of one unified system; however, there should at least be a mechanism to draw on each system's strengths to feed these into conflict management discussions at the international level.

With UN reform and efforts to codify the Responsibility to Protect, so prevention is favoured and intervention occurs as a last resort, this is a key moment in which to integrate attention to minority rights within conflict prevention. The Responsibility to Protect should help provide impetus for a more coherent early warning system, and for the translation of early warning system information into legitimate and appropriate action to protect populations.

Iraq illustrates how the wrong type of international intervention, not authorized through the accepted international channel, has served to frustrate authorized intervention elsewhere, has seriously worsened sectarian conflict, and created a security climate with horrific effects for all communities and one which threatens the existence of minorities. A purported justification for the intervention in Iraq, after the event, is the need to remove a dictator who persecuted minorities, but the result has been a much worse situation for minorities. Iraq strengthens the argument that early conflict prevention is far less costly and risky than military intervention.

## Failure in early warning and action in Darfur<sup>117</sup>

Conflict has been brewing in Darfur over the last few decades, yet opportunities to tackle the situation at the stage of structural prevention were not taken up. Coordinated and coherent early warning, including political and rights-focused analysis could have translated into appropriate early action at a time when the government of Sudan may have been more inclined to accommodate minorities' concerns. Instead, since 2003, at least 200,000 people have died, 2 million people have been displaced, and thousands of women and girls have been raped. The May 2006 Darfur Peace Agreement (DFA) is unworkable, the ceasefire not adhered to and the crisis continues.

Although to many the scale of the conflict and the genocide came somewhat as a surprise, there was considerable build up to the incident in El Fasher in 2003 (generally considered the beginning of the current conflict). Conflicts in 1987 left 3,000 people dead and in 1994, 2,000 people. There was *ad hoc* early warning in the 1990s, primarily from human rights bodies, on the possibility of escalation. In 1999 a group of Sudanese NGOs raised the alarm to the UN Sub-Commission on the Prevention of Discrimination and Protection of Minorities that the conflict risked becoming 'full blown war'. This was followed in 2000 by the dissemination of

*The Black Book: Imbalance of Power and Wealth in Sudan*, written by anonymous members of excluded communities. From 2001, the UN Commission on Human Rights' Special Rapporteur for Sudan began paying particular attention to Darfur reporting his concerns on the deteriorating situation there. Yet in 2003 his mandate was ended. The same year, the UN Resident Representative, the highest UN official in Khartoum, had only a mandate to deal with humanitarian and development issues. When he requested political engagement from the UN Department of Political Affairs, this was met with reluctance. In 2003, some attempts were made by more moderate forces within Sudan to reach a solution but talks in Abeche and in El Fasher in February 2003 were ineffective. After these talks the stakes were raised, with the Sudan Liberation Army's declared nationwide struggle against the government and the escalation in violence. The international community's failure to act can also be explained by the precedence given to the North–South peace process; Darfur was considered a peace spoiler to this despite the conflicts being tied up with each other. Failure to consider Darfur in the process provided further impetus to the conflict and the Sudan People's Liberation Movement provided support to the insurgents in Darfur. A number of opportunities to act were lost, early warning information was available,

although not in a systematic way. Without effective and coordinated early warning analysis linked to a graduated system of action, the international community failed to act in a timely, decisive and appropriate fashion.<sup>118</sup>

## Preventative diplomacy: positive lessons from the OSCE's High Commissioner on National Minorities

The international community accepts that it needs to do more to prevent conflict before it erupts. There is considerable scope and value to adopting an approach that applies minority rights within preventative diplomacy. Possible approaches can take inspiration from the work of the HCNM. This post was created as a response to the ethnic threats in the 1990s in Eastern Europe and the former Soviet Union. The approach is one of quiet diplomacy. The HCNM works in confidence and will only use the media when negotiations cannot be threatened. The mandate includes early warning but most of the work has focused on taking appropriate early action in situations where conflict involving minorities is foreseeable. Activities include consultations and dialogues with the government, the communities and other relevant political, rights and development bodies. With a small office of legal and political advisors, the HCNM makes recommendations to the main decision-makers within the country on strategies to promote integration and stability, advising and prescribing on legislation and practices within the framework of minority rights. This has proven successful to date in Estonia, Hungary and Latvia, among others, where compromises between state and minority communities have been possible. The stress on a long-term involvement is a particular strength of the HCNM; some countries have been visited 30 times or more. Success requires the government to be open to negotiation. While this is an obligation of member states of the OSCE, the states have to issue a formal invitation for visits and in practice, a little pressure is sometimes required by other interested governments and international bodies. This form of quiet preventative diplomacy needs to occur before a conflict ignites, and before it becomes so complex or large scale that competing interests cannot be compromised on.

## Peace making and minorities

Peace making does not tend to heed the rights violations aspects of conflicts, adequately paying attention to and addressing the causes. Further, usually only the main and armed parties to the conflict are brought to the table to

consider the future of the area and its peoples. Women (minority and majority) are rarely involved. This is despite the Security Council Resolution 1325, which calls for much greater participation of women in peace processes, reaffirming the important role of women in conflict prevention and conflict resolution. The Dayton Agreement in BiH and the CPA in Sudan that ended the 'North-South' civil war are examples of exclusionary approaches. In both cases closely linked minority problems, in Kosovo and Darfur, respectively, were excluded and ignored from the peace processes in BiH and Sudan respectively, as those involved in the peacemaking found addressing these issues to be too complicated. Instead they missed the major chance to address these problems, which erupted into violence shortly afterwards. But also in dealing with the specific conflict at hand, the peacemaking adopted an exclusionary approach, only including the leaders of the communities that had used violence.

The neglect of rights and the focus solely on the main perpetrators has major repercussions in the way that the country will be governed, and on the extent to which all the communities especially the smallest and most marginalized will be affected. If smaller minorities are excluded in peacemaking this will be very difficult to rectify, and they will be likely to suffer discrimination and exclusion in the aftermath.

The Ohrid Framework Agreement, which brought peace to the Republic of Macedonia, is generally considered a relative success. The international community helped broker peace and did so with adherence to minority rights principles, including providing a greater representation of Albanians in government and society, and recognition of their language. However, even there greater attention is needed to protect the rights of the other minority communities, such as the Roma. The Good Friday Agreement for Northern Ireland placed considerable emphasis on political and economic inclusion. It also provided for the development of anti-discrimination and rights-related mechanisms, including the Northern Ireland Human Rights Commission and a Police Ombudsperson. Currently a Bill of Rights is being developed.

## Lack of consultation with minorities and segregation in Kosovo

Following the 'ethnic cleansing' in 1999 led by Milosevic, and then the North Atlantic Treaty Organization (NATO) military intervention, the UN Mission in Kosovo (UNMIK) has been in Kosovo for seven years in probably the most extensive international intervention to end and reverse an ethnic conflict. Despite the amount of

resources poured into Kosovo, international rule has done little to entrench the protection of minority rights and create an integrated society. Instead, the approach is one of segregation, of keeping the main communities – the Serbs and Albanians – separate, and relegating all other communities to second-class status. 'Ethnic cleansing' happened in 1999, under international rule, and again in 2004, even after UNMIK had been the main governing authority for several years. Rather than resolving the underlying problems, Kosovo is in the position of a 'frozen' conflict. There has been a failure to return the displaced to their homes. There are parallel systems of education and employment, and politics is almost completely organized along ethnic lines. There is a comprehensive anti-discrimination law in place, considered by some to be the best in Europe, but no resources have been devoted to its implementation.<sup>119</sup> The Ashkaelia, Egyptians and Roma; Croatians; Gorani; and Turks are caught in the middle, with little attention to their rights. The Roma are particularly at risk of total exclusion and they have been major victims of both periods of 'ethnic cleansing'.

The current proposals from the international community on the future of Kosovo seemed designed to deepen division between communities. It would grant a form of ethnic decentralization, which would further divide Kosovo, introducing a number of new municipalities along ethnic lines. Decentralization can be very useful in increasing accountability and effective participation in decision-making, devolving power to regional areas. However, the many caveats which need to be considered to ensure it does not negate minority rights seem to have been ignored in Kosovo.

In Kosovo, decentralization risks exacerbating already considerable segregation, and risks increasing barriers to movement. When interviewed by MRG, some Serbs expressed their concern that without this level of decentralization they feared for their long-term future within Kosovo. They conceded though that with implemented, accessible anti-discrimination mechanisms, and with the rule of law applied equally, a future might be possible in Kosovo without it.

Minorities have been systematically excluded from decision making in Kosovo, with the appearance of participation (guaranteed seats in the Assembly) but without the reality, in particular on the most important decisions. The status negotiations of 2006–7 took place with only Albanian and Serb delegations involved directly. The Consultative Committee for Communities, set up to advise the status negotiations on the issues affecting the 'other' communities, is led by an Albanian, and has held meetings mainly with the minority politicians who have little room to manoeuvre in a difficult political situation.

The resulting Framework for the Protection of Minorities, drafted largely by international experts and Albanians, was considered too broad and not reflective of the actual concerns of the communities. Minority women have also been underrepresented in these committees and minority women's rights in particular have not been to the fore.

## Conclusions and ways forward

There is no 'one size fits all' model for conflict prevention but consideration of minority rights can help offer solutions. This report indicates a range of alternatives and provides discussion points regarding issues to be taken into account within minority rights parameters. Some key points should be noted in terms of carrying forward appropriate international responses:

First, there needs to be a much greater emphasis on avoiding conflicts' occurrence and reoccurrence. All those involved in conflict prevention, development, financial, political and rights-related issues need to pay attention to minority rights within their work – for example, knowing the different communities at the grassroots, understanding the effects of their work on different communities and providing for genuine participation of women and men from minorities in country

strategy/programming documents. Anti-discrimination mechanisms are also essential to ensure the functioning of a multi-ethnic society, and international decision-makers have a role to promote this within good governance.

Regarding early warning and operational prevention there needs to be both greater coordination and coherence, with a strengthened international role to ensure accountability and greater attention to rights violations. In peacemaking much greater attention to minority rights will also be worth the investment. Minority expertise in the key bodies that deal directly with conflict in the UN is needed – to include the UN Department of Political Affairs (DPA), DPKO, OCHA and the UN Peacebuilding Commission. This expertise also needs to be translated into the country missions to ensure that this knowledge is used on the ground. All of this can be achieved by having specific posts in each agency. By having the necessary expertise these bodies will be much better placed to promote and implement approaches to prevention that are workable and have some durability. These UN bodies can also draw on minorities' expertise from the Working Group on Minorities in Geneva, and information gained by the other UN and regional human rights treaty and charter bodies on missions.

# Overall conclusions

At the heart of many violent conflicts lie minority issues. Such violent conflict generally has three main origins. Violence may originate directly from governments and majority communities. Violence can originate in attempts to suppress the minority's identity, can become manifest in widespread hate speech against the community and in systematic discrimination, and culminate in violent attacks on the minority. Such violence may arise from dislike of the community, from the minority being a useful scapegoat, or from a desire to drive out or destroy the community, in the name of ethnic or religious purity, or simply to grab their property and resources. Alternatively (or sometimes at the same time), members of the minority community may resort to violence. Such violence may prove long-lasting when it receives widespread support from within the community. This violence seems to begin when the minority community has a long-lasting grievance, often related to attempts to suppress their identity, to systematic discrimination or to exclusion from participation in decision-making. Support for violence appears to be higher where minorities feel excluded from the political process or have no effective access to the rule of law to address their grievances.

The third main cause seems unfortunately, to be the attempts of the 'international community' to address ethnic and religious conflict. Over 80 years after minority rights began to be developed as a tool of conflict prevention, it is striking how poorly international experts still understand minority issues. Often, they fail to perceive

the ethnic and religious issues within conflicts that may be nominally about other issues. Or, when they do perceive such issues to be important, the solutions proposed may amount to little more than creating or reinforcing cleavages on the basis of ethnic or religious division (thereby creating ethnically or religiously 'pure' countries or regions). These are policies that have failed so disastrously in the past, yet continue to be repeated. In particular, international involvement rarely understands the importance of the rights of everyone to choose their identity or identities, and instead divides states or political systems into rigid ethnic or religious blocs. Peacemakers also only focus on those groups that have been using violence, ignoring others and thereby relegating them to second-class status. At worse, this ends up with a situation such as in BiH where, after over a decade of international rule, society is more divided than in the past, and there is systematic discrimination against the smaller minorities.

And yet, the minority rights regime that began in 1919 as a tool to prevent conflict has greatly strengthened in the intervening decades. Using minority rights to ensure an effective rule of law that addresses security, discrimination and property rights, and a system of real participation and accountability for minority women and men in decision making, will ensure that the identities of all peoples and groups can flourish in societies, and even for old conflicts to be resolved. The checklist and recommendations below are a series of steps for those trying to prevent or end such conflicts involving ethnic or religious minorities.

# Relevant international instruments

## International Covenant on Civil and Political Rights (ICCPR)<sup>120</sup>

### Article 20

2. 'Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.'

### Article 25

'Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in Article 2 and without unreasonable restrictions:

- (a) To take part in the conduct of public affairs, directly or through freely chosen representatives.
- (b) To vote and to be elected at genuine periodic elections, which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors.
- (c) To have access, on general terms of equality, to public service in his *[sic]* country.'

### Article 27

'In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.'

## United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (UNDM)<sup>121</sup>

### Article 1

1. 'States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity.
2. States shall adopt appropriate legislative and other measures to achieve those ends.'

### Article 2

'[...] 2. Persons belonging to minorities have the right to participate effectively in cultural, religious, social, economic and public life. 3. Persons belonging to minorities have the right to participate effectively in decisions on the national and, where appropriate, regional level concerning the minority to which they belong or the regions in which they live [...].'

### Article 4.5

'States should consider appropriate measures so that persons belonging to minorities may participate fully in the economic progress and development in their country.'

## Council of Europe Framework Convention for the Protection of National Minorities (FCNM)<sup>122</sup>

### Article 3

'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.'

### Article 5

1. 'The Parties undertake to promote the conditions necessary for persons belonging to national minorities to maintain and develop their culture, and to preserve the essential elements of their identity, namely their religion, language, traditions and cultural heritage.
2. Without prejudice to measures taken in pursuance of their general integration policy, the Parties shall refrain from policies or practices aimed at assimilation of persons belonging to national minorities against their will and shall protect these persons from any action aimed at such assimilation.'

### Article 6

1. 'The Parties shall encourage a spirit of tolerance and intercultural dialogue and take effective measures to promote mutual respect and understanding and co-operation among all persons living on their territory, irrespective of those persons' ethnic, cultural, linguistic or religious identity, in particular in the fields of education, culture and the media.
2. The Parties undertake to take appropriate measures to protect persons who may be subject to threats or acts of discrimination, hostility or violence as a result of their ethnic, cultural, linguistic or religious identity.'

### Article 7

'The Parties shall ensure respect for the right of every person belonging to a national minority to freedom of peaceful assembly, freedom of association, freedom of expression, and freedom of thought, conscience and religion.'

## UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions<sup>123</sup>

### Article 7

- 'Parties shall endeavour to create in their territory an environment which encourages individuals and social groups:
- (a) to create, produce, disseminate, distribute and have access to their own cultural expressions, paying due attention to the special circumstances and needs of women as well as various social groups, including persons belonging to minorities and indigenous peoples; [...].'

## OSCE Lund Recommendations on the Effective Participation of National Minorities in Public Life (Lund Recommendations)<sup>124</sup>

### A. Arrangements at the Level of the Central Government

'[...] These may include, depending upon the circumstances:

- \* special representation of national minorities, for example, through a reserved number of seats in one or both chambers of parliament or in parliamentary committees; and other forms of guaranteed participation in the legislative process; [...].'

### III. Self-governance

'14) Effective participation of minorities in public life may call for non-territorial or territorial arrangements of self-governance or a combination thereof. States should devote adequate resources to such arrangements. [...]

### B. Territorial Arrangements

'[...] 21) Local, regional, and autonomous authorities must respect and ensure the human rights of all persons, including the rights of any minorities within their jurisdiction.'

### IV. Guarantees

#### Constitutional and Legal Safeguards

'[...] Periodic review of arrangements for self-governance and minority participation in decision-making can provide useful opportunities to determine whether such arrangements should be amended in the light of experience and changed circumstances.'

## International Convention on Economic Social and Cultural Rights<sup>125</sup>

### Article 2.2

'The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.'

## International Convention on the Elimination of Racial Discrimination<sup>126</sup>

### Article 2.2

'States Parties shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms. These measures shall in no case entail as a consequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved.'

## UN Declaration on the Right To Development<sup>127</sup>

### Article 2.3

'States have the right and the duty to formulate appropriate national development policies that aim at the constant improvement of the well-being of the entire population and of all individuals, on the basis of their active, free and meaningful participation in development and in the fair distribution of the benefits resulting therefrom.'

# Checklist

A checklist for assessing if a country is at risk of violent conflict involving ethnic, religious or linguistic minorities

## Different identities

- Are there different groups with different identities in the country? Y / N
- Are all the groups accepted and acknowledged? Y / N
- Does the state accept it has minorities? Y / N
- Are some groups/religions/cultures/languages given superior status, such as by stating the state is of a particular religion or people, or 'constituent' peoples? Y / N

## Identity

- Is everyone able to practice their language, religion and culture freely? Y / N
- Is everyone able to choose their identity or identities without suffering a detriment? Y / N

## History

- Is there a history of violence and crimes against different groups? Y / N
- Where there is a history of major crimes against minorities has this been addressed, through investigations, prosecutions at the senior level, and apologies? Y / N
- Is there a common history curriculum, which reflects the history of all the communities in the country in a positive way? Y / N

## Separation and segregation

- Are different peoples able to mix? Do they live together? Y / N
- Are schools, housing, jobs segregated? Y / N
- Are there strict quota systems? Y / N

## Constitution

- Does the Constitution guarantee equality? Y / N

## Political system

- Does the political system ensure participation by all groups, including women in all groups? Y / N
- Is the government accountable in fact to all groups? Y / N
- Does the political system encourage parties to seek support across different groups, or force parties and voters into ethnic or religious blocs? Y / N
- Where there is devolution or decentralization, are the boundaries arbitrary? Y / N

- If devolution is on the basis of 'ethnic' or 'religious' areas are minorities within those areas given equal rights and the ability to freely express their identity? Y / N

## Violence and security

- Is hate speech tolerated against minorities, especially in the media and education? Y / N
- Is violence common against minorities? Y / N
- Is there any rule of law for minorities – do police protect them and arrest those who are violent towards them? Y / N

## Economics

- Are any groups economically marginalized? Y / N
- Is there understanding and action by those helping on development to address such marginalization? Y / N
- Is development respectful of minorities' identity, including language, religion, and land? Y / N

## Land and property

- Do minorities have full protection of their property and land rights, in law and in practice? Y / N
- Has there been historic eviction of minorities from their homes? Y / N
- Where there have been evictions, are there effective mechanisms to address this, providing restitution and/or compensation? Y / N
- Are the displaced people integrated into new homes where they can make a viable living and maintain their identity? Y / N
- Are important sites to religions and groups protected? Y / N

## Discrimination

- Is there systematic discrimination against particular groups? Y / N
- Are there laws against discrimination? Y / N
- Are these implemented? Are cases being brought and implemented? Y / N

## Justice

- Can and do minorities use the justice system, especially in security, land/property and discrimination? Y / N

# Recommendations

## The most important steps after an ethnic or religious conflict

- 1 **Stop violence** against minorities, ensure a justice system that identifies and prosecutes perpetrators, especially the leaders. Ensure that all communities are free from attack, including minority women.
- 2 **Ensure minorities do not leave against their will**, by providing security and financial assistance. **Provide conditions for minorities to return** who have recently left as quickly as possible. Set up systems for identifying owners of property and returning these.
- 3 Prohibit and prosecute **hate speech**, especially in the media and education.
- 4 Create a **political system** based on equality. Remove (and do not insert any new) references to a country being based on a particular people, religion or constituent peoples.
- 5 If power-sharing is considered the only option, have a clause providing for a review or termination after a fixed period. Do not have any system that forces persons into ethnic groups.
- 6 Create an **effective legal system** that uses all languages in the country and is open to all. Ensure minorities have financial means to use it.
- 7 Create a system to **outlaw discrimination**, and give effective (legal and other) remedies against it.
- 8 If quotas are deemed necessary, make them temporary and ensure the discrimination is addressed first.
- 9 Ensure **economic development** does not marginalize communities, or destroy their identity. Ensure those involved in development understand discrimination.
- 10 Create an **education system** that ensures all children can learn their communities' language, religion and culture, but also creates common experiences and understanding. Ensure a shared history curriculum.

## General recommendations to governments and others in position of authority

### Creation of integrated societies with diversity

- 1 There should be no references in a Constitution or elsewhere to the pre-eminence of one religion, community or language.
- 2 Governments should create frameworks that allow individuals and groups to determine their own identity. Governments should not entrench particular identities and groups, but recognize and protect those that exist and develop.
- 3 Governments must implement their obligations to promote minorities' rights to practice their culture, religion and language, in public and in private.
- 4 Governments should take effective measures to promote mutual respect, understanding and cooperation among everyone living on their territory, including through educational curricula, culture and the media.

### Preventing violence

5. **Hate speech** should be prohibited, and effectively addressed, especially when committed by state and public officials, in education and in the media.
- 6 Violence against members of minorities, whether by state officials or other parties should be effectively addressed, in particular by prosecutions of the organizers.

### Education

- 7 Governments, and anyone else contributing to education, must ensure that all children, boys and girls, of minority communities are able to learn their own languages, culture and religions in the education system. Minority communities have the right to set up private education on the same basis as anyone else.
- 8 The norm in public education should be integrated schools where children from all communities can learn about each others' culture, languages, religions and history. In areas of mixed population, public schools based on one religion, language or community should be discouraged.
- 9 Where publicly-funded schools based on religion exist, there should be a provision for a percentage of pupils from other (or no) religions, and an opt-out from religious activities within the school. Any state funding of religious schools should be applied proportionately to all religions in the country.
- 10 Female and male representatives of all communities should work together to draw up an agreed history curriculum that is applied across the country.

### Participation of minorities in political life

- 11 There must be accessible, collaborative consultative mechanisms at the national and local level for members of minorities (both women and men); there should be free prior and informed consent on issues that directly affect them.
- 12 Constitutional arrangements, especially electoral systems, should be carefully designed to provide incentives to leaders to cooperate across communities and avoid narrow sectarian appeals. Particular care should be taken to ensure that no predetermined identities are forced on electors and elected in these conditions. The needs of smaller minorities should be particularly taken into account. Special measures may be necessary to ensure a fair representation of minority women.
13. States must operate fair and transparent processes to allow for access to citizenship, and should not discriminate against specific minority groups, especially women from those groups, in this access. Citizenship should not be denied to communities that have lived in the country for a number of generations.
- 14 Where there are autonomy and other decentralized systems:
  - (a) Autonomy must be fully implemented and respected in practice – the autonomous institutions must be adequately funded, and governments must avoid undue interference in decision-making and election of officials;
  - (b) Minority women and men must also have adequate representation in central government;
  - (c) Within regions, there must be full promotion and protection of human and minority rights for all, including smaller minorities within those regions.
- 15 Peacemaking efforts must be rights-based, should follow SC Resolution 1325 and be inclusive of all communities including minority women. Conflicts must be tackled in an holistic way with an appropriate country and/or regional approach, inclusive of all people affected, and not just those that take up arms.
- 16 Generally, rigid power-sharing agreements based on fixed ethnic and religious structures and identities should be avoided. In the few cases where they are considered necessary on a temporary basis, there should be a sunset clause to end them and shift to more integrative arrangements after a fixed number of years. The norm for this should be one or two parliaments.

### Economic participation

- 17 Economic data must be collected on a basis that is disaggregated by ethnicity, religion and gender. Urgent action should be taken for any group that is clearly economically disadvantaged.

- 18 The right to development must be respected as the right of each group to determine its own development with full respect to its religion, language and culture.

### Land

- 19 The protection of land and property rights of minority groups and individuals should be a key priority in any society where there is tension. This includes an adequate legal framework, effective implementation of the above and protection of any vulnerable groups from evictions by any parties. Development donors and others should be particularly aware of this.
- 20 Where there have been recent evictions, especially ethnic cleansing, voluntary return should be organized as quickly as possible for all communities, through the guarantee of the return of land and property, and security.
- 21 Where there have been historic evictions that lead to underlying tensions today, a fair and comprehensive settlement should be designed and dealt with, including a determination of the legal owner, and restitution where this is possible, with compensation.
- 22 Whatever the legal status, access to places of religious and cultural significance should be guaranteed.

### Justice

- 23 The rule of law should be a key priority, in particular ensuring fair access for minorities. All minorities should be able to use their language in the justice system. The justice system should prioritize security (criminal justice), land and property rights protection and address discrimination.
- 24 Major crimes against minorities should be addressed by judicial and other bodies that investigate, in public what occurred, and provide for prosecution, compensation and apologies.

### Addressing discrimination

- 25 Addressing discrimination against all groups should be a major priority.
- 26 A comprehensive anti-discrimination law should be drafted with input from all disadvantaged groups.
- 27 Such a law should be implemented with the support of an official anti-discrimination body (ombudsperson or similar). State laws and policies should be reviewed for discrimination. Members of minorities should be assisted to bring test cases.
- 28 Anti-discrimination policies should include special measures where necessary to produce equality in fact.
- 29 Comprehensive and effective anti-discrimination measures should take the preference over quota-type systems.

# Notes

- 1 Srinivasan, S., *Minority Rights, Early Warning and Conflict Prevention: Lessons from Darfur*, London, MRG, 2006.
- 2 Given that the immediate cause was the assassination of the Archduke Franz Ferdinand and Austria–Hungary’s declaration of war on Serbia, linked to Austria’s inability to address the claims of the Serbian minority in Bosnia.
- 3 Which was created by the Treaty of Versailles in 1919.
- 4 We have found a strong link between minority rights violations and the outbreak of major conflict. In 2003, MRG started a project to examine the causes of conflict involving minorities and to see how such conflicts could be prevented, with the aim of drawing general lessons.
- 5 Genocide is defined as certain acts carried out with the intention to destroy, in whole or in part, a national, ethnic, racial or religious group, as such. (UN Convention on the Prevention and Punishment of the Crime of Genocide, Article 2.)
- 6 Hylland Eriksen, T., ‘Ethnic identity, national identity and intergroup conflict’, in R. Ashmore, L. Jussim, and D. Wilder, (eds), *Social Identity, Intergroup Conflict and Conflict Reduction*, New York, Oxford University Press, 2001.
- 7 Packer, J., Presentation at MRG High-Level Seminar on Minority Rights and Conflict Prevention, New York, November 2006.
- 8 Brunnegger, S., *From Conflict to Autonomy in Nicaragua, Lessons Learnt*, London, MRG, 2007.
- 9 *Ibid.*, citing M. Cleary, ‘Democracy and indigenous rebellion in Latin America’, *Comparative Political Studies*, vol. 33, no. 9, November 2000, p. 1137. Note: *mestizos* are the majority group in Nicaragua of mixed European, indigenous and African descent.
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## Minority Rights: The Key to Conflict Prevention

This report, *Minority Rights: The Key to Conflict Prevention*, cogently argues that an understanding of minority rights is essential for anyone dealing with conflict prevention and resolution.

The report's authors, Clive Baldwin, Chris Chapman and Zoë Gray, demonstrate the strong links between minority rights violations and the outbreak of major conflicts, drawing on research carried out in China, India, Iraq, Kosovo, Nicaragua, the Philippines and Sudan, among other states. MRG's report shows how minority rights violations are often warning signs of an approaching conflict.

This new report looks at five themes: minority identity, the ability of minorities to participate in political and economic life, land/property rights and justice issues. Using case studies and providing practical advice, the authors show why ignoring early warning signs in any of these areas could lead to a build up of tensions and ultimately, violent conflict.

The international community's record on minority rights and conflict prevention is examined and found wanting. The report concludes with a checklist and a series of recommendations aimed at international bodies working on conflict prevention and resolution.