United Nations Nations Unies

Executive Office of the Secretary-General
Cabinet du Secrétaire géneral

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PRIORITY

To: DSG,

03/07/13

Please find attached the draft annual report of the SG on the Responsibility to Protect for clearance.

As proposed by Dieng's Office and as agreed by you, this year's theme is State responsibility and prevention of atrocity crimes. The topic attracted considerable interest among MS who have engaged constructively in the preparation of the report. Key CSOs – such as the Global Centre, HRW, ICG – have also been extensively consulted.

Overall, it is a constructive, forward-looking and balanced report which, as noted by Dieng, could "serve to increase consensus on the concept".

The report consists of two main substantive sections: *Risk factors* for atrocity crimes and *policy options* for prevention. Concrete examples on policies, laws and initiatives by Member States – provided either through the consultations or through desk research – are integrated throughout the text. They represent a good geographical balance.

Based on the policy options presented, it calls on Member States to take concrete steps to enhance national prevention efforts, including national assessment of risks and resilience. The report recommends that the Secretariat organizes a follow-up meeting with Member States on the status of implementation of these measures and encourages States

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to update the Special Advisers on steps taken in this regard.

After prodding by PU, the conclusion refers to Syria: "The unacceptable suffering in Syria is a tragic reminder of the consequences when, in the first instance, the State and, subsequently, the international community, fail to fulfill their responsibilities in this regard. Our collective failure to prevent atrocities in Syria over the past two and a half years will remain a stain on the reputation of the United Nations, both its bodies that have responsibility for dealing with threats to international peace and security and also those Member States that have fanned the conflict." It urges maximum support for the Geneva conference and any outcome.

All States mentioned in the report have been informed and given the opportunity to respond. Of all States mentioned, Afghanistan, Indonesia and Nepal are the only ones yet to respond - they have been contacted several times. Where States have asked for different language, this is reflected in the current text.

Political Unit
3 July 2013

Cc: CDC

United Nations Nations Unies

INTEROFFICE MEMORANDUM MEMORANDUM INTERIEUR

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OF THE SECRETARY-GENERAL

TO: Susana Malcorra,
A: Chief of Staff
Office of the Secretary-General

DATE: 12 June 2013

REFERENCE:

ACTION AG

COPY DSG

THROUGH:
S/C DE:

FROM: Adama Dieng, USG
DE: Special Adviser on the Prevention of Genocide

SUBJECT: 2013 Report of the Secretary-General on the responsibility to protect: State responsibility and
OBJET: prevention

Please find attached the draft report of the 2013 Secretary-General on the responsibility to protect, which will be debated in the General Assembly in an informal, interactive dialogue, tentatively scheduled to take place on 11 September 2013.

Focusing on the responsibility of States to protect their populations by preventing genocide, war crimes, ethnic cleansing and crimes against humanity, as well as their incitement, this report assesses the causes and dynamics of these crimes and violations and reviews the array of structural and operational measures that States may take to prevent atrocity crimes. The report provides some examples of initiatives that Member States are already taking and identifies additional steps that could be taken to protect populations from atrocity crimes.

The draft takes into consideration the contributions of Member States provided through written submissions and consultations with the regional groupings in New York. It also takes into account contributions from civil society organisations, and reflects the comments received from colleagues within the UN system, including from the Departments of Political Affairs and Peacekeeping, the Office of the High Commissioner for Human Rights and the Office of Legal Affairs. The examples of initiatives by States that are included were drawn from the submissions of States, the consultations, suggestions of UN colleagues and from desk research. My staff is contacting each State mentioned to ensure that each is aware of and welcomes inclusion of the examples in the report.

ok?

While some Member States continue to have some concerns about aspects of implementation of the responsibility to protect, I have been very pleased by the interest of Member States in the subject of this year's report, and their constructive engagement during consultations. I believe that this report could serve to increase consensus on the concept. I also hope that the report could serve as a guide for States who seek to strengthen their capacity to prevent atrocity crimes and fulfil their RtoP responsibilities.

Regarding the time line for publication, I would like the report to be published by the end of July to give States ample time to prepare for the GA dialogue. This would mean submitting the final version to DGACM for processing by the end of June. The process of review and clearance should thus be completed by that time. There is an 8,500 word limit.

PoL/03/001

Report of the Secretary-General on the responsibility to protect: State responsibility and prevention

Approved by the Deputy Secretary-Gen

Jan Eliasson

Date:

I - Introduction and mandate

1. Since the 2005 World Summit adoption of the concept of the responsibility to protect, the international community has made progress in the development of the concept and its implementation.[1] In 2009, the General Assembly agreed to give on-going consideration to the concept in resolution A/RES/63/308. Since then, I have issued annual reports to assist the General Assembly by examining different aspects of the concept and its application, which have been considered by the Assembly.

2. The first report, on *Implementing the responsibility to protect* (A/63/677), laid out a three-pillar strategy for implementation in line with paragraphs 138 and 139 of the World Summit Outcome. The first pillar refers to the primary responsibility of each State to protect its populations by preventing genocide, war crimes, ethnic cleansing and crimes against humanity ("atrocity crimes") in accordance with their national and international obligations. The second pillar sets out the parallel commitment of the international community to encourage and assist States to fulfil their responsibility. The third pillar underscores the range of tools available under Chapters VI, VII, and VIII of the United Nations Charter for timely and decisive response when States manifestly fail to meet their responsibilities.

3. The second report, in 2010, focused on *Early warning, assessment, and the responsibility to protect* (A/64/864) called for early engagement tailored to the evolving needs of each situation. The third report, in 2011, considered *The role of regional and sub-regional arrangements in implementing the responsibility to protect* (A/65/877-S/2011/393). Focusing on *Timely and decisive response* (A/66/874-S/2012/578), the fourth report, in 2012, took stock of the Charter-based tools available to respond to situations of concern and the partnerships that could be utilized, as well as ways of protecting responsibly.

4. Advancing the responsibility to protect agenda through the prevention of atrocity crimes is a key element of my five-year action agenda. Recent events, including in the Syrian Arab Republic, underline the vital importance of early action to prevent atrocity crimes, and the terrible consequences when prevention fails.

5. At the heart of paragraphs 138 and 139 of the World Summit Outcome Document lies the acknowledgement by Member States of their primary responsibility to protect their populations. This responsibility entails the prevention of such crimes, including their incitement, through

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[1] 2005 World Summit Outcome A/RES/60/1

[3] These acts are set out in the Genocide Convention and the Rome Statute of the International Criminal Court. All acts constituting the crimes and violations related to the responsibility to protect are prohibited under international customary law, which is binding on all States regardless of their treaty obligations. Ethnic cleansing, while not defined as a distinct crime under international criminal law, is often a result of a combination of acts that could constitute genocide, war crimes or crimes against humanity.

appropriate and necessary means. "Populations", in this regard, refers not only to citizens or civilians but to all populations within State borders.

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6. This responsibility is consistent with existing obligations under international human rights, humanitarian and refugee law, which are binding on all States. The obligation of States to actively prevent genocide is established in Article 1 of the Genocide Convention. Common Article 1 of the Geneva Conventions sets out the obligation of State parties to ensure respect for international humanitarian law in all circumstances.

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7. Beyond moral and legal obligations, history has shown that building societies resilient to atrocity crimes reinforces State sovereignty and increases prospects for peace and stability. Building resilience implies developing appropriate legal frameworks and building State structures and institutions that are legitimate, respect international human rights law and the rule of law in general, and that have the capacity to address and defuse sources of tension before they escalate. It means building a society that accepts and values diversity and in which different communities coexist peacefully.

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8. Focusing on the responsibility of States to protect their populations by preventing genocide, war crimes, ethnic cleansing and crimes against humanity, as well as their incitement, this report assesses the causes and dynamics of these crimes and violations and reviews the array of structural and operational measures that States can take to prevent atrocity crimes. The report provides some examples of initiatives that Member States are already taking and identifies additional steps that could be taken to protect populations from atrocity crimes.

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II – Methodology

9. In order to seek the views of Member States and other key partners on the subject of this report, my Special Adviser conducted a consultation process. By note verbale of 11 March 2013, all Member States and regional and sub-regional organisations were invited to submit their views on the measures available to increase national prevention capacity, the challenges to implementing these measures and examples of preventive practices. Non-governmental organisations were also invited to contribute. As of 16 May 2013, the Secretariat had received written submissions from 27 Member States, one regional organisation and 27 civil society organisations.

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10. In addition to written submissions, in April 2013 the Secretariat held consultations with more than 120 Member States from Africa, Asia, Europe and Latin America and the Caribbean through meetings with regional groupings in New York. In addition, Slovenia organised a consultative meeting in Ljubljana, in which 31 European Member States participated. The consultations and written contributions have informed the content of this report.

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11. The examples included in the report highlight measures that Member States from across regions have taken that may contribute to addressing risk factors for atrocity crimes and building State resilience, even if not undertaken with that specific objective. Some of the examples were generated through the consultative process while others were identified through desk research. These examples are not meant to provide an assessment of progress, nor are they intended to

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capture all relevant initiatives. Nevertheless, they illustrate how some of the policy options presented have been operationalized.

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III - Risk factors

12. It should be acknowledged that there is an overlap between the risk factors related to armed conflict and those related to atrocity crimes. Atrocity crimes are more likely to occur during armed conflict, especially internal armed conflict. Armed conflict is itself a source of risk for atrocity crimes, while atrocity crimes can also increase the risk of armed conflict. Not all armed conflict generates atrocity crimes and not all atrocity crimes occur within a context of armed conflict. What distinguishes atrocity crimes is the deliberate targeting of specific groups, communities or populations, including persons protected under the Geneva Conventions, and sometimes cycles of reaction and counter-reaction between communities.

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13. As a result, while conflict prevention and atrocity prevention are closely related, they are not synonymous and atrocity prevention measures should be developed with this in mind. Focusing exclusively on conflict prevention would overlook the risk of atrocities that occur outside of armed conflict or that are not necessarily related to armed conflict.

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14. Genocide, war crimes, ethnic cleansing and crimes against humanity share much in common with regards to the specific prohibited acts,[3] and thus the associated risk factors. Nevertheless, there are key distinctions. In the case of genocide, the distinction lies in the intent of the perpetrators to 'destroy in whole or in part' a national, ethnic, racial or religious group. War crimes can only be committed in the context of armed conflict or occupation. War crimes may include the targeting of civilian infrastructures that are not military objectives and of anyone no longer taking an active part in hostilities as well as the use of weapons prohibited under international law. Crimes against humanity are distinguished by the systematic or widespread nature of gross violations committed. War crimes, ethnic cleansing and crimes against humanity may be committed in the course of the same event or can be precursors to other atrocity crimes.

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In addition to targeting civilians in general, war crimes may include the targeting of civilian infrastructures that are not military objectives and of anyone no longer taking an active part in hostilities and those *hors de combat* as well as the use of weapons prohibited under international law. War crimes, ethnic cleansing and crimes against humanity may sometimes be precursors to genocide or they may be committed simultaneously in the course of the same event.

15. History has shown that atrocity crimes are processes, not singular events. There is no single cause or set of causes. Rather, there is a multitude of factors associated with a heightened risk of these crimes. Many of these factors are reflected in the Analysis Framework developed by my Special Adviser on the Prevention of Genocide to assess the risk of genocide.[4] A forthcoming framework addressing risk factors for genocide, war crimes and crimes against humanity will complement this tool.

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16. The presence of risk factors does not directly or inevitably cause atrocity crimes. Societies can exhibit multiple sources of risk but not experience atrocity crimes. The absence of atrocities can stem from sources of resilience within a given country or simply from the absence of a triggering or driving factor. Although it is impossible to draw a direct causal connection between the presence of specific risk factors and the occurrence of atrocity crimes, they are rarely committed in the absence of these risk factors.

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[4] The Analysis Framework is available at http://www.un.org/en/preventgenocide/adviser/ in the official languages of the United Nations.

17. First, countries at risk of genocide and, to an extent, other atrocity crimes, often have a **history of discrimination or other human rights violations against members of a particular group or population**, often on the basis of its ethnic, racial or religious background. This risk factor is particularly significant where the legacies of past atrocity crimes have not been adequately addressed through individual criminal accountability, reparation, truth-seeking and reconciliation as well as comprehensive reform measures in the security and judicial sectors.

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18. Genocide is an extreme form of identity-based crime. Whether real or socially constructed, identity can be subject to manipulation by elites, including as a deliberate tactic for personal or political gain, and may be used to deepen societal divisions. Identity-based conflict can be rooted in differences between national, ethnic, racial or religious groups, whether real or perceived. It is not the differences *per se* that cause conflict between groups but discrimination based on such differences that creates unequal access to resources and exclusion from decision-making processes and leads to a denial of economic, social, cultural, civil and political rights.

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19. Of significance are patterns of discrimination against a particular community. Discrimination can be overt or covert and come in many different forms. Political discrimination refers to the denial of basic political rights, such as participation and representation, freedom of expression, opinion and association. Political discrimination can be evident in the under-representation or exclusion of population groups within national legislatures, the security sector and judiciary. Social discrimination includes measures such as denial of citizenship or the right to profess a religion or belief, compulsory identification and limitations on basic rights such as marriage or education that target members of a community. Patterns of economic discrimination are evident where there are significant socio-economic disparities between communities. Economic discrimination includes unequal access to economic opportunities, land and other resources, employment, food, shelter or healthcare. Gender discrimination and inequality increase underlying risks associated with sexual and gender-based violence, which can constitute genocide, war crimes and crimes against humanity in some circumstances. Specific practices of gender discrimination include the denial or inadequate protection of basic rights relating to physical security and status of women, compulsory birth control and unequal access to services and property.

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20. Such discrimination causes discord between groups but, from the perspective of atrocity prevention, is especially concerning when it stems from patterns of deliberate exclusion. Persistent discrimination establishes divisions within society that serve as both a material cause and perceived justification of group violence, whether by the source of discrimination or its victims. Without group-level discrimination, even deeply seated grievances are unlikely to translate into the patterns of abuse that give rise to atrocity crimes. Discrimination is often backed by violence and additional human rights violations, such as arbitrary detention, enforced disappearances, torture, and killing, whether targeting specific members of a community or the community as a whole.

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21. Second, the underlying **motivation of actors** for targeting a community – whether political, economic, military or religious – is an additional risk factor for atrocity crimes. Such motivation is often demonstrated through the use of exclusionary ideology and the construction

of identities in terms of "us" and "them" to accentuate differences. These differences can be deepened through hate speech or propaganda campaigns against the targeted community, which depict them as disloyal, as a security or economic threat or as inferior, so as to justify action against the community. Whether a State is providing open justification for its actions in targeting a particular sector of the population is also an indicator of risk.

22. Third, the risk of atrocity crimes is often connected to the **presence of armed groups or militia and their capacity to commit atrocity crimes**. Armed groups or militia may be allied to the State or to a particular population sector. Heightened risk is associated with the proliferation of arms, including small arms, as well as the ability of armed groups to support their operations financially, including through the exploitation of natural resources or other transnational crimes. In a situation of increasing instability or conflict that is compounded by an absence of any deterrent, access to prohibited weapons can further increase the risk of atrocity crimes.

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23. Fourth, the risk of atrocity crimes may depend on **particular circumstances that facilitate perpetration** of these crimes. This risk entails any development that suggests a trajectory towards mass violence or the existence of a longer term plan or policy to commit atrocity crimes. This can include a sudden or gradual strengthening of the military or security apparatus, creation of or increased support to militia groups, attempts to reduce or eliminate diversity within the security apparatus, preparation of sectors of the population to use them to perpetrate acts, introduction of legislation derogating rights and freedoms or the imposition of emergency or extraordinary security laws.

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24. Fifth, the risk of genocide and other atrocity crimes can be increased by a government's **lack of capacity to prevent these crimes**. This pertains to the existence or otherwise of structures or institutions designed to protect the population and deter the threat of atrocity crimes. Sources of risk are associated with an autocratic political regime or one that denies the right to effective participation in public affairs and restricts civil society. Risk is also linked to weak legislative protection for human rights as well as with weaknesses in the judiciary, national human rights institutions and the security sector. The absence or the lack of credibility of these structures or institutions is an important risk factor. When the rule of law is weak or under stress, these institutions are unable to function properly and populations are left vulnerable. In such situations, there is more likely to be impunity for discrimination and the violence that may be used to enforce it. Impunity not only diminishes human rights protection, it also creates conditions that enable the incitement of further violence.

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25. Sixth, risk factors for atrocity crimes include the **commission of acts that could be elements of genocide, war crimes and crimes against humanity** as set out in, for example, Article 6, 7 and 8 of the Rome Statute. This can include acts such as killings; enforced disappearance; hostage taking; torture or other inhumane treatment; rape and other forms of sexual violence; child recruitment and other forced recruitment, arbitrary displacement or forced deportations, the use of prohibited weapons and ammunition; attacks against civilian infrastructures which are not military objectives or attacks against humanitarian personnel. Furthermore, programs intended to prevent reproduction as well as the forcible transfer of children can constitute elements of genocide or crimes against humanity.

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26. Acts specifically related to genocide include less obvious methods of destruction of a protected group, such as the deliberate deprivation of resources needed for the group's physical survival and which are accessible to the rest of the population. The evidence of intent "to destroy in whole or in part" is also a key risk factor associated with genocide. Intentions can be difficult to ascertain but may be discernible in propaganda or hate speech or in State policies. This intention can be manifest in widespread discriminatory practices culminating in gross violations of human rights against a specific group. The intent to destroy can also be inferred from the widespread or systematic nature of acts targeting a particular group as well as the intensity and scale of these acts and the type of weapons employed.

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27. **These risks can be compounded by triggers or drivers** that create a permissive environment or engender a rapid escalation of tensions. Triggers may include a non-constitutional change of government; events that spill over from a neighbouring country, including armed hostilities or mass displacement; internal uprisings or unrest; the assassination of symbolic personalities; or security vacuums following the removal of security forces from an area. In some instances contests for political power, such as elections, can trigger crises, especially where parties are factionalized along identity lines, where doubts arise about the transparency of electoral processes or where scheduled elections are arbitrarily delayed or cancelled. These contests can be exacerbated by the co-existence of other crises, such as those caused by economic instability or natural disasters. Against a backdrop of discrimination and inter-group tensions, contests for political authority or necessary resources can become existential struggles between groups, where one portrays the other as a source of threat.

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28. The greatest challenges to preventing atrocities often occur in situations of armed conflict. However, this does not diminish the responsibility of the State to prevent atrocities, nor can it excuse their inaction. States must continue to apply relevant international norms and do their utmost to protect their populations. Failure to ensure that security forces are trained to comply with international humanitarian and human rights law can increase the risk of war crimes and other atrocity crimes. Emerging patterns of violations of international humanitarian and human rights law can indicate a risk of future atrocity crimes. Impunity for violations committed by armed forces personnel, irregular forces, militias, as well as armed rebels or other non-state actors also increases the risk of future atrocity crimes. The risk of war crimes may increase with the absence of rules of engagement that comply with international humanitarian and human rights law, notably the failure to effectively prohibit and prevent attacks on civilians and civilian objects, or the disproportionate or indiscriminate use of force.

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29. The risks highlighted in this report have been evident to different degrees in cases of atrocity crimes that have occurred in all regions of the world. No state can consider itself immune to the risk of atrocity crimes. While there is a hierarchy of risk and many States may have the structures in place which ensure that they are able to address internal risks and stresses, the responsibility to protect must be seen as both a national and international responsibility.

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IV – Policy options for atrocity prevention

30. The range of risk factors demonstrates that atrocity crimes are processes and not single events that unfold overnight. The Holocaust did not originate in the gas chambers and the

genocide in Rwanda did not start with massacres in churches. Rather, these genocides started with hate speech, discrimination and marginalisation. In Argentina, identification of perceived political opponents by the military regime of 1976 to 1983 was a step towards widespread arbitrary detentions, enforced disappearance, torture and other acts that constituted atrocity crimes. While the processes have differed, in each case a number of steps were taken that, intentionally or unintentionally, facilitated the perpetration of these crimes. An environment permissive to these crimes does not develop overnight; the process can take years or decades. There are, therefore, numerous entry points for action that can stop the process and prevent atrocity crimes. Whatever the configuration of risk factors in a particular situation, actions by States to address these risk factors, including with the support of partners, can reduce the underlying sources of risk and build resilience to navigate periods of stress.

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31. Early preventive action can address structural and operational factors that affect State capacity to prevent atrocity crimes. Structural policy options aim at establishing an environment of resilience, addressing root causes of atrocity crimes, removing core sources of grievances and building State structures that contribute to impeding the commission of these crimes or successfully overcome periods of instability. Operational measures may involve taking deliberate action to mitigate tensions, halting the commission of imminent or ongoing crimes, ensuring accountability for crimes committed and preventing further violence. Operational measures also include the development of early warning, assessment and response mechanisms.

32. It is important to recognise that genocide, war crimes, ethnic cleansing and crimes against humanity affect men and women, girls and boys differently. Security Council Resolutions 1325, 1820, 1888, 1889 and 1960 on Women, Peace and Security affirm the importance of combating sexual violence as a method of warfare, as well as the full and equal participation of women in decision-making and peace processes. Security Council Resolutions 1612, 1698, 1998, 1882 and 2068 on Children and Armed Conflict outline, amongst other things, means for combating specific crimes against children. The principles outlined in these resolutions can be incorporated into atrocity prevention strategies.

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33. There is no "one-size-fits-all" approach to atrocity prevention. The policy options outlined in this report can be tailored to the context of each State. Some are most successful when undertaken in partnership, including with the United Nations, Member States, regional or sub-regional arrangements or civil society.

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34. The following section will highlight structural and operational measures that can contribute to reducing the risk of atrocity crimes. The section also outlines some current examples of policy options implemented by Member States. While there are sometimes challenges of implementation, the examples provide ideas of how measures can be applied in different contexts.

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Building national resilience

35. **Constitutional protections**, when upheld, can contribute to creating a society based on non-discrimination. Constitutional arrangements can be vehicles for accommodating distinct national concerns while guaranteeing the protection of fundamental human rights. Constitutions can recognize the diversity of a State and grant explicit protection to different populations,

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including cultural, ethnic or religious minorities. They can also ensure political recognition of diversity through the devolution of powers, including the establishment of territorial chambers to guarantee regional participation in State governance and assignment of meaningful roles for regional administrations. Constitutions can provide for diversity in the composition of the State's administrative bodies, civil service, judiciary and security forces. While no diversity management model is perfect, constitutional arrangements have the potential to create the means to address political tensions, including those with a territorial or identity component.

36. Examples of such constitutional protections can be seen worldwide. For instance, the Canadian Charter of Rights and Freedoms, which is entrenched in Canada's constitution, affirms that every individual in Canada is considered equal – regardless of race, religion, national or ethnic origin, colour, sex, age or physical or mental disability. The courts have upheld that this provision protects equality for other characteristics not specifically set out in the Charter. In Croatia, the Constitutional Act on the Rights of National Minorities paves the way for the representation of minorities in political, administrative and judicial institutions at the local, national and regional levels. In South Africa, a comprehensive system of rights for cultural, linguistic, religious and traditional communities is supported by a constitution that recognises the harmonisation of customary law with human rights principles. While there may be challenges to implementation, these constitutions recognise the diversity of their societies and provide protections which can help to manage diversity constructively.

37. Most governments seek legitimacy through some form of democratic **electoral process**. When elections meet international standards of freedom, fairness and respect for human rights and enjoy popular support, they can provide legitimacy for the government. When all sectors of the population have the opportunity to participate in public life through inclusive, fair electoral processes, they are less likely to resort to violence to resolve their differences or make their voices heard. Electoral processes can help to manage social tensions through public dialogue, constructive debate, and the selection of leaders through agreed rules. Electoral systems that encourage inter-communal political cooperation can help prevent tensions that may spiral into atrocity crimes. Electoral management bodies play an important role in ensuring the integrity of the electoral process, and require the necessary resources to play this role impartially and effectively. Monitoring by a robust and independent civil society, in addition to representatives of political parties, can help ensure that elections are open, transparent and free from malicious influence, and that they are accepted as credible.

38. Although the 2006 general election in Guyana was marked by tensions, fear and political uncertainty, peace-building initiatives by national actors, supported and facilitated by the international community, contributed to preventing a large-scale outbreak of violence. For instance, the electoral commission worked with partners to streamline electoral processes, monitor the media for inaccurate, biased or inflammatory statements and encourage media outlets to adhere to a code of conduct. In Nepal, the Interim Constitution required political parties to take into account the principle of inclusiveness when selecting candidates. The Election Act of 2007 established a quota system for the representation of disadvantaged caste and ethnic groups based on their share of the population as determined by the last census. Despite some challenges, the act helped establish an inclusive and diverse Constituent Assembly.

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39. The diffusion and sharing of power can engender political pluralism, which promotes the peaceful coexistence of different interests. In a democratic society, the political environment can support a vibrant, multiparty landscape and protect the rights of individuals to establish, join, and operate a political party. While politicisation of identity can be a side-effect of national peace processes, political parties can be formed in a manner that promotes national cohesion, accommodates the rights of different populations and limits the ability of political leaders to exploit identity to exclude or marginalize other groups. To foster resilience to atrocity crimes, political parties can be self-regulating in terms of influencing the content of their discourse and political programmes, encouraging tolerance and respect for diversity, fostering the use of positive speech and the avoidance of discriminatory language.

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40. States have a binding obligation under international customary law to criminalise genocide, war crimes and crimes against humanity, and investigate and prosecute perpetrators. **Ensuring accountability** for human rights violations and for past atrocity crimes, contributes not only to their prevention and also builds the credibility of institutions. The legal framework for such accountability is provided through the ratification, domestication and implementation of relevant international legal instruments.[5] Incorporating obligations under international human rights and humanitarian law in national legislation and taking practical measures for the laws to be implemented strengthens these legal frameworks. Although not always strictly replicating international definitions, a number of States have criminalised genocide, war crimes or crimes against humanity, or all the three, in national legislation, such as Bolivia, Portugal, Seychelles and Vietnam. Guatemala has set an historical precedent by being the first State to indict a former head of State on charges of genocide and crimes against humanity. States can also refer cases to the International Criminal Court for prosecution. Four State Parties to the Rome Statute, namely the Central African Republic, the Democratic Republic of the Congo, Mali and Uganda, have so far referred situations occurring on their territories to the Court.

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41. National accountability mechanisms can also ensure that personnel under the control of the State, including the security forces, do not commit acts that could amount to atrocity crimes. The removal of statutory limitations, amnesties or immunities which obstruct the prosecution of State officials and other individuals responsible for atrocity crimes, and therefore fall short of international standards, strengthens national legal frameworks for accountability. In Argentina, a 1990 pardon for atrocity crimes committed by the regime of Jorge Rafael Videla was overturned in 2003, when the State removed legal obstacles in order to prosecute those responsible. More than four hundred people have now been convicted for crimes against humanity, including the former President.

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42. In societies that have lived through atrocity crimes, **a fair and inclusive transitional justice process** can prevent relapse into further violence. Transitional justice initiatives can encompass both judicial and non-judicial mechanisms, including individual prosecutions,

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[5] These conventions include the Convention on the Prevention and Punishment of the Crime of Genocide; Covenant on Civil and Political Rights and its 1989 Second Optional Protocol; Covenant on Social, Economic and Cultural Rights; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; Convention on the Elimination of All Discrimination against Women; Convention on the Elimination of Racial Discrimination; Convention relating to the Status of Refugees and its 1967 Protocol; Convention on the Rights of the Child; the Rome Statute of the International Criminal Court and the Arms Trade Treaty.

reparations, truth-seeking, institutional reform, vetting and dismissals. These processes can address the root causes of tensions by promoting truth-telling and ensuring accountability and access to justice. Addressing past grievances and violations can facilitate reconciliation by promoting human rights, bolstering the rule of law and re-instilling confidence in the State, which promotes stability and durable peace. Compliance with international standards and a comprehensive approach ensures that these processes are effective and legitimate.

43. In terms of transitional justice processes, the Timor-Leste Commission for Reception, Truth and Reconciliation provides an example of an independent, statutory authority. The Commission was mandated to undertake truth seeking for the period of 1974-1999 and facilitate community reconciliation. The Commission's recommendations were presented to the President, Parliament and Government of Timor-Leste.

44. An **effective security sector reform process** can contribute to mitigating the risk of atrocity crimes by controlling the means to commit atrocity crimes and deterring instances of misconduct or abuse. A legitimate security sector is characterised by transparent, accountable and democratic civilian oversight, including on budgetary matters; the inclusion of staff at all levels that reflect the diversity of a society; the promotion of professionalism among uniformed personnel; the creation of programmes to improve relations with local communities; vetting of officers for participation in atrocity crimes and removal of identified perpetrators; the provision of training on international humanitarian and human rights law and on the collection of evidence of atrocity crimes; the establishment of operating procedures for the use of force and firearms compliant with international standards; and the adoption of international humanitarian and human rights standards into national military statutes along with the creation of internal disciplinary mechanisms and other accountability mechanisms to address violations committed by security forces personnel. Security sector reform is most likely to contribute to reducing the risk of atrocity crimes when initiated by a legitimate government with democratic institutions or within the framework of a comprehensive democratic reform plan. In many European countries, including Austria, Estonia and Slovenia, civilian oversight of the armed forces encourages accountability.

45. As economic deprivation, or real or perceived disparities, constitute risk factors for atrocity crimes, a range of political, economic and social measures can be taken to **increase actual or perceived equity in the distribution of resources,** assets, income and opportunities between groups as well as to promote overall economic development and prosperity. Relevant measures to promote horizontal equality could include employment and safety net programs for marginalised populations, including youth, as well as fiscal reforms to enhance transparency and equity. Anti-discriminatory initiatives and policies aimed at reducing corruption, including corruption or favouritism linked to identity can complement these reforms. As corruption and inequity undermine the legitimacy of the State, such reforms can contribute to mitigating grievances that create instability.

46. In 2008, Australia adopted the "Closing the gap" strategy at the national level that aims to reduce disparities between the indigenous and non-indigenous populations with respect to life expectancy, child mortality, access to early childhood education, educational achievement and employment. In Ecuador, the Constitution serves as the foundation for social protection policies

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and for more inclusive economic growth. The adoption of a national development plan has paved the way for the promotion of inclusiveness and transparency by incorporating social actors in the development process.

47. Beyond these structural reforms, the development or **strengthening of national institutions, including legislative bodies,** that establish the foundations of good governance based on the rule of law, democratic principles and values, and accountability contribute to building societies resilient to atrocity crimes. National institutions that are accountable to the population assume responsibility for their protection and enjoy greater legitimacy. One of the principal sources of resilience is the rule of law. Legislative protection for human rights, minority rights and the rights of refugees and internally displaced persons; an independent and effective judiciary; national human rights institutions; effective, legitimate and accountable security forces; and a diverse and robust civil society, including a pluralistic media, are all related to the rule of law and can contribute to strengthening the capacity of a society to overcome the risks associated with atrocity crimes. When the rule of law is weak or under stress, these institutions are less able or are unable to function properly and populations are left vulnerable.

48. Among others, legislative chambers in France, Luxembourg and Romania produce annual public reports on their activities and budget implementation. In Botswana, the Directorate on Corruption and Economic Crime is mandated to prevent corruption in public bodies by conducting a corruption risk assessment, examining practices and procedures of government bodies and providing seminars and consultancy services to various public organisations.

Promote and protect human rights

49. A national infrastructure for the **promotion and protection of human rights** strengthens State resilience to atrocity crimes and improves its capacity to address underlying sources of tension. This infrastructure should be based on a legal framework that is consistent with international human rights law. It can also include national human rights action plans and human rights institutions, as well as human rights commissions and humanitarian institutions dedicated to the protection, inclusion and empowerment of vulnerable or excluded groups. An Ombudsperson may represent the interests of the population by investigating and addressing complaints of mismanagement or violations of rights.

50. Such institutions can play a critical role in atrocity prevention. They may promote and monitor the implementation of international human rights standards and domestic law, including by cooperating with United Nations treaty bodies, and the human rights mechanisms and Universal Periodic Review process of the Human Rights Council, as well as with international and regional mechanisms. States that establish these institutions and provide them with the necessary independence and resources to operate demonstrate their commitment to building resilience to atrocity crimes.

51. As of May 2012, 69 of the 101 national human rights institutions from across all regions have been assessed as complying with the Paris Principles, which set standards for their status and functioning. One of them, the Afghanistan Independent Human Rights Commission, has been investigating cases of human rights violations and classifying those that could amount to

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<#>To be a source of resilience to atrocity crimes, **national institutions, including legislative bodies, should be democratic and accountable to constituents**. National institutions that are accountable to the population assume responsibility for their protection and enjoy greater legitimacy. The breakdown or lack of accountability of these institutions, including through corruption and nepotism, make them less responsive to the needs of their populations, less able to identify and respond to social tensions, more prone to being manipulated to advance practices of discrimination and more likely to themselves become the subject of disputes between communities. To instil confidence in public institutions, States may institute political reforms that uphold democracy and the rule of law and combat corruption ¶

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atrocity crimes. The governing body of this Commission includes civil society organisations and has built bridges between government and civil society. The National Human Rights Institution in Indonesia is equipped with extensive legal powers and a mandate to investigate possible human rights violations. In 2008, the institution was given additional responsibilities for the prevention of racial and ethnic discrimination. The members of the Central American Council of Human Rights Ombudsmen have approved the development of an early warning system for genocide prevention that would seek to utilize the autonomous and investigatory role played by each Ombudsman to obtain and analyze information through a genocide prevention lens.

52. National institutions that contribute to building resilience can take different forms. In Kenya, the National Cohesion and Integration Commission was established in 2008 to facilitate and promote "equality of opportunity, good relations, harmony and peaceful coexistence between persons of different ethnic and racial backgrounds" and to advise the government on measures to increase knowledge and practices on cohesion, eliminate discrimination and strengthen good governance.

53. **An active, diverse and robust civil society** that is allowed to operate freely and openly without fear of persecution or reprisal contributes towards ensuring accountability of leaders, respect for the rule of law and the inclusion of all sectors of society in decision-making processes. In Mexico, a 2012 law established new protection mechanisms for journalists and human rights defenders and created a special advisory board to the government to involve civil society in the implementation of the mechanism. While there are challenges to implementation, the law is seen as a step towards protecting at-risk journalists and human rights defenders.

54. The media is an important element of civil society. The **independence and plurality of the media** should be encouraged, including the right of national, racial, religious and ethnic minorities to have their own media. States can also create a legal and social environment that will encourage professional and ethical standards in journalism and respect and encourage freedom of the press. Freedom of expression is safeguarded in the constitutions of many States, including The Netherlands, which has an independent and diverse media. The constitution of Malawi guarantees freedom of the press. While there are ongoing challenges regarding access to information, in May 2012 the administration repealed media laws judged to be repressive and took steps to strengthen the role of the media.

55. While respecting freedom of opinion and expression, it is important to combat advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, in line with Articles 19 and 20 of the International Covenant on Civil and Political Rights and also taking into account the Rabat Declaration and Plan of Action (see A/HRC/22/17/Add.4, appendix).

Adopting targeted measures to prevent atrocities

56. There are some specific measures that States can take to mainstream an atrocity prevention lens within national administrations. These include the **designation of an atrocity prevention or 'responsibility to protect' focal point or an inter-agency mechanism**, which can contribute to the integration of an atrocity prevention perspective in national policies and

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strategies. These focal points can help coordinate national efforts to mainstream and operationalise the responsibility to protect concept, which can spur the establishment of national atrocity prevention action plans, tailored to the national context.

57. Some States have already taken this step. In 2010, the Responsibility to Protect Focal Points initiative was launched by Denmark and Ghana. Australia and Costa Rica have since joined the organising group. At present, 28 States representing all regions have appointed national responsibility to protect focal points. As with any national initiative, each State has approached this function from its own perspective. In Denmark, the appointment of a national focal point on the responsibility to protect was followed by the establishment of an inter-ministerial coordination mechanism, based on the relevance of each ministry to implementation of the three pillars of the responsibility to protect. In a separate initiative, a series of regional conferences on the prevention of genocide organised by Argentina, Cambodia, Switzerland and Tanzania since 2008 has led to the creation of a network of genocide prevention focal points and facilitated an exchange of lessons learned.

58. In the United States of America, the establishment of the inter-agency Atrocities Prevention Board in 2012 was preceded by a thorough review of existing capacities and gaps and led to a series of recommendations that are now being implemented.

59. In Africa, Kenya, Rwanda, Tanzania, Uganda and Zambia have established National Committees on the Prevention and Punishment of the Crime of Genocide, War Crimes, Crimes against Humanity and all forms of Discrimination, based on the Protocol of the International Conference on the Great Lakes Region of Africa and building on the Genocide Convention and the Rome Statute of the International Criminal Court. All eleven Member States of this sub-regional body have committed to establishing similar committees.[6] While still in the process of development, the Committees could pave the way for the creation or strengthening of national early warning mechanisms.

60. **Effective early warning mechanisms** with a specific atrocity prevention focus and which are linked to policy development can help to detect, assess and respond to sources of tension and points of risk or identify vulnerable populations. In this context, early warning mechanisms can serve to alert decision-makers – including government officials and politicians, as well as representatives of regional and sub-regional organisations – to situations that could escalate into atrocity crimes. More specifically, these mechanisms can help identify sources of risk, monitor developments and make recommendations for early preventive action. They can channel relevant information to the right actors in a systematic and timely manner that facilitates better planning and use of resources to implement preventive action. While early warning does not always result in early action, timely preventive action is unlikely without early warning.

61. Institutionalised processes for **dialogue between the State and different communities** are important to maintain open channels of communication and build trust. States can also consider developing mechanisms to support the early resolution of tensions. An effective national mechanism would regularly assess risk factors and root causes of tensions and identify

[6] Angola, Burundi, Central African Republic, Democratic Republic of Congo, Kenya, Uganda, Republic of Congo, Rwanda, Sudan, Tanzania and Zambia.

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ways to address those tensions before they escalate. Local mechanisms aimed at resolving tensions between communities and countering hate speech and incitement to violence can also contribute to enhancing national cohesion. Civil society organisations, including women's groups, should be included in such mechanisms. National and local actors can draw on tools such as mediation, arbitration, legal settlement and other judicial means to resolve disputes. These tools are effective when they are seen to be credible and respect the rule of law.

62. In Ghana, the National Peace Council that was established in 2011 has taken steps to mediate local tensions and develop a policy framework for conflict resolution. The Council has been instrumental in managing political tensions, particularly those arising from closely contested elections. Singapore has a variety of institutional arrangements that bring to ether religious leaders to build inter-faith trust and strengthen community interaction to address inter-religious tensions before they escalate.

63. **Education** can promote tolerance and an understanding of the value of diversity. Changing the behaviour, attitudes and perceptions of youth can contribute to creating a society resilient to atrocity crimes. Education systems should reflect the ethnic, national and cultural diversity of societies, set an example of inclusiveness in their policies and prescribe textbooks that promote inclusiveness and acceptance. Education curricula should include instruction on past atrocities, the causes and dynamics of atrocity crimes and their consequences. In 2009, Argentina launched an educational programme that includes teaching on the Holocaust in a manner that reinforces the notion of accountability, participation and inclusion.

64. **Commemoration acts and memorials** to past atrocities are also elements of preventive action. Among others, Cambodia, Germany, Iraq, Paraguay, Poland and Rwanda have institutionalised the memory of past atrocity crimes by establishing memorials or organising remembrance ceremonies, promoting greater recognition and understanding of these crimes. The empowerment of victims' associations, including in Rwanda, ensures that those who were most affected by these crimes are a part of the national conscience as their respective countries move forward.

Challenges

65. While there is a broad range of policy options available to strengthen national atrocity prevention capacity, there are still challenges for Member States to fulfil the commitment made at the 2005 World Summit.

66. First and foremost, political will and leadership are required to translate this commitment into practice. It is sometimes difficult to demonstrate the added value of prevention, particularly early preventive action, which may not have immediate, visible outcomes. While such action is most likely to save lives – and is less costly and contentious than action taken at a later stage – it can be challenging to secure the political support and resources required to undertake it.

67. Second, as atrocity crimes stem from a range of risk factors, it can be hard to discern what needs to be addressed and at what stage. Lack of capacity, expertise and understanding of

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the causes and dynamics of these crimes, or of the severity of certain risks, can be further barriers to preventive action.

68. Third, the responsibility to protect entails both a national and international responsibility. Atrocity prevention must be rooted in national efforts to create a society resilient to atrocity crimes and in international efforts to assist other States, should the need arise.

Building partnerships for prevention

69. Partnerships, including with the United Nations, other Member States, regional or sub-regional organisations and civil society, can help States strengthen national atrocity prevention efforts and overcome these challenges. Partnerships, rooted in national ownership of atrocity prevention efforts, can provide Member States with technical assistance and resources to strengthen national capacities. These partnerships can also pave the way for strengthened regional and international collaboration for atrocity prevention.

70. As an example of regional partnership, eighteen States launched the Latin American Network for Genocide and Mass Atrocity Prevention in 2012. In collaboration with civil society partners and my Special Advisers on the Prevention of Genocide and on the Responsibility to Protect, this coalition supports initiatives by its members to build national capacity to prevent atrocity crimes.

VI - The way forward

71. Beyond the range of policy options identified above, Member States committed to fulfilling their responsibility to protect populations by preventing atrocity crimes and meeting their obligations under international law could consider the following steps to invigorate national atrocity prevention efforts.

72. These steps could be undertaken in partnership with the United Nations, other Member States or civil society. I call on all Member States to:

- Appoint a senior-level focal point with atrocity prevention responsibilities and adequate resources, or establish other national mechanisms to implement this mandate.
- Conduct a national assessment of risk and resilience, using the Analysis Framework developed by my Special Adviser on the Prevention of Genocide, as appropriate, as well as the risk factors outlined in this report and tools developed by civil society. The review should be system wide and include identification of vulnerable populations and an

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Deleted: <#>As one example of an effective partnership, eighteen States launched the Latin American Network for Genocide and Mass Atrocity Prevention in 2012.[7] In collaboration with civil society partners and my Special Advisers on the Prevention of Genocide and on the Responsibility to Protect, this coalition of States supports the initiatives of its members to institutionalise atrocity prevention, including through training of government and security personnel. ¶

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assessment of existing structures for resilience. Civil society should be included in the review process.

- Sign, ratify and implement relevant international legal instruments.[8]

- Engage with and support other Member States and regional or sub-regional arrangements to share experiences and enhance cooperation to promote the effective use of resources.

- Participate in peer review processes, including the Universal Periodic Review of the Human Rights Council, as well as regional peer review processes and other options for monitoring effectiveness of measures taken.

- Identify and form partnerships with other Member States, regional and sub-regional arrangements or civil society for technical assistance and capacity building purposes, exchange of lessons learned and mobilisation of resources.

- Participate in international, regional and national discussions on the further advancement of the responsibility to protect and its implementation.

VII - Conclusion

73. The consequences of the failure by States to protect their populations were evident in the brutal legacy of the twentieth century. In the twenty-first century, we have again witnessed atrocities that are the direct consequence of the failure of States to take preventive action – including in Côte d'Ivoire, the Democratic Republic of the Congo, Kenya, Mali, Sri Lanka, Sudan and Syria. These situations are particularly tragic when we know that they could have been prevented.

74. As this report has set out, the prevention of atrocity crimes requires continuous efforts by States. It also requires the engagement of the international community through assistance, or by action, when States manifestly fail to protect their populations. The unacceptable suffering in Syria is a tragic reminder of the consequences when, in the first instance, the State and, subsequently, the international community, fail to fulfill their responsibilities in this regard. Our collective failure to prevent atrocities in Syria over the past two and a half years will remain a heavy moral burden on the standing of the United Nations and its Member States, in particular those who have primary responsibility for international peace and security, and also those who in different ways have exacerbated the conflict. I urge all Member States to provide maximum support for the peace conference in Geneva, especially the implementation of any agreements reached there.

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[8] Including the Convention on the Prevention and Punishment of the Crime of Genocide; Covenant on Civil and Political Rights and its 1989 Second Optional Protocol; Covenant on Social, Economic and Cultural Rights; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ; Convention on the Elimination of All Discrimination against Women; Convention on the Elimination of Racial Discrimination; Convention relating to the Status of Refugees and its 1967 Protocol; Convention on the Rights of the Child; and the Rome Statute of the International Criminal Court and the Arms Trade Treaty.

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75. Few of the policy options presented in this report are completely new. Many are already being implemented by States, even if they may not be doing so with the specific objective of atrocity prevention. Radical change may thus not be required. Simply re-framing of current initiatives, however, is not enough. In order to be effective, atrocity prevention requires a concerted, comprehensive and inclusive review of risks and vulnerabilities and the action that could be taken to address them in a timely fashion. I commend all States that have already taken steps to strengthen their preventive capacities, including through implementing measures outlined in this report.

76. I look forward to the upcoming informal interactive dialogue in the General Assembly on this report. As with earlier dialogues, it will provide an opportunity for Member States to share their views as we continue to chart the road towards the full, balanced and sustainable implementation of the responsibility to protect concept. It is time to make the responsibility to protect a living reality for all people of the world, and make prevention a priority.

77. To this end, I intend to organise a follow-up meeting with Member States, regional and sub-regional organisations and civil society on the status of implementation of this report's recommendations. This meeting would provide an opportunity for an informal exchange of views on the parameters and effectiveness of policy options in certain contexts, good practices and lessons learned, promote partnerships and identify steps for the way forward. I encourage Member States to update my Special Advisers on the Prevention of Genocide and on the Responsibility to Protect on measures taken to implement these recommendations.

78. I would welcome suggestions for the focus of next year's dialogue. One option could be to examine in greater depth the "Pillar II" responsibility of Member States and the international community to help States build capacity to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity and to assist those which are under stress before crises and conflicts break out.

Deleted: <#>The right of the individual to protection under international human rights, humanitarian and refugee law is the continuous obligation of States that underpins prevention. I urge States to act now on their obligations, as they so solemnly committed to do in the 2005 World Summit Outcome Document, in order for the prevention of atrocity crimes to become a living reality.¶
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