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**CONCLUSIONS AND RECOMMENDATIONS OF THE SUB-REGIONAL SEMINAR
ON MINORITY RIGHTS: CULTURAL DIVERSITY AND DEVELOPMENT IN
SOUTH-EAST ASIA**

(Chiang Mai, Thailand, 4-7 December 2002)

Mr. Asbjørn Eide, Chairperson/Rapporteur

I. INTRODUCTION

1. The Sub-Regional Seminar on Minority Rights: Cultural Diversity and Development in South-East Asia took place in Chiang Mai, Thailand from 4 to 7 December 2002. The proposal to hold regional seminars on minority issues had been made by the Working Group on Minorities and endorsed in resolution 2000/16 of the Sub-Commission on the Promotion and Protection of Human Rights. The seminar was organized by the Working Group on Minorities and the Office of the High Commissioner for Human Rights (OHCHR) in cooperation with the Regional Centre for Sustainable Development of Chiang Mai University.
2. The objectives of the seminar and the list of working documents and country presentations are contained in annex I. Annex II contains the list of participants in the seminar.
3. Mr. Asbjørn Eide chaired the opening of the seminar and its closure, including the adoption of conclusions and recommendations. Additionally, participants chose Mr. Sem Karoba to chair the discussion on the "Current situation of ethnic minorities in South-East Asia" and Ms. Julia Kam to chair the discussion on "Participation in development".
4. The present document contains the conclusions and recommendations adopted by the participants in the seminar. The narrative report of the seminar is contained in document E/CN.4/Sub.2/AC.5/2003/CRP.11.

II. CONCLUSION OF THE SEMINAR AND ADOPTION OF THE CONCLUSIONS AND RECOMMENDATIONS

5. At the last meeting of the seminar, draft conclusions and recommendations, which had been drawn up by participants from the sub-region, were presented by Mr. Jaran Ditapichai, Commissioner, National Commission for Human Rights of Thailand, for consideration by all participants. Participants then discussed, revised and adopted the conclusions and recommendations of the sub-regional seminar.
6. Participants in the Sub-Regional Seminar on Minority Rights: Cultural Diversity and Development in South-East Asia expressed their gratitude to the Government of Thailand for its warm welcome, participation and generous hospitality.
7. It was recognized that greater awareness exists in and among States and their societies about the rights of persons belonging to minorities and the need for initiatives to promote and protect such rights as provided in the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, adopted by the United Nations General Assembly on 18 December 1992 (hereinafter referred to as the Minorities Declaration).

8. Participants strongly endorsed the statement, contained in the preamble to the Minorities Declaration, that the constant promotion and realization of the rights of persons belonging to national or ethnic, religious and linguistic minorities, as an integral part of the development of society as a whole and within a democratic framework based on the rule of law, would contribute to the strengthening of friendship and cooperation among peoples and States.

9. Participants pointed out that despite some recent positive developments, Governments of the region still paid insufficient attention to the implementation of the Minorities Declaration. As a consequence, stability, rule of law, friendship and co-operation have not yet been well established in South-East Asia. The participants expressed the view that their adoption of the following conclusions and recommendations was a contribution to the further development of social, cultural, legal and political matters within the region.

A. Conclusions

10. Participants discussed the concepts of “minorities, ethnic groups, ethnic minorities, or indigenous peoples” and acknowledged the complexity of definitional issues within the sub-region. Participants identified issues of concern facing such groups and the persons belonging to such groups. They included the lack of respect for the principle of self-identification; the absence of recognition of minorities; the lack of respect for the principle of non-discrimination; and the lack of appreciation of a history reflecting the cultural diversity and plurality of communities in society. Participants expressed the view that in the process of nation-State building, the non-conformity of minorities’ culture to that of the mainstream society had been interpreted, on repeated occasions, as posing a risk to national security and unity.

11. Participants affirmed that some fundamental rights were denied to persons belonging to minorities, such as the right to legal status and citizenship, the right to education in the mother tongue, effective participation in all aspects of life, and freedom of expression. For many minorities and indigenous peoples, boundaries have deprived them of their right of movement and of maintaining contact among minorities within countries and with minorities across frontiers. Participants stressed that administrative boundaries have been defined without reference to the traditional domains of minorities. It was pointed out that the notion of superiority and inferiority among majority and minorities has impacted on the concept and application of development policy. The interpretation and practice of democracy as decision-making by majority rule was deemed to be one such expression of superiority. It was pointed out that the use of minority culture for commercial exploitation had had a negative impact on human dignity and had not benefited communities. Indigenous peoples and minorities were not only excluded from the process of national development, but also continued to suffer from the effects of alienation and of imposed concepts and an imposed framework of development. Participants stressed that in the process of defining and designing development, existing traditional decision-making structures and traditional knowledge were ignored, thereby undermining the integrity of the culture of minorities and endangering the sustainability of the environment. Participants emphasized that the traditional way of life of minorities, such as the practice of shifting cultivation, had been stigmatized as damaging. That had been used as a justification for the forced or lack of planned relocation of minorities, as well as for States’ and private interests’ taking over the control of resources in the traditional areas of minorities. Participants noted that, in some countries, the resettling of populations into minority areas has

created tensions and that in most countries, the customary lands of and the control of natural resources by indigenous minorities have not been recognized and protected by law. Participants also pointed out that traditional beliefs and spirituality are not recognized and respected and that States which adopted a particular religion tended to discriminate against minority religions.

12. Participants affirmed that basic social services such as education, health and housing are poorly accessed by minorities, because their provision is not always appropriate to the needs and sensitive to the culture of minority communities. Emphasis was placed on the poor representation of minorities in aspects of public life, including within the judiciary, police and armed forces and that in some cases such access was denied. Participants also stressed that minorities are poorly represented in decision-making processes and that their participation and representation in political life in general was minimal.

13. Participants stressed that corruption practised by public officials dealing with minorities had aggravated the problems faced by minorities. It was also stressed that violence against minorities by State and non-State actors remained a serious problem.

14. Participants emphasized that the absence of the rule of law has allowed violations of human rights to continue. Participants expressed the view that few mechanisms exist for recourse to justice for minorities and that there are no effective mechanisms which allow minorities to demand the accountability of State officials. The policy on autonomy and decentralization in South-East Asia was believed to be a positive development for protecting and promoting cultural diversity and development. In some cases, however, autonomy decisions were not made with the full participation and involvement of minorities and indigenous peoples but were imposed by central government.

15. As a result of these various practices, participants affirmed, minorities were disadvantaged, deprived, discriminated, marginalized and excluded. Participants recognized that different components of civil society including organizations working at the grass-roots level and other non-governmental organizations have been playing an important role in addressing these concerns.

B. Recommendations

16. The participants in the seminar adopted the following recommendations, addressed to particular actors, aimed at strengthening the protection and promotion of minorities:

Governments

The participants recommend that the Governments of the South-East Asian subregion:

1. Ratify, if they have not done so, the international human rights covenants and other conventions, including Convention (No. 169) concerning Indigenous and Tribal Peoples in Independent Countries of the International Labour Organization, as well as optional protocols additional to these treaties, and to provide to the public information on any obstacles to or difficulties in becoming a party to these treaties;

2. Ratify the Rome Statute of the International Criminal Court;

3. Formulate and adopt legislation by which States would be required to abide by decisions emanating from international human rights complaints procedures;
4. Recognize, protect and promote the rights of indigenous peoples and persons belonging to minorities living within their States and, to that end, enact requisite legislation and adopt a set of good practices;
5. Ensure that persons belonging to minorities are not subject to any form of discrimination, direct or indirect, and that they are entitled to exercise their rights effectively in full equality before the law;
6. Protect the rights of all persons residing within their jurisdiction, irrespective of whether these persons are recognized as citizens or national minorities;
7. Adopt measures of protection and promotion of the rights of minorities in order to contribute to the political and social stability of the States in which minorities live, which is conducive to the strengthening of friendship and cooperation between peoples and States;
8. Revise any programme for good governance to make sure that guidelines on civil society participation acknowledge explicitly that minority groups are a vital part of civil society whose participation should actively be sought; any programme for good governance should address the issues of minority representation in the political, judicial and public institutions of the State;
9. Establish mechanisms for the consistent implementation of legal provisions which provide for the effective participation of minorities in political life, including in matters relating to the choice of electoral systems and the functioning of political parties;
10. Provide adequate and easily accessible remedies to address violations of the rights of persons belonging to minorities. For that purpose, independent courts or tribunals should be established and due process guarantees be afforded to victims of violations of minority rights. Courts or tribunals should comprise some members of minority communities;
11. Desist from granting blanket amnesties to persons who have systematically committed gross violations of minority rights or actively instigated such violations;
12. Prosecute gross violations of minority rights as crimes against humanity and violations of international law;
13. Establish national human rights institutions comprising persons of independence and ability and enable such institutions to investigate and grant appropriate relief for violations of minority rights by all State agencies including the police, the armed forces and paramilitary forces, and also by non-State actors;

14. Address the phenomenon of corruption, which is a source of violations of minority rights, including socio-economic rights;
15. Enact appropriate legislation on the subject of citizenship, provide rational, objective and non-discriminative criteria for its application and ensure its implementation in a transparent and non-discriminatory manner. The legislation should provide for periodic review of implementation and remedies for wrongful denial of citizenship;
16. Establish effective birth registration systems and issue official documentation promptly without conditions;
17. Abstain from adopting transmigration policies and programmes which result in the implantation of settlers in minority areas and the weakening of the effective participation of minorities in decision-making, and which negatively impact on the culture and livelihood of minorities, and to review such existing policies and programmes;
18. Ensure freedom of expression for persons belonging to minorities and indigenous peoples, provide training for minority journalists, permit and provide support to minority language media, including community broadcasting institutions, and ensure access of minorities to public media;
19. Ensure that the benefits of affirmative action programmes and policies will reach the rightful beneficiaries who are deprived, disadvantaged and living in poverty, provide substantial quota allocations for education, livelihood and other basic services support to those in need and involve civil society in its implementation and monitoring;
20. Take all necessary steps to eliminate stereotypes and all forms of expression which stigmatize or tend to create prejudice and ill-will towards members of minority communities;
21. Enact and enforce legislation to prohibit dissemination by the media, public officials or educational institutions of prejudicial or stereotypical images of minorities and indigenous peoples;
22. Make widely available information on minority and indigenous rights to the population at large in as many local languages as possible;
23. Guarantee transborder travel and facilitate cooperation opportunities between members of minorities living on both sides of country boundaries;
24. Respect and protect by law the customary lands and domains of minorities and indigenous peoples, particularly when they have been on those lands for more than one generation even without any formal legal land titles;

25. Sensitize and train public servants, the police, members of the judiciary, prison staff and government officials on human rights, in particular the rights of minorities and indigenous peoples;

26. Ensure the use of minority languages and names by administrative authorities and provide multilingual public sign boards in areas where minorities are living;

27. Provide education for minorities in their mother tongue from the beginning of primary school onward;

28. Provide access to all levels of education for minority children, ensure that educational establishments and research institutions respect the cultures and histories of minorities, and review educational curricula so that they provide learning on and respect for the values, histories, languages and cultures of minorities;

29. Highlight in educational policies and programmes that diversity and unity are not necessarily opposed and that integrating diversity is conducive to good governance;

30. Develop sustainable non-formal education programmes by utilizing local human resources and by training local indigenous people and people belonging to minorities themselves as teachers and trainers, including for the development of appropriate curricula;

31. Institute programmes in schools to educate all pupils fully about the history and realities of minorities and indigenous peoples;

32. Ensure that arrangements for autonomy or decentralization are tailored to the specific requirements of each situation and ensure that procedures for election to local government structures are transparent and fully democratic, including with a view to addressing the perception and phenomenon of the concentration of political and economic power with local elites;

33. Provide protection to asylum seekers of oppressed minorities, make all efforts to ensure that the principle of non-refoulement is respected and facilitate the full exercise of the protection mandate of the Office of the United Nations High Commissioner for Refugees;

34. Ensure the genuine implementation of peace agreements relating to internal conflicts involving minorities and indigenous peoples and ensure the widest participation of minorities, civil society and other stake-holders in peace processes with a view to achieving sustainable and lasting peace;

35. Consider setting up truth and reconciliation commissions on minority issues as a means of addressing historical grievances, including as part of confidence-building processes;

36. Ensure that all national plans of action on human rights deal adequately with minority rights and ensure sufficient budgetary support for such programmes.

National institutions and commissions for human rights

The participants recommend that national institutions and commissions for human rights, including the Asia-Pacific Forum of National Human Rights Institutions:

37. Consider how they could work together on minority issues that are common between and among the countries of the region, including through coordinated and mutually supportive parallel or joint investigations and reports, as well as campaigns of awareness raising and advocacy;
38. Build the capacity of commissions to work in the aforementioned areas;
39. Consider asking the Advisory Council of Jurists to explore the possibility of comparing the legal position of minorities under national law with the provisions of international standards;
40. Consider the inclusion of minority rights as a theme at future annual meetings.

International, regional and national development agencies

Participants recommend that international, regional and national development agencies:

41. Assess how their policies, including their staffing policy, impact on minorities, especially as to whether they may be perpetuating discrimination, either explicitly or implicitly, towards minorities, and, if necessary, implement reforms such as internal anti-discrimination policies and affirmative action measures;
42. Integrate minority rights into country programme especially in the light of the UN millennium Development Goals and the strategy to eradicate poverty.
43. Ensure the participation of minorities in the formulation, implementation and evaluation of development plans and programmes that affect them. Mechanisms of participation should be compatible with traditional decision-making processes;
44. Revise their guidelines on civil society participation in any development programmes and acknowledge explicitly that minority groups are a vital part of civil society whose participation should be actively sought;
45. Investigate the social, economic, cultural and environmental impact of policy on the lives of minorities. Impact assessment must follow principles of participation of minorities, in a manner that is transparent, genuine and which enables minorities to contribute effectively to the assessment process;

46. Establish or expand programmes of research with a view to acquiring greater knowledge of the nature, extent and dynamics of discrimination and exclusion of minorities in development processes;

47. Prioritize civil society capacity-building programmes within the field of development and provide training for community-based organizations to strengthen their capacity to assess the impact of development on their own communities;

48. Achieve a balance between preserving traditional culture and reducing poverty and improving the livelihood of the local people by education;

49. Protect minorities and indigenous peoples' livelihood, customary land and other natural resources while implementing development programmes.

United Nations, United Nations Children's Fund (UNICEF), International Labour Organization (ILO), World Bank and Asian Development Bank

Participants recommend that the above organizations:

50. Examine whether their programmes exacerbate or tackle the underlying causes of the marginalization of and discrimination against particular minority groups, and apply pressure on Governments to end legal and factual systematic discrimination;

51. Step up their capacity-building of minority community-based organizations and non-governmental organizations to assist them in voicing their concerns, influencing decision-making and seeking remedies by:

- (i) Setting up mechanisms for monitoring the implementation of peace agreements by States and minority groups;
- (ii) Supporting the establishment of a special mechanism on minorities with a conflict prevention mandate;

52. Ensure that all social and environmental costs have been fully assessed and incorporated into the development plans which affect minorities. This should include the costs of resettlement and full compensation of populations displaced and adversely affected by for example, dam construction or forest concessions. The costing should be done and made public before a decision is taken about whether to proceed with the project or not;

53. Ensure traditional leaders and all community members are fully consulted during the project identification and planning stage. If development structure is established in minority communities, it should be ensured that it works closely with or through traditional structure rather than undermining them;

54. Use personnel who speak local languages, where possible, in the implementation of development programmes in minority areas;

55. Examine whether their programmes aggravate or tackle the underlying causes of the marginalization of and discrimination against particular minority groups;
56. Respect minority communities own priorities for development in accordance with their own concept of development;
57. Integrate minority rights into their country programmes especially in the light of the United Nations Millennium Development Goals and the strategies to eradicate poverty;
58. Ensure the effective participation of minorities in the formulation, implementation and evaluation of country strategies, development plans and programmes that affect them, and build the capacity of minorities and multilateral actors to implement this effective participation;
59. Ensure that country offices of international financial institutions review records of violations of human rights arising from projects funded by them, and work closely with minorities not only in assessing the impact of development strategies on the situation of minority communities, but also through equitable representation of minorities within country offices;
60. Establish independent review and complaints procedures that are easily accessible to minorities to ensure the implementation of the recommendations enumerated above.

Office of the High Commissioner for Human Rights (OHCHR)

Participants recommend that OHCHR:

61. Consider how to implement the recommendations of this seminar as part of a coherent programme of work on minorities in the Asian and Pacific region;
62. Strengthen the rights of minorities under international law and standards in its work in the Asian and Pacific region;
63. Collect and make available practical examples of programmes in which Governments, the United Nations, non-governmental organizations and development agencies have incorporated the rights of minorities in development programmes;
64. Initiate a dialogue with the Asian Development Bank and the World Bank on encouraging Governments to incorporate the rights of minorities in poverty reduction strategies and other development initiatives;
65. Elaborate guidance on how to implement a rights-based approach to development that fully recognizes the rights of minorities in the development process;

66. Provide support to national human rights institutions to take up issues concerning minorities;
67. Provide training to non-governmental organizations concerned with minority issues on treaty body reporting and the work of the special procedures of the international human rights system;
68. Monitor issues pertaining to the security and protection of persons participating in United Nations human rights meetings and cooperating with human rights mechanisms;
69. Ensure that technical advisory services include the coverage of minority rights in appropriate country programmes;
70. Support efforts to publicize the Minorities Declaration and its translation into minority languages.

United Nations treaty bodies and special procedures

Participants recommend that the United Nations human rights treaty bodies and special procedures:

71. Pay special attention to the situation of minorities in their work, including when mandate holders of special procedures undertake country missions.

United Nations Working Group on Minorities

Participants recommend that the Working Group on Minorities:

72. Play a stronger role in examining solutions to problems involving minorities and in providing guidance and recommendations to address these issues;
73. Hold further meetings on minority rights in the Asian and Pacific region with the participation of minority representatives and civil society;
74. Recommend the establishment of a voluntary fund to facilitate the participation in the Working Group of minority representatives and experts on minority issues from developing countries.

Office of the United Nations High Commissioner for Refugees (UNHCR)

Participants recommend that the Office of the United Nations High Commissioner for Refugees:

75. Implement its mandate of protection for asylum-seekers, especially those from oppressed minorities, as well as all individuals assisting such asylum-seekers;

76. Ensure the provision of facilities in locations where asylum-seekers are likely to look for protection.

The Food and Agricultural Organization of the United Nations, the United Nations Educational, Scientific and Cultural Organization and the World Intellectual Property Organization

Participants recommend that the above organizations:

77. Protect the traditional knowledge of indigenous and minority communities and prevent corporations from appropriating the intellectual property of these communities;

78. Ensure that priority is given to programmes of research and support for the traditional ways of life of indigenous peoples and minorities and the maintenance of the Earth's bio-diversity.

Non-governmental organizations

Participants recommend that non-governmental organizations of the subregion:

79. Strengthen capacity-building for civil society and minority communities to advocate their rights and strengthen local, sub-regional, regional and global linkages for work on human rights and minority rights;

80. Advocate and lobby Governments for the ending of legal and factual systematic discrimination;

81. Enhance capacities within societies to deal peacefully with differences and conflicts between and among communities;

82. Utilize and monitor the follow-up on the implementation of concluding observations and recommendations of international human rights treaty bodies and special procedures; and

83. Enhance knowledge and understanding within society for the respect of minority cultures.

Association of Southeast Asian Nations (ASEAN)

Participants recommend that ASEAN:

84. Encourage its member States to recognize that the protection and promotion of minority rights is essential for the enhancement of democracy in the ASEAN countries;

85. Recognize that addressing minority rights is key to the preservation of national stability and security in all the ASEAN countries;
86. Provide further space and opportunity for dialogue with civil society organizations representing minority rights in the ASEAN countries; and
87. Establish, at the sub-regional or country levels, early warning systems for the prevention of violent conflict, especially as it affects minorities and indigenous communities.

Annex I

The main purposes of the seminar were the following:

1. To identify priorities in the area of minority issues in South-East Asia for future activities of the Office of the High Commissioner for Human Rights (OHCHR);
2. To raise awareness of the work of the Working Group on Minorities, the work of OHCHR, as well as the work of international human rights mechanism on minority issues;
3. To reach out to communities with a view to involving further minority representatives and grassroots NGOs from this region in the Working Group's activities and other international human rights mechanisms;
4. To seek possibilities for networking with civil society and community-based organizations with a view to strengthening cooperation in the field of minority issues in the region.

List of working documents and country presentations:

1. "Ethnic minorities in South-East Asian nations: Thai and Vietnamese cases", by Mr. Charles Keyes;
2. "Background to the existing national legislation on the recognition and protection of minorities, with focus on the hill tribes of northern Thailand" and "Case study on minority rights: the Moken Sea nomads of southern Thailand", by Ms. Narumon Arunotai;
3. "The dilemmas between development and cultural diversity: the case of the Lao People's Democratic Republic", by Ms. Vattana Pholsena;
4. "Ethnic minorities in Viet Nam: current development and a closer look at the issue of education", by Ms. Duong Bich Hanh;
5. "Minority rights and development: overcoming exclusion, discrimination and poverty", by Minority Rights Group International;
6. "Cambodia and its ethnic minorities policy", by Mr. Pen Dareth;
7. "Development and problems: minority nationalities in China", by Ms. Huifang Yang;
8. "The face of autonomy package for Indonesia's West Papua", by Mr. Sem Karoba;
9. "The face of legal discrimination: the case of Indonesia's Tohnghoa ethnic", by Ms. Julia Kam;
10. "Indonesia: development, minority and indigenous", by Mr. Riza Primahendra;

11. “Demands of Indian Malaysians for a better future”, by Mr. Arumugam Kalimuthu;
12. “An overview of the situation of development activities in ethnic minority regions in Myanmar”, by Mr. Aye Win;
13. “Legal bases for minority peoples’ rights in the Philippines: the Bangsamoro people in Mindanao”, by Ms. Mucha-Shim Quiling Arquiza.

Annex II

LIST OF PARTICIPANTS

Cambodia

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