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COMMISSION ON HUMAN RIGHTS  
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Working Group on Minorities  
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**REPORT ON THE SUBREGIONAL SEMINAR ON MINORITY RIGHTS:  
CULTURAL DIVERSITY AND DEVELOPMENT IN SOUTH ASIA**

**(KANDY, SRI LANKA, 21 - 24 NOVEMBER 2004)**

Chairpersons-Rapporteurs: Ms. Asma Jahangir, Mr. M.C.M. Iqbal and  
Mr. Soli Sorabjee

## **Introduction**

1. The proposal to hold sub-regional seminars has been made by the Working Group on Minorities and endorsed in resolutions of the Sub-Commission on the Promotion and Protection of Human Rights. The purpose of these activities is to raise awareness of the United Nations work on minority issues and questions, enhance cooperation with civil society, contribute to the empowerment of minorities in better defending their rights, and promote awareness of minority rights and the need for their implementation.

2. In the light of the recommendations made by the Working Group and the Sub-Commission, the Office of the United Nations High Commissioner for Human Rights (OHCHR) organized the first Sub-Regional Seminar on Minority Rights: Cultural Diversity and Development in South East Asia, held in Chiang Mai, Thailand in December 2002 (see E/CN.4/Sub.2/AC.5/2003/2). The second Sub-Regional Seminar on Minority Rights: Cultural Diversity and Development in Central Asia was organized in Bishkek from 27 to 30 October 2004 (see E/CN.4/Sub.2/2005/AC.5/2005/5). The third Sub-Regional Seminar on Minority Rights: Cultural Diversity and Development in South Asia was held in Kandy, Sri Lanka, from 21 to 24 November 2004.

3. The present seminar was organized by OHCHR in cooperation with the Working Group on Minorities, with the support of the Human Development Organization, based in Kandy. The invitation of the Government of Sri Lanka to hold the meeting in Kandy was much appreciated. The Permanent Missions to the United Nations Office at Geneva of countries in the Asian region were informed about the seminar and invitations made for the representation by Governments. Minority representatives to this meeting came from different countries in the region and the situation in Bangladesh, India, Nepal, Pakistan and Sri Lanka was considered. The list of participants is annexed to the present report.

4. The Seminar was preceded by a one-day training session. The main themes discussed during the seminar related to the current situation of minorities in South Asia - national legislation and its implementation in practice, participation in public life and peaceful and constructive group accommodation and participation in development. A summary of the discussions that took place during the seminar is contained in a separate document (E/CN.4/Sub.2/AC.5/2005/WP.6). A CD-ROM was distributed to the participants, containing inter alia the text of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, United Nations materials relating to minorities, papers presented at the present Seminar, and other papers concerning the subregion submitted to the Working Group.

## **CONCLUSIONS AND RECOMMENDATIONS**

### **I. Conclusions**

5. The participants at the Sub-Regional Seminar on Minority Rights: Cultural Diversity and Development in South Asia, meeting in Kandy, Sri Lanka, from 21 to 24 November 2004, agreed on the following conclusions and recommendations.

6. The participants find that the problems of religious minorities, linguistic groups, ethnic minorities and indigenous peoples discussed in the seminar share a number of common elements across the South Asian subregion. All the countries share a colonial past and the problems of today have historical roots, stemming from the political and social structures introduced by the colonial powers. After decolonization, ethnic, linguistic, racial, caste-based and religious differences surfaced as the post-colonial States sought to establish their authority and writ over diverse population groups.

7. It has been observed that in the formative phases of the new States almost all the constitutions were secular in nature. However, over time, most of these constitutions have been amended to suit the interests of the powerful dominant political elites. In countries like Pakistan and Bangladesh, military interventions have disfigured the original intent and contents of the constitutions and thwarted the evolution of a secular system. In other countries—for example India and Sri Lanka—the constitutions may have remained secular in nature but in practice colonial elites took over State apparatuses and entrenched their own power. In all cases this was done in the name of nation building. The process led to the marginalization of the minorities in all countries. Invariably, exclusion became the organizing principle of national polities.

8. The participants noted that all the national constitutions are riddled with contradictions (Bhutan does not have a constitution). On the one hand, the constitutions guarantee varying degrees of fundamental human rights and political equality. But on the other, the same constitutions also provide a dominant status for the powerful majority groups. Administrative practices, electoral processes, distribution of national resources and the organization of political, economic and socio-cultural structures under these constitutions are heavily biased in favour of the dominant classes. This situation has led to a variety of conflicts in every country. Many of them have turned violent.

9. Most of the conflicts and problems involving ethnic, religious and linguistic minorities and indigenous people are little known internationally or even within the region. Governments have used their monopoly over the media and their diplomatic missions at regional and international forums to hide these issues and to prevent the outside world from knowing the real situation. States have not fulfilled their responsibilities in giving adequate physical and other protection to minorities, and there has been insufficient pressure on States to fulfil their role as the protector of the rights of persons belonging to minorities. Where there is a breakdown in measures to protect minority rights, the State should take speedy and expedient measures to prosecute and bring offenders to book. The duty of the State to protect the minorities is absolute and in cases of infringements, the burden is on the State to explain its failure to fulfil its obligations.

## **II. Recommendations**

10. The participants proposed that recommendations for action addressed to various entities, aimed at strengthening the promotion and protection of minorities, be forwarded through appropriate channels for consideration.

### **Recommendations to Governments**

11. The participants recommend that Governments of the South Asian subregion:

- Ratify, if they have not already done so, both international covenants and other conventions and optional protocols pertaining to the rights of vulnerable groups, minorities and indigenous peoples, including ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries, and enact requisite national legislation that is in compliance with such international standards;
- Adopt measures to ensure that secularism and the promotion and preservation of cultural diversity is defended in national legislation, and remove any anomalies in the constitution, other legislation, rules and regulations that provide room for discriminatory policies and practices on the basis of religion, ethnicity, language, caste and race as well as the situation of women;
- Review legislation, in each country of the subregion, to ensure that anti-terrorism or states of emergency legislation respect human rights and fundamental freedoms, and where necessary, reform such legislation, and consider requesting technical assistance from the United Nations in that regard;
- Initiate and effectively implement special measures of protection, including affirmative action programmes, for minorities and other vulnerable groups;
- Take urgent measures to reduce statelessness and address refugee situations, especially those which are long-standing, such as the situation affecting the Bihari people and the Bhutanese refugees in Nepal, and commission independent studies on the impact of the situation of refugees and internally displaced persons, particularly on communities of indigenous peoples;
- Provide adequate and accessible remedies to address violations of the rights of persons belonging to minorities, and establish independent courts and tribunals to deal with such cases. The composition of tribunals or courts must have adequate

representation of the aforesaid groups. Provisions should be made for adequate access to such courts and tribunals;

- Provide a standing invitation to the special rapporteurs and other United Nations bodies and mechanisms to monitor the situation of minority rights and vulnerable groups;
- Incorporate input from civil society groups and members of minority communities into reports submitted by Governments to international bodies;
- Prosecute, under relevant laws, hate speech and the dissemination of prejudices against minorities in the electronic and printed media;
- Reform the educational curricula to provide human rights education and review educational curricula to ensure that stereotypes and prejudices against minorities, especially religious minorities, and indigenous groups of people are removed from textbooks;
- Ensure that minorities have the right to education in their mother tongue;
- Ensure that persons belonging to minorities are not denied citizenship and take urgent measures to address such situations;
- Introduce governance reforms to bring administrative practices in conformity with international norms, evaluate the situation of minorities in public employment and, where necessary, provide greater opportunities for minorities to gain employment in government service;
- Take stringent and resolute steps to eliminate the menace of corruption, which is a potent source of violation of socio-economic rights, especially of the minorities and indigenous groups;
- Establish mechanisms for the appropriate representation and equal participation of minorities and indigenous peoples, including women belonging to minorities, in decision-making processes
- Undertake sensitization programmes on the rights of minorities for both minorities and the majority population and for specific occupational groups such as law enforcement officials;

- Establish independent national human rights institutions where they do not already exist, with representation from all groups of people. Appointments to these commissions should be made in consultation with independent bodies and in conformity with the Paris Principles. Where such commissions are already in existence, they should have powers to hold public hearings on minority issues and have the mandate to investigate and grant remedies for the violation of minority rights. The establishment of special units within the national institutions to monitor the implementation of minority rights as provided under international treaties and conventions should be considered. Recommendations of these commissions should be implemented. The staff of such institutions should also be representative of different minorities and population groups;
- Ensure that all peace agreements between conflicting parties within the region are complied with, and provide particular special protection for the rights of minorities, indigenous people and other vulnerable groups, such as children, in areas where there is conflict;
- Ensure that the targets of the Millennium Development Goals are met with respect to whole populations, including minorities and other vulnerable groups. The participation of minorities in the planning, implementation and evaluation of and reporting on programmes and strategies to achieve the Millennium Development Goals should also be ensured, and that development aid and benefits reach the rightful beneficiaries who are deprived, disadvantaged and living in poverty;
- Recognize and respect the traditional land rights and traditional occupations of indigenous people. Encroachment on their lands and their displacement from lands should not be resorted to in the name of development projects or perceived security considerations. Where the rights of people have been violated in the name of development, adequate compensation should be granted by those responsible;
- Consider establishing a mechanism for preventing religious intolerance and for drafting a convention on religious tolerance, especially given the richness of religious diversity in the Asia-Pacific region;
- Consider establishing a regional human rights mechanism (as they exist in other regions) and a regional mechanism for the protection of the rights of minorities (as exists in Europe).

**United Nations and international and intergovernmental bodies**

12. Participants recommend that the United Nations and international and inter-governmental organizations and bodies:

- Urge States to comply with their international obligations and to ratify international human rights instruments and any optional protocols thereto, including the Rome Statute;
- Disseminate information and raise awareness among minority groups about the mechanisms and remedies available in the United Nations system. Technical training should be provided to non-governmental organizations (NGOs) concerned with issues relating to minorities, indigenous peoples and internally displaced persons on how to use the United Nations human rights system;
- Urge States to ensure that security and anti-terrorism legislation and its implementation in different countries of the subregion is in conformity with international human rights standards, and offer the provision of technical assistance in that regard;
- Ensure that the United Nations and other international organizations and agencies reach out to disadvantaged minorities and that minorities receive benefits from United Nations and other country development projects;
- Continue to provide forums for minorities to discuss their problems at the regional level and for the further consideration of sub-regional statements of principle;
- Support the establishment of an international year for minorities, to be followed by a decade;
- Urge Member States to adopt, in the General Assembly, the recommendation of the Economic and Social Council to establish a voluntary fund for minorities to facilitate and encourage the participation of minority representatives in minority-related activities, including the Working Group on Minorities;
- Review the action taken in respect of the recommendations and conclusions reached at previous sub-regional seminars and meetings and ascertain whether those recommendations have or have not been implemented, and identify the causes and reasons for their non-implementation;

- Support the appointment of a special representative of the Secretary-General with the specific mandate to examine the question of violations of the rights of minorities and to submit a report to the High Commissioner of Human Rights. The study on the situation of internally displaced persons in the subregion should also be supported;
- Assist Governments in addressing refugee situations, including through supporting and facilitating the voluntary repatriation of refugees, in accordance with the mandate of the United Nations High Commissioner for Refugees concerning the reduction of statelessness, including with respect to Biharis in Bangladesh and Bhutanese refugees in Nepal; and assist in addressing the situation of non-citizens, such as the alleged denial of citizenship rights to Tamils of Indian origin in Sri Lanka;
- Assist Governments in peacebuilding, including the implementation of agreements for peace or decentralization of power, to address particular situations of minorities or indigenous peoples, such as the one prevailing in the Chittagong Hill Tracts;
- Ensure that the staff of United Nations country offices is representative of the cultural diversity of the population in the country;
- Encourage Governments to actively promote religious tolerance at all levels of public education through media programmes sponsored by the United Nations. Developments with respect to practices of discrimination alleged against persons belonging to minorities should be followed and assistance provided to Governments to review legislation and other measures to ensure that they do not discriminate in practice against persons on the grounds of their religion;
- Consider supporting the development of an international convention on minority rights and the establishment of a uniform definition of a minority;
- Cooperate with States to ensure that they exercise no restriction on religious practice and the publishing of religious documents that are in line with international human rights standards, and that they effectively enforce the provisions of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief;
- Cooperate with Governments in developing training manuals and exercises to sensitize and increase awareness about human rights and minority rights of



government officials, police, judiciary and others who are in close contact with minority members on a regular basis;

- Assist States in establishing special prosecution mechanisms to deal with gross violation of minority rights;
- Establish a database of successful case studies that might serve as resource for other South Asian countries that are facing similar minority problems;
- Urge States to ensure that all religious educational institutions should follow a syllabus that does not contain any matter that is offensive or derogatory towards other faiths;
- Ensure that international organizations like the World Bank or the International Monetary Fund safeguard the rights of minorities in the development and implementation of existing programmes and that respect for such rights are incorporated into new ones;
- Undertake assessments of their impact on minority rights prior to funding development projects, analysing any adverse effects they may have on minorities, and institute a follow-up process to check whether development projects may have been detrimental to minority rights;
- Provide protection and security for asylum-seekers of oppressed minorities, especially through the mandates of humanitarian organizations.

### **Civil society and non-governmental organizations**

13. Participants recommend that civil society and non-governmental organizations:
- Establish a South Asian coordination committee, specifically to look at the issues of minorities. The coordinating committee should prepare a periodic publication on the situation of minority rights in the region;
  - Ensure that their efforts to pursue justice are sensitive to and respectful of the rights of other minority and vulnerable groups, such as the Dalits and women.

## **Annex**

### **List of participants**

#### Experts and members of the Working Group on Minorities

Ms. Asma Jahangir  
Special Rapporteur on the right to freedom of religion and belief

Mr Ravi Nair  
Director, Asia Pacific Human Rights Network

Mr. Soli Sorabjee  
Member of the Working Group on Minorities

#### Bangladesh

Ms. Gautama Chakma  
Representative, Bangladesh Rural Action Committee (BRAC)  
Education programmes for minorities at the grassroots level

Mr. M.I. Farooqui  
Senior Advocate and Representative  
Al Fallah, a civil society organization working on behalf of Biharis

Mr. Mesbah Kamal  
Adviser, Central Committees of Jatio Adivasi Parishad  
and Bangladesh Adivasi Forum

Mr. Abdul Awwal Khan CH.  
Central Missionary of Ahmadiyya Muslim Jama'at Bangladesh

Mr. Nizamul Huq Nasim  
Advocate Supreme Court,  
Member of Ain-O-Salish Kendra (ASK Law and Arbitration Centre)

Ms. Sultana Faizun Nahar  
Supreme Court lawyer dealing with minority issues

India

Rev. Dr. Dominic Emmanuel SVD

Mr. Anthony Debbarma  
Borok People's Human Rights Organization (BPHRO), North East India

Mr. Dino D.G. Dympep  
Meghalaya Peoples Human Rights Council (MPHRC), North East India

Nepal

Mr. Ratan Gazmere  
Association of Human Rights Activists Bhutan

Ms. Ambika Gajmer  
Feminist Dalit Organization (FEDO)

Ms. Adhikari Radha  
Bhutanese refugee in Nepal

Ms. Lucky Sherpa  
Himalayan Indigenous Women Network (HIWN)

Mr. Rup Narayan Shrestha  
Forum for Women, Law and Development (FWLD)

Ms. Durga Sob  
National Dalit Commission (former member)

Pakistan

Mr. Najum Mushtaq  
International Crisis Group

Mr. Samson Salamat  
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