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**COMMISSION ON HUMAN RIGHTS
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**Regional Seminar on Minority Rights: Cultural Diversity and Development in
Southeast Asia**

(Chiang Mai, 4 to 7 December 2002)

Ms. Julia Kam (Institute Dayakologi, Indonesia)
Mr. Sem Karoba (Koteka Tribal Assembly for Rights, Peace and Justice in
West Papua, Indonesia), Co-Chairpersons

I. INTRODUCTION

1. The Sub-Regional Seminar on Minority Rights: Cultural Diversity and Development in Southeast 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 Center for Sustainable Development of Chiang Mai University in Chiang Mai. The present document contains the narrative report of the discussion at the seminar. The conclusions and recommendations of the seminar are contained in document E/CN.4/Sub.2/AC.5/2003/2.

II. OPENING OF THE SEMINAR AND ELECTION OF CHAIRPERSONS

2. The seminar commenced with opening remarks made by Mr. Tanun Anumanrajadhon, Vice President for International Relations and Special Affairs of Chiang Mai University and by Mr. Asjørn Eide, the Chairperson of the Working Group on Minorities. They both expressed the importance of holding the seminar in the sub-region in order to raise the awareness of minority issues, outreach communities and contribute to broadening and deepening understanding of minority issues among governmental, non governmental organizations and among social actors in the region.

3. Each participant introduced him/herself and gave an outline of the work of their organizations. Ms. Julian Kam (Institute Dayakologi, Indonesia) and Mr. Sem Karoba (Koteka Tribal Assembly for Rights, Peace and Justice in West Papua, Indonesia) were elected as Co-Chairpersons.

III. TRAINING ON INTERNATIONAL SYSTEM OF HUMAN RIGHTS

4. Mr. Asbjørn Eide provided a comprehensive overview of the international system of human rights in relation to measures for the protection and promotion of minorities within the UN system. Referring to the two major international covenants of human rights, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), he noted that they are both relevant to the protection and promotion of minority rights. Minority rights were not specifically addressed in the Universal Declaration of Human Rights when the Declaration was negotiated in 1948, but the issue has been reflected since in the Article 27 of ICCPR in 1966. He noted that the UN Declaration on Minorities in 1992 marked an important breakthrough for minority rights in international law of human rights.

5. Mr. Eide responded to a question relating to the distinction between the terms “indigenous” and “minorities” as used by in the UN human rights system. He referred to the ongoing debate on the definition of indigenous and minorities at international fora and to the definition of the ILO Convention on Indigenous and Tribal Peoples’ Rights as an appropriate working definition. He then presented the mandates the Working Group on Indigenous Populations and of the Working Group on Minorities, highlighting the openness of the two Working Groups, which allowed NGOs and community representatives to participate in the discussion and exchange views with Governments at international forum. Finally, he reiterated that when examining ways by which the principle of minority protection can be realized, the preservation and respect for cultural identities and maintenance of traditional ways of life for minority communities were extremely important. By way of example, he referred to the traditional slash and burn cultivation of many minority peoples in Southeast Asia. This tradition has been stigmatized as damaging to the environment, and on this basis, used by some governments as a justification for relocating peoples.

6. Mr. Soli Sorabjee recalled that, under the UN Declaration on Minorities, State are obliged to protect minorities by taking specific measures to ensure that persons belonging to minorities can enjoy, *de facto*, the equality and the principle of non discrimination in society. Moreover, he said that it was important to examine whether

in practice these measure benefit minorities or not. In addition, he underlined the importance of identifying processes of discrimination with a view to addressing root causes and reinforcing law and due processes. In this regard, minority NGOs have a great role to play.

7. Ms. Fiona Blyth-Kubota and Ms. Hui Lu of OHCHR gave a brief presentation on the importance of NGO involvement in the work of the human rights treaty bodies and special procedures. The importance of preparing alternative reports for the treaty bodies, submitting communications to the special procedures and following-up on recommendations for action proposed by those mechanisms was highlighted. Reference was made to the practical guidance and information provided in the *United Nations Guide for Minorities* and its pamphlets, including, for example, that related to ways of participating in and contributing to the work of the Working Group on Minorities. Given that few NGOs present in the seminar had ever had experience of working with UN treaty bodies and special procedures, attention was drawn to the urgent need for further training with a view to building the capacity of NGOs to work with United Nations human rights mechanisms.

IV. CURRENT SITUATION OF ETHNIC MINORITIES IN SOUTH-EAST ASIA: NATIONAL LEGISLATION AND PRACTICE

8. The summary of the paper “Ethnic Minorities in South-east Asian Nations: Thai and Vietnamese Cases” prepared by Mr. Charles Keyes was introduced by Mr. Sam in the absence of the author. The paper presented the evolution of the terms and concepts of “indigenous peoples” and “ethnic minorities” in South-east Asia in general, and the practices surrounding them, particularly in Thailand and Vietnam. The paper stated that the term “*indigenous*” was applicable to both majority and minority populations in the sub-regional context from a historical perspective. Attention was drawn to the distinction between “indigenous and migrant peoples” and between “ethnic and national identities” in the mainland of Southeast Asia, noting that it was partly due to the fact that legally recognized country borders between countries had been designed by State actors without the involvement of groups concerned. In analysing the historical background of the nation-making in these two countries, he

presented the different approaches applicable to and affecting minorities in these countries.

9. According to Mr. Keyes' analysis, the inclusive policy of Thailand had successfully integrated Chinese migrants into the Thai nation by minimizing ethnic differences of the past. However, this policy had been stopped due to the concern over national security during the Cold War era, thereby considerably affecting many ethnic minorities living in the North of Thailand. These peoples are considered to be "migrants", "hill tribes" or "ethnic minorities" rather than members of the Thai nation. Originally from China, many of these people still do not have Thai citizenship despite their presence in Thai territory for several generations. In Vietnam, ethnic diversity has been emphasised by the State which classifies groups of peoples by origin rather than by self-identification. Diverse groups were thus classified for the national unification while discrimination against small, remote and "invisible" ethnic groups has persisted, as was revealed in the recent uprising of ethnic groups in the Central Plateau. The paper concluded in stating that peoples as *ethnic minorities* within a nation-State is a political definition, and the processes would undergo further transformations in the future.

10. Representatives from NGOs and the Thai National Commission for Human Rights presented their concern with regard to the situation of citizenship for tribal peoples in the north of Thailand. They said that the national policy on naturalization was based on national security priorities which did not taken into account the dimension of fundamental rights of individuals living in the national territory. They requested that this policy be reviewed, with a view to integrating all people in the Thai nation. In spite of some progresses made over last two years to facilitate access to citizenship, the process required further efforts. Several factors which have tremendously hindered the timely process to citizenship were raised, including the difficulties experienced by people in providing tangible proof of their duration of their residency in Thailand, the lack of birth registration documents, the corruption of officials dealing with requests, the lack of human and budgetary resource in administration, the lack of knowledge of officials on minority culture thereby limiting their ability to correctly record names of ethnic groups and persons, and the reluctance of officials to take responsibility in determining the status of naturalization.

11. Ms. Narumon Arounotai introduced the case study of the sea nomadic Moken people, a community of approximately 5 000 persons living on movement in the Mergui Archipelago, between Thailand and Myanmar, who are the original inhabitants of the region. The traditional nomadic way of life of the Moken has been disregarded by mainstream Thai society. Most of the Moken do not have Thai citizenship and could be treated as “illegal migrants” when travelling in towns. Moken children have been facing difficulties in accessing to public education and health services. On one hand, the formal educational curricula was designed for the assimilation purpose and did not take into account minority language, values and cultures. On the other hand, the mainstream society has not shown the interest in learning more about other ethnic groups. There remains a very strong ethnocentric attitude in mainstream society which is reflected in media, public servants and administrative officials dealing with minority people. The stigmatization and stereotyping of minority peoples’ ways of life and values are evident in public sentiment. Finally, Ms Arounotai called for the consideration of a possible agreement between Thailand and Myanmar to grant dual citizenship to the Moken people, thereby allowing them to maintain their traditional nomadic way of life between the sea areas of two countries, without legal and administrative difficulties.

12. Mr. Sem Karoba (Koteka Tribal Assembly for Rights, Peace and Justice in West Papua, Indonesia), made a presentation on West Papua of Indonesia. Although West Papua became part of Indonesia in 1969 in a specific historical deal, relations between Indonesia and the former colonial power Netherlands, and the integration of West Papua into Indonesia have been problematic. The West Papuan people have been steadily claiming their right of self-determination over their territory. In response, the Indonesian government has so far proposed three plans of autonomy. Moreover, the West Papua people consider these autonomy plans as impositions. For example, it was felt among West Papuans that autonomy plans did not guarantee the use of local languages nor address the grievance of past human rights abuses. In addition, only certain community elite representatives were invited to participate in the process of autonomy negotiations and arrangements, thereby excluding a wider representation.

13. The question of how to integrate traditional system of consultation of all communities concerned in the negotiation of autonomy was raised. Mr. Karoba stated that in the process of autonomy, the recognition of the self-determination of West Papuans as a people aspiring for a nation, the peaceful resolution of conflicts among different groups of West Papua, the balance between the national sovereignty and integrity and the respect of minority rights, should also be addressed. The solution, in his view, should be reached through democratic and due process. He added that any autonomy arrangements should be made with due respect for the existing pluralism of the region, without prejudgement or stigmatization of traditional beliefs, customary laws and tribal councils. He called upon the international community to play an active role in the conflict resolution and peace proces in West Papua in order to facilitate the dialogue between West Papuan people and the Indonesian government.

14. When discussing on the reasons for which the proposed package in West Papua did not work, participants from Indonesia commented that two basic conditions for the fair and effective autonomy should be met. They are the delegation of power from the central government to the local government and the equal access to decision-making process by local people in the ongoing autonomy. It would appear that only the first approach has been adopted in the current process concerning West Papua. In addition, the question was raised as to whether local government and councils had undertaken extensive and democratic consultation with local population prior to and in the negation with the central government. Some groups of West Papuans have been given more power than other non-Papuan people living in the region within the current frame of autonomy. Mr. Sem Karoba stated that the sharing of power was not extended to all Papuans nor the non-Papuans living in the region. Authority has been distributed to some groups; over others. The situation has created new tensions among communities. He also mentioned the need to train Indonesian and Papuan officials in the monitoring and implementation of autonomy bills.

15. Ms. Greta B. Tarun (National Commission for Human Rights of the Philippines) gave an outline of the Filipino governmental legislation regarding indigenous and minority communities. The Philippines adopted a working definition of Indigenous Cultural Communities (ICC) to identity the communities which had not been Christianized during the colonial era and maintained their distinct ethnic, social,

economic and cultural identities. These minority communities, which have never been under the colonial rules and refused to be assimilated to Christianity, constitute approximately 10% of the national population. These communities have been facing common challenges in the face of the dominant majority, and claim land rights over their ancestral domain. Ms. Tarun presented some of the measures taken by the Government in addressing these issues.

16. Mr. Edtami Mansayagan (Commissioner of the National Commission for Indigenous Peoples of the Philippines) provided additional information on the National Commission on Indigenous People. The Commission was established in 1997, its mandates include, *inter alia*, the implementation of the 1997 Indigenous Peoples Rights Act which is the main legal reference for indigenous peoples human rights. The Commission has been publically advocating on the rights of indigenous people over their ancestral land.

17. The presentation of Ms. Mucha-Shim Quiling Arquiza (Asian Muslim Action Network, the Philippines) focused on the situation of the Bangsamoro people and other Islamized communities of Mindanao in the Philippines. Nearly 46 ethnic groups of Mindanao, known under the general name “Bangsamoro”, were collectively classified as “National Cultural Minorities” by the Commission of National Integration in 1957. However, these groups were excluded from the recognition of 1997 as “Indigenous Cultural Communities”. The Moro identified themselves as indigenous in Mindanao and minorities in the Philippines. In the past they had resisted assimilation during the colonial era, so as to preserve their identity. Following more than two decades of conflicts and negotiations with the central government, the Moro Islamic Liberation Front (MILF) and the Government of Philippines signed the Final Peace Agreement (FPA) in 1996. Ms. Quiling Arquiza explained that the civil society of Mindanao supported the FPA processes and expected the implementation of the framework of the agreement be effective and timely, as the provisions of the FPA would provide cultural autonomy and the recognition of Moro people.

18. Mr. Sem Karoba noted that the process of claiming of identity as a group or a people in Mindanao was similar to the situation of West Papua in Indonesia. He said the governments are generally more concerned about the maintenance of national

integrity than the recognition of minority rights and that governments argued that national identity-building should be a priority over minority groups' claim for autonomy or similar arrangements. Mr. Karoba noted that in addition, the demand of addressing minority rights has been seen as potential threat for national stability and unity.

19. Mr. Kalimuthu Arumugam (Group of Concerned Citizens, Malaysia) discussed the situation of the Indian community in Malaysia. There are four major ethnic groups in Malaysia: Malays Muslims, Chinese, Indian and the indigenous community, the latter consists of diverse sub-groups. Chinese and Indian communities arrived in Malaysia in late 19th century as immigrants to work in the rubber plantations, tin mines and commerce. Following the independence in 1957, the Constitution guaranteed equality and freedom of all citizens in Malaysia. Since 1970s, the Constitution has been amended and the political and social system has given more specific attention to the majority Malays. As result, political representation has been seen as being imbalanced, as a dominant ethnic political party could virtually control the executive, judiciary and other State policy making institutions, while minority groups have little likelihood of being represented and elected under the current system. Mr. Arumugam added that the affirmative action in education and employment has not always been applied in practice on the basis of needs, but on the ethnic origin. In addition, the history taught in schools does not reflect the richness of cultural diversity of the country, nor the contribution of all communities to the independence and the building of modern Malaysia.

20. Mr. Ravi Nair (Asia-Pacific Human Rights Network, India) suggested that the NGOs working on minority issues in the sub-region should more effectively utilize the complaint procedure of UN human rights system to raise cases of discrimination and any kind of brutality toward minority people committed by State or non State actors. Several participants agreed to the idea, but pointed out the need for further training on how to use these procedures.

21. In her presentation, Ms. Julia Kam (Institute Dayakologi, Indonesia) described the situation of the Chinese ethnic minority in Indonesia, a multi-ethnic country with more than 300 ethnic groups. The population of the Chinese descendents is estimated

to 8 to 10 million, out of a national population of 210 million. Although present in Indonesia for several generations, the Chinese community has been largely excluded from the mainstream society and in particular from its political and public life. She referred to a number of laws and governmental regulations which restrict the Chinese ethnic community from serving in public sectors, the army and some other professions. In addition, their access to citizenship is also very much limited. The Chinese community has been suffering “institutionalized discrimination” and stigmatization which are contrary to the principle of equality as provided in the Indonesian Constitution. The history of the Chinese community’s struggle for the independence and their contribution to the nation building has totally been ignored in educational curricula. Finally Ms. Kam presented the work of NGOs which are advocating and lobbying the government to review the discriminatory laws and regulations since it ratified the International Convention against All Forms of Racial Discrimination in 1999.

22. Mr. Pen Dareth (The Royal Academy of Cambodia) made his presentation on the situation of ethnic groups in Cambodia. The new Constitution adopted by Cambodia in 1993 granted fundamental human rights to all Khmer citizens including about 40 ethnic minorities, as well as specific provisions in the Constitution to prevent any form of discrimination. Although the Constitution does not contain specific legal framework regarding minorities, numerous actions have been taken in order to draw attention to the situation of ethnic minorities in country, and to develop policy relating to the integration of all ethnic groups into the Cambodian society. Emphasis was placed on addressing the social and economic disadvantages among various groups, preventing any forms of discrimination and strengthening the legal status of ethnic minorities so that they can effectively participate in the political, social and economic life of the country. Mr. Dareth stressed that understanding and appreciation of others’ cultures in society at large are necessary condition for a peaceful and pluralist country.

23. Mr. Soli Sorabjee and Mr. Asbjørn Eide expressed their view on the separation of religion and State when the question of the lack of public funding to religious educational institutions was raised. They both agreed on the principle of a secular State, which does not interfere in religious affairs.

V. PARTICIPATION IN DEVELOPMENT

24. Ms. Vatthana Pholsena introduced her paper outlining dilemmas relating to development and minorities in Laos. She highlighted the issue of resettlement of minority population in the implementation of development programs. The government of Laos supported the relocation of minorities who practice shifting cultivation in the mountainous area to the valley on idea that such relocation would contribute to poverty eradication, preservation of environment and improvement of life conditions with the access to health and education. However the programmes of relocation lacked sufficient preparation and prior consultation with the communities concerned. As a result, villagers experienced great difficulties in adaptating to new living places. Furthermore, resettlement appears to be one of the major causes of cultural rupture among minorities who are obliged to move away from their traditional land, along with their traditional knowledge relating to land management and natural resources. Ms. Pholsena added that national development plans in Laos were influenced by external pressures and interventions which may lead Laos to integrate further into the regional market oriented economy and geopolitical schema.

25. Ms. Julia Kam intervened by saying that the stigmatization of minority peoples' traditional shifting cultivation as damaging to the environment also occurred in West Kalimantan in Indonesia. She said that the majority's and external values and influences have been used to judge minorities' existing traditional systems of knowledge and values, and such mentality needed to be reviewed.

26. Mr. Khamphammay Sennouvong (Lao Youth Union) and Ms. Kalee Leenhiavu (The Quaker Service in Laos) expressed their views on development in Laos. Mr. Sennouvong provided additional information on the local authorities' efforts to improve minorities' life in remote areas. He stressed the importance of strengthening the mutual understanding between majority and minorities at local and national levels, with a view to reducing and avoiding eventual conflicts and tensions. He noted that one of the main difficulties for minorities in accessing to education is that, in most cases, teaching is provided in Lao language only.

27. Concerning the implementation of development, Mr. Nelson Jangai provided a concrete example in the region of Sarawak, Malaysia. A dam was constructed in the ancestral land of the indigenous community. People consequently moved to new environments and encountered great difficulties, as they were not granted adequate land or certain financial compensation. Problems related to expenditure on alcohol and gambling arose. The indigenous community families with a traditional exchange system were not well prepared for new way of life. Without the possibility of hunting, they did not know how to obtain food and generate income and consequently, became poorer. Some have even been involved in cases of the delinquency in the town.

28. Participants shared common concern over the relocation of minorities in the name of development for major construction plans of dams, hydro-power plants and forest exploitation. They urged that the effective consultations with communities be integrated into such programs, and asked that their concerns be forwarded to UNDP and other development agencies such as the Asian Development Bank and the World Bank.

29. Ms. Duong Bich Hanh introduced her paper on the participation of minorities in development in Vietnam. She presented a case study on education for minorities supported by either government or international development agencies. The study showed that, minority families hesitate to sending children to primary school because they do not see the immediate benefit of doing so, unless the education can continue beyond secondary school. In addition, the curricula and the instruction in the Vietnamese language constitute major difficulties for children of minorities. The debate on the use of minority language in education has led the policy-makers of Vietnam to make decisions addressing this issue with a view to improving the education standard of minority populations. However, none of governmental reports to date mention how or whether the ethnic minorities have participated in the decision-making process on this matter. Ms. Hanh pointed out that bilingual education can be sustainable only with the effective participation of minorities themselves, and that it is important to start bilingual teaching from an early age in primary school. She also noted training local minorities teachers should be a priority.

30. Mr. Yves Goudineau (Institut français de recherche pour le développement) addressed the broader issue of the impact of majority's views and discourses on minorities. In mainland Southeast Asia, the fact that the history of countries has been written by members of dominant or majority group, with the history of minority people largely neglected, inaccurate or denied, has tremendous consequences for minorities. In his view, while the term of "indigenous" may not be appropriate to the sub-regional context; it would be relevant for a specific minority group in context of expressing its specific link with a territory in the past or present. However, this term has often been used by the majority group to redefine the territory in a national scale in ways which deny the rights, including the historical rights, of minorities in a given territory. The denying and manipulation of minorities' histories have been used to deny minority ancestral land rights, to justify internal colonization, to relocate minority peoples and to populate their areas with members of dominant majority. Mr. Goudineau said that minority rights should integrate the respect of minorities' history, including the documentation of their histories and the teaching such histories to both minorities and majority.

31. Regarding education, Mr. Yap Sin Tian (Dong Jiao Zong Education Center) spoke on the experience of mother tongue education in the Chinese community in Malaysia. He referred to the governmental Malay-centric language policy after 1961, which stipulated the use of Malay language only in the educational system. The Chinese communities have therefore organized themselves to provide Chinese language education for children in their community and their experiences have proven successful in complementing the national Malay language education.

32. Mr. Asbjørn Eide mentioned that in mainstreaming minority rights in the development policy for central governments, international financial institutions and UNDP, it is necessary to take into account the ILO Convention on Indigenous and Tribal Peoples with regard to local autonomy, the management of land and natural resources and the control of their own educational institutions.

33. One participant spoke on the need to conduct an analysis on the rational of development policy relating to market oriented economic policy. The rational is to take over the control of natural resource of minorities for commercial purpose, and

too often minorities have been asked to make sacrifice for the development of the many others or majority group of the society. It should make the best use of international instrument of human rights in addressing minority rights. The mentality of asking “minority” to comprise their rights for the good of many others or majority should be reviewed.

34. Ms. Mucha-Shim Quiling Arquiza explained that in Mindanao development designed from the top levels of central government with external support has been seen as “civilizing mission” for local indigenous and minority people. The lack of capacity for them to participate in the process of development has accentuated the sentiment of an imposed development programme. In addition, indicators of development are seen as being too narrow, as they neglect minorities’ cultural richness and traditional knowledge. For example, the criteria of literacy has been based on skill in speaking and writing the majority language or English while as many minority people speak only their own languages.

35. Ms. Phoy Bun Nyok (Non Timber Forest Products, Cambodia) spoke of the significance of ensuring the participation of all members of communities in the implementation of development programmes at community level. She emphasized the important advisory role of elders, urged that the wisdom of elders be given greater recognition in maintaining community solidarity and coherence.

36. Mr. Riza Primahendra (Self- Reliance Development Foundation, Indonesia) presented an assessment of development programmes in some areas of Indonesia. He noted that the economic policy practiced by the government for more than one decade has been characterized by the highly centralized approaches in decision-making, concentration of the governmental sector in economy, and the creation of leading economic sectors by providing privileges to a handful group or individuals of the society. Moreover, the new model of development relied on manufacturing, an area in which minority and indigenous people more often lacked necessary skill, consequently, could not partake in the economic benefits.

VI. CONCLUSION OF THE SEMINAR AND ADOPTION OF THE RECOMMENDATIONS

39 At the last meeting chaired by Mr. Asbjørn Eide, participants discussed the conclusions and recommendations presented by Mr. Jaran Ditapichai, Commissioner, National Commission for Human Rights of Thailand. The text was revised and adopted. The conclusions and recommendations adopted by participants at the Sub-Regional Seminar on Minority Rights: Cultural Diversity and Development in Southeast Asia, Chiang Mai (4 to 7 December 2002) are contained in document E/CN.4/Sub.2/AC.5/2003/2.

40 Mr. Asbjørn Eide, on behalf of the Working Group on Minorities thanked all the participants for their valuable contribution to the seminar and reaffirmed the support of the Working Group to minority communities in their efforts to raise their voices for the protection and the promotion of their rights. He expressed the intention of the Working Group to widely disseminate the recommendations of the seminar, and to continue the process of outreaching to communities at the regional level.