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# “Human Rights and Ethnic, Linguistic and Religious Minorities”

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## I. Executive Summary

Asia-Europe Meeting (ASEM) member states should pay more attention to the importance of the “rights of minorities”. This was one of the outcomes of a two-day, intensive seminar on “Human Rights and Ethnic, Linguistic and Religious Minorities”. The **7th Informal ASEM Seminar on Human Rights took place in Budapest on 23-24 February** at the premises of the Central European University and brought together delegations of 36 out of the 38 ASEM member states and the European Commission with representatives from governments and various sectors of civil society. The seminar resulted in intensive discussions of high quality on many aspects of this important topic.

- Most intensive, informal discussions took place in the two working groups, which paid attention to civil and political rights and economic, social and cultural rights of minorities.
- A thorough discussion took place about the aim of the developing international regime on minority rights. There was a strong sense that a main goal for protecting minority rights is conflict prevention (both internationally and domestically). However, the minority rights regime is also part and parcel of human rights and aims at promoting social justice, social cohesion and national unity. It was strongly emphasised that a proper implementation of minority rights is a vital and common interest of the state itself, of the majority population and of the minorities themselves.
- The effectiveness of the protection of rights of minorities depends upon appropriate legislation, national institutions dedicated to them and implementing mechanisms. Different measures such as decentralisation and empowerment on certain matter have already been put in place both in Asia and in Europe. It was emphasised by a majority of participants that a regional mechanism to deal not only with minority rights, but with human rights in general, was lacking in Asia. This particular issue needs further examination.
- A widely-discussed issue concerned the “new minorities” which usually are identified in terms of migrants (in particular, migrant workers). These migrants, who are not properly considered as minorities according to international law, over time may inevitably become minorities at the second or third generation and governments will have to provide proper protection of their rights in order to maintain social stability within society.
- Although the role of states is essential for minority rights’ protection, the seminar also noticed that civil society as well as corporations and international financial institutions (the World Bank notably through financing infrastructures) also play an essential role.
- Since human rights and minority rights are about relationships between states and individuals, it is essential to find the right balance between minority rights and state interests. For a large majority of the participants, it is, however, important to bear in mind that state interests and state sovereignty should not be promoted at the expense of minority rights.

**The Seminar concluded with four main recommendations to ASEM and its member states:**

1. Member states should make more use of ASEM to discuss this sensitive issue of minority rights more intensively, as its informal character allows for more open and intensive debates. Moreover, the seminar clearly showed that both Asia and Europe can learn from each other's experiences in this area. Therefore, it was recommended to consider organising more workshops focused on such issues as the land rights, the right to education and political participation, among others.
2. Asian ASEM members could consider the drafting and adoption of some kind of regional instrument (political declaration or charter) relating to the protection of human rights, in general, and minority rights, in particular. Although the discussion about this topic was far from conclusive, the general opinion was that ASEM could provide an effective framework for paying more attention to the issue of a regional instrument. It became clear that most participants favoured a careful and step-by-step approach in this area.
3. A more intensive use of the ASEM framework could be utilised for consultations about human rights issues, and especially minority rights issues, for instance intergovernmental consultations prior to, or at the sidelines of, specialised meetings of the United Nations (UN) and relevant ASEM ministerial meetings about such issues.
4. ASEM is encouraged to consider becoming more active in the area of training and awareness-raising on minority rights issues, as it was obvious from the discussion that lack of knowledge and public awareness is an issue that deserves more attention from ASEM and its member states. In this context, ASEM was also mentioned as the framework for establishing a specialised database on good practices relating to minority rights protection in general and specific government programmes and affirmative action in particular.

These conclusions have been sent to the ASEM governments and were presented on the occasion of the ASEM Senior Officials' Meeting (SOM) held shortly after the seminar on 7 March 2006 in Vienna, Austria. The next section contains a more comprehensive report elaborating on these and other points raised in the seminar discussions.

## II. Report of Working Group Discussions

Many issues which have been briefly presented in the preparatory report for this **informal seminar** (see elsewhere in this publication) were further discussed during plenary meetings and working groups. Although the discussions were very rich, it turned out that time was too short to go deeper in many of the highly delicate aspects of the minority rights regime.

Since most speeches in the plenary are published in this same volume, there is no need to summarise the main points made in these presentations in the present report. **This report, therefore, focuses only on the main issues discussed in the two working groups as well as some points of the discussions in the plenary meeting after the presentation of the summaries** of the discussions in the working groups.

**Working Group I** was devoted to “civil and political rights” while **Working Group 2** focused on “economic, social and cultural rights” of ethnic, linguistic and religious minorities. Nevertheless, issues of common interest, such as the goals of the minority rights regime, definition and/or indicators to identify minorities, and the national implementation of minority rights were raised in the discussions in both working groups. To avoid repetition and to make this report as comprehensive, but as concise as possible, discussions and views shared on those common issues are integrated while some specific aspects are treated separately in the report.

### Structural Issues of Common Interest

#### *Aim of the Minority Rights Regime*

The aim or goal of the developing regime of rights of minorities was a broadly discussed issue during the seminar. There was a general agreement that minority rights do not only constitute an integral part of the international corpus of human rights at large, but that these rights have been developed, in particular, also for security reasons. Since the treatment of minorities may cause international tensions and conflicts, – as evidenced by several violent conflicts in, for instance, European, Asian and African countries – an international regime of minority rights is of paramount importance to create transparency and predictability in inter-state relations. At the same time, the existence of a regime of minority rights is an indispensable framework for maintaining stability and harmony between minority and majority groups within a country. Therefore, the general conclusion was that the international minority rights regime has been created for mainly three purposes:

- a) to protect the rights of minorities as part of the human rights corpus;
- b) to protect and promote cultural diversity as an asset for any society in the world; and last but not least,
- c) for the prevention of conflicts involving minority issues.

The ultimate aim of the minority rights regime is to achieve a proper integration of minorities within the societies in which they are living. Integration in this context means achieving its proper place with equal rights and opportunities and it should not be equated in any way with (forced) assimilation or separation.

Since the conflict prevention goal of minority rights is of such prominence, this has a very important consequence, namely that the protection of the rights of minorities is not just a privilege for minorities, but that these rights also exist particularly in order to protect the vital interests of the state at large and, therefore, also of the majority group(s) within these states. This is an important observation, because it implies that a “token” or minimalist implementation of minority rights by governmental authorities basically affects the interests of the state itself.

While there is a general agreement in both working groups that prevention of conflict is a goal, but the Working Group II noted many other goals representing both policies and realities of certain societies. For example, in France, dealing with the issue of minority rights is to deal with social problems. The goal here is to bring social justice by ensuring that no sector in society is left out and that all groups are treated equally. In China and some other Asian countries, the goal is to keep national unity and social cohesion by promoting inter-ethnic and communal harmony. Interestingly, most Asian participants consider integration of minority groups rather than prevention of conflict as the main objective. Working Group II stressed, however, that while identities of minorities have to be kept in the process of integration, national identity needs to be upheld.

Some other goals of the protection and promotion of rights of minorities are further elaborated by participants including:

- a) furthering equalities of certain groups who are not necessarily minorities but might be disadvantaged and/or marginalised in the societies;
- b) highlighting uniqueness and values of minorities’ cultures and identities in a way that serves as a tool to better appreciate the richness of cultures and identities of majority; and,
- c) ensuring a fair distribution of wealth and economic development.

It is important to note that, although the term “assimilation” was rarely mentioned during the discussion in Working Group II, a European participant pointed out that while involuntary assimilation is unacceptable, voluntary assimilation is considered as part of integration. The key idea here is integration into one’s chosen society, and not isolation from it.

Another important aspect of the minority rights regime that was intensively discussed in Working Group I in particular concerned the delicate balance between minority “rights” and the responsibilities that these same minorities also bear. It was obvious that minorities are not considered to have (legal) “obligations” or “duties” under the minority rights regime, as this would be in contrast to the letter and spirit of minority rights, but it was also obvious that there was a large agreement that minorities also have their responsibilities towards the society at large. This implies that on the one hand, they definitely may claim that their minority rights are being respected, but that on the other hand, the state and majority group(s) may also expect them to contribute to the development and well being of society at large to a certain extent. It was clearly formulated that the regime of minority rights is not a unilateral scheme or a “one-way street”: the state is certainly entitled to the loyalty of its minorities, but at the same time these minorities are also entitled to the loyalty of their state!

The discussion in Working Group I about the highly sensitive question whether minorities are entitled to the rights of self-determination was very short: a general agreement seemed to exist that minorities are not entitled in any way to claim self-determination. After a forceful statement by the moderator of the working group to the effect that minorities definitely do not have a (legal) right to self-determination, no further discussion developed, not even about the question whether this statement also would apply to *internal* self-determination. In this sense, there seemed to be a very clear opinion among all workshop participants that self-determination concerns peoples, but that minorities may not be considered to be peoples. Therefore, the fear among some states that the recognition of minorities may lead to secessionist movements is considered to be ill founded. The issue of self-determination was discussed in Working Group II in a much broader context of economic, social and cultural rights. It extends to cover rights of the peoples to determine their own economic and social status including their own path of development. So, the discussions in both working groups indicated that the question whether minorities can invoke the right to self-determination cannot be simply answered in a positive or negative way, but should be considered in a broader than just a legal context.

A last delicate issue related to the nature and goal of the minority rights regime concerned the question whether states may consider the treatment of minorities to be exclusively internal affairs. Some states strongly adhere to this opinion, such as the (previous) Thaksin administration in Thailand which considered the Muslim insurgency in the deep south of the country to be an exclusively internal affair and has actually used rather strong wordings in order to discourage neighbouring states or international organisations to express their opinions about this ongoing problem. It was clear that this opinion did not receive any support from the seminar participants. From the perspective of conflict prevention as a main goal of the minority rights regime, it was generally considered that the international community does have a certain responsibility to assist countries in overcoming certain minority-related problems. Moreover, it was also observed that states should not “hide” behind the non-intervention principle to shield off international attention, as this was considered to be rather “hurting than helpful”. These were important statements, as they indeed reflect recent developments in international law both in Europe and in the world at large which all aim at “internationalising”, to a certain extent, problems related to minorities in view of the high security-risks involved.

#### *Concept or Definition of Minorities*

Much debate in both working groups focused on the question whether the concept of minorities could be more precisely defined, taking into account that no generally accepted definition exists under international law. Although many forms of definitions are available and although a general understanding about the concept of minorities can certainly be noticed, a consensus on the definition of a minority has never been achieved and is unlikely to be achieved in the future. From a legal perspective, the acceptance of a definition of minorities would certainly be logical. However, it was largely accepted that the continued search for a definition of minorities might not be very helpful and could rather be seen as a tactic to delay progress in the protection of minority rights in general, and therefore be quite counter-productive.

In spite of the fact that a generally accepted definition does not exist, there was a clear understanding about the main features of what constitute minorities which can be summarised as follows:

- a) distinctive features in terms of language, religion, ethnicity, history and cultures;
- b) subjective features in terms of the wish of minorities to be considered as such and to preserve their distinctive features;
- c) numerical minorities in a non-dominant position; and,
- d) a time component in terms of a longer term stay on the territory of the countries concerned. Some countries like Latvia consider only those groups as minorities who have lived in the country before 1940.

Interestingly, the participants agreed that “vulnerability” should not be seen as a criterion for the concept of a minority, in particular, also because minorities who definitely are not “vulnerable” do exist, and in certain countries are actually more developed than majority groups in society. However, there is a general recognition that minorities are usually vulnerable. Similar problems, however, could be shared by traditional and new minorities.

The main points of discussion and contention focused on two elements: the time component and the citizenship requirement. Some favour a (substantially) longer-term presence of minorities on the territory of a country concerned before they would be eligible as “minorities” under international law. It was noticed, however, that the time component is much less important under the UN minority rights regime than under the Organisation for Security Co-operation in Europe (OSCE) and Council of Europe regimes. The latter regimes only recognise “national minorities”, whereas the UN regime is much broader and recognises not only “national minorities” (where the time component is generally considered to be highly relevant), but also “ethnic, linguistic and religious minorities” as separate categories. These latter categories are considered to be minorities without the strict requirement of a long-standing relation with the country of residence.

In this context, a widely discussed issue concerned the “new minorities” which usually are identified in terms of migrants (in particular, migrant workers). These migrants over time may inevitably become minorities and governments will have to provide proper protection of their rights in order to maintain social stability within society (see also below the sub-section “New Minorities”).

The requirement of citizenship of the country of residence for minorities to be eligible as such under international law was generally considered to be irrelevant, in particular from the perspective of the prevention of conflicts. Since the goal of the minority rights regime is to maintain and promote stability and prevent conflicts, certain minorities, not having the citizenship of the country of residence, should not be artificially excluded as this would run counter to the aim of the regime. However, participants noticed that practice in European states in this area is quite mixed, as several countries officially only recognise those groups as minorities which have the citizenship of the country concerned.

Some specific issues were raised in Working Group II:

- sub-cultures should be taken into account; making sure that some groups of people are not forced to accept a minority status;

- people have the right to identify themselves; thus, indicators should be expanded to cover social and economic aspects; and,
- Strong precautions were put forward claiming minorities' rights are not the same as secession nor independence.

*Implementation of Minority Rights in particular at the National Level*

It goes without saying that the development of international standards concerning the protection of the rights of minorities has been a major step forward for the protection of minority rights. However, in Working Group I, much attention was also paid to the issue of *implementation*. Although norms and standards may look excellent on paper, at the end of the day, it is the implementation of these standards which matter and that has to be guaranteed first and foremost at the national level. It was observed that a great number of mechanisms and methods exist for the implementation of minority rights. A number of these methods/mechanisms were discussed more particularly:

- a) Proper and effective national legislation about minority rights should be in place which should be fully in accordance with the international legal minimum standards. In this context, it was particularly emphasised that national constitutions must also be in conformity with international law and that in case of conflicts between constitutional and international law, the constitutions have to be adapted. It was also specifically emphasised that criminal law should ban any form of impunity in case of wrongdoings against minorities.
- b) Effective national remedies should be in place in order to address any alleged cases of violations of minority rights. In this context, special attention was paid to the courts about which considerable concern was expressed, as courts are generally considered to function inadequately in the area of minority rights protection. This is reflected, for instance, in the fact that hardly any landmark decisions about minority rights protection exist. This can be partially explained by the lack of appropriate training for judges, but partially also because of the lack of a political will to “make minority rights work” at the national level.
- c) The establishment and effective functioning of special national institutions for the protection of minority rights. These could take a multitude of forms, such as special consultative bodies or ombudsman offices. China offered an interesting example with its Ethnic Affairs Commission. However, the participants paid particular attention to the role of the National Human Rights Commissions which exist in various Asian (and European) countries and it was strongly recommended that these commissions should widen their scope so as to include also the protection of minority rights. This was considered to be an effective approach, since such commissions have been established in quite a few countries and have found their place already – to a certain extent – in the constitutional and legal order of these countries. Therefore, they could function more effectively in the area of minority rights protection than newly created bodies which might face difficulties in becoming “accepted” by the traditional state bodies.
- d) For the proper implementation of minority rights at the national level, non-government organisations (NGOs) may play several roles, including monitoring as well as the development of activities that empower minority groups to “raise their

- own voice” with respect to their rights and concerns. It was emphasised that the functioning of such NGOs at the national level should not be subject to any unreasonable limitation and that these organisations also should have unlimited and effective access to partner organisations and other bodies at the international level. In this context, the importance of (international) networking was emphasised.
- e) Public awareness and the people’s education on the nature and role of minority rights were also strongly emphasised as important tools to guarantee effective implementation of minority rights at the national level. Lack of knowledge often leads to misunderstandings which may have unfortunate consequences. It was particularly emphasised that such public education activities should also address the majority groups in society, as, in practice, serious misunderstandings about the importance of minority rights exist among the majority population, often leading to discrimination and sometimes even to acts of violence. Public awareness activities should also address the business and (international) donor community as relevant partners in the process of implementing minority rights.
  - f) International mechanisms, in particular, also at the United Nations (UN) level in relation to Asian countries, play an important role in the implementation process of minority rights as well. However, one should always bear in mind that international mechanisms basically play only a subsidiary role, as the main mechanisms for properly implementing minority rights exist always at the national level. International instruments can never take the place of such national mechanisms. However, such international mechanisms do have an important guiding or steering role, for instance, in clarifying the nature and scope of particular minority rights in the sphere of participating in public affairs at the national level.

The national implementation of a minority rights regime could be effectively realised if the state fulfils its obligations. According to international human rights treaties, each state party has obligations to respect, protect and fulfil rights of people living in its own territory. It is recognised, however, that the state as such is biased. In addition to some points shared by the two working groups, these specific aspects of the state’s responsibilities were highlighted in Working Group II:

- a) Assess the impacts of laws and policies and programmes to ensure that they do not produce any negative repercussions on minorities.
- b) Collect accurate and complete data about minorities groups. By the same token, minorities should be provided with full and up-dated information.
- c) As the very livelihood of minority people depends very much on the access to natural resources, it is therefore important to ensure that minorities are not denied access to natural resources. Sovereignty over natural resources of peoples must be guaranteed.
- d) Give people the opportunity to participate in the process of development and policy-law making; this implies that platforms for consultation in which minorities can make their voice heard should be created.
- e) Intervene in cases of exploitation of minorities’ culture for tourism purposes.
- f) Cultures and ways of living of minorities (and the majority) are different from one another and it is recommended that different groups be exposed to each other in order to create a mutual understanding.
- g) Preserve ancestral domain and cultural heritages of minorities.

Working Group II emphasised that the state can play constructive roles only when rights of minorities are recognised. Roles should be played at different layers, be they national, regional or grassroots. Local governments should be included in the process. It is essential that the state ensures a right balance between rights of minorities and of disadvantaged majority.

### *Mechanisms and Institutions*

One of the striking differences between Asia and Europe lies in the fact that in Europe, there exist various regional mechanisms some of which are with judicial powers and institutions which are rather well developed while there is none in Asia. While a majority of Asian participants recognised that there is a need for an appropriate regional human rights mechanism, they admit that the way towards the establishment of an Asian-wide mechanism is still far from reality because of the lack of political will from Asian governments as well as a low level of comfort to the ideas of human rights. This issue was debated during the presentation of the groups' report. Representatives from some countries ie China and Singapore commented that it might be premature to talk about an Asian human rights mechanism because of regional diversity and the level of readiness. The "Asian values" discourse was revived during the discussion.

However, the participants of Working Group II take note of initiatives from civil society in Southeast Asia to push the Association of Southeast Asian Nations (ASEAN) governments to establish an appropriate ASEAN human rights mechanism. After about ten years, efforts made bear some fruits. In the Vientiane Action programme, the ASEAN governments have made clear that an ASEAN Commission on the Protection and Promotion of Women and Children' Rights be established. ASEAN governments have also invited civil society, the Working Group for an ASEAN Human Rights Mechanism in particular, to engage in the process.

Although in some countries, institutions and mechanisms exist at different levels, their effectiveness remains desirable. Hence, while an inter-governmental mechanism is recommended for the long run, social, political and legal procedures and mechanisms are proposed. Regarding legal procedures, it is suggested that discrimination must be made illegal in domestic laws; rights of minorities must be made justiciable (ie subject to trial in a court of law). In this legal procedure, making full use of the court is necessary. As for political measures, it includes proper representation in political and public institutions of minorities, creation of platform for minorities to participate in public, social and economic facets of the societies, and an inclusive process through dialogue and in a democratic manner. Concrete social measures include education, ethnic minorities' languages training in particular, inter-religious dialogue, inter-minority groups activities, as well as affirmative action. In addition to this, minorities' rights should be mainstreaming in all institutions and it should be done in a focused and persistent manner.

An interesting, but inconclusive discussion took place about the issue whether the Asian countries would benefit from the development of a special instrument for the protection of the rights of minorities in Asia. This instrument could have many forms, ranging from a legally non-binding political declaration until the adoption of a legally binding Convention or Charter with supervisory bodies.

It was generally observed that the first, effective step may be to make the hundreds of existing human rights instruments at the international level work more effectively instead of just starting to draft a new piece of text. The participants also stressed the fact that Asian countries certainly do not always have to follow European examples and that a legalistic approach is certainly not the only effective way of tackling difficult issues. It was also mentioned that the existing UN system on human rights protection already contains numerous and often far-reaching obligations relating to minority rights protection which are also binding on Asian states and that, therefore, the need of a specific Asian instrument is not so self-evident.

In this context, the fundamental principles of international law on state sovereignty and non-intervention in internal affairs were also raised, as these principles – although not considered to be absolute concepts – still do have significance, in particular in the Asian context. It also showed a certain lack of political will in the Asian context, as observed by some participants, to move forward on this road of standard-setting relating to minority issues in Asia. They pointed at the fact that many obligations that do exist already are still not complied with by state leaders.

There was a general agreement that this issue would warrant a careful, step-by-step approach which could be a topic of the next Informal ASEM Human Rights Seminar. The first necessary step would be to generate the political will to properly implement the rights of minorities in Asian countries.

### **Civil and Political Rights of Minorities: some specific aspects**

#### *Indicators*

A brief discussion took place about the question of which indicators are relevant to measure proper implementation of minority rights in the various countries. It became clear that the indicators, developed by the rapporteurs in their introductory report, were generally considered to be relevant. In addition, statistics was strongly emphasised as a main indicator. Statistical data about the representation of minorities in public bodies can be an important source of information about the status of minority rights in a country. The same *mutatis mutandis* applies to, for instance, the occurrence of torture in relation to minorities, the number of minority people in prisons and the representation of minorities in the civil service.

#### *Non-discrimination and Special Measures*

Working group participants also spent some time to discuss the highly important principle of non-discrimination in relation to the need of special measures or affirmative action, aimed at overcoming existing inequalities in the levels of development of a considerable number of minorities. Although it was generally accepted that such special measures or programmes with assistance for minorities are not discriminatory in nature if applied in a fair and transparent way, it was also clear that a cautious approach was favoured. It was emphasised that special measures should only be temporary in nature and that minorities should be made aware of the fact that support programmes will not last forever. This is a delicate issue as the

discontinuation of special programmes for minorities can easily be considered as a step backwards and, therefore, as “discriminatory”.

Participants suggested developing a database of best practices in this area, because it is obvious that many countries in the world have interesting experiences in promoting and protecting the status of minorities. Bringing together good (and bad) practices would be a helpful tool for states to avoid mistakes and to learn from good experiences in other parts of the world. It was suggested that the Asia-Europe Foundation (ASEF) should consider undertaking this task.

#### *Status of Asians in Europe and Europeans in Asia*

An interesting discussion developed about the question of how far the status of Asians, living in European ASEM member countries, and Europeans, living in Asian ASEM member states, is comparable. The conclusion was quickly reached that the status of both groups is hardly comparable and their treatment is very different. Asians in Europe, for instance, are often in the position of being illegal immigrants. In case of a legal title of residence, they may be and often are considered as specific minorities.

However, Europeans in Asia are certainly not considered to be minorities and are therefore never treated as groups, entitled to minority rights. This is also understandable in view of the fact that most Europeans in Asia certainly belong to “well-to-do” groups, whereas this is not necessarily the case for Asians in Europe.

It was stressed that in case of Asians in Europe who have acquired the citizenship of their new states of residence through naturalisation, their (original) kin-states have in principle no legal right or interest to “keep an eye” on their treatment.

A common feature of both groups (Asians in Europe and Europeans in Asia) is that both are entitled to equal protection of their rights in accordance with national law, whereas it was emphasised that national law of course has to be in conformity with the international obligations of the states concerned.

#### **Economic, Social and Cultural Rights of Minorities: some specific aspects**

As in Working Group I, the discussions in Working Group II focused more on conceptual and structural aspects rather than any specific economic, social and cultural rights. Certain structural issues covered were already noted of this report. There are, however, some specific issues, such as the existence of new minorities, were broadly discussed, and some specific rights namely the right to education and land rights were also were addressed. The participants of the seminar, both from Asia and Europe, agreed to raise the issues of language as well as the majority’s response to minority rights into the discussion as well.

#### *New Minorities*

It seems, from the discussion, that new minorities are identified in general with migrant workers. In Europe as in Asia, migrant workers are not considered as minorities. It is recognised, however, that not all of them are migrant workers and in the long run next

generations may become minorities in the countries in which they reside. Today's migrants may be tomorrow's immigrants and end up with being minorities. Some may speak the same language, believe in the same religions and have the same culture such as Latin Americans in Spain or Portugal. Many may have different language and cultures like the Turkish in Germany, the Burmese in Thailand, or the Filipinos in Singapore. In spite of this fact, they all face, although with different degrees, more or less the same difficulties to adapt into a new society.

Migrants might be lawful or unlawful (documented or undocumented). In Singapore migrant workers are mostly documented. They may be categorised differently from professional foreign talents down to foreign workers. They are to return back to the country of origin once their contract ends. In France, those who migrate from outside are considered as new migrants. They are not citizens and are not identified as minorities. On the other hand, the Indochinese refugees are not considered as minorities for they are fully integrated into the French society and they do not claim any special rights. Different legal statuses should not, nevertheless, determine the way they will be treated.

### *Land Rights*

Indigenous people have a special relationship to land for it is closely linked to all aspects of their lives. The International Labour Organisation (ILO) Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries and the Draft UN Declaration on the Rights of Indigenous Peoples require governments to respect the customary land rights and special relationship to land of these peoples. However, there is no universal definition of customary land use and land rights of the indigenous. It is therefore very natural that in the discussions on land rights, rights of indigenous people to land and land use, have been highlighted.

We learn from the discussion that land rights of indigenous people are legally recognised in some countries but problems remain, more serious in Asia than in Europe. The following issues were addressed;

- In both Asia and Europe land often belongs to the state. The nature of land rights depends on customary laws and practices of particular indigenous groups. It is understood that land and natural resources are the principal sources of livelihood, and social, cultural and spiritual cohesion of indigenous people. In Europe some indigenous groups do have indigenous land rights. In Asia, indigenous and ethnic minorities will have to prove the ownership and right to land used which is subject to various conditions.
- What is more problematic in a market economy is the concept of private ownership. In general, indigenous peoples consider land as a common good. Every member of a community has a share of ownership and none of the members have any exclusive rights to any plot of land. In this concept, members have rights to use individually and communally based on types of lands and practices in a given community. Government officials may not understand the concept of communal land or ancestral domain at all.
- Another crucial issue related to land rights and development policies and projects. Common Article 1 of the two UN Covenants on Human Rights refers not only to political status of peoples but also to their economic, social and cultural development,

their right to freely dispose of their natural wealth and resources. Article 2 recognises their right not to be deprived of their own means of subsistence. According to these two articles, peoples, meaning indigenous and ethnic minorities have the right to freely pursue their economic, social and political development and the right to self-determination to determine their path of development or at least the right to meaningfully participate in, contribute to, and enjoy economic, social, cultural and political development. In many cases, especially in dam construction projects throughout Asia (and Europe to certain extent), lands of indigenous people are taken by the government for the sake of “national development and national interests”.

- Often indigenous peoples are forced into a particular model of development based on the idea of individual land ownership and a capitalist economy. Their right to land and the use of natural resources are encroached on and they are most affected by the so called “development projects” without proper compensation which in all cases could not be sufficient as in many cases, money cannot compensate their traditional way of life and values.
- Development policies and projects actually create conflicts at least at two levels; conflicts between the state and the groups and conflicts within the groups themselves. In many cases, a community has been torn apart because of development projects. Some members may look at it as opportunity while others consider it as a threat to their cultures and their very existence.
- It is discussed that many if not most of development policies and projects are influenced and/or supported by International Financial Institutions (IFIs) such as the World Bank, the International Monetary Fund (IMF) and the Asian Development Bank (ADB). There is a critical need to seriously review the roles of these IFIs
- There are questions that remain unanswered on how to balance interests and rights of indigenous peoples and interests of the public and state; how indigenous groups participate in the development process and have a chance to determine their own path of development.
- Although some questions remain but the working group shared some good practices and recommendations which include the creation of a consultative body with proper representation; in addition to a routine Environmental Impact Assessment (EIA) [please define] social impact assessment must be carried out as well.

### *Right to Education*

General Comment of International Covenant on Economic Social and Cultural Rights (ICESCR) No. 13 on the right to education specifies that “under Article 13(4), everyone, including non-nationals, have the liberty to establish and direct educational institutions. Given the principles of non-discrimination, equal opportunity and effective participation in society for all, the state has an obligation to ensure that the liberty set out in the Article 13 (4) does not lead to extreme disparities of educational opportunity for some groups in society”. Based on this comment, the Hague Recommendations Regarding the Education Rights of National Minorities goes further that “the right of national minorities to establish and manage their own institutions, including educational ones is well grounded in international law and must be recognised as such. The Hague Recommendations continue that minorities not only have right to maintain their identity through the medium of their

mother tongue but that they also have the right to integrate into and participate in the wider national society by learning the state language”.

Recognising that education is both right in itself and an indispensable means of realising other rights, the working group focused the discussion on the right to education on three issues namely access to education, language teaching and religious teaching:

- On access to education, participants, mainly from Asia, share some concern that children of minorities and indigenous groups have little access to education. In spite of some measures, including affirmative action, provision of scholarships, establishment of boarding schools and lower requirements for admission, minorities are still denied the opportunity to reach their full potential. In cases in which educational services and facilities are available, very often they are of a lower standard than those offered to the children of the majority group(s). Lack or insufficient financial resources is always put forward as an excuse.
- In general, language teaching is done in a unified system of education. In some countries, the mother tongue is allowed to be taught at schools, but this is not the case in higher education where the state language is applied across the board. The issue of language teaching is closely related to freedom of education in the sense that parents have – within the limits of compulsory education – a right to choose the kind of education and school for their children. While this is true for parents in Europe, very few Asian countries give this freedom to parents. In some cases where parents can make the choice they deem proper for their children, they might not be provided with sufficient information.

The participants note one critical point on language teaching that the language of minorities is becoming much less attractive if not marginalised in this globalised world. The language of minorities has to give way to another which is more internationalised hence competitive in a job market.

- As for religious teaching, European participants affirm that religious schools (eg Christian or Islamic or others – offering general education required by the state on top of religious education) have been supported by the state. However, after 9/11, discussions on whether or not states should support Islamic schools are ongoing in some countries.

Religion is not usually compulsory at schools. It could be, nevertheless, problematic if a state religion (if any) is taught. It could be problematic as well if education is organised on religious lines because it might impact the process of integration.

- A final note could be made here: whether a right to education is recognised as fundamental education programme and awareness campaign for minorities is recommended. Very often, lack of education of parents may lead to denial of rights to education of children. Education here also includes educating majorities about way of life, cultures and practices of minorities.

*Majority's Response to Minorities' Rights*

The working group discussed an issue of the majority's response to minority rights. In general, majority and minority are living apart. There is always a sense of "we-us" and "they-them". A sense of trust between the two groups is lacking in many societies. A participant from Singapore advanced that minorities will have to prove themselves that although they are different, they are an integral part of the society and are willing to fulfil duties as good citizens. The majority, for their part, will have to deliberately adjust themselves to different cultures and practices of minorities. It is recommended that the majority learn more about cultures of minorities, respecting their religion, beliefs, and languages. There is a need to build better mutual understanding between minorities and the majority. Taking part in social and cultural lives and events could be one of the ways towards mutual understanding.

**Some Final Recommendations to ASEM and Its Member States**

The seminar concluded with some recommendations to ASEM and its member states. One of the main suggestions was that the member states should make more use of ASEM to discuss this sensitive issue of minority rights more intensively, as its informal character of this series allows for more open and thorough-going debates. Moreover, the seminar clearly showed that both Europe and Asia could learn from each other's experiences in this area. Therefore, it was recommended to consider organising more of such informal seminars, focusing on more specific issues of minority rights.

Another recommendation was related to the topic of whether the Asian members countries of ASEM should consider the drafting and adoption of some kind of regional instrument (political declaration or charter) relating to the protection of human rights in general and minority rights in particular. Although the discussion about this topic was far from conclusive, the general opinion was that ASEM could provide an effective framework for paying more attention to the issue of this regional instrument. It became clear that most participants favoured a careful and step-by-step approach in this area (see above).

A further recommendation favoured a more intensive use of the ASEM framework for consultations about minority rights issues, for instance intergovernmental consultations prior to specialised meetings of the UN about such issues. This recommendation was also based on the belief that both Europe and Asia can learn from each other.

As another recommendation, ASEM was encouraged to consider becoming more active in the area of training and awareness-raising on minority rights issues, as it was obvious from the discussion that lack of knowledge and public awareness is an issue that deserves more attention from ASEM and its member states. In this context ASEM was also mentioned as the framework for establishing a specialised database on good practices relating to minority rights protection in general and specific government programmes and affirmative action in particular.

## Seminar Programme

### **Wednesday, 22 February 2006**

*Arrival and registration of participants (Budapest)*

- 1500hrs – 1800hrs      Registration of participants  
Venue: hotel
- 1830hrs                  Welcome Reception  
Venue: Central European University

### **Thursday, 23 February 2006**

- 0900hrs – 0930hrs      Registration of participants (continued)  
Venue: CEU
- 0930hrs - 1045hrs**      **PLENARY SESSION 1**
- Chair: **Nsongurua Udombana**  
Director of Human Rights Center of the Central  
European University  
Associate Professor, Department of Legal Studies
- OPENING SPEECHES**
- Welcome address by **Yehuda Elkana**  
Rector, Central European University
- Dr. Somogyi Ferenc**,  
Minister of Foreign Affairs, Hungary
- Gudmundur Alfredsson**  
Professor, Director  
Raoul Wallenberg Institute, Sweden
- Frédéric Tiberghien**  
State Counsellor,  
Representative of the Ministry of Foreign Affairs,  
France
- Bertrand Fort**  
Director for Intellectual Exchange, Asia-Europe  
Foundation
- 1045hrs - 1100hrs      Coffee/Tea Break

1100hrs – 1230hrs

**KEYNOTE SPEECHES**

**Chair: B. Fort**

**Keynote speech Asia: Jannette Cansing Serrano**  
Chairperson

National Commission on Indigenous Peoples, the Philippines

**Keynote speech Europe: Rainer Hofmann**

Former President, Advisory Committee, Council of Europe Framework  
Convention for the Protection of National Minorities

Q&A Session

1230hrs - 1400hrs

Lunch

*Venue:* BM Dunapalota

1400hrs – 1615hrs

**WORKING GROUP SESSION I (Part I)**

**Group 1: Civil and Political Rights of Minorities**

*(Venue: CEU)*

Rapporteur: **Dr. Arie Bloed**

Consultant, Minority Rights expert

Moderator: **Gudmundur Alfredsson**

Director, Raoul Wallenberg Institute

**Group 2: Economic, Social and Cultural Rights of  
Minorities** *(Venue: CEU)*

Rapporteur: **Sriprapha Petchamesree**

Director, Office of Human Rights and  
Social Development, Mahidol University

Moderator: **F. Tiberghien**

1615hrs – 1645hrs

Coffee/Tea Break

1645hrs – 1830hrs

**WORKING GROUP SESSION I (Part II)**

1930hrs

Dinner reception hosted by the Ministry of Foreign  
Affairs, Hungary, and chaired by Mr. László Várkonyi,  
Deputy State Secretary and ASEM SOM, Hungary.

*Venue:* Gundel

**Friday, 24 February 2006**

<b>0900hrs – 1100hrs</b>	<b>CEU SESSION: The Social Life of Minority Rights</b>
<b>11h00-13h00</b>	<b>WORKING GROUP SESSION II</b>  <b>Group 1: Civil and Political Rights of Minorities</b> ( <i>Venue:</i> CEU)  Moderator: <b>G. Alfredsson</b> Rapporteur: <b>A. Bloed</b>  <b>Group 2: Economic, Social and Cultural Rights of Minorities</b> ( <i>Venue:</i> CEU)  Moderator: <b>F. Tiberghien</b> Rapporteur: <b>Sriprapha Petcharamesree</b>
1300hrs – 1430hrs	Lunch <i>Venue:</i> BM Dunapalota
<b>1430hrs – 1630hrs</b>	<b>PLENARY SESSION II</b>  <b>Chair: F. Tiberghien</b> <ul style="list-style-type: none"><li>• Reports from the working groups</li><li>• Question / Answer session</li></ul>
1630hrs – 1700hrs	Coffee Break
<b>1700hrs – 1800hrs</b>	<b>CONCLUDING REMARKS</b>  <b>Chair: G. Alfredsson</b>  <i>Venue:</i> Auditorium, CEU
1930hrs	Free dinner for participants  Steering Committee Working Dinner <i>Venue:</i> Mokka Café & Restaurant

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## **The Informal ASEM Seminar on Human Rights Series**

On the occasion of the first meeting of ASEM Foreign Ministers in Singapore in February 1997, Sweden and France had suggested that informal seminars on human rights be held within the ASEM framework. The aim of this initiative was to promote mutual understanding and co-operation between Europe and Asia in the area of political dialogue, particularly on human rights issues.

Seven seminars were held successively in Lund (Sweden) in December 1997, in Beijing (China) in June 1999, in Paris (France) in June 2000, in Bali (Indonesia) in July 2001, in Lund (Sweden) in May 2003, in Suzhou (China) in September 2004 and in Budapest (Hungary) in February 2006.

The formula employed is as follows: the participation of two representatives from universities and NGOs invited by the organisers and one official representative for each of the 13 Asian ASEM countries, and in order to have a balance representation between Asia and Europe, 1 representative from the civil society and 1 official from each of the 25 European ASEM countries; an agenda structured around the main topics related to the subject of the seminar, with discussions held in working groups; closed room debates to allow free and direct exchanges of view; a set of recommendations elaborated collectively to be sent to the relevant institutions in ASEM countries as informal contribution to the official Asia-Europe dialogue.

Supervision of the seminar is entrusted to a **Steering Committee** made up of the following partners: France, Sweden (the Raoul Wallenberg Institute), China, Indonesia, the Asia-Europe Foundation (ASEF), and the European Commission. This Committee sets the seminar's guidelines and how it should be organised. The technical preparation is delegated to three coordinators (Mr. Frederic Tiberghien, State Counsellor, France, Mr. Gudmundur Alfredsson, President of the Council of Directors, Raoul Wallenberg Institute, Sweden and Mr. Bertrand Fort, Deputy Executive Director, ASEF, Singapore, in liaison with the host country's partners. The funding of meetings is divided into three equal parts among France, the Raoul Wallenberg Institute and the Intellectual Exchange Department of the Asia-Europe Foundation (which holds the secretariat of the Series).

The experience of the first series of seven seminars has shown the usefulness of the chosen formula: a climate of confidence and mutual understanding, in accordance with the ASEM spirit, has grown stronger during this nine year process; the topics selected by the Steering Committee, which focus on issues of common interest to the two regions, have made high quality discussions possible; the high level of participation of the ASEM partners shows the strong interest of the partners for these meetings.

### **Topics debated in the seven Asia-Europe seminars already implemented were:**

- Lund (December 1997): Access to Justice; regional and national particularities in the administration of justice; monitoring the administration of justice.
- Beijing (June 1999): Differences in Asian and European values; right to education; rights of minorities.

- Paris (June 2000): Freedom of Expression and Right to Information; humanitarian intervention and the sovereignty of states; is there a right to a healthy environment?
- Bali (July 2001): Freedom of Conscience and Religion; democratisation, conflict resolution and human rights; rights and obligations in the promotion of social welfare.
- Lund (May 2003): Economic Relations: Human Rights and Multinational Companies, Human Rights and Foreign Direct Investments.
- Suzhou (September 2004): International Migrations: Protection of Migrants, Migration Control and Management.
- Budapest (February 2006): Human Rights and Ethnic, Linguistic and Religious Minorities.

After each conference, the outcomes of the discussions are gathered in a publication that may be used by governments and civil society as a reference on the state of play of the debate on Human Rights in ASEM countries.

## **About the Co-organisers**

### **About the Asia-Europe Foundation**

The Asia-Europe Foundation was created by the Asia Europe Meeting (ASEM) heads of state in 1997 and acts as its manifestation toward Civil Society. ASEF works for intellectual, cultural, and people-to-people exchange among our member-countries in Asia and Europe. In particular, Intellectual Exchange aims to contribute to policy debate and strategic thinking on themes of current and future inter-regional importance between Asia and Europe. For more information on ASEF programmes, please visit our website <http://www.asef.org>.

### **About Raoul Wallenberg Institute**

The Raoul Wallenberg Institute of Human Rights and Humanitarian Law is an independent academic institution dedicated to the promotion of human rights through research, training and education. Established in 1984 at the Faculty of Law at Lund University, Sweden, the institute is currently involved in organising in Lund two Masters Programs and an interdisciplinary human rights programme at the undergraduate level. Host of one of the largest human rights libraries in the Nordic countries and engaged in various research and publication activities, the Raoul Wallenberg Institute provides researchers and students with a conducive study environment. The Institute maintains extensive relationships with academic human rights institutions worldwide. For more information, please visit our website: <http://www.rwi.lu.se>

### **About the French Ministry of Foreign Affairs**

For more information, please visit our website: <http://www.diplomatie.fr>

### **About the Central European University**

Central European University (CEU), a graduate university with a curriculum offering master's and doctoral degrees in the social sciences, humanities and policy studies, is accredited in the United States and Hungary, and is based in Budapest. CEU was founded in 1991 in order to help the people of post-communist countries, especially those of Central and Eastern Europe and the former Soviet Union, move towards open, democratic societies, and, to help educate a new generation of leaders and scholars for the region. In Academic Year 2005/2006 some 1,050 students are enrolled at CEU, from almost 70 countries. CEU particularly supports applicants from emerging democracies. CEU has some 5,500 alumni to date; many hold leading positions in academic institutions, NGOs, government and industry in their countries. Currently at CEU there are 12 research-oriented teaching units and several research centers including a Center for Policy Studies, a Humanities Center, as well as a Business School. The language of instruction is English. For more information, please visit our <http://www.ceu.hu>