HL-SENTERET
Minority Network

NAIL
NORWEGIAN ACADEMY OF INTERNATIONAL LAW

Inclusive Citizenship in Transitions
Participation and Representation of Religious and Ethnic Minorities

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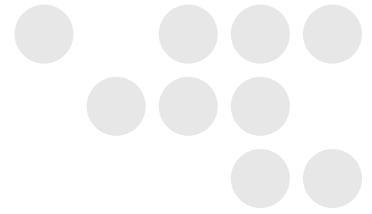
Key Note

Fernand de Varennes

UN Special Rapporteur on Minority Issues

Expert Panel

Mark Lattimer

Director, Ceasefire Center for Civilian Rights

Nazila Ghanea

Director of International Human Rights Law Programmes, University of Oxford

Sriprapha Petcharamesree

Advisor to the Institute of Human Rights and Peace Studies, Mahidol University
Convener of ASEAN University Network, Human Rights Education

Saad Salloum

Director, MASARAT for Education and Culture, Iraq

Gro Nystuen

Senior Research Fellow, Norwegian Academy of International Law (NAIL)

Ed Brown

Secretary General, Stefanus Alliance International

Bidhayak Das

PhD fellow at Institute of Human Rights and Peace Studies, Mahidol University

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Ellen Stensrud

Senior researcher and project manager, The Norwegian Center for Holocaust and Minority Studies (HL-senteret)
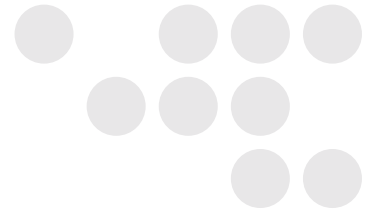
Moderators

Ingvill Thorson Plesner

Senior Research Fellow and Project manager ICHR, The Norwegian Center for Holocaust and Minority Studies (HL-senteret)

Cecilie Hellestveit

Senior Research Fellow, Norwegian Academy of International Law (NAIL)

Introduction

The hybrid conference was organized by HL-senteret as part of the Inclusive Citizenship and Human Rights (ICHR) project[1] in partnership with NAIL – Norwegian Academy of International Law.[2] The conference gathered experts that have been involved in the work of the ICHR over the last years and addresses some of the questions that are at the core of the interdisciplinary research and international network activities of the project. The project is supported financially by the Norwegian Ministry of Foreign Affairs.

The subject the conference was the representation and participation by ethnic and religious minorities in countries in transitions. People who are in a minority situation based on their religious and/or ethnic identity are particularly exposed in conflict-ridden societies, a vulnerability that is often exacerbated in periods of post-conflict transition. The main objective of the conference was to identify strengths and weaknesses of different models of representation and participation in addressing the vulnerabilities of minorities in such situations.

Questions

The conference asked what institutional model-alternatives exist for securing participation and representation by ethnic and religious minorities in conflict-ridden societies. The conference first discussed **models for political representation in power sharing agreements** among larger groups based on ethnic and/or religious identity (horizontal models). Notably examples from the Balkans and MENA region were reviewed. The conference then looked at **models of representation of minority groups at the regional/sub-national level** (vertical models), with a particularly focus on models in Asia and MENA. A particular attention was given to dilemmas relating to challenges of ensuring the rights of **minorities within minorities** (e.g. in areas of regional self-government) under these different models.

Methodology

The expert panel was multidisciplinary, including scholars from sociology, political science and international law. The discussions were based on a comparative approach, informed by selected cases from Iraq, Iran, Myanmar and Bosnia. Prior to the conference, the main cases relied on for comparison and keynote introductions were distributed to participants in pre-recorded video introduction by the moderators presented at the event web site.[3]

Participation

The expert panels included the UN Special Rapporteur on Minority issues, representatives of Ceasefire Center for Civilian Rights and Minority Rights Group International as well as researchers from institutions such as Mahidol University, Center for Peace and Human Rights Studies (Bangkok), Centre for Diversity (Baghdad), Oxford University as well as Norwegian expert institutions and civil society organizations working in the regions. Event page to be launched shortly. The seminar is moderated by Dr. Ingvill Plesner, senior researcher and project manager of the ICHR project at HL-senteret and by Dr. Cecilie Hellestveit, senior research fellow at NAIL.
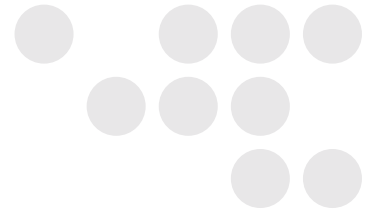
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Executive summary

The seminar examined institutional and constitutional models for safeguarding representation and participation by minorities in conflict-ridden societies in transition. The aim was to analyze constitutional and other institutional arrangements for minority/majority representation in countries of transition, by relying on comparisons of empirical examples from the MENA region, ASEAN and the Balkans. The main objective was to identify strengths and weaknesses of different models of representation and participation in addressing the vulnerabilities of minorities in such situations.

The seminar discussed which institutional model-alternatives exist for securing participation and representation by ethnic and religious minorities in conflict-ridden societies. The UN special rapporteur on minority issues, Fernand de Varennes, in his keynote speech outlined two models often relied on to address the risk of exclusion of minorities:

- The first model is **proportionate participation and representation** of minorities within State structures, usually on a territorial basis. De Varennes pointed to highly successful models in Finland, Italy, Belgium and Switzerland.
- The second model relies on a **robust human rights protection regime**, such as inclusion of protection of minority language in education. He relied on the French-speaking province Quebec in Canada for example, notably the position of English-speaking minorities within this minority.

The seminar inquired into models for political representation in power sharing agreements among larger groups based on ethnicity and/or religion, referring to examples from different regions with a main focus on the cases of Bosnia, Myanmar, Iraq and Iran.

- Gro Nystuen explained how the three-prong constitutional setup in Bosnia came about, how the solutions were blatant violations of human rights, and how the model became entrenched and impossible to adjust, despite multiple efforts.
- Saad Salloum described a similar development following the occupation of Iraq in 2003, the struggle for power and wealth became a dispute between the three major groups Sunnis, Shias and Kurds, and the system is locked between them and cannot be changed.
- Mark Lattimer compared the situation in Bosnia, to the Taif accord which brought the Lebanese civil war to an end. In both contexts, the situation has been ossified and is hard to change because representation must be along these ethnic or religious lines.

- Sriprapha Petcharamesree explained how representation of ethnic and religious minorities was extremely minimal in both Thailand and Myanmar, and hardly no measures can increase the representation and participation in politics. In Myanmar, the Constitution divided up various minorities, some recognised minorities with territorial autonomy, while others became minorities within minorities. Other minorities, such as the Rohingyas, were not recognized as ethnic minorities, and consequently did not get similar rights.
- Nazila Ghanea explained how the quota system in Iran implied that the government gives enhanced privileges to minorities because of their numeric size, but they do not necessarily get a seat in the parliament since the different characteristics are being played against one another. Religious minorities in certain circumstances have had more enhanced linguistic rights than linguistics minorities in Iran, if their ancestry is elsewhere than Iran, such as "Syrian" or "Armenian".

The conference then looked at models of representation of minority groups at the regional/sub-national level, with a particularly focus on models in Asia and MENA, and the challenges of minorities within minorities.

It was warned against conflating demands for representation based on identity criteria, and representation by minority communities who would never have a voice without a system of dedicated representation. Attention was also brought to the question of recognition as a precondition for participation and representation.

Experts further pointed to "representation" on behalf of a minority group as sometimes a misleading term. Leaders often take advantage to impose models that benefit the leadership rather than the group as such. Dissident voices within minorities may expose the group, and minority leaders may resort to strict discipline to maintain cohesion. This dynamic may foster very strict expectations of adherence to the minority community.

Several experts underlined their preference for an emphasis on access to rights because the quota model is liable to have exclusions or be a temporary shelf life or get captured by politics, preventing a steady sustainable and advance access to rights. The detrimental effects of the lack of constitutional courts for representation were also highlighted. Many of the countries in question do not have a (functioning) constitutional court. This fact makes inflexible models of representation between larger minority groups even more dangerous.

Expert interventions (summary)

Fernand de Varennes
UN Special Rapporteur on Minority Issues

Fernand de Varennes warned that exclusionary and discriminatory practices by States seems to be on the rise. He pointed to various dynamics to explain the development:

Rising number of internal conflicts. In pair with rising conflicts in the world, minorities are disproportionately excluded in government in employment and civil services, their languages reduced, and they are being excluded from public education. De Varennes warned that the global trends go in the opposite direction from "inclusive citizenship". As shown by Uppsala conflict data program and the Minorities at risk program, most conflicts take place within states, with an ethnic, religious, or linguistic dimension. This takes place in pair with one of the largest forced displacement crisis on record. He underlined that conflicts often involve a minority against the State with grievances of injustice, precisely from the lack of full participation. Perceptions of injustice combined with perceived discrimination are emerging as potent factors of division rather than inclusion in European and other societies.

Growing inequality. Inequality has been amplified by the pandemic, together with an increase in discrimination, exclusion and even hate, against minorities. We are seeing extreme inequalities; in fact, we could say it is out of control. 22 of the richest men in the world have more wealth than all the women in Africa, where one out of every five children will not be able to go to school. In this situation, it is the most vulnerable and most marginalized segments of society, the indigenous people, women, and certain minorities, who again are disproportionally left behind. De Varennes recalled a joint UN/World bank seminar report on pathways to peace, underlining the need to address grievances around exclusion from access to power, opportunity and security, which mainly occurs to minority groups.

One of two models are often relied on to address the exclusion of minorities.

The first is **proportionate participation and representation of minorities within State structures,** usually on a territorial basis. Highly successful models include Åland islands of Finland and Satiro Bolzano Boateng province of Italy, Belgium, and Switzerland.

The second relies on a **robust human rights protection regime,** such as inclusion of protection on the use of minority language in education, or in other areas where political participation and representation is reasonable and justified.

In Canada, the autonomy model is used to ensure that the French speaking minority exercises internal self-determination in Quebec, while other French speaking minorities have guaranteed the right to use their language elsewhere in the country of Canada, an example of a robust individual human rights approach, also protecting the rights of participation and representation of minorities within minorities. The English-speaking Canadians inside of Quebec are entitled to human rights protections in education and access to public service.

De Varennes ended by commending the "Lund recommendations" and its different models for participation and representation for national minorities in public life by the high commissioner of national minorities for OSCE.

Mark Lattimer
Director, Ceasefire Center for Civilian Rights

Lattimer started by distinguishing between tensions in societies where you have different ethnic or religious groups in contention, such as Iraq or Bosnia on the one hand, and situations of conflict where minorities are at risk although they are not contenders for power in society, but are rather extremely marginalized. In Iraq, Shia-Muslims in the north were targeted by ISIS, as were the Yazidis. But the Yazidis never took up arms against ISIS. The victims of genocide did not threaten the perpetrators, like in Rwanda and in the Nazi Germany. Lattimer warned against conflating demands for representation on the basis of identity, and representation by minority communities who would never have a voice without a of system of dedicated representation.

Lattimer drew attention to Bosnia, where the Dayton agreement divided up the polity between three constituent people, between Croats, Serbs and Bosnian Muslims, in the same way that the Taif accord which had brought to the Lebanese civil war to an end. People were complaining about Dayton and Taif. But when you asked what is the alternative, and shall we change it, everyone replied no - you must start from Dayton, start from Taif. There was this tremendous attachment to the document, to the constitution that had brought peace. In Bosnia the situation has been ossified and nothing can change because representation must follow these ethnic or religious lines.

Lattimer then evoked Iraq, where the situation is very different, and things are more in movement. With almost every election there have been changes to the electoral law. Under the occupation there was a model resembling the Dayton model, but the Iraqis began to change this. The independent, dedicated representation that remains for smaller minorities (mainly Christians) who have the best deal in that representation (five seats in the national parliament). But the last election has shown how that voice can be effectively usurped by major political parties who have used the electoral laws to their own advantage.

Nazila Ghanea

Director of International Human Rights Law Programmes, University of Oxford

Nazila concentrated on religious minorities in Iran. In 2003 a working group on minorities was dedicated to the Lund-recommendations (in 1999) about the effects of participation of minorities in public life. Iran has a quota in its national constitution for four religious minorities but only three are recognized as religious minorities. Jews, Christians and the Zoroastrians are recognized as religious minorities under the Iranian constitution (article 13). The Bahai are not recognized.

However, converts are not beneficiaries of those constitutional recognition and are highly restricted. A government can thus play one of the minority characteristics against the another. In the late 1990s, the Iranian government was allowing Christians to go to their churches but were checking IDs to make sure that no converts or a Muslim sounding name or someone not born with identifiable recognition as a Syrian or Armenia. Religious minorities in certain circumstances had more enhanced linguistic rights than linguistics minorities.

Within the quota system the government gives enhanced privileges to minorities because of their numeric size, but they would not necessarily get a seat in the parliament since the different characteristics that are being played against one another.

Nazila underlined her preference for an emphasis on access to rights because the quota model is liable to have exclusions or be a temporary shelf life or get captured by politics, preventing a steady sustainable advance access to rights.

Although there is recognition of personal status law, the focus largely becomes on the model and the focus goes to the size of that particular minority, camouflaging what may actually be happening on the ground.

Therefore, the argument is that a robust human rights model and approach with guarantees is more sustainable.

Finally, Nazila drew attention to the detrimental effects of the lack of constitutional courts. Many of the countries in question do not have a (functioning) constitutional court. This fact makes inflexible models even more dangerous.

Sriprapha Petcharamesree

Advisor to the Institute of Human Rights and Peace Studies, Mahidol University and Convener of ASEAN University Network, Human Rights Education

Sriprapha underlined that in Thailand, many members of minority ethnic groups such as the Hmong are living in the margin of the Thai society and often lack citizenship despite having lived in the country for generations, and their political representation is almost non-existent. In the parliamentary election in Thailand in 2018, a representative of the Hmong ethnic groups was elected to the lower house for the first time.

In the case of Myanmar, to the contrary, candidates from Rohingya community were barred from running in the last elections. The Rohingyas had the right to vote and run for election until the 2011 election. The barring of Rohingyas to run for election and to vote started in 2015. During the 2020 elections (just prior to the coup) the parties of ethnic minorities won only 13 seat out of 322. This was a substantial decrease from the 2015 elections. Sriprapha underlined that this indicates that the representation of ethnic parties is weak, and they have been unable to secure formal representation through elections.

> *In Myanmar, one third of the population consists of ethnic minorities and they are actually the majority in some states. Representation of ethnic and religious minorities is extremely minimal in both Thailand and Myanmar, and there are no measures to increase the representation and participation in politics.*

Saad Salloum

Director, MASARAT for Education and Culture, Iraq

Salloum started by highlighting the positive developments in the latest Iraqi parliamentary elections, where ethnic and religious minority representation is clearly on the rise.

However, the situation continues to be dire for the minorities of the Yazidis. The effects of the genocide of the Yazidis are still ongoing. Before the summer of 2014 and the ISIS attacks, the Yazidis numbered around 550 000. The initial attack led 360,000 persons to be displaced, more than a thousand were killed and more than 6000 were kidnapped. Yet, political conflict over the administration of the traditional Yazidi homeland Sinjar continuous. High rates of immigration fracture the community further. Displaced from the Yazidi community in camps in Kurdistan have dwelled there for years without a clear vision of their future. Three options are available to them; return to their homeland, settle permanently in areas of displacement or leaving the country, especially for Germany.

Following the occupation of Iraq in 2003, the struggle for power and wealth became a dispute between the three major groups Sunnis, Shias and Kurds. The system is locked between them and cannot be changed. Although we have a new government, a new generational and gender-based perspective, we are not in position to change the shape of this, due to the structure of the political system.

Gro Nystuen

Senior Research Fellow, Norwegian Academy of International Law (NAIL)

Nystuen underlined that the Dayton peace agreement was an original setup since it was in fact a treaty between three states – Bosnia, former Yugoslavia republic and Croatia concerning how one of them was going to be organized. In the fall of 1995, the war was still raging. The Srebrenica genocide had just been committed in the summer, and the American had started to take an interest. In November 1995 the parties gathered in Dayton, Ohio, at the Wright Patterson Air Force Base.

There were three so called constituent people in Bosnia; the Bosniaks who were predominately Muslim, the Croats who were predominately Catholic, and the Bosnian Serbs who were predominately Orthodox. There were also other ethnicities, like Bulgarians, Roma, Jew, Macedonians, etc. The constitution with this ethnic setup was part of the peace agreement, establishing the governmental structures of Bosnia; a parliament, a presidency, a council of ministers and a constitutional court.

During the negotiations, the constituent peoples who were fewer in numbers (Croats and Serbs) insisted that they get a constitutional system that would secure them from being outvoted in cases of importance to them, that is, an ethnic veto. In order for such a system to work, certain offices had to be "ethnically earmarked" so the three constituent people were given one seat each in the three-person presidency. They were also given separate chambers in the parliament, an "upper chamber" called *the house of peoples*, containing five of each ethnicity, in addition to the democratically elected part of the parliament. Each president and each ethnic groups in the house of peoples were given the right to veto any majority decision made by the presidency or the parliament. Consequently, each group was given a right to veto any political decision that they defined as being of vital interest to their group.

All lawyers present in Dayton, including the American lawyers, knew that this was a blatant violation of human rights. Yet, the choice seemed to be between this arrangement and continued war. The choice was never between a *good* and *bad* solution. It was a choice between a bad solution and one that was worse. The group of lawyers tried to get a mechanism to break the deadlock in to the constitution, but to no avail, because the veto had to rest with the people who had translated their military gains into political currency. And as is common in peace processes, it was the most nationalist groupings calling the shots rather than the moderates. Attempt to make the arrangements temporary failed. Richard Holbrooke argued that if the constitution were made temporary, the parties would never try to make it work. Our response was to introduce what we called "a silver bullet" into the human rights section in the constitution. Article 2 stipulated that the European Convention on Human Rights was to be directly applicable in Bosnian law, and that it would prevail over all other law including the constitution itself. In article 10 it was specified that no amendment of the constitution could weaken the human rights provisions in the constitutions.

The plan was to enable the constitutional court to conclude that the ethnically based discriminatory constitutional system would not be viable to continue, given that the constitution itself gives preference to human rights. The constitutional court never acted in such a way. However, in 2009, the European Court of Human Rights concluded that the ethnic system of Bosnia was indeed in contradiction to the European Convention on Human Rights. Unfortunately, this did not cause any changes in Bosnia. Currently, there is a renewed risk of political conflict in Bosnia because the Serb president of the three-party presidency threatens to veto everything in order to paralyze the State of Bosnia.

Ed Brown
Secretary General, Stefanus Alliance International

Brown brought attention to the question of recognition as a precondition for participation and representation. In Myanmar, the Constitution divided up of various minorities, some recognised minorities with territorial autonomy, while others became minorities within minorities. Yet other minorities, such as the Rohingyas, were not recognized as such, and consequently did not get any similar rights.

Another issue that complicates the subject is the right to representation. Dissident voices within minorities may expose the group, and leaders often take advantage to impose models that benefit the leadership rather than the group as such. "Representation" on behalf of the minority group therefore becomes a misleading term.
A similar problem arises from the need for minority leaders to maintain strict discipline and cohesion, resulting in practices where conversion (and hence abandon of the group) is perceived as a threat. This dynamic may foster strict expectations of adherence to the minority community.

Bidhayak Das
PhD fellow at Institute of Human Rights and Peace Studies, Mahidol University

Bidhayak looked at the minority question in Assam in terms of citizenship and statelessness. When the issue of Muslim minorities in Assam is addressed, it is more about minorities in terms of their ethnic identity and their language and also their colour, not so much their religion. Many of the Muslims in Assam have ancestors from Bangladesh and are referred to as "Bengali". He referred to the fact that hundreds of thousands of them, among them many women and children, are now in danger of becoming stateless due to the Citizenship Amendment Law of 2019 where other religious minorities are given an easier access to citizenship, except Muslims. Bidhayak compared their situation to that but the Rohingyas are not recognized as citizens. Like the Rohingyas in Myanmar the Muslims, the Bengali Muslims of Assam are not accepted as a part of the national "us". He argued that when we look at the situation in this region, we have to look at it from post-colonial perspective of minority representation when we talk about citizenship and statelessness.

Fahmina Karim
PhD fellow at Institute of Human Rights and Peace Studies, Mahidol University

Fahmina Karim referred to that both religious and ethnic identity of the Rohingya were both used for excluding them from citizenship in Myanmar: their religious identity as a Muslim minority and their historic ethnic ties to Bangladesh. But she referred to that the Rohingya are not seen as citizens in Bangladesh either. Karim underlined that the Rohingya displaced in Coxes Bazaar in Bangladesh currently are actually in practice deprived not only of the right to citizenship but also of their fundamental human rights also as refugees. In Bangladesh they are considered illegal migrants, not refugees. In Bangladesh the right to education is reserved for the citizens and legal residence. Rohingyas are considered to be neither citizens nor legal residence and this is the argument that the government repeatedly use to deny most of their human rights including the right to education.

Ellen Stensrud
Senior research fellow and project manager, HL-senteret

Referring to the two models that Fernand de Varennes talked about in his introduction, Ellen Stensrud argued on this basis that universal recognition should always come first and one should not confuse to fight for ethnic representation with a fight for universal rights. For instance, major ethnic groups in Myanmar fight for political autonomy and that may look like a human rights struggle because they fight against the major human rights abuser in Myanmar namely the military. But it is not the same. Stensrud argued that the Rohingya situation exemplifies that. The fact that their group size give them some political claim if they are recognised as citizens, that threatens the other political groups in Myanmar.

Footnotes

1. https://www.inclusive-citizenship.no
2. https://intlaw.no/en
3. https://www.inclusive-citizenship.no/international-hybrid-conference