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Committee on the Elimination of Racial Discrimination**Eighty-first session**

6 – 31 August 2012

**Consideration of reports submitted by States parties under
article 9 of the Convention****Concluding observations of the Committee on the Elimination of Racial
Discrimination****Thailand**

1. The Committee considered the first to third periodic reports of Thailand (CERD/C/THA/1-3), submitted in one document, at its 2173rd and 2174th meetings (CERD/C/SR.2173 and SR.2174), held on 9 and 10 August 2012. At its 2193rd meeting (CERD/C/SR.2193), held on 24 August 2012, it adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the combined periodic report submitted by the State party, which conforms to the Committee's guidelines for the preparation of treaty-specific reports, despite the delay in submitting. The Committee also welcomes the submission of the Common Core Document (HRI/CORE/THA/2012).

3. The Committee appreciates the open and frank dialogue it had with the large inter-ministerial and high-level delegation and welcomes the supplementary information provided during the consideration of the report.

B. Positive aspects

4. The Committee welcomes the following legislative and other measures taken by the State party:

(a) The adoption of the 2012 Comprehensive Strategy on Resolving the Problems of Irregular Migrants;

(b) The adoption of the 2008 Civil Registration Act Number 2, which allows for the registration of all persons born in the State party, irrespective of the origin or status of the parents;

(c) The allocation of moneys from a public budget to compensate the victims of the violence in the Southern Border Provinces and to implement the Development Plan for the Special Area in the Southern Border Provinces for 2009-2012;

(d) The adoption of the 2008 Prevention and Suppression of Human Trafficking Act.

5. The Committee notes with satisfaction the ratification by the State party of two Optional Protocols to the Convention on the Rights of the Child, namely on the sale of children, child prostitution and child pornography, and on the involvement of children in armed conflicts, in 2006; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 2007; and the Convention on the Rights of Persons with Disabilities in 2008.

6. The Committee appreciates the consultative approach adopted by the State party in the preparation of the State report.

C. Concerns and recommendations

Domestic application of the Convention

7. Noting the State party's dualist system of reception of international treaties, the Committee expresses concern that the State party has not taken sufficient measures to incorporate the provisions of the Convention in its domestic law.

The Committee urges the State party to take stock of existing legislation governing the elimination of racial discrimination with a view to taking the most appropriate approach to give effect to all provisions of the Convention. The Committee also recommends that, in this regard, the State party take account of the relevant recommendations in the present concluding observations.

The interpretative declaration

8. The Committee is concerned that the interpretative declaration on the Convention made by the State party, according to which it does not recognize 'any obligation beyond the confines of its Constitution and law,' is incompatible with the obligation of the State party under article 2 of the Convention to use all means, including legislation, to prohibit and bring racial discrimination to an end. (art. 2)

The Committee urges the State party to build on the momentum gained through the Universal Periodic Review commitment to lift reservations to international human rights treaties, and withdraw its interpretative declaration on the Convention.

Definition and criminalization of racial discrimination

9. The Committee notes with concern the absence of legal provisions defining and prohibiting racial discrimination in the State party, which are critical to enabling the prosecution of acts of racial discrimination and seeking redress for violations.¹ (arts. 1, 2, 5)

The Committee urges the State party to introduce a definition of racial discrimination in its legislation, in accordance with article 1, paragraph 1, of the Convention, and to make it an offence punishable by law. To this end, it also recommends that direct and indirect discrimination, in all fields of public life, including those outlined in article 5 of the Convention, be defined in the State party's administrative and civil laws.

Systematic review of national and local policies

10. Referring to paragraph 47 of the State report according to which none of the State party's laws is discriminatory, the Committee expresses concern that it has not been ascertained that systematic analysis of the possible discriminatory effects of laws and policies is undertaken by the State party. (art. 2 (c))

The Committee recommends that the State party ensure that procedures are in place for the review of governmental, national and local policies and laws with a view to guaranteeing that they do not have any discriminatory impact on any particular ethnic group.

Reservation to article 4

11. Noting that the State party is considering the withdrawal of the reservation to article 4, the Committee is nevertheless concerned that the reservation which interprets article 4 to require legislation "where it is considered that the need arises," is vague and possibly inconsistent with the obligation of States parties to enact laws prohibiting the dissemination of all ideas based upon racial superiority and hatred. The Committee also notes with concern that existing legal provisions, including those of Sections 83-88, 206, 207 and 393 of the Criminal Code, fall short of the requirements of article 4. (arts. 2, 4)

Recalling its general recommendation No. 15 (1993) which stipulates that the provisions of article 4 are mandatory and preventive, the Committee urges the State party to withdraw its reservation to article 4 of the Convention and to incorporate in its Criminal Code the offences proscribed by article 4.

Court cases on racial discrimination

12. The Committee notes with concern the lack of information on court decisions relating to racial discrimination. The Committee also expresses concern about the obstacles to access to justice experienced by members of ethnic groups, including their limited knowledge of their rights, as well as language, geographical and financial barriers. (arts. 5(a), 6)

Recalling its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee recommends that the State party collect data on court decisions relating to racial discrimination with a view to assessing the effectiveness of laws and policies aimed at eliminating racial discrimination. The Committee requests that the State party include such information in its next periodic report. Moreover, drawing attention to its general recommendation No. 26 (2000) on article 6, the Committee recommends that the State party raise the public's awareness of the Convention as well as of laws adopted pursuant to the Committee's recommendation in paragraph 7 above, and ensure that members of ethnic groups can avail themselves of legal remedies.

Equality in the enjoyment of civil and political rights

13. The Committee is concerned at the restrictions to the right of naturalized Thais to participate in, and stand for, elections. (art. 5(c)).

The Committee urges the State party to accord equal civil and political rights to all citizens irrespective of the mode of acquisition of the citizenship.

Access to citizenship

14. While welcoming the setting of the target of granting of legal status to around 300,000 persons within a timeframe of three years and measures such as the adoption of the 2008 Civil Registration Act Number 2, the Committee is nevertheless concerned at the large number of persons in the State party eligible for citizenship but who are currently stateless. The Committee is further concerned at the subsequent denial of their civil and political rights as well as economic and social rights.

Moreover, while noting that the State party's legislation allows for the registration of all persons born in the State party, the Committee remains concerned that a large number of births, particularly among ethnic groups and migrants, are not registered. The Committee reminds the State party that lack of birth registration is a contributing factor to statelessness. (art. 5(d))

The Committee urges the State party to take effective measures to address the obstacles encountered in the acquisition of citizenship by those who qualify for it, including with regard to obtaining the required documentation from local authorities. Bearing in mind its general recommendation No. 30 (2004) on discrimination against non-citizens, the Committee also recommends that the State party strengthen its efforts to facilitate the registration of births, including by allowing late registration as well as through the healthcare system. The Committee further encourages the State party to accede to the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.

Self-identification

15. The Committee expresses concern at the categorization used by the State party for identifying specific groups, such as rootless persons, aliens, unsurveyed persons, persons with status problems, referred to in paragraphs 11 to 40 of the State report. (arts. 1, 2)

The Committee recommends that the State party review the policy of categorisation of the various groups in its territory guided by the principle of self-identification contained *inter alia* in general recommendation No. 8 (1990) and revise its terminologies in order to avoid discrimination against these groups.

Moreover, referring the State party's support for the adoption of the United Nations Declaration on the Rights of Indigenous Peoples, the Committee encourages the State party to affirm in its legislation the rights of indigenous peoples, in line with the Declaration, and also consider acceding to the ILO Convention No 169 on Indigenous and Tribal Peoples.

Ethnic groups living in forests

16. The Committee is concerned that the various forestry and environment protection laws may have a discriminatory effect on ethnic groups living in forests. The Committee is also concerned that it has not been assured how their free and prior informed consent is guaranteed in decision-making processes affecting them. (arts. 1, 2 and 5)

Notwithstanding the Constitutional Court decision No. 33/2554 of November 2011, the Committee urges the State party to review the relevant forestry laws in order to ensure respect for ethnic groups' way of living, livelihood and culture, and their right to free and prior informed consent in decisions affecting them, while protecting the environment.

Vulnerable ethnic groups

17. The Committee is concerned about the inadequate access to social welfare and public services by certain ethnic groups because of language barriers and the limited availability of such services where these groups live. The Committee also regrets the lack of data to monitor the progress achieved in improving their situation. (art. 5(e), 2(2)).

The Committee calls on the State party to continue efforts aimed at improving the enjoyment of economic and social rights by all ethnic groups, including by implementing special measures so as to speed up the achievement of equality in the enjoyment of human rights. In this regard, the Committee refers the State party to its general recommendation No. 32 (2009) on the meaning and scope of special measures.

Moreover, noting the State party's intention to collect and produce disaggregated data on the implementation of its National Human Rights Action Plan, the Committee recommends that the State party also collect data on the enjoyment of economic, social and cultural rights by ethnic groups.

Risk of disappearance of certain ethnic languages

18. The Committee notes with concern that some ethnic languages in the State party are at risk of disappearance. Moreover, taking note of pilot projects, announced by the State party, for the teaching of ethnic languages in schools, the Committee remains concerned that many ethnic children have limited opportunities to learn their language. (art. 5(e))

The Committee calls on the State party to strengthen efforts to protect and conserve ethnic languages and to allocate the necessary resources for the promotion of the teaching of ethnic languages in schools.

Negative stereotypes and prejudices

19. The Committee expresses concern at negative stereotypes and prejudices about ethnic groups which are conveyed by the media. (art. 7)

The Committee recommends that the State party take measures to eliminate negative stereotypes about ethnic groups and to raise awareness among media professionals of their responsibility not to disseminate stereotypes and prejudices and to avoid giving accounts of incidents involving ethnic groups in ways that stigmatize the group as a whole.

Situation of Malayu women

20. The Committee is concerned by reports that Malayu women are facing double discrimination in many fields of political and social life. (art. 2, 5(d))

Bearing in mind the intersectionality of ethnicity and religion in certain circumstances and taking into account the Committee's general recommendation No. 25 (2000) on gender related dimensions of racial discrimination, the Committee urges the State party to take the necessary measures, including legislative ones, to ensure, in accordance with the Convention, equal treatment and non-discrimination of Malayu women.

Special laws application in the Southern Border Provinces

21. Notwithstanding the measures taken by the State party such as the dissemination of human rights cards and the lifting of the emergency decree in some districts, the Committee remains seriously concerned at the discriminatory impact of the application of the special laws in force in the Southern Border Provinces, including reports of identity checks and

arrests carried out on the basis of racial profiling, as well as reports of torture and enforced disappearance of Malayu Thais. The Committee is further concerned at the risk of serious human rights violations in the enforcement of these laws as well as at the absence of a mechanism of oversight of their application. (art. 2, 5(a, b, d))

Recalling its general recommendation No. 31 (2001) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee urges the State party to take concrete measures to eradicate the practice of identity checks and arrests based on racial profiling in the application of the special laws in the Southern Border Provinces. The Committee also recommends that, in addition to providing compensation to persons affected by incidents in the Southern Border Provinces, the State party:

- (a) assess the need for the special laws and establish an Continuously independent mechanism to monitor their enforcement;**
- (b) Review the special laws with a view to meeting international human rights standards, particularly those in regard to the prevention of torture; and**
- (c) Thoroughly investigate all allegations of human rights violations and prosecute those found responsible.**

The Committee requests that the State party provide in its next periodic report information on the impact of the strategies implemented by the Internal Security Operation Center as well as of the Development Plan for the Special Area in the Southern Border Provinces for 2009-2012, including on finding durable solutions to the conflict in the area.

Exploitation of migrants

22. While noting the measures taken by the State party aimed at curbing exploitation and abuse of migrant workers and the applicability of the Labour Protection Act to all workers irrespective of their immigration status, the Committee is nonetheless concerned at reports of abuse and exploitation of migrant workers, in particular of those with irregular status. (art. 5(e))

Bearing in mind its general recommendation No. 30 (2004) on discrimination against non-citizens, the Committee recommends that the State party explore the need for specific protections for migrant workers in addition to those provided for by the Labour Protection Act and revise the system for granting and terminating work permits so as to reduce migrant workers' vulnerability to exploitation and abuse by their employers. The Committee also recommends that the State party assess the effectiveness of mechanisms in place to receive complaints of violation of labour rights and their accessibility by migrant workers.

Discrimination against migrant women

23. While noting the explanation provided by the State party according to which the draft regulation requiring the return of pregnant migrant women to their country of origin to give birth was still under discussion, the Committee remains concerned that such measures would constitute a discrimination against migrant women. (art. 5(e))

The Committee recommends that the State party abandon the proposal to return pregnant migrant women to their country of origin to give birth and ensure that regulations and legislation on migrants respect their human rights. The Committee also requests that the State party provide in its next periodic report information on access to health care by documented and undocumented migrant women.

Human trafficking

24. The Committee notes the information provided by the delegation on measures adopted by the State party to combat trafficking in human beings, but regrets the lack of information on the impact of these measures. (art. 5(e))

The Committee requests the State party to provide in its next periodic report information on the impact of measures taken on the incidence of human trafficking, on how they address the root causes of trafficking, and on the prosecution of cases of trafficking.

Asylum-seekers and refugees

25. While welcoming the State party's generosity in hosting a large number of refugees from neighbouring countries, the Committee is concerned that the State party's enactments, including the Provincial Admission Board screening procedures as well as those under the National Immigration Act, fall short of international standards for the protection and treatment of refugees and asylum-seekers. Moreover, noting the information provided during the dialogue according to which humanitarian assistance is provided to Rohingyas coming into the State party, the Committee expresses concern at reports of members of the group being turned back to sea. (arts. 1, 2)

The Committee recommends that the State party adopt appropriate legislation and procedures for the protection of refugees and asylum-seekers, in line with international human rights standards. The Committee also urges the State party to take measures to prevent any further expulsion of Rohingyas seeking asylum and to give them access to the United Nations High Commissioner for Refugees, and registration through the Provincial Admission Board mechanism. Furthermore, the Committee encourages the State party to pursue the UPR commitment to review its position on the 1951 Convention relating to the Status of Refugees and its 1967 Protocol.

D. Other recommendations

Ratification of other treaties

26. Bearing in mind the indivisibility of all human rights, the Committee encourages the State party to consider ratifying those international human rights treaties which it has not yet ratified, namely, the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families and the International Convention for the Protection of All Persons from Enforced Disappearance.

Follow-up to the Durban and Programme of Action

27. In the light of its general recommendation No. 33 (2009) on follow-up to the Durban Review Conference, the Committee recommends that the State party give effect to the Durban Declaration and Programme of Action, adopted in September 2001 at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, taking into account the outcome document of the Durban Review Conference, held in Geneva in April 2009, when implementing the Convention in its domestic legal order. The Committee requests that the State party include in its next periodic report specific information on action plans and other measures taken to implement the Durban Declaration and Programme of Action at the national level.

Declaration under article 14

28. The Committee encourages the State party to make the declaration under article 14 recognizing the competence of the committee to receive and consider individual complaints.

Amendment to article 8

29. The Committee recommends that the State party ratify the amendments to article 8, paragraph 6, of the Convention, adopted on 15 January 1992 at the Fourteenth Meeting of States Parties to the Convention and endorsed by the General Assembly in its resolution 47/111. In this connection, the Committee cites General Assembly resolutions 61/148, 63/243 and 65/200, in which the Assembly strongly urged States parties to accelerate their domestic ratification procedures with regard to the amendment to the Convention concerning the financing of the Committee and to notify the Secretary-General expeditiously in writing of their agreement to the amendment.

Dissemination of the State party's reports and the concluding observations of the Committee

30. The Committee recommends that the State party's reports be made readily available and accessible to the public at the time of their submission, and that the observations of the Committee with respect to these reports be similarly publicized in the official and other commonly used languages, as appropriate.

Dialogue with civil society

31. The Committee recommends that the State party continue its dialogue with civil society organizations working in the area of human rights protection, in particular in combating racial discrimination, in connection with the implementation of these recommendations and the preparation of the next periodic report.

Follow-up to concluding observations

32. In accordance with article 9, paragraph 1, of the Convention and rule 65 of its amended rules of procedure, the Committee requests the State party to provide information, within one year of the adoption of the present concluding observations, on its follow-up to the recommendations contained in paragraphs 20, 21 and 25 above.

Paragraphs of particular importance

33. The Committee also wishes to draw the attention of the State party to the particular importance of recommendations 16, 23 and 24 above, and requests the State party to provide detailed information in its next periodic report on concrete measures taken to implement these recommendations.

Preparation of the next report

34. The Committee recommends that the State party submit its fourth to seventh periodic reports in a single document by 28 January 2016, in accordance with the specific reporting guidelines adopted by the Committee at its seventy-first session (CERD/C/2007/1) and addressing all the points raised in the present concluding observations. The Committee also reminds the State party to observe the page limit of 40 pages for treaty-specific reports.