



**International Convention
On the Elimination
Of all Forms of
Racial Discrimination**

Distr.
GENERAL

CERD/C/IDN/CO/3
15 August 2007

Original: ENGLISH

**COMMITTEE ON THE ELIMINATION
OF RACIAL DISCRIMINATION**

Seventy-first session
Geneva, 30 July-18 August 2007

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 9 OF THE CONVENTION**

**Concluding observations of the Committee on the
Elimination of Racial Discrimination**

INDONESIA

1. The Committee considered the initial to third periodic reports of Indonesia, submitted in one document (CERD/C/IDN/3), at its 1831st and 1832nd meetings (CERD/C/SR.1831 and 1832), held on 8 and 9 August 2007. At its 1844th meeting (CERD/C/SR.1844), held on 17 August 2007, it adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the initial report submitted by Indonesia and the initiation of a dialogue with the State party. It welcomes the efforts made by the State party to comply with the reporting guidelines, in particular the submission of information relating to difficulties encountered by the State party in implementing the Convention. Noting that the report was almost six years overdue when submitted, the Committee invites the State party to respect the deadline set for the submission of its future reports.

3. The Committee appreciates the attendance of a large delegation, composed of representatives of various governmental institutions concerned, and the efforts made to provide detailed responses to issues raised, in writing, and to the wide range of questions asked by Committee members.

4. The Committee appreciates the participation of Komnas-HAM, the Indonesian National Commission on Human Rights, in the dialogue with the State party and the oral presentation made by their representatives, independent of the State party's delegation, during the consideration of the initial report.

5. The Committee appreciates the contribution of numerous Indonesian non-governmental organizations, which enhanced the quality of the dialogue with the State party.

B. Positive aspects

6. The Committee notes with satisfaction that the State party has ratified the Convention without any reservation.

7. The Committee appreciates the steps taken by the State party to strengthen its legal framework for the protection and promotion of human rights, in particular the adoption of Act No. 39 of 1999 on Human Rights, and the ratification of the two International Covenants on human rights in 2006.

8. The Committee welcomes the fact that the State party, in accordance with its Second National Plan of Action on Human Rights 2004-2009, has embarked on a process of harmonizing its domestic laws with international human rights instruments, including the Convention.

9. The Committee notes with appreciation that Komnas-HAM has established a working committee on the evaluation of laws and regulations, the recommendations of which are currently being considered by the State party.

10. The Committee notes with satisfaction the enactment of Law No. 24 of 2003 on the establishment of the Constitutional Court, enabling individuals to seek the review of the constitutionality of any act, including on matters relating to discrimination.

11. The Committee welcomes the adoption of Law No. 12 of 2006 on Citizenship, which marks a substantial improvement in addressing citizenship matters and eliminates discriminatory rules based on ethnic, gender and marital status.

12. The Committee appreciates that the Presidential Decree No. 26 of 1998 banned the use of the terms "*pribumi*" (natives) and "*non-pribumi*" (non-natives), the latter being used to designate Indonesians of foreign origin, in particular Chinese origin. It also welcomes Presidential Decree No. 6 of 2000, under which the practice of religions, beliefs and traditions followed by Indonesians of Chinese origin no longer requires a special permit.

13. The Committee welcomes the fact that the State party has pledged to accede to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, and encourages it do so in a timely manner.

C. Concerns and recommendations

14. The Committee notes that the Convention is not self-executing in Indonesian law. While appreciating efforts undertaken to harmonize national legislation with the Convention,

and noting that a draft law on the elimination of racial and ethnic discrimination is under consideration, the Committee regrets that it has not received sufficient information on the extent to which the Convention has been incorporated into domestic law (art. 2).

The Committee encourages the State party to continue the review of its laws and regulations in order to ensure their full compliance with the Convention. It also encourages the State party to adopt a comprehensive law on the elimination of racial discrimination, taking into consideration all elements of the definition of racial discrimination provided in article 1 of the Convention, and guaranteeing the right of everyone not to be discriminated against in the enjoyment of all rights enumerated in article 5 of the Convention. The Committee also wishes to receive more detailed information on measures adopted to ensure that regional laws and regulations also comply with the Convention.

15. The Committee notes that the State party recognizes the existence of indigenous peoples on its territory, while using several terms to designate them. It is concerned, however, that under domestic law these peoples are recognized “as long as they remain in existence”, without appropriate safeguards guaranteeing respect for the fundamental principle of self-identification in the determination of indigenous peoples (arts. 2 and 5).

The Committee draws the attention of the State party to its general recommendation No. 8 (1990), and recommends the State party to respect the way in which indigenous peoples perceive and define themselves. It encourages the State party to take into consideration the definitions of indigenous and tribal peoples as set out in ILO Convention No. 169 of 1989 on Indigenous and Tribal Peoples, and to envisage ratifying that instrument.

16. The Committee welcomes the acknowledgement by the State party that it is a multi-ethnic, multicultural, multireligious, and multilingual country, as well as its commitment to achieve “unity in diversity” and respect of human rights for all on an equal basis. The Committee is concerned, however, that in practice the rights of indigenous peoples have been compromised, due to the interpretations adopted by the State party of national interest, modernization and economic and social development (arts. 2 and 5).

The State party should amend its domestic laws, regulations and practices to ensure that the concepts of national interest, modernization and economic and social development are defined in a participatory way, encompass world views and interests of all groups living on its territory, and are not used as a justification to override the rights of indigenous peoples, in accordance with the Committee’s general recommendation No. 23 (1997) on indigenous peoples.

The State party should recognize and respect indigenous culture, history, language and way of life as an enrichment of the State’s cultural identity and provide indigenous peoples with conditions allowing for a sustainable economic and social development compatible with their cultural characteristics.

17. The Committee notes with concern the plan to establish oil palm plantations over some 850 kilometres along the Indonesia-Malaysia border in Kalimantan as part of the Kalimantan Border Oil Palm Mega-project, and the threat this constitutes to the rights of

indigenous peoples to own their lands and enjoy their culture. It notes with deep concern reports according to which a high number of conflicts arise each year throughout Indonesia between local communities and palm oil companies. The Committee is concerned that references to the rights and interests of traditional communities contained in domestic laws and regulations are not sufficient to effectively guarantee their rights (arts. 2 and 5).

The Committee, while noting that land, water and natural resources shall be controlled by the State party and exploited for the greatest benefit of the people under Indonesian law, recalls that such a principle must be exercised consistently with the rights of indigenous peoples. The State party should review its laws, in particular Law No. 18 of 2004 on Plantations, as well as the way they are interpreted and implemented in practice, to ensure that they respect the rights of indigenous peoples to possess, develop, control and use their communal lands. While noting that the Kalimantan Border Oil Palm Mega-project is being subjected to further studies, the Committee recommends that the State party secure the possession and ownership rights of local communities before proceeding further with this plan. The State party should also ensure that meaningful consultations are undertaken with the concerned communities, with a view to obtaining their consent and participation in it.

18. The Committee notes with concern that although it has been abolished, the transmigration programme has long-standing effects, as exemplified by the conflict that took place between the Dayak and the Madura ethnic groups in Palangkaraya, Central Kalimantan. The Committee also notes with concern the challenges faced by the State party due to the increase in the number of internally displaced persons, resulting not only from natural disasters but also from conflicts, and the cultural misunderstandings that have arisen between communities (arts. 2 and 5).

The Committee strongly recommends that the State party increase its efforts to prevent the resurgence of ethnic conflicts on its territory. It should assess the adverse impact of the transmigration programme, in particular on the rights of local communities, and promote mutual understanding between communities, as well as mutual knowledge and respect for their histories, traditions and languages. It should ensure that violent acts are duly investigated, prosecuted and sentenced. The Committee also encourages the State party to prepare a set of guiding principles for internally displaced persons with the aim of preventing racial discrimination, as envisaged by the State party. It suggests in this regard that the State party take into consideration the Guiding Principles on Internal Displacement (E/CN.4/1998/53/Add.2).

19. The Committee notes the information provided by the State party that non-citizens have limited civil and political rights, but that these limitations are applied in accordance with the Convention and the Committee's general recommendation No. 30 (2004) on discrimination against non-citizens (arts. 2 and 5).

The Committee recommends that the State party include more detailed information on the rights of non-citizens in its next periodic report. The Committee encourages the State party to envisage ratifying the International

Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

20. The Committee notes with satisfaction that Presidential Instruction No. 56 of 1996 abolished SBKRI (Proof of Indonesian Citizenship) for citizens of Chinese origin and other citizens of foreign descent. It remains concerned, however, at the insufficient level of implementation of that Instruction. In particular, it notes with concern that, as is acknowledged by the State party, banks continue to require SBKRI despite Presidential Instruction No. 26 of 1998 specifically prohibiting them to do so (arts. 2 and 5).

The Committee recommends that the State party strengthen its efforts to ensure the practical implementation of the abolition of SBKRI in all regions, and effectively prohibit its use by public institutions as well as private entities such as banks. The State party should adopt programmes to raise awareness about the prohibition of SBKRI and assist individuals who have been required to produce SBKRI in obtaining remedy.

21. While noting the statement made by the delegation that there are no “recognized” or “non-recognized” religions in Indonesia, the Committee expresses concern at the distinction made between Islam, Protestantism, Catholicism, Hinduism, Buddhism and Confucianism, which are often referred to in legislation, and other religions and beliefs. The Committee is concerned at the adverse impact of such a distinction on the rights to freedom of thought, conscience and religion of persons belonging to ethnic groups and indigenous peoples. It notes with particular concern that under Law No. 23 of 2006 on Civic Administration, individuals are required to mention their faith on legal documents such as identity cards and birth certificates, and that those wishing either to leave the column blank or to register under one of the “non-recognized” religions reportedly face discrimination and harassment. The Committee also notes with concern that men and women of different religions face great difficulties in officially registering their marriages, and that their children are not provided with birth certificates, as acknowledged by the State party (arts. 2 and 5).

The Committee recommends that the State party treat equally all religions and beliefs and ensure the enjoyment of freedom of thought, conscience and religion for ethnic minorities and indigenous peoples. Noting that the State party is considering removing the mention of religion on identification cards in order to be in line with the objectives of the Convention, the Committee strongly recommends it to do so in a timely manner, and to extend such a policy to all legal documents. The Committee also recommends the adoption of legislation allowing individuals to contract a civil marriage if they so wish.

22. The Committee welcomes efforts made towards the decentralization of power and consolidation of regional autonomy. It regrets, however, that it has not received sufficient information on the status of implementation of the Papua Special Autonomy Law No. 21 of 2001, and expresses concern about information according to which Papuans continue to experience great poverty (arts. 2 and 5).

The Committee recommends that the State party provide information on the implementation of the Papua Special Autonomy Law No. 21 of 2001, as well as on

measures adopted to ensure the enjoyment by Papuans of their human rights without any discrimination.

23. The Committee notes that no discrimination-related cases have been brought before the courts of the State party. It notes with concern the view expressed in the report of the State party that there is no racial discrimination in Indonesia, direct or indirect, since domestic laws guarantee the elimination of racial discrimination. The Committee notes that this statement is in contradiction with other parts of the report, which acknowledge difficulties in the implementation of the Convention, as well as efforts towards the harmonization of laws with the Convention (arts. 4 and 6).

The Committee draws the attention of the State party to its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, and recalls that the absence or small number of complaints, prosecutions and convictions relating to acts of racial discrimination should not be viewed as necessarily positive. The State party should inquire whether this situation is the result of inadequate information provided to victims concerning their rights, their fear of social censure or reprisals, their fear of the cost and complexity of the judicial process, a lack of trust in the police and judicial authorities, or the insufficient level of awareness by the authorities of offences involving racism. The State party should take, in particular on the basis of such a review, all necessary measures to ensure that victims of racial discrimination have access to an effective remedy.

24. The Committee notes with concern that the violations of human rights which were committed during the riots of May 1998 still remain unpunished. It is concerned at reports according to which Indonesians of Chinese descent were specifically targeted, and at the contradictory information provided by the State party in its report and its written replies in this respect. The Committee is further concerned at the conclusion reached by Komnas-HAM that gross human rights violations had been committed. It is further concerned that Komnas-HAM's recommendation that an ad hoc human rights tribunal be established has not been implemented yet, following the Attorney-General's position that the investigations remained incomplete (arts. 4 and 6).

The Committee strongly recommends that the State party take all measures to ensure that acts of racial discrimination committed during the riots of May 1998 are duly prosecuted and punished.

25. The Committee notes with concern that Komnas-HAM has encountered difficulties in the discharge of its mandate, due in particular to the refusal of the military to comply with its requests to submit evidence. It also notes that Law No. 39 of 1999 does not contain any provision ensuring legal immunity for its members, and that the status and mandate of the secretariat of the Commission are currently set forth in a Presidential Decree, which jeopardizes its independence and autonomy.

The Committee recommends that the State party reinforce the independence of Komnas-HAM, in line with the Paris Principles, and guarantee the legislative immunity of its members and staff in the exercise of their duties. The State party should also strengthen the Commission's mandate, in particular its monitoring

functions and investigation powers, and ensure its participation in the follow-up and implementation of the present concluding observations.

26. The Committee recommends that the State party take into account the relevant provisions of the Durban Declaration and Programme of Action when implementing the Convention in its domestic legal order, in particular as regards articles 2 to 7 of the Convention. The Committee also urges the State party to include in its next periodic report information on action plans and other measures taken to implement the Durban Declaration and Programme of Action at national level.

27. The Committee recommends that the State party ratify the amendment 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 resolution 47/111. In this connection, the Committee cites General Assembly resolution 57/194 of 18 December 2002, in which the Assembly strongly urged States parties to accelerate their domestic ratification procedures with regard to the amendment and to notify the Secretary-General expeditiously in writing of their agreement to the amendment. A similar appeal was made by the General Assembly in its resolution 58/160 of 22 December 2003.

28. The Committee notes that the State party has not made the optional declaration provided for in article 14 of the Convention and invites it to consider doing so.

29. The Committee recommends that the State party's reports be made readily available 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 Indonesian language.

30. The Committee recommends that the State party consult widely with organizations of civil society working in the area of combating racial discrimination, in connection with the preparation of the next periodic report.

31. The State party should, within one year, provide information on the way it has followed up on the Committee's recommendations contained in paragraphs 17, 20 and 25 above, pursuant to paragraph 1 of rule 65 of the Committee's rules of procedure.

32. The Committee invites the State party to submit its core document in accordance with the harmonized guidelines on reporting under the international human rights treaties, including guidelines on a common core document, approved by the fifth inter-Committee meeting of the human rights treaty bodies held in June 2006 (HRI/MC/2006/3 and Corr.1).

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