



**International Convention on  
the Elimination  
of all Forms of  
Racial Discrimination**

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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Seventy-first session

SUMMARY RECORD OF THE 1832nd MEETING

Held at the Palais Wilson, Geneva,  
on Thursday, 9 August 2007, at 10 a.m.

Chairperson: Mr. de GOUTTES

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The meeting was called to order at 10.10 a.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (continued)

Initial to third periodic reports of Indonesia (continued) (CERD/C/IDN/3)

1. At the invitation of the Chairperson, the delegation of Indonesia resumed places at the Committee table.
2. Mr. YANA (Indonesian National Commission on Human Rights), speaking at the invitation of the Chairperson, said that the Indonesian National Commission on Human Rights (Komnas HAM) was an independent body that carried out activities in respect of study and research, public awareness-raising, monitoring and mediation. Komnas HAM appreciated the Government's efforts to promote and protect human rights, particularly through the adoption of legislation. Discrimination in Indonesia was not only based on race, but also related to other issues such as disability, social status, political affiliation, religion and belief. Komnas HAM had examined the bill on the elimination of all forms of racial discrimination and did not support it, since Act No. 29/1999 already dealt with all forms of discrimination. Regarding the draft law on civil registration referred to in paragraph 84 of the State party report (CERD/C/IDN/3), he said that the adoption of the law would not constitute progress since the essence of the draft was covered by legislation already in force.
3. Although there was no written legislation stipulating that only six religions - Islam, Protestantism, Catholicism, Hinduism, Buddhism and Confucianism - were officially recognized in Indonesia, only those six religions were recognized on the national identity card. Turning to paragraph 150 of the State party report, he said that Komnas HAM had conducted an inquiry into the May riot of 1998, and had found that there was ample evidence that the events had constituted grave violations of human rights and crimes against humanity. The results of the inquiry had been submitted to the Attorney-General in September 2003 for follow-up and prosecution. Komnas HAM had met the Chairperson of the House of Representatives to request the establishment of an ad hoc human rights court for the May riot. Annex 2 to the State party report should include reference to the establishment of Komnas HAM.
4. Mr. WIBISONO (Indonesia) said that his delegation had done its best, in the time available, to prepare answers to the Committee's questions. Further information would be submitted to the Committee in writing in due course. While civil society organizations had been involved in the drafting of the State party report, the final content of the report was the responsibility of the Indonesian Government. The Government had been unable to meet its earlier reporting obligations owing to political transition and democratization, and had therefore submitted a combined initial, second and third periodic report. The National Commission on Human Rights played a significant role in the promotion and protection of human rights in Indonesia.
5. Mr. NATABAYA (Indonesia) said that the principles of equality and non-discrimination were enshrined in Act No. 29/1999 on the ratification of the International Convention on the Elimination of All Forms of Racial Discrimination, and in criminal procedural law. The adoption of the draft law on the elimination of racial or ethnic discrimination would strengthen the legal

protection of the principle of non-discrimination, and would open more avenues to reparation for victims of discrimination on grounds of race or ethnicity. Article 156 of the Penal Code (KUHP) could be invoked if hate crimes had been committed, and the Administrative Court dealt with cases of a discriminatory nature that had resulted from government programmes or policies. Individuals had the right to request a judicial review of the constitutionality of any Act, including those on discrimination, before the Constitutional Court. In accordance with a decision of the Constitutional Court, former members of the Communist Party had the right to stand for election to the House of Representatives. The National Plan of Action on Human Rights 2004-2009 contained a programme mandating the Government to undertake research on existing legislation and to revise it and to draft new legislation as it deemed appropriate to bring it into conformity with human rights standards. The legislation should be harmonized with due regard for the dynamics of social and political development and the needs of the Indonesian people. Partnership and cooperation with non-governmental organizations (NGOs) and the National Human Rights Commission were essential in that endeavour.

6. The Supreme Court had the competence to review regulations, and the Constitutional Court to review acts of Parliament, including those on discrimination. The authority of the Supreme Court and of the Constitutional Court was set forth in the Constitution. The amended Constitution guaranteed all citizens protection against all forms of discrimination. Pursuant to the Penal Code, any person who publicly expressed feelings of hostility, hatred or contempt against any group of the Indonesian population could be punished by up to four years' deprivation of liberty. Act No. 29/1999 on the ratification of the International Convention on the Elimination of All Forms of Racial Discrimination strengthened the protection of all individuals against racial discrimination.

7. Turning to the issue of judicial and other remedies available to victims of discrimination, he said that racial discrimination cases could be brought before the courts, including the Human Rights Court. Komnas HAM was mandated to receive complaints on alleged human rights violations, including cases of racial discrimination, and could follow up on complaints through the establishment of an ad hoc team to conduct preliminary investigations. Any findings of grave violations of human rights should subsequently be submitted to the Office of the Attorney-General for further investigation.

8. The abolition of SBKRI (Surat Bukti Kewarganegaraan Republik Indonesia - proof of Indonesian citizenship) for people of Chinese origin demonstrated the Government's efforts to remove all obstacles to the implementation of the Convention. While in practice breaches of the law abolishing SBKRI could still occur, efforts were being made to ensure its full implementation. Three regions had issued their own regulations on the abolition of the use of SBKRI for citizens of Chinese origin, since in the context of regional autonomy regions had the competence to govern and manage their own affairs, except in certain specific areas, such as defence, security, finance, law, religion and foreign affairs. SBKRI had been abolished at the national level by presidential decree, and local regulations were not in fact required.

9. Ms. HARTONO (Indonesia) said that, according to the dictionary, the word "indigenous" applied to people or things originating in the country where they were found. Peoples who had lived in Indonesia since time immemorial were considered to be indigenous, while "native Indonesians" were inhabitants of the archipelago who could claim that their ancestors had always lived there, as opposed to other Asians or European settlers. On the other hand, in its

Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries, the International Labour Organization defined indigenous peoples as those people who were descended from the populations which had inhabited the country, or a geographical region to which the country belonged, at the time of conquest or colonization or the establishment of State boundaries and who, irrespective of their legal status, retained some or all of their own social, economic, cultural and political institutions. As it was used in Indonesia, the term “ethnic groups” was more restrictive, since it was based on a racial or cultural identity, while “traditional communities” were groups of indigenous people who were reluctant to relinquish their traditional philosophy, culture and customs. Some people in Indonesia had been more willing than others to adapt to a modern way of life, but most maintained traditional customs, mainly relating to rites of passage.

10. As was stated in the third periodic report (para. 64), the indigenous peoples depended on nature and not any social contract, but enjoyed their full rights. In other words, the State recognized the fact that not everyone equated modernity with happiness, but it was mindful of the need to ensure that everyone’s state of health and financial well-being met the minimum standards of a modern society. She recalled that Indonesia had been transformed from a very traditional society to a very modern society in six decades, whereas many industrialized nations had taken over three centuries to do so. Those Indonesians who lived in villages but worked in cities were faced with both traditional customs and high technology every day. Whereas Jean-Jacques Rousseau’s social contract had been a fictional concept, the 1928 Youth Pledge (Sumpah Pemuda), the social contract referred to in the report, had committed Indonesia’s nationalist leaders to “one blood (the Indonesian nation), one people (the Indonesian people) and one unifying language (Indonesian)”. Accordingly, the 1945 Constitution made no mention of different ethnic groups.

11. Turning to the question of language, she explained that the democratically-minded founding fathers of Indonesia had rejected Javanese, the language spoken by the largest ethnic community in Indonesia, as the national language, since its structure was based on social class. Instead Malay, already the lingua franca in the region, was adapted as Bahasa Indonesia, the national language. It had replaced Dutch as the official language under the Japanese occupation and had become the official language of administration and the judiciary following independence. Local and regional languages and dialects could be taught at primary school, if the community concerned so wished, but Indonesian was the first language of all citizens.

12. Mr. SITUMEANG (Indonesia) said that, although there was no official religion in Indonesia, only five faiths - Islam, Protestantism, Catholicism, Hinduism and Buddhism - were mentioned in national law. The majority of Indonesians were Muslims but Indonesia was not an Islamic State. The State recognized all the other religions professed and practised by many Indonesians, including the ethnic minorities, and imposed no legal sanctions on their followers. Since some local authorities did not recognize the other religions, however, those who practised them were sometimes marginalized socially; they were denied the right to identity cards, faced difficulties in contracting a legal marriage and were even unable to register their children’s births. The Government was taking steps to remedy that situation.

13. Mr. WIBISONO (Indonesia) added that some of Indonesia’s founding fathers had called for the Constitution to mention sharia, but others, including Mohammad Hatta, the country’s first Vice-President, had intervened to ensure that Indonesia should be a secular State.

14. Mr. SUDARSONO (Indonesia) said that Indonesia was a unitary republic made up of 33 provinces, whose directly elected administrations were to some extent autonomous from the central Government. Moreover, another four provinces, Nanggroe Aceh Darussalam, Yogyakarta Special Region, Papua and Jakarta Special Capital Region, enjoyed special autonomous status. Their authorities could decide their own policy on all issues barring defence, security, finance, foreign affairs and religion, which remained the preserve of central Government.
15. Mr. LINDGREN ALVES asked whether civil marriage existed in Indonesia. If it did not, consideration might be given to instituting civil marriage, since in his view Indonesia could not otherwise claim to be a secular State.
16. Mr. THORNBERRY, recalling that it was the International Day of the World's Indigenous People, asked whether Indonesia supported the adoption of the Declaration on the Rights of Indigenous Peoples and whether it intended to ratify the International Labour Organization's Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries. He added that the definition of indigenous peoples given in the ILO Convention was preferable to any dictionary definition since it was an internationally accepted benchmark. Peoples' spiritual attachment to the land they occupied might also be taken into account. As far as racial discrimination was concerned, it was acceptable for States to recognize difference, as was implied by the State motto of "Unity in Diversity", provided there was no suggestion of superiority or inferiority. He asked which religious beliefs were taught at school, and whether religious education was compulsory and for whom.
17. Mr. KJAERUM noted that the actions of transnational corporations often violated the rights of local communities and indigenous peoples. Since it was the State party's responsibility to protect those people's rights, he asked what the Indonesian authorities were doing to ensure that local and international companies respected human rights and shouldered their corporate social responsibility. In view of the Global Compact Leaders Summit, held in Geneva in July 2007, he wondered what the Indonesian Government was doing, or intended to do, to apply the principles of the United Nations Global Compact. Were law enforcement officials being specially trained to deal with the complex issues of human rights violations by multinationals? He would also be interested to learn how the local communities were made aware of their rights and through which channels they could instigate legal proceedings against corporations that violated their rights.
18. Mr. ABOUL-NASR expressed his sympathy with the Indonesian people who were suffering the effects of another powerful earthquake. He wished to know if those Indonesians who did not profess one of the officially recognized religions had different rights to those who did.
19. Mr. YUTZIS noted the delegation's acknowledgment of the existence of possible discrimination in Indonesia despite the State's social contract. Groups who preferred to maintain their traditions often suffered discrimination owing to the brutal aspects of capitalism. In any case, it was important for the State to consult all the interested parties and reach a consensus before it took any measures.

20. Mr. WIBISONO (Indonesia), after thanking Mr. Aboul-Nasr for his expression of sympathy following the earthquake in Indonesia the previous day, said in reply to Mr. Kjaerum that the problems arising from the activities of multinational companies affected all groups in society and therefore needed a consensus response from all stakeholders. A sound regulatory framework was required: the new investment law adopted recently in Indonesia included an element of corporate social responsibility. Those laws then needed to be implemented - the Coordinating Minister of People's Welfare was responsible for their implementation in the field, while the Investment Coordinating Board monitored corporate social responsibility. Capacity-building, training and education were provided for police and customs officers and the military, with the assistance of intergovernmental organizations, including the International Committee of the Red Cross, NGOs, including Amnesty International, and bilateral partners, including Canada, Norway and Japan.

21. Ms. HARTONO (Indonesia) said that the first of the five basic principles (Pancasila) which formed the country's political philosophy was "belief in the one and only God". There was a general belief that the country's achievements had been granted by God rather than resulting from the people's own efforts. The five principles were goals which the country aspired to achieve in the long term, rather than instantly.

22. Members had asked about the status of people whose religion had not been officially registered. The Government had tried to register as many religions as possible, but many people were suspicious of the registration process, which they associated with the favouritism shown to Christianity during the colonial era. The marriage law (Act No. 1 of 1974) did not provide for the possibility of civil marriage, i.e. a marriage which did not take place under the auspices of any religion. The law had attempted to unify the myriad, complex body of existing marriage laws and was therefore a delicate compromise. Many couples continued to marry according to their own customs. It was now much easier for Muslim women to marry non-Muslim men: in the past, couples in that situation who could afford it had married abroad, while others had merely lived together.

23. Members had asked how adat (customary) law was defined. In many cases, it came from traditional usage or from pronouncements by the head of a tribe. Some case law existed from the colonial era. In the present day, community leaders and the people decided on matters such as land ownership, which was basically communal, with any decision on matters such as land boundaries or the way in which the land was used requiring the approval of the community. Other matters, such as investment proposals, were likewise put to the community, but if no agreement could be reached they would be decided by the courts.

24. Ms. ABDULLAH (Indonesia) said that the ethnic conflict in West Kalimantan had its roots in property disputes and discriminatory treatment of certain groups. The Government had taken a number of measures to promote reconciliation, including the establishment of a forum for dialogue, social and economic capacity-building, the dissemination of local values and knowledge and social integration programmes.

25. Presidential Instruction No. 111 of 1999 was intended to protect and empower traditional remote communities. Many thousands of families had already received support. A draft law was currently in preparation which would ensure the realization of the basic rights of traditional remote communities and recognize their social, cultural and environmental knowledge.

26. Mr. YANSEN (Indonesia), speaking on the Government's plans to establish a palm-oil plantation extending over some 850 square kilometres in Kalimantan, said that, under the Constitution, the State managed land, water and the means of production for the benefit of the people. He quoted extensively from Act No. 18 on Plantations of 2004, which included provisions on sustainable management, planning "in a participative, integrated, open and accountable way", consultation with indigenous people in the area and the conduct of an environmental impact assessment. The Government was committed to protecting the assets and lifestyle of the local population and keeping the people fully informed. Various studies were to be conducted in the area to ensure that the plantation truly benefited the people. The allegations which had been made about the project were unfounded.

27. Ms. HIDAYATI (Indonesia), highlighting the prevalence of natural and man-made disasters in her country, drew particular attention to the tsunami which had devastated the province of Aceh in December 2004, recalling her experiences as part of the team which had gone to Aceh in its immediate aftermath. Responsibility for dealing with the consequences of the tsunami lay with central and local government, in conjunction with the international community, and action had been based on a three-phase approach ordered by the President: emergency measures in the first six months; then rehabilitation, with the rebuilding of infrastructure, trauma healing, counselling and the establishment of centres for children, which included catering for their educational needs; and finally, in the third phase, reconstruction. Large-scale recruitment of government employees, including teachers, had also been undertaken. Over half the measures provided for in the plan established in 2005 had been implemented, in cooperation with local people, NGOs and the international community. The private sector had also played an important role.

28. Ms. PUDIASTUTI (Indonesia) provided additional information on the centres established for children. Women police officers had been trained, in cooperation with the United Nations Children's Fund (UNICEF), and a free child helpline had been set up. Integrated empowerment centres for women and children had also been established in every district destroyed by the tsunami. A gender perspective had been incorporated into rehabilitation policies and into all phases of the reconstruction process. Around 500 volunteers had been recruited for two years to maintain the centres, which were operated in the best interests of the children concerned and in accordance with the principles of non-discrimination, providing protection against violence, sexual harassment and trafficking. They also assisted with registration and reuniting families, using methods developed by the organization Save the Children, and had received help from Plan International and other NGOs.

29. A government programme on the elimination of commercial sexual exploitation of children was under way, focusing on Bali and other major tourist destinations. Act No. 23/2002 established a maximum prison term of 15 years for such offences, higher than the penalties laid down in the Penal Code. The 2003-2007 master plan on eliminating commercial sexual exploitation of children had been completed; it included law enforcement and monitoring measures and the establishment of women's crisis and empowerment centres and community networks, based on a cross-sectoral approach. Provincial and district task forces had been set up by presidential decree, and AusAID (the Australian Government's overseas aid programme) was assisting the tourism industry to address problems connected with sex tourism.

30. Mr. SUDARSONO (Indonesia) said that recruitment to the police and military forces was based on certain variables and individual capacities. Regional and provincial quotas had been set to ensure access to local jobs for local people. Since 1999, human rights and anti-discrimination training had been included in the formerly military-style police education programme, the aim being to produce officers who would safeguard the rule of law while upholding human rights. The police force was committed to becoming civilian and every effort was being made to minimize paramilitary policing. The operational emphasis was on community policing and the introduction of new mechanisms for dispute resolution. Any assistance towards its objectives would be welcomed.

31. Instances of rape by police officers during riots were still recorded. While underlining that many riots led to mayhem and anarchy and were particularly violent, he stated that proper internal and external mechanisms existed to deal with officers found guilty of such acts.

32. Mr. SITUMEANG (Indonesia) described the investigation and prosecution procedure for violations of human rights. While the Rome Statute of the International Criminal Court included four actions which constituted gross violations of human rights, only genocide and crimes against humanity were considered gross violations under Indonesian law. If, on the basis of an inquiry, the National Human Rights Commission believed that there was sufficient preliminary evidence that a violation had been committed, its findings were submitted to the Office of the Attorney-General. If there was sufficient evidence for a prosecution, gross violations committed before the enactment of Act No. 26/2000 on the Human Rights Court were tried by an ad hoc human rights court established upon the recommendation of Parliament and instruction by the President, in accordance with Act No. 39/1999; gross violations committed after the enactment of Act No. 26/2000 were tried by the Human Rights Court; and ordinary violations were tried on the basis of the Penal Code by the regular courts. Different penalties were imposable in each case. If there was insufficient evidence, the dossier was returned to the National Human Rights Commission for completion and guidance. Ordinary violations were investigated by the police and prosecuted by the Office of the Attorney-General; in cases of gross violation, the Office of the Attorney-General acted as both investigator and prosecutor.

33. The riots in May 1998 had been connected to the general political upheaval at the time and had not been directed at any particular ethnic or racial group. Not only people of Chinese origin but all Indonesians had been potential victims of the mass lawlessness and violence which had occurred. In July 1998 the Government had established a joint fact-finding team, which had concluded that the riots were not an isolated incident and had found indications of gross human rights violations, particularly crimes against humanity. The National Human Rights Commission's inquiry had corroborated the fact that there had been human rights violations but the subsequent investigation by the Office of the Attorney-General had found that the Commission's conclusions did not meet all the formal and material requirements. In addition, given that the riots had taken place before the enactment of Act No. 26/2000, it was for Parliament to decide whether they involved gross violations before an ad hoc human rights court could be established.

34. Mr. SIAHAAN (Indonesia) said that Indonesia had traditionally been a transit country for refugees and asylum-seekers, rather than a destination country, which was one reason why it had not ratified the Convention relating to the Status of Refugees. The commitments arising from ratification, in particular the prohibition on refoulement or expulsion, would overburden an

archipelagic State with a large ocean territory, and one which had many internally displaced persons as a result of disasters and conflict. However, it remained committed to protecting refugees and asylum-seekers within its territory, had ratified other international instruments and enacted national laws on the issue, and had a good record of cooperating with organizations such as the International Organization for Migration and the Office of the United Nations High Commissioner for Refugees. An entire island had been given over as a transit centre for refugees from Viet Nam in the late 1970s and early 1980s. The many refugees arriving from the Middle East, Central Asia and other areas were helped with identification and registration and given humanitarian assistance while in Indonesia, and international human rights instruments were taken into account in formulating national policies and immigration regulations.

35. Non-citizens had limited rights in Indonesia compared with citizens, being unable, for example, to own land, but the restrictions were proportionate and fell within the scope and objectives of international conventions.

36. Mr. WIBISONO (Indonesia) recalled that Indonesia had voted in favour of the draft declaration on the rights of indigenous peoples in the Human Rights Council and expressed the hope that it would become applicable to all.

37. The CHAIRPERSON invited the delegation to submit in writing any replies which had not been given because of time constraints.

38. Mr. PILLAI (Country Rapporteur) expressed satisfaction at the positive approach of the delegation and its commitment to improving its reports in the future, and at the fact that Indonesia had ratified the Convention with no reservations, setting an example for other countries. He complimented the country on its action plans on human rights and would follow their implementation with interest. He also welcomed the participation of the National Human Rights Commission in the Committee's work and encouraged Indonesia's efforts to strengthen the institution and make it truly independent and effective.

39. He highlighted the Committee's concerns about the rights of indigenous peoples, particularly in the context of the planned large palm-oil plantation and the need for early warning measures. He noted the progress made with respect to State recognition of religions and expressed support for Mr. Lindgren Alves' suggestion regarding a possible law on civil marriages. He encouraged the Government to involve civil society organizations in reporting and programmes on racial discrimination.

40. The CHAIRPERSON expressed the hope that the dialogue opened between the Committee and Indonesia by virtue of its first submission of periodic reports would continue.

The meeting rose at 1 p.m.