

# TREATY BODY MONITOR

International Service for Human Rights



Human Rights Monitor Series

## COMMITTEE FOR THE ELIMINATION OF RACIAL DISCRIMINATION 71<sup>ST</sup> SESSION INDONESIA, INITIAL, 2<sup>ND</sup> AND 3<sup>RD</sup> REPORTS 8-9 AUGUST 2007

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Information submitted to the Committee

### State report

The State party submitted its third periodic report<sup>1</sup>, which was due in 2000, on 4 April 2006 to the Committee on the Elimination of Racial Discrimination (the 'Committee'). It combines the State's initial, second, and third period reports. The rather short report focused on the laws and decrees that have been passed in the years since Indonesia acceded to the *International Convention for the Elimination of All Forms of Racial Discrimination* ('the Convention') in 1999. For example, the report highlighted that the Government is in the process of reviewing all existing laws to ensure that the related laws are being upheld in accordance with the principle of non-discrimination, citing a decree<sup>2</sup> revoking previous measures that limited the ability of ethnic Chinese to practice their religions and traditions. The report did not include much concrete information on the

<sup>1</sup> CERD/C/IDN/3; 4 April 2006, available at <http://www.ohchr.org/english/bodies/cerd/cerds71.htm>

<sup>2</sup> Presidential Decree No. 6 of 2000, revoking the Presidential Instruction No. 14 of 1967 on the Chinese Religion, Beliefs, and Traditions.

implementation of such legislation, but noted in its conclusion that the Government is taking steps to ensure that the Convention ‘works’ in the country.

### **List of issues**

The Committee’s country rapporteur for Indonesia, Mr Raghaven Pillai, submitted a list of issues to the State party that focused on some of the sensitive issues in the country.<sup>3</sup> These included the lack of a general law prohibited racial discrimination in all spheres of public life (paragraph 8), the practical implementation of the abolition of the Proof of Indonesian Citizenship measures (paragraph 15), and what measures, if any, schools are taking to provide education and training in relation to the Convention. The State party submitted handwritten replies to the list of issues the morning of 8 August, and several members on the Committee on the Elimination of Racial Discrimination (‘the Committee’) noted that this inhibited their ability to ask focused questions.

### **NGO parallel reports**

Four organizations submitted parallel reports. Human Rights Watch’s report<sup>4</sup> focused on the human rights abuses in the Central Highlands region in West Papua due to the Indonesian Security Forces alleged targeting of guerrilla groups who were vying for independence. This issue was not taken up by the Committee, however, which focused instead on the conflicts in the Kalimantan province. Thirteen NGOs submitted a joint report<sup>5</sup> calling for an urgent action to stop the Palm Oil Mega-Project in Kalimantan. The Asian Indigenous & Tribal Peoples Network submitted a report<sup>6</sup> that covered numerous instances of non-implementation of the Convention, from not respecting the rights of indigenous communities to the environmental destruction from the Palm Oil project in Kalimantan. Finally, the NGO Coalition’s report<sup>7</sup> described the plight of indigenous people and ethnic Chinese populations, alleging differentiated treatment and problems in accessing social services. Mr Pillai and other Committee members referenced some of these reports, but did not address some of the most sensitive claims, such as the rape of ethnic Chinese in the May riots of 1998, as reported in the joint report by 13 NGOs.

### **Themes and Issues**

Indonesia was represented by a large, high level delegation. Ms Harkristuti Harkrisnowo, Director General of Human Rights Protection in the Ministry of Law and Human Rights, presided as head of the delegation on the first day, but was replaced by H.E. Dr Makarim Wibisono, the Ambassador and Permanent Representative of Indonesia to the UN when Ms Harkrisnowo had to unexpectedly return to Indonesia on 8 August. Other speaking members of the delegation included Ms Sahawiyah Abdullah, the Special Advisor to the Minister for Social Affairs; Ms Sunaryati Jartono, the Deputy Head of the National Ombudsman Commission; Mr Ahmad Syarifuddin Natabaya, Judge of the Constitutional Court; Mr Jansen Akun Effendy, the Regent of Sanggau in the West Kalimantan Province; Mr Teguh Sudarsono, the Chief of Division for Legal Affairs; Mr Mangasi Situmeang, Chief of Section at the Office of the Attorney General and Mr Benny Siahaan, First Secretary at the Permanent Mission in Geneva.

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<sup>3</sup> CERD/C/IDN/3.

<sup>4</sup> Human Rights Watch. ‘Out of Sight: Endemic Abuse and Impunity in Papua’s Central Highlands’ July 2007. Available at <http://www.ohchr.org/english/bodies/cerd/cerds71.htm>.

<sup>5</sup> Thirteen NGOs submitted the following report: ‘Request for Consideration of the Situation of Indigenous Peoples in Kalimantan, Indonesia, and the United Nations Committee on the Elimination of Racial Discrimination’s Urgent Action and Early Warning Procedures.’ 6 July 2007. Available at <http://www.ohchr.org/english/bodies/cerd/cerds71.htm>.

<sup>6</sup> Asian Indigenous & Tribal Peoples Network. “Indonesia: Piecemeal approaches to systemic and institutionalised discrimination.” Available at <http://www.ohchr.org/english/bodies/cerd/cerds71.htm>.

<sup>7</sup> NGO Coalition. “Breaking the smoke-screen of Racial Discrimination and Impunity in Indonesia.” 1 June 2007. Available at <http://www.ohchr.org/english/bodies/cerd/cerds71.htm>.

The delegation's reasoning throughout was that the existence of legislation against racial discrimination was indication enough that Indonesia acted in accordance with the Convention. It also utilized historically-based answers, citing a multicultural society as difficult to bring together in the modern world. Additionally, the delegation cited prior colonization as a reason for the backlash against a very centralized government. Given its lengthy replies, the delegation did not manage to address all of the Committee member's questions. The Chairperson, Régis de Gouttes, asked them to provide additional written answers to the Committee after they returned to Indonesia.

### **Domestic legislation**

Mr José Augusto Lingren and other Committee members took issue with the report's tendency to refer to the existence of legislation as proof of compliance with the Convention. Mr Lingren said that he felt an obligation to call the State party's attention to the fact that they do not normally accept the idea that simply because laws are anti-discriminatory, no discrimination exists in the country. Despite this, the Committee was pleased with the existence of a National Action Plan on human rights, although it asked for more information about the plan, its follow-up, and any other relevant legislation. Patrick Thornberry, as well as other Committee members, asked for clarification on indigenous or *Adat* law principles, but the only clear response given was that *Adat* is an element of customary law.

### **Definition of racial discrimination**

In his initial analysis as Country Rapporteur, Mr Pillai highlighted the Committee's concern that Indonesia lacks legislation that defines racial discrimination in domestic law that is in line with the Convention. Mr Natabaya responded by stating that the principle of equality and non-discrimination are fully granted through Article 27 of the 1945 Constitution and through *Law No. 39 of 1999 on Human Rights*. *Law No.39's* definition describes discrimination as any restrictions or degradation on grounds of religion, ethnic origin, race, ethnicity, group, faction, social status, economic status, sex, language and political belief. Mr Natabaya was pleased to point out that the definition went beyond race and ethnicity, covering even economic and social status. The Committee remained concerned about the implementation of this definition as a standard that effectively prohibited discrimination.

### **Lack of legal process for discrimination**

Mr Pillai also expressed concern that although the legislation was in place, there was no clear process for filing complaints or engaging in the legal process. There was confusion on the regionalization of the law system, and what that meant for the legal process.<sup>8</sup> Mr Natabaya did not directly respond to this question. He stated generally that equality and non-discrimination are legally protected principles, citing hate crimes based on ethnicity as an example of a case that could be brought. He stated that Article 156 of the Penal Code punishes racial discrimination, as does *Law No. 39 of 1999*. It was not clarified how the process of bringing a claim was undertaken. The Committee took the opportunity of their concluding observations to urge the State part to adopt a comprehensive law on the elimination of racial discrimination.

Mr Natabaya also described the national human rights institution, Komnas HAM, as another avenue for pursuing redress for discrimination, as it can receive complaints. Mr Pillai urged that the absence of subpoena powers by Komnas HAM was a weakness in the system. Mr Natabaya responded that if Komnas HAM finds gross violations of human rights, it can forward the cases onto the Attorney General, who has the final authority in the case. In its concluding observations, the Committee recommended that the State party strengthen Komnas HAM's mandate, in particular its monitoring function. It also urged Indonesia to reinforce the independence of the Commission in line with the Paris Principles.

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<sup>8</sup> This is taken up in paragraph 40 of the State report.

## ***Eliminating the terms 'indigenous' and 'non-indigenous' from the Constitution***

Another contentious issue was elimination from the Constitution's of the terms 'indigenous' and 'non-indigenous'. As the State report explains in paragraph 118, the elimination of these terms was to ensure equal treatment and services for all the peoples of Indonesia and to eliminate discrimination. The Committee was not pleased by this argumentation, explaining that simply eliminating words could not combat the underlying distinctions the words represented. Mr Thornberry added that having a properly nuanced definition of 'indigenous', for example the one in the International Labour Organisation's Convention No. 169, could be a better way to avoid discrimination than eliminating the term completely. In its concluding observations, the Committee recommended that the State party respect the way in which indigenous peoples perceive and define themselves, adding its encouragement for the State party to ratify ILO Convention No. 169.

## **Follow-up to May 1998 riots**

The Committee asked for more information about the riots of May 1998 and the various fact-finding teams created to investigate it. Mr Pillai wondered if reparations had been made to minorities and ethnic Chinese who had been affected, while Mr Chengyuan Tang asked for general clarification on the position the State party took towards the targeting of ethnic Chinese. According to the joint NGO report (see *supra* footnote 7) Komnas HAM, the national human rights institution, and the Attorney General's office have allowed – and even ensured – that procedural problems stall the progress in their investigation. As a result, investigations have been on hold since 2003. The delegation explained this hiatus in investigations in a convoluted way, saying that the characterization of 'gross human rights violations' made it difficult for Komnas HAM and the Attorney General's office to work within correct procedure. An additional problem was that the relevant legislation establishing a court for human rights, *Law No. 26*, was not established until after the riots. The delegation affirmed that the riots were not due to isolated factors, and that the Attorney General's fact-finding mission confirmed that they were a product of the general upheaval of the revolutionary period in the country. According to him, no specific racial groups were targeted. This issue could not get clarification because it was answered at the end of the session and there was no time for further discussion. In its concluding observations, the Committee strongly recommended that the State party take all measures to ensure that the acts of racial discrimination committed during the riots are prosecuted and punished.

## **Minority issues**

### ***Official and unofficial religions***

The Committee expressed its confusion over the status of the official state religions, which by the delegation's account included Islam, Protestantism, Catholicism, Hinduism, Buddhism and Confucianism. Confucianism had been added as the sixth official religion after the State report was published. Although religion is not officially under the purview of the Committee, the existence of official religions means that persons ascribing to non-official religions are minorities in Indonesia. These minorities receive different treatment and therefore the several Committee members affirmed that the subject was relevant to the Committee's work. Problems arise specifically in marriages between persons of different religions, as well as identification through State-issued identity cards. Although Mr Situmeang described a situation of general acceptance of all religions, even those beyond the six official ones, the legal situation for those believing in religions other than the official six was precarious, in that there might be difficulties getting legally married or obtaining a birth certificate for children of mixed marriages. The delegation justified this by explaining that there is no facility for civil marriage in the country; thus if persons entering a marriage did not have a religion, or had different religions, the resulting marriage was not legally recognized. Ms Hartono added that the *1994 Law on Marriage* faced strongly divided opinion, which resulted in the compromise of linking marriage to religion. She acknowledged, however, that change could not be instant, and the Government was working in the right direction to ensure marriages are legal for everyone. Mr Lingren,

echoed by other Committee members, strongly urged the Indonesian government to allow for civil marriages. His arguments included the idea that those who did not believe in God would be marginalized by these provisions. The Committee also repeated their call to allow for civil marriages in their concluding observations.

Another issue relating to differences in treatment between believers in official and non-official religions related to identity cards. Although one municipality, the city of Bogor, had cancelled a previous decree requiring the listing of a person's religion on their Citizen Identification Card, Mr Pillai said he had read information insisting that religion was still being marked on an identity card. This question was not clearly addressed in the delegation's replies. Mr Thornberry also asked about the extent of the obligations for religious education, wondering what kind of religious teaching is compulsory and for whom. This question also was not answered.

### ***Ethnic Chinese minority***

Another situation where minorities receive different treatment in Indonesia is for being members of the ethnic Chinese minority. Until recently, citizens of ethnic Chinese origins were required to obtain a proof of Indonesian citizenship (*Surat Bukti Kewarganegaraan Indonesia* or SRBKI) in order to fulfil various administrative functions, such as opening a bank account. In paragraph 108, the State report acknowledges that the SBKRI was prohibited by presidential instruction. However, in paragraph 109, it continues by saying three provinces have abolished the practice. Mr Kjaerum asked why it would be necessary for regional-level legislation to be passed when national-level legislation already existed. Mr Natabaya did not have a concrete explanation for this. He could only reply that the provinces should not have had to sign an additional decree, since the national legislation provided the necessary legal protection. Such regional activity, he concluded, could be understood as enthusiasm for the democratic process. Despite this conclusion, the Committee urged the state party to strengthen its efforts to ensure the practical implementation of the abolition of the SBKRI in all regions and effectively prohibit its use either by public institutions or private entities like banks.

### **Non-citizen issues**

#### ***Children***

Ms Harkrisnowo admitted that the State party had strict laws on granting Indonesian citizenship, even to children with one Indonesian parent, but she affirmed that the law was changing and progress was being made. She explained that in the past the children of an Indonesian mother and a foreign national father would not be granted Indonesian citizenship, as citizenship is patrilineal. This presented problems for non-citizen children, such as access to Indonesian public schools and the right to a birth certificate.<sup>9</sup> Now, however, these children can get Indonesian citizenship even with a foreign father. However, they are not entitled to dual citizenship, and therefore must chose either their mother's or father's citizenship. The Committee took the opportunity of its concluding observations to ask the State party to provide more detailed information on the rights of non-citizens in its next report.

#### ***Refugees***

The Committee highlighted the State party's lack of signature of the *1951 Convention on Refugees*, and asked if Indonesia would consider signing. Mr Siahaan said that the country has reservations about the principles of non-refoulement in the Convention, because accepting people into the archipelago would be too large a burden. He admitted that Indonesia did not wish to become a destination country for asylum seekers and refugees as it was already dealing with high numbers of internally displaced persons from natural disasters. He affirmed, however, that this did not mean Indonesia wished to shirk its responsibilities in respecting

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<sup>9</sup> NGO Coalition report, cited in footnote 9. Paragraph 94.

refugees, citing a case where they provided an entire island for Vietnamese refugees waiting to be repatriated. This case, however, was in the 1970s and 1980s.

## **Indigenous peoples' rights**

### ***Definitions***

In response to the myriad terms the State party used to describe their people (e.g. indigenous, native, traditional communities, ethnic groups, and minorities), the Committee asked for clarification. Ms Hartono responded at length, explaining that English was not her or her delegation's first language, so such precise terms were problematic. She proceeded to define several of the terms from the BBC English dictionary, using the *ILO Convention No. 169*'s definition of indigenous peoples as well. Her conclusion about the distinction between the groups of indigenous peoples and other peoples was two different approaches to modernity and industrialization. In her lengthy philosophical explanation, indigenous people were characterized by less enthusiasm for modernism and more traditional lifestyles. She said that the Government was working on a draft bill on traditional communities, to help bridge understanding and create social harmony among these different sectors of society. Mr Lindgren was pleased with Ms Hartono's definitions, but Mr Thornberry maintained that there was something beyond pure definitions and the context in which such words are used. He added that the ILO's definition of indigenous needed to be understood in the larger context of land and land rights, as well as indigenous peoples' spiritual connection to the land.

### ***Land rights***

The Committee expressed general concern over problems with indigenous peoples' access to land rights. Mr Thornberry asked what the delegation's sense was about the extent to which ethnic, cultural, and religious conflicts might be tied to land. He pointed out that different cultural groups might feel threatened by other communities' uses of land titles. Mr Amir wondered about the fates of the original rubber farmers and whether they were compensated when large, industrial plants took over. The delegation's answer by Mr Effendy outlined the legal provisions in the Constitution relating to land, saying that it was the Government's job to develop land and water resources for the 'optimal use' of the people. Ms Hartono implied in her clarification, however, that groups might have communal right to the land through the *Adat* law in Indonesia. Nevertheless, it seemed that the Supreme Court had precedence to decide whether *Adat* law was applicable, or whether modern Indonesian law had become the only relevant legislation.

### ***West Kalimantan***

Mr Pillai referred to an NGO's call to stop the work on a palm oil 'Mega-Project' in Kalimantan province.<sup>10</sup> He stated that the 1.8 million hectares the project planned to use would possibly cause the complete disappearance of indigenous peoples living in the forests there.<sup>11</sup> Other Committee members echoed this concern. Mr Effendy also answered this question by referencing the Constitution. He stated that the Government controlled the land, and after reading at length from different Constitutional articles, concluded that the law provides many legal restrictions that ensure the 'greatest benefit to the people'. The delegation also made a point of mentioning that one possible culprit for this and similar industrializing projects are the multinational corporations involved. Mr Wibisono said that the State party has amended its financial laws, which now require elements of social responsibility, in order to guard against possible exploitation by corporations. He also said that those persons or entities wanting to undertake land cultivation must consult with the people living on the land in question. Mr Kjaerum applauded this move, but hoped that the State party was making sure that local communities are aware of their rights so that they can assert them when

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<sup>10</sup> See footnote 7 about the Request for Urgent Action by 13 NGOs.

<sup>11</sup> He said that the Special Rapporteur on indigenous peoples had implied this outcome in his work, but did not cite a specific report. The 1.8 million hectare figure comes from the Asian Indigenous and Tribal People's Network report, page 21.

necessary, a sentiment which was repeated in the concluding observations. The Committee also asked that the State party provide any information on its follow-up of the matter within one year.

### ***Central Kalimantan***

Another area of concern was the Government's inability to effectively deal with the ethnic conflict that arose in 2001 between the ethnic Dayak people of Central Kalimantan and their neighbours, the indigenous Madura people. Although the joint NGO report (*supra* footnote 5) argues that the Government could have seen a conflict emerging since a series of small ethnically based riots erupted in 1998 in West Kalimantan, the Government allegedly turned a blind eye. Several Committee members expressed concern that these kinds of ethnic conflicts were not receiving adequate attention from the State party. Ms Hartono explained that the Government was now working on cohesion, and on 'building bridges' between groups with competing interests, like the Dayak and Madura people. Mr Abdullah characterized the conflict as coming from misunderstandings between the people, property disputes, and an 'exclusive attitude' towards their way of life and culture. His description of the origins of the conflict placed it firmly within the purview of these two different groups and not any wider systemic problems. According to the same NGO report, Komnas HAM investigated and found human rights violations had occurred, but there were no adequate mechanisms of reparation for the victims, which has only worsened the relationship between the two groups.<sup>12</sup> In its concluding observations, the Committee strongly recommended that the State party increase its efforts to prevent the resurgence of ethnic conflicts on its territory.

### ***Regional differences in standard of living***

Mr Pillai pointed out that the incidence of poverty in the provinces with high percentages of indigenous populations, for example Papua, is ten times higher than in Jakarta.<sup>13</sup> He affirmed that the State party's 'special measures' to help vulnerable sectors of the population are empowering for the population. According to the report, Indonesia's national human rights institution, Komnas HAM, had undertaken a study on these special measures, and he hoped for information on the follow-up of this study, adding that statistics are necessary for the Committee's comprehension of the country situation.

### **Multiculturalism**

While Indonesia received praise for their expansive diversity, citing hundreds of ethnicities and many religions and languages, there were some concerns over the equal protection of rights for all members of these various groups. Additionally, a concern surfaced over the extent to which different groups were free to retain their cultural practices. Mr Thornberry referred to paragraph 122 in the State report, raising concern over the language used to describe the relationship between the ethnic Chinese and native Indonesians. The report stated that the Government made efforts to 'amalgamate' the two groups by establishing a Working Group on 'Society Blending'. He argued that 'integration' might be a better term than 'blending'. Unfortunately the delegation did not have time to reply to this specific concern.

### **Conclusions and next steps**

Although many of the questions the Committee members posed remained unanswered, Mr Pillai thanked the delegation for the meetings and the 'pains' they took to answer a number of the questions the Committee raised. He thanked the State party for not having any reservations to the Convention, and complimented them

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<sup>12</sup> This problem has also resulting in about 20,000 Madura IDPs fleeing to other areas of Indonesia, as they are too frightened to return to their homes. See the report by 13 NGOs, footnote 7.

<sup>13</sup> Mr Pillai quoted the report of the Special Rapporteur on the right to education in her 2002 mission to Indonesia. E/CN.4/2003/9/Add.1; 18 October 2002.

on their National Plan of Action for human rights. Regarding more troubling matters, he asserted that he would need to be informed if problems arose with the Palm Oil project. He also reiterated his hope that the problems of those who practice non-official religions, as well as ethnic Chinese, were repaired. In this spirit, he reaffirmed his support for the idea of implementing civil marriage in Indonesia.

Some of the issues in the discussion have been mentioned in other treaty bodies. In the concluding observations of the Committee on the Rights of the Child (CRC) in 2004, Indonesia was urged to accede to the *1951 Convention Relating to the Status of Refugees* and its 1967 Protocol, the Convention on the Status of Stateless Persons and the Convention on the Reduction of Statelessness.<sup>14</sup> In the same report, the CRC recommended that the State party review its legislation to identify changes necessary to ensure the full guarantee of non-discrimination in Indonesian law (paragraph 31). Finally, the concluding observations note that the *Human Rights Act of 1999* does not extend to non-citizens, and that this has disturbing implications for these non-citizens' access of education, health, and social services. Similar concerns remain after this current session.

The State party is scheduled to next come before CERD in 2010, but with Mr Pillai's mention of possible early action on the Palm Oil project, it is possible that the Committee will be engaged with Indonesia before that date.

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<sup>14</sup> CRC/C/15/ADD.223; 26 February 2004.

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