



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

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Committee on the Elimination of Racial Discrimination
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Summary record of the first part (public)* of the 2168th meeting

Held at the Palais Wilson, Geneva, on Tuesday, 7 August 2012, at 10 a.m.

Chairperson: Mr. Avtonomov

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* The summary record of the second part (closed) of the meeting appears as document CERD/C/SR.2168/Add.1.

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The meeting was called to order at 10.20 a.m.

Informal meeting with non-governmental organizations

*Information relating to the initial to third periodic reports of Thailand
(CERD/C/THA/1-3)*

1. *At the invitation of the Chairperson, the representatives of non-governmental organizations took places at the Committee table.*
2. **Ms. Khongkachonkiet** (Cross Cultural Foundation) said that, in 2008, the Foundation had examined the situation regarding racial and other types of discrimination in Thailand and studied international human rights instruments in order to produce a handbook in Thai for use by non-governmental organizations (NGOs) in preparing the alternate report. Thailand had many minority groups, but they were generally successfully assimilated, entailing a loss of their cultural specificities. Like many countries in the region, Thailand received an influx of refugees, asylum seekers and migrant workers. For example, Shan refugees from Myanmar were dispersed across northern Thailand without access to a proper camp.
3. **Mr. Tamee** (Highland Peoples' Taskforce) said that his organization represented 30 indigenous ethnic groups in Thailand. Statelessness was a growing concern for indigenous and nomadic people, as many had been denied Thai citizenship, thereby limiting their access to services such as health care. They were also the population segment most affected by drug wars and anti-drug policies. Given that Thailand had accepted but not yet implemented many of the recommendations made to it by various treaty bodies, notably a recommendation by the Committee on the Rights of the Child regarding stateless children, he asked what the role of treaty bodies was and how they could pressure countries into compliance.
4. **Ms. Aleemama** (Muslim Attorney Centre Foundation) called on the Committee to urge the Thai Government to repeal the special legislation currently in force in the southern border provinces, namely martial law, the Emergency Decree and the Internal Security Act. Martial law, in effect since 2004, resulted in many human rights violations and adversely affected livelihoods through constraints on cultivation. She referred to letters written by former Malayu Muslim detainees detailing the fear and insecurity they felt upon their release, and stressed that they should have every guarantee of personal safety when they returned to their homes in the southern border provinces.
5. **Ms. Khongkachonkiet** (Cross Cultural Foundation) said that, under martial law, individuals could be held without charge for up to seven days. Often the families of detainees were not informed of the whereabouts of their loved ones or were denied visiting rights. Under the Emergency Decree, detainees could be held for a further 30 days. Although court orders were required for such detention, they were often granted on a tenuous basis and had only been requested in cases involving Malayu Muslims, a group especially targeted by racial profiling. Moreover, delays in the judicial process were common. According to statistics from the Muslim Attorney Centre Foundation, 80 per cent of trials ended in acquittal, suggesting that many individuals were wrongfully arrested and prosecuted. The names of thousands of former detainees remained on record after their release, making it difficult for them to travel, even domestically.
6. **The Chairperson** said that treaty bodies were not courts and did not possess enforcement powers; therefore, they could not oblige States parties to follow up on their recommendations. However, a persistent approach could enable issues to be resolved over time.

7. **Mr. Conte** (International Commission of Jurists) said that ICJ had been studying women's access to justice in Thailand for the past two years and had found that, despite strong constitutional guarantees of non-discrimination, a range of factors routinely undermined access to justice by women of certain ethnic minorities. First, undocumented migrants from Cambodia, the Lao People's Democratic Republic and Myanmar tended not to report acts of violence out of fear of arrest or deportation and were forced to stay in abusive situations or risk losing their work permits. Second, the camps for displaced persons from Myanmar had their own internal justice system, which was supposedly complementary to the Thai legal order; however, in practice, there was great uncertainty as to which laws applied to which offences. Third, sharia law, rather than the Thai Civil and Commercial Code, was applied in matters of marriage and inheritance in the southern border provinces. There was a proposal to update the legislation on Islamic law, but ICJ was concerned at the lack of a human rights component in the consultation process. He drew the attention of the Committee to ICJ's recommendations to the Thai Government, set out in its alternate report.

8. **The Chairperson** said that the Committee was concerned about cases of multiple discrimination. Indeed, its general recommendation No. 25 of 2000 was on gender-related dimensions of racial discrimination.

9. **Mr. Huang** Yong'an (Country Rapporteur) asked whether any of the NGO representatives had information on the situation of ethnic minorities in parts of Thailand other than the south.

10. **Mr. de Gouttes** asked whether the NGOs had direct contact and effective cooperation with the Government and the National Human Rights Commission. It would be useful to have additional information on the situation of the different ethnic groups in northern Thailand, particularly the Karen hill tribe, which were reportedly the victims of serious human rights violations. Given that many refugees from Myanmar remained in the State party, he would also welcome further details on their situation. The Committee would appreciate updated information on the temporary residence permits that were granted to members of ethnic minorities.

11. **Ms. Crickley** asked what the NGOs regarded as the current top priority in relation to the elimination of racial discrimination in Thailand. She would welcome further explanation of the complex issues involved in the drug wars that were affecting the State party's indigenous communities. Given the disturbing details the NGOs had provided on the racial profiling taking place in southern Thailand, she asked whether racial profiling of other minority groups occurred in other parts of the country and, if so, how extensive it was. In the light of the information provided on the multiple discrimination suffered by women from minority groups, she wished to know what priority the NGOs were currently focusing on in that regard. It would be useful to learn about the particular issues affecting women from Myanmar who lived in refugee camps in the State party.

12. **Mr. Amir** asked whether Muslims in the State party suffered discrimination as individuals or as a community and whether there were Muslims living throughout the State party or in specific areas only. It would be useful to know what status ICJ held in the State party.

13. **Mr. Lindgren Alves** said that he would welcome some guidance from the ICJ representative on the approach the Committee might take to the application of Islamic law in southern Thailand, given that it appeared to discriminate against women.

14. **Mr. Vázquez** requested additional information on how the Government's policies to combat drug trafficking were affecting ethnic minorities in Thailand. He also wished to know which ethnic groups were denied Thai citizenship and on what grounds.

15. **Mr. Kut** asked how many people were affected by the problem of statelessness in Thailand.

16. **Ms. Khongkachonkiet** (Cross Cultural Foundation) said that many Thai NGOs enjoyed a good level of cooperation with the Government, especially the Department of Rights and Liberties Protection of the Ministry of Justice. As a member of a subcommission of the National Human Rights Commission since 2007, she had taken part in monitoring visits to detention facilities and had helped prepare reports on torture and the plight of Rohingyas. However, NGOs had experienced difficulties in the south, especially when working with the local authorities and armed forces. There were some 66,000 members of the armed forces in the three southern provinces affected by the conflict, which seemed somewhat disproportionate for a population of 1.9 million. Local NGO human rights defenders, particularly male NGO staff and student activists, were often interrogated.

17. A number of international NGOs were working along the border between Thailand and Myanmar. The Thai Government had stopped registering new refugees from Myanmar, despite the influx of refugees in the run-up to the Myanmar elections. The situation of registered and non-registered Myanmar migrants continued to cause great concern. Many of them were forced to register as migrant workers, which precluded them from the benefits of international protection.

18. There had been clear manifestations of racial profiling in the southern border provinces, where the conflict had escalated significantly in 2004. To date, some 5,000 people had been killed and a further 10,000 injured. The Government's attempts to quell the violence by imposing martial law and increasing the number of troops and refugee camps had only exacerbated the situation by resulting in human rights violations.

19. **Mr. Tamee** (Highland Peoples' Taskforce) said that many minority ethnic groups throughout Thailand suffered levels of discrimination similar to that experienced by the Malayu Muslims in the southern border provinces. Ethnic minorities were regarded as a threat to national security and frequently accused of being responsible for drug trafficking and deforestation in the country. Martial law was applied along the northern border of Thailand to the detriment of the ethnic minorities living in the area.

20. While temporary residence permits had been granted to some members of ethnic minorities, they were only approved for one year at a time, rendering the situation of the beneficiaries precarious. They also became stateless persons as a result of the permits and were denied many rights, particularly the right to participate in the Thai health-care scheme. There were currently some 540,000 stateless persons in Thailand. Despite the Government's attempts to reduce that number, it had decreased only slightly, from 550,000 in 2002. Moreover, some of the amendments to the relevant legislation had actually resulted in greater obstacles to citizenship, including a resolution passed in 2010 which specifically excluded some 13 groups from Thai citizenship.

21. The law enforcement authorities had used excessive force in their operations to combat drug trafficking. They had committed extrajudicial killings, including those of six members of the Mien ethnic group.

22. The Government had been using legislation concerning forestry rights to force indigenous people and ethnic groups to leave the areas they considered their homelands. Those refusing relocation had been arrested. That situation had become worse since 2009, with ethnic groups and indigenous peoples living in forests being blamed for contributing to global warming. Legislation aiming to reduce global warming had been adopted and used to target indigenous tribes that refused to move from the forests.

23. **Mr. Conte** (International Commission of Jurists) said that the situation of refugees from Myanmar was addressed on page 4 of the ICJ submission to the Committee. While a

wide range of cases were handled by an internal camp justice system, others fell outside the jurisdiction of the system under the Criminal Code and Code of Criminal Procedure, leading to confusion among camp residents about where to apply for justice. Furthermore, the legal support provided to the residents, including interpretation services and financial assistance, was limited.

24. The issue of undocumented migrants was addressed on page 2 of the submission. Women migrant workers did not normally seek protection or remedies, primarily because they feared arrest and deportation if they did so. In fact, in the rare cases in which they had filed complaints, they had been detained or released from detention only after paying a bribe. Immigration law often took precedence over the right of access to justice. Expulsion procedures were lengthy. When a person was deported and proceedings continued in Thailand the persons concerned faced difficulties in travelling back to the country for those proceedings. Such hurdles often resulted in the settlement of cases without full access to justice. ICJ had presented detailed recommendations on improving access to justice on pages 3 and 4 of the submission.

25. Turning to the question of the status of ICJ in Thailand, he said that the ICJ office in Bangkok was a regional office of the international NGO, which worked on issues involving access to justice, accountability and the independence of judges and lawyers in several countries in the region. As it was situated in Thailand, however, the office had direct interaction with ethnic minorities in the country.

26. The question of the role of traditional values in the southern provinces and Islamic law was discussed on page 5 of the submission. While traditional values were of great importance, they should never undermine the principle of universality or be implemented in a manner that was inconsistent with the particular human rights obligations of the State. The review of relevant legislation concerning Islamic law currently under way in Thailand should therefore focus on human rights. One example discussed in the submission was the question of divorce. When Malayu Muslim women in the provinces wished to seek a divorce, they typically did not sue for one. Instead, they were compelled to ask the family to persuade the husband to apply for a divorce or paid their husbands to divorce them, as prevailing interpretations of Islamic law granted men an exclusive right to pronounce a divorce, whereas women could file for divorce only on very limited grounds.

27. **Ms. Khongkachonkiet** (Cross Cultural Foundation) said that another obstacle to access to education and training was the failure of the Thai Government to promote indigenous languages. Some languages had even been prohibited in the past. A policy of assimilation had been pursued at the expense of cultural diversity. A number of ethnic groups, especially in the northern part of the country, were pressing the Government to help to promote their culture and language through education.

28. **Ms. Aleemama** (Muslim Attorney Centre Foundation) said she had once been stopped by military officers while riding a motorbike and, when she had asked them why they had not stopped others, they had told her that the others had not been wearing a hijab. Despite available resources, law enforcement authorities were not staffed with persons familiar with the local languages. In addition, hospitals and other health-care facilities lacked interpretation services. She had personally been prohibited from speaking her mother tongue while she was attending a State school. Saying even one word in the language was punishable by a fine of about 1 baht. Diversity should be promoted in both the north and south of the country to foster understanding and prevent conflict.

29. **Mr. Thornberry**, referring to the identity question in general and noting in particular the comments of the previous speaker on mother tongues, recalled that when he had given a lecture to a group of judges in Thailand several years before he had not sensed that they had had an understanding of or sympathy for ideas about ethnic diversity.

However, the report of the State party seemed to strike a different note regarding diversity. It was unusual to hear about fines being imposed for a language being spoken in school. He wished to know the extent to which indigenous status as such was recognized in Thailand. He asked whether there was a national strategy to implement the United Nations Declaration on the Rights of Indigenous Peoples. He was puzzled by some of the descriptions in the report of the State party, in particular the reference to “unsurveyed persons” as having illegitimate status and “rootless persons”. He would like to know whether either of those categories of persons had any ethnic basis. As the State party had stated in its report that there were no laws in Thailand that responded directly to the articles of the Convention, he would be interested in knowing how the absence of such laws affected the opportunities for advocacy. How did persons file legal complaints or address issues of racial discrimination in Thailand?

30. **Mr. Saidou**, noting that the National Human Rights Commission was said to report to the National Assembly under the supervision of the Office of the President, asked whether that was the case and how the members of the Commission were appointed.

31. **Mr. de Gouttes** said that despite considerable efforts in recent years the problems of trafficking in persons, trafficking for sexual exploitation and organized pimping continued in Thailand. He would like to know whether such problems affected indigenous communities in particular, as they lived in remote or mountainous areas and were often the poorest and most vulnerable segments of society.

32. **Mr. Vázquez** said that he would appreciate clarification regarding the claim that climate change was being used as a pretext for relocating indigenous populations. It was not clear whether the contention was that the relevant tribes had not been engaging in deforestation or that they had a right to remain on lands despite the fact that their activities resulted in deforestation.

33. **Mr. Ewomsan** asked whether sexual tourism was affecting specific ethnic groups in Thailand.

34. **Ms. Khongkachonkiet** (Cross Cultural Foundation), citing a particular case involving two members of a Karen community that had been settled in a village for more than 100 years, said that forestry authorities had come to arrest the community members while they had been cultivating rice in the forest on charges of unlawfully occupying the land, as it had been declared to fall under the Forestry Act. One young woman had not been able to run far as she had a baby tied to her back, another, an elderly man, had been unable to run at all, while the rest of the villagers had managed to hide from the authorities. Criminal charges had subsequently been pressed against the two arrested persons and the proceedings had been conducted without interpretation. The two had been sentenced for a minor offence and placed in detention, as they had been unable to pay the relevant fine. They had later been charged in a civil court for damages. An appeal subsequently lodged in the criminal case because of the lack of interpretation had been dismissed. The decision was currently before the Supreme Court, which meant that the villagers had not been forced to relocate to date. Nevertheless, she was citing only one out of 10,000 to 20,000 cases per year that involved the use of such methods by the Forestry Department, without regard for the history or customs of the persons affected.

35. **Mr. Tamee** (Highland Peoples’ Taskforce) said that the majority of indigenous groups lived on State lands. Under the forestry legislation, people could be arrested at any moment. In fact, the number of arrests of people living in forest lands had been increasing as the forests themselves had been shrinking. Business investment was also contributing to deforestation and forest degradation. More than 10 million people were currently living in forest lands declared to be State-owned, 900,000 of whom belonged to indigenous groups and ethnic minorities. Only those communities, which were powerless, had been subject to

arrest and relocation. The law was often used strategically against individuals to set precedents that could be applied to other villagers.

36. Newly declared protected areas under the National Protected Forests Act had been exploited for carbon credit trading under the Kyoto Protocol. The areas in question had been expanding at a great rate for the past five or six years and members of local communities could be charged with concurrent violations of several different forestry laws. Only a small number of people actually benefited from land ownership and forests in mountainous areas.

37. With regard to the acceptance by the Thai authorities of the principle of self-identification of indigenous peoples, the Government had never officially recognized the existence of indigenous peoples. It referred instead to “migrants” who had been living in Thailand for many years. In fact, the Lawa or Lua people had been living in Thailand prior to the arrival of the Thais.

38. Rootless persons were defined as people without a family background who had been given shelter by the State. Unsurveyed persons had never been officially registered in Thailand. The State was willing to offer citizenship to members of the former group but unregistered persons had great difficulty in obtaining citizenship.

39. Thailand had failed to enact the type of anti-discrimination legislation required by the Convention and it had also maintained its reservation to article 4. As a result, discriminatory messages conveyed by the media and other bodies were not subject to legal scrutiny. For example, when a person was arrested for drug trafficking, the media tended to highlight the community to which he or she belonged, implying that the entire community was involved in the narcotics trade. Many reports and images promoted humiliating stereotypes of ethnic minorities and indigenous peoples. Traditional dress and performances were used to promote tourism without respecting the customs and religious beliefs of the groups concerned. The media also fuelled ethnic conflicts by means of negative stereotyping. It was therefore essential for Thailand to withdraw its reservation to article 4 of the Convention.

40. The National Human Rights Commission had achieved a very low score in a survey of institutions engaged in providing public support. Some members of the Commission had actually discriminated against certain ethnic groups. The first group of members, who had been chosen by a selection committee, had been more democratic. The situation had changed under the 2007 Constitution. Five judges had selected the second group of members and there had allegedly been lobbying and corruption involved at the process. He noted that no members of the Commission would be attending the dialogue with the Committee.

41. A Thai NGO called Empower assisted victims of trafficking in women, especially members of ethnic groups from Myanmar and Laos. The Government had never supported its initiatives and the NGO was currently faced with funding difficulties. Many illiterate women belonging to indigenous and ethnic groups were particularly vulnerable. They fell victim to traffickers on leaving their families to seek employment and were frequently prevented from returning home or disappeared completely.

42. **The Chairperson** warmly thanked the NGO representatives for the information they had provided.

The public part of the meeting rose at 12.25 p.m.