

UNEDITED VERSION

UNITED
NATIONS

CERD



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

Distr.
GENERAL

CERD/C/FJI/CO/17

Original: ENGLISH

COMMITTEE ON THE ELIMINATION
OF RACIAL DISCRIMINATION
Seventy-second session
18 February - 7 March 2008

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

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

FIJI

1. The Committee considered the sixteenth to seventeenth periodic reports of Fiji (CERD/C/FJI/17) submitted in one document at its 1850th and 1851st meetings (CERD/C/SR.1850 and CERD/C/SR.1851), held on 19 and 20 February 2008. At its 1867th meeting (CERD/C/SR.1867), held on 3 March 2008, it adopted the following concluding observations.

A. INTRODUCTION

2. The Committee welcomes the timely submission of the periodic report by the State party, and the opportunity thus offered to pursue its dialogue with the State party. It notes with appreciation that the report is in conformity with the reporting guidelines and welcomes the efforts made by the State party to address the issues raised by the Committee in its previous concluding observations (CERD/C/62/CO/2).

3. The Committee expresses appreciation for the dialogue held with the delegation and for the detailed and extensive written and oral responses provided to the list of issues and to the wide range of questions asked by Committee members.

**A. FACTORS AND DIFFICULTIES IMPEDING THE IMPLEMENTATION
OF THE CONVENTION**

4. The Committee is aware of the recent suspension of democratic institutions in Fiji and hopes for a speedy return to a democratic form of government, especially bearing in mind the close connection between democracy and human rights.

C. POSITIVE ASPECTS

5. The Committee welcomes the stated intention of the State party to make the optional declaration under article 14 of the Convention.

6. The Committee notes with satisfaction the adoption of the Immigration Act of 2003, and the repeal of section 8 (1) g of the Act, which marks a substantial improvement in the State party's immigration legislation.

7. The Committee welcomes the commitment expressed by the State party to strive for reconciliation among the communities in Fiji.

8. The Committee commends the ratification by the State party of the ILO Conventions No. 111 on Discrimination in Employment and Occupation and No. 169 concerning Indigenous and Tribal Peoples in Independent Countries.

D. CONCERNS AND RECOMMENDATIONS

9. The Committee reiterates its concern about the decision by the State party to maintain its reservations and declarations which may seriously affect the implementation of the Convention, particularly in light of recent developments in international law regarding the protection of indigenous rights.

The Committee encourages the State party to consider withdrawing its reservations and declarations. In particular, the Committee recommends the State party to reflect on the appropriateness of its reservation and declarations in light of the developments in international law in relation to indigenous peoples' rights.

10. Notwithstanding the State party's intention to finalize a Peoples' Charter for Change and Progress as a guideline for future policies through consultation and dialogue with various stakeholders including civil society, the Committee is concerned that this needs to be an inclusive process.

The Committee recommends that the State party guarantee the participation of all ethnic communities in the elaboration of the draft Peoples' Charter for Change and Progress. It also expresses the hope that this process is in conformity with the Convention as well as with the Committee's recommendations. The Committee further encourages the State party to hold free and fair elections as soon as possible so as to form a government based on the 1997 Constitution which provides for power

sharing between the ethnic communities while ensuring that indigenous forms of governance are respected.

11. The Committee, while noting the delegation's assurances regarding the independence of the Fiji Human Rights Commission, is concerned that the Commission may no longer fully meet the criteria set out in the Paris Principles relating to the status of national institutions for the promotion and protection of human rights.

The Committee encourages the State party to take all necessary steps to ensure the independence of its national human rights institution, in accordance with the Paris Principles of 1993 (United Nations General Assembly resolution A/RES/48/134, annex, of 20 December 1993).

12. The Committee welcomes the census conducted in 2007. Pending the publication of the census results, it regrets, however, the paucity of the data currently available. The Committee also notes that it has not received data on children of mixed parentage.

The Committee recommends that the results of the recent census be published as soon as possible, and in this regard draws the State party's attention to paragraphs 10 to 12 of its guidelines on the form and content of reports (CERD/C/2007/1) concerning the ethnic characteristics of the population. The State party is also encouraged to collect statistics on children of mixed ethnic parentage and to provide the Committee with such data.

13. While noting the explanation offered by the delegation, the Committee observes that its interpretation of the concept of "indigenous Fijians" remains unclear, in particular in relation to the general concept of "indigenous peoples" in international law. Moreover, the relationship between the rights of "indigenous Fijians" and those of other Fijians needs further explanation. (art.2)

The Committee recommends that the State party reflect further on how the concept of "indigenous Fijians" relates to the understanding of indigenous peoples in international law, in particular as reflected in ILO Convention 169 on indigenous and tribal peoples' rights and the 2007 United Nations Declaration on the Rights of Indigenous Peoples. Furthermore, the State party is invited to explain how the concept of indigenous Fijians is applied in law and practice and its impact on the enjoyment of human rights by everyone in Fiji.

14. While welcoming the fact that national courts must have regard to international law when interpreting the State party's Constitution, the Committee regrets that it has not received any information on the extent to which courts have referred to the Convention in accordance with the constitutional provisions. (art.2(1))

The State party is invited to provide the Committee, in its next periodic report, with examples of cases in which the Convention has been utilized by courts when interpreting national law.

15. The Committee is seriously concerned that no specific laws prohibiting racial discrimination have been adopted by the State party. (art.2(1))

The Committee recommends that the State party adopt a comprehensive law on the elimination of racial discrimination, including regarding acts perpetrated by private persons, taking into consideration all elements of the Convention. Furthermore, the State party should expedite the review of its legislation so as to ensure full compliance with the Convention.

16. The Committee is concerned that the requirement for individuals to indicate their ethnicity in official forms, such as immigration forms, may lead to discrimination. (art.2(1))

The Committee recommends that the State party take all necessary measures to ensure that the registration of ethnic identity in Fiji is made on the basis of self-identification, and that the operation of the present system does not lead to discriminatory treatment.

17. The Committee notes the State party's stated intention to review the scope of its special measures programmes as well as to consult communities affected when devising new programmes. The Committee remains concerned, however, that the need for special measures, in sectors such as education and employment, may not be based on a realistic appraisal of the current situation of the different communities. (art.2(2))

The Committee encourages the State party to engage in a data-gathering exercise to ensure that special measures are designed and implemented on the basis of need, and that their implementation is monitored and regularly evaluated. The Committee also reiterates the need to ensure that the special measures adopted in no case lead to the maintenance of unequal or separate rights for different ethnic groups after the objectives for which they were taken have been achieved.

18. While noting the statistical information provided by the State party on the representation of the different ethnic communities in the military and police forces as well as the State party's explanation of this data, the Committee remains concerned about the lower levels of representation of Indo-Fijians in these forces and in the public administration in general. (arts.2(2) and 5(c))

The Committee recommends that the State party consider adopting measures to ensure that all ethnic groups are duly represented in State institutions and the public administration, including special measures aimed at achieving adequate representation of all communities, particularly in the military, taking into account its role during the recent political turmoil in the State party.

19. The Committee notes the information provided by the State party on the education system, and particularly welcomes the compulsory teaching of both the Fijian and Hindi languages, although it remains unclear whether this is applicable to all schools. The Committee, however, considers that the mere re-registering of a school as private and the withdrawal of its funding upon a finding that its enrolment policies are

discriminatory is not conducive to avoiding segregation in schools. (arts.3, 5(e)(v), and 7)

The Committee recommends the State party to take all necessary steps to ensure that school enrolment policies are not discriminatory, including where necessary by de-registration of schools. It also invites the State party to ensure that curricula convey to students the importance of respect for the different ethnic communities of Fiji. Furthermore, mixed schools should be promoted and strong action taken to promote intercultural education.

20. While noting the existing criminal law provisions in relation to article 4 of the Convention, the Committee remains concerned by the State party's opposition to the banning of racist organizations, and the absence of laws to the effect that committing offences for racial reasons generally constitutes an aggravating circumstance. The Committee also reiterates its regret about the State party's insufficient statistics on discrimination-related cases. (art.4)

The Committee strongly recommends that the State party amend its legislation to bring it in line with article 4 of the Convention, in the light of the Committee's general recommendation no. 15 on organized violence based on ethnic origin (1993). The Committee recommends that the State party adopt specific and unambiguous legislation prohibiting racist organizations and amend its laws to the effect that racial motivation constitutes an aggravating circumstance for crimes. Furthermore, the Committee wishes to receive data regarding serious cases of racial hatred or incitement to racial hatred.

21. The Committee regrets that the State party was not able to provide data concerning the ethnic composition of the prison population. (art.5(b))

The Committee encourages the State party to strengthen its efforts to collect the requested data, in the light of the Committee's general recommendation no. 31 on the prevention of racial discrimination in the administration and functioning of the criminal justice system (2005), and to provide such data to the Committee in its next periodic report.

22. The Committee regrets that it did not receive adequate information regarding the nature of the relationship between the indigenous communities and their lands and the extent of the land base subject to customary norms. Furthermore, while taking note that the issue of land rights will be addressed in the proposed Peoples' Charter, the Committee remains concerned that the current status of land distribution in the State party inhibits the economic development of non-indigenous communities, in particular Indo-Fijians. (art.5(d))

The Committee invites the State party to include, in its next periodic report, information on the nature of the relationship of the indigenous community to their lands. The Committee also encourages the State party to take appropriate and immediate measures to resolve the land rights issue, in a conciliatory and equitable manner, and to urgently put in place interim measures so as to prevent further deterioration of the economic situation of

non-indigenous Fijians. It also strongly recommends that the State party consider reviewing its current land regime so as to make it more accessible to members of non-indigenous communities.

23. While welcoming the fact that the National Committee on the Prevention of Suicide has identified Indo-Fijians as their key addressees, the Committee continues to be concerned that it did not receive information on the effectiveness of measures taken by the State party to address high suicide rates among this community. (art.5(e)(iv))

The Committee recommends that the State party put into place a comprehensive evaluation strategy of its suicide prevention programs, including the motives behind the pattern of suicides, and to provide information in this regard to the Committee in its next periodic report.

24. The Committee welcomes the adoption of an Action Plan to combat racial discrimination in the field of education and to promote integration of the student body. It regrets, however, that the State party has not provided sufficiently detailed information on the content of this plan or how it is implemented in practice. (art.7)

The Committee recommends that the State party provide more detailed information on the Action Plan as well as on its effectiveness in practice.

25. The Committee encourages the State party to consider ratifying the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (adopted by General Assembly resolution A/RES/45/158 of 18 December 1990).

26. The Committee recommends that the State party take into account the relevant parts of the Durban Declaration and Programme of Action, adopted in September 2001 by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (A/CONF.189/12, chap. I), when implementing the Convention in its domestic legal order, particularly as regards articles 2 to 7 of the Convention. The Committee also urges that the State party include in its next periodic report specific information on action plans and other measures taken to implement the Durban Declaration and Programme of Action at the national level. The Committee also encourages the State party to increase their efforts to actively participate in the Preparatory Committee of the Durban Review Conference, as well as in the Durban Review Conference in 2009.

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 on 16 December 1992 (resolution A/RES/47/111). In this connection, the Committee cites General Assembly resolution of 19 December 2006 (A/RES/61/148), 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.

28. 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 official and national languages.

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

30. The Committee invites the State party to update its core document in accordance with the harmonized guidelines on reporting under the international human rights treaties, in particular those on the Common Core Document, as adopted by the fifth inter-Committee meeting of the human rights treaty bodies held in June 2006 (HRI/GEN/2/Rev.4).

31. In accordance with article 9, paragraph 1, of the Convention and article 65 of its amended rules of procedure, the Committee requests the State party to provide information, within one year of the adoption of the present conclusions, on its follow-up the recommendations contained in paragraphs 11, 19, and 23 above.

32. The Committee recommends that the State party submit its eighteenth, nineteenth, and twentieth periodic reports, in a single document, due on 10 February 2012, taking into account the guidelines for the CERD-specific document, as adopted by the Committee at its 71st session, and that the report be an update document and address all points raised in the present concluding observations.
