

TREATY BODY MONITOR

International Service for Human Rights



Human Rights Monitor Series

COMMITTEE FOR THE ELIMINATION OF RACIAL DISCRIMINATION 72ND SESSION REPUBLIC OF THE FIJI ISLANDS, 16TH & 17TH COMBINED PERIODIC REPORT 19TH AND 20TH OF FEBRUARY, 2008

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Information submitted to the Committee

On 19 and 20 February 2008 the Committee on the Elimination of All Forms of Racial Discrimination (the Committee) considered the combined 16th and 17th periodic State report of the Republic of the Fiji Islands (Fiji) regarding its implementation of the *International Convention on the Elimination of all Forms of Racial Discrimination* (the Convention). Fiji ratified the Convention on 11 January 1973, at which time the Government of the United Kingdom, on behalf of Fiji, placed reservations on Articles 4, 5, 6, and 15 of the

Convention. The Fiji Government affirmed these reservations after gaining independence, although the exact phrasing has been redrafted.¹

Fiji submitted its periodic report to the Committee on 10 January 2007.² The 81-page report is composed of two parts; the responses of the Fiji Government to the concluding observations made by the Committee in 2003,³ and the progress made in Fiji with respect to each article of the Convention since the last review. The report's headings address the major areas covered by the Convention, although in the case of contentious areas it tends to give general statements.⁴ The Committee's list of issues thus focused on alleged discrimination against non-indigenous Indo-Fijians by indigenous Fijians through unnecessary special measures for the latter population, amongst others.

A significant point of note was that Fiji underwent a *coup d'état* in December 2006, after the periodic report to be used for this session has been submitted. However, the current interim Government provided the Committee with a supplementary report only on the day of the review, making it difficult for the Committee members to ask questions that could take this new information into consideration.

The single NGO report submitted to the Committee was initiated and drafted by the Citizen's Constitutional Forum (CCF), with input and endorsement from the Ecumenical Centre for Research, Education and Advocacy (ECEA) and Women's Action for Change (WAC).⁵ There were fourteen NGOs in the original NGO Coalition on Human Rights (NGOCHR) in Fiji, but only the two NGOs mentioned above were able to provide their inputs in time on the draft. The report focused first on land issues, Government policy on land ownership in Fiji is allegedly biased to favour indigenous Fijians over Indo-Fijians. One of the professed reasons for the recent military coup was to nullify the allegedly racist *Qoliqoli Land Bill*, which would have had a devastating effect on Indo-Fijians and other ethnic minorities. Another reason was that the former Government attempted to free the perpetrators of the previous coup of 2000. The report then focused on other issues related to CERD's mandate, such as the lack of the construction of a national identity that encompasses minorities; race-based attacks on non-Christian places of worship; the communal vote system; hate speech; and the consequences of such racial discrimination in Fiji.

NGO briefing

The NGO briefing held prior to the convening of the Committee was hosted by a representative of the Citizen's Constitutional Forum (CCF), with a representative from the Fiji National Human Rights Commission present as well to interact with Committee members and answer their questions. The CCF representative informed the Committee members that there had been three public consultations towards the drafting of the State report, although the current interim Government had yet to collaborate with civil society. The main points raised were the preferential treatment of coup offenders of the previous Government; race-based affirmative action; unresolved land issues; racism in education; the rise in suicide rates from the sense of hopelessness amongst Indo-Fijians; and the lack of a national identity that encompasses indigenous and Indo-Fijians.

The representative from the Fiji National Human Rights Commission also gave a short update on the domestic situation in Fiji and the Fiji NHRC's role in it. Specifically, she stated the potential of the People's Charter for Change and Progress (explained below) to become a form of amnesty bill for people that have participated in the recent military coup; the situation of hate speeches and racial discrimination in education within Fiji; and the current status of the Fiji NHRC, which it claimed is doing what it can despite receiving limited funding.

¹ Available at: www2.ohchr.org/english/bodies/ratification/2.htm

² CERD/C/FJI/17, 10 January 2007. Available at: www2.ohchr.org/english/bodies/cerd/cerds72.htm

³ CERD/C/62/CO/3, 2 June 2004. This can be searched through: tb.ohchr.org/default.aspx

⁴ For instance, paragraph 308 simply states "By law, men and women have equal opportunities for employment."

⁵ Available at: www2.ohchr.org/english/bodies/cerd/docs/ngos/ngosfiji72.pdf

Themes and issues

The delegation for Fiji was headed by Mr Ross Ligairi, the Permanent Secretary for Foreign Affairs, International Cooperation and Civil Aviation. He was supported by Ms Judy Harm Suka, the Acting Principal Assistant Secretary, as well as by Mr Esala Nayasi, the Second Secretary and a member of the Fiji Mission to the UN in New York. Mr Ligairi conducted almost all of the interaction with the Committee, with Mr Nayasi responding in the second day sporadically and Ms Suka only speaking once.

Mr Ligairi's opening statement first outlined the incidents in Fiji since the submission of the present report two years ago, and argued that the interim Government undertook the military coup in order to deal with the deepening racial conflict between Fijians. He stated that Fiji will mandate the National Council for Building a Better Fiji (NCBBF) to develop the People's Charter for Change and Progress that will work towards a "Fiji which is non-racial, culturally vibrant, united, well-governed and truly democratic." After that Mr Ligairi went on to provide answers to the list of issues put forth by the Committee, which was followed by Country Rapporteur Mr Patrick Thornberry's presentation and questions posed by other Committee members. Mr Ligairi responded to these new questions posed by other Committee members the following day.

Reservations to the Convention and the definition of 'indigenous peoples'

Several themes were brought up with regards to the status of the Convention in Fiji's domestic law. Questions were first raised about the fact that Fiji has maintained reservations that were in place when it succeeded to the Convention after having gained independence from the United Kingdom. Mr Ligairi stated that Fiji intends to maintain its reservations to the Convention until the proper reviews are conducted regarding those issue areas. A large part of this has to do with the definition of indigenous peoples employed by the Fiji Government, which is different from the international legal concept of the term. Mr Ligairi recognized that the concept of 'indigenous' used by Fiji, due to historical considerations since the colonial ages, is different from its use in international law.

Committee member Mr Mahmoud Aboul-Nasr questioned the rationale that it is necessary for Fiji to have reservations to protect its indigenous population, arguing that modern international instruments such as the Convention itself or *ILO Convention No. 169* do not run counter to the *Declaration of the Rights of Indigenous Peoples*, and are capable of providing sufficient protection. This concern was echoed by Committee members Mr Ion Diaconu, Mr Jose Augusto Lindgren Alves, and Mr Jose Francisco Cali Tzay, who pointed out that the 'indigenous' Fijians as a group do not face injustice, as they play a dominant role in the governance of the country whilst also owning most of the land (86%).

However Mr Ligairi stated that Fiji intends to maintain its reservations, as the situation has not changed since 1973. He pointed out that indigenous Fijians do not want to end up like their counterparts in Australia and New Zealand. A possibility is the People's Charter and its potential for discovering a solution for racial discrimination issues; the success of which would spell the lifting of Fiji's reservations to the Convention.

The Committee did not further comment on this point, but recommended in the concluding observations that the Fiji "reflect on the appropriateness of its reservation and declarations in light of the developments in international law in relation to indigenous peoples' rights."⁶

⁶ CERD/C/FJI/CO/17, paragraph 9. Available at: www.ohchr.org/english/bodies/cerd/cerds72.htm

Penalization of racial offences

Another point concerning the status of the Convention in domestic law is the penalization of racial crimes. Mr Ligairi stated that there are provisions in the Fiji Penal Code and *Public Order Act* that deal effectively with conduct likely to stir up racial hatred, although he did concede that there are no provisions *per se* that designate offences committed for racial reasons as an aggravating circumstance. This was pointed out by a number of Committee members; Mr Ion Diaconu raised the question directly by asking how it is possible to punish those who have committed criminal acts motivated by racism and who is granted the authority to initiate the prosecution. Mr Regis de Gouttes pointed out that Fiji seems to be against forbidding racial organizations, and requested more data on prosecutions, complaints, and offenders involved in racial incitement and religious intolerance. He also expressed his hopes that the new People's Charter will bring in legislation to criminalise racial discrimination.

The Fiji delegation did not answer to these questions however, and thus in the concluding observations the Committee reiterated the concern above and strongly recommended that the Fiji Government amend its legislation to bring it in line with Article 4 of the Convention by adopting specific and unambiguous legislation prohibiting racist organizations and amending its laws so that racial motivation constitutes an aggravating circumstance for crimes.⁷

Access to land, the People's Charter for Change and Progress, and the *Vola ni Kawa Bula* (Indigenous Fijian Register of Births)

The issue of access to land and land utilization has been a long-standing issue in Fijian society. 83% of the land in Fiji is owned by indigenous Fijians, which they lease out to Indo-Fijians and other ethnic minorities for a period of 30 years under the current legislation. The problem arises from the fact that some land owners are exercising their right not to renew these leases. It is difficult for the non-indigenous Fijians to buy land at all, as priority is given to the indigenous people under the current legislation. Non-indigenous Fijians are therefore risk economic poverty due to their racial background, which constitutes a violation of the Convention.

Delegation head Mr Ligairi addressed this issue in his initial response, citing the movement within Fiji to draft a People's Charter for Change and Progress, which would deal with the land issue extensively, while in the meantime the *Committee on Better Utilisation of Land* (CBUL) had been established to provide immediate response. However, as Country Rapporteur Mr Thornberry pointed out, the CBUL's activities focus on education of land owners so that they may be more willing to lease their property, rather than deal with the legislative causes of the situation. Committee member Mr Diaconu seconded this observation, noting that access to land has been used politically in the past and is one of the main sources of instability in the country. Mr de Gouttes and Mr Murillo Martinez also asked for specific legislation in place or pending to deal with the issue, while asking for more information on the developments to the dialogue on peace and dispute resolution.

In his response the next day, Mr Ligairi gave some explanation regarding the *Vola ni Kawa Bula*. While all citizens of Fiji are registered on the day of their birth, death, and marriage in the national registry, only indigenous Fijians are registered under the *Vola ni Kawa Bula*. Although Mr Ligairi did not state this explicitly, the implication was that preference is given to those on the registry in being able to buy 86% of the land in Fiji. Mr Ligairi stated that this was to ensure the preservation of what was rightfully the claim of indigenous-Fijians for 5000 years. He argued that while this would not be changed, the Government would seek through the review process in drafting the People's Charter to unify the people and take account of all

⁷ CERD/C/FJI/CO/17, paragraph 20. Available at: www.ohchr.org/english/bodies/cerd/cerds72.htm

communities in the population. Committee member Mr Peter, however, expressed that as long as there are two registries in the population, ethnic tensions will prevail.

Thus in its concluding observations the Committee recommended that the drafting of the People's Charter be an all-inclusive process, including inputs from ethnic minorities. It also recommended that the Government hold its democratic elections as soon as possible, and ensure that this results in power sharing between ethnic communities while making sure that indigenous forms of governance are respected.⁸ The Committee also recommended that Fiji include in its next periodic report information on the precise relationship of the indigenous community to their lands, and in the meantime to implement special measures to prevent the further deterioration of the economic situation of non-indigenous Fijians. The Committee also strongly recommended that Fiji consider reviewing its current land regime to make it more accessible to these populations.⁹

Continuing special measures

A related point of concern raised by Committee members was the fact that the affirmative action programme enacted by the Government favoured indigenous Fijians, despite there being allegations that there is no more need for special measures aimed at the majority population. Country Rapporteur Mr Thornberry clarified that while special measures are not discriminatory under the Convention, they also need to be limited in scope and time so that it does not create a new state of segregation. Thus he emphasised that it is important to look at the justification, scope, monitoring of application, and the target population, focusing on present disadvantages as well as historical disadvantages. To get a clearer picture of this, the Committee members requested more updated data in relation to the effectiveness of the programme on poverty, unemployment, and education for various ethnic groups in Fiji, which Mr Ligairi explained wasn't at hand due to the restructuring of relevant departments that would produce them. He did state that a census has been carried out in 2006, but the results of that effort are still not out. He also promised the delegation that further information regarding positive action will be given in the next report, also stating that the Government intends to review the scope of its special measures programs and consult communities affected when devising new programmes.

In its concluding observations the Committee noted Fiji's stated intention and recommended that it engage in a data-gathering exercise to ensure that special measures are designed and implemented on the basis of need. It also stressed that these special measures should not lead to the maintenance of unequal or separate rights for different ethnic groups after their original objectives have been realized.¹⁰

Employment in the public sphere

With regards to the employment of non-indigenous Fijians in public service, Mr Ligairi cited the Equal Employment Opportunity (EEO) principle that is embedded when undergoing recruitment, training, and advancement in the Fiji public service. He stated that this process is monitored by the Public Service Commission, and that the only two reasons any group would have less representation would be either unsuitability/incompetence or the preference of the group in question to be employed in the private over the public sector.

There was much speculation with regards to Mr Ligairi's logic in explaining the lower representation in public sphere; Committee member Mr Dilip Lahiri stated for instance that the low representation of Indo-Fijians in the Fiji police and the military force is unlikely due to a lack of 'fit.' This would more likely have to do with how the organisations treated them during military coups.

⁸ CERD/C/FJI/CO/17, paragraph 10. Available at: www.ohchr.org/english/bodies/cerd/cerds72.htm

⁹ CERD/C/FJI/CO/17, paragraph 22. Available at: www.ohchr.org/english/bodies/cerd/cerds72.htm

¹⁰ CERD/C/FJI/CO/17, paragraph 17. Available at: www.ohchr.org/english/bodies/cerd/cerds72.htm

In the concluding observations the Committee thus recommended that Fiji consider implementing special measures aimed at achieving adequate representation of all communities in the country. Considering the important role that the military has played in the recent history of Fiji, such representation in the military would be especially important.¹¹

Education

In his initial statement, Mr Ligairi acknowledged the prerogative of parents to send their children to schools that provide religious and cultural instruction consistent to their own, while noting that this fact should not be a basis of discrimination on the part of the schools themselves. In the case of such discrimination on the part of schools, Mr Ligairi cited the measures taken by the Ministry of Education to deregister the school and to make it a private school. This, he argued, cuts Government support and assistance from the schools in terms of funds and human resources and hence “ensures” that no student is discriminated against when trying to enrol in any school in Fiji. Also, Mr Ligairi stated that positive measures are in place to assist indigenous-Fijians in education, as they are not performing on par with children from other minorities. He cited that this is done through counselling of communities and providing disadvantaged schools with assistance. He also highlighted that an Action Plan has been implemented to deal with racial discrimination in the education system in the long run.

On this issue, Committee member Mr Diaconu asked if schools can choose to reject taking in students based on race, while Mr Ewomsan asked what the indigenous-Fijians themselves view as the reason for their children’s scoring lower than other ethnic groups. Mr Peter questioned if the Government’s approach in deterring racial discrimination is sufficient; this could also mean that if a rich foundation prefers to engage in racial discrimination there will be no deterring mechanism to prevent it. Towards Mr Peter’s point, the delegation head Mr Ligairi responded that in most cases private schools need more assistance than public schools [not clear?]; it is not like the West where private institutions have more money than the public ones.

After this response, Committee member Mr Prosper again questioned the Fiji delegation on what happens to students who are enrolled in schools at the time the latter are deregistered into private schools. Ms Suka of the Fiji delegation spoke for the first time and stated that the delegation does not have further information regarding this, and would supply this information later on at the Committee’s request.

Besides this issue, Mr Peter also pointed out that while it is encouraging to note that it is mandatory to teach both the Fiji and Hindi languages in schools, there is an inherent discrimination taking place by coining the term ‘Fijian-Vernacular’ to the Hindi language.

In its concluding observations, the Committee recommended that Fiji take steps to ensure that school enrolment policies are not discriminatory, and also to ensure that curricula convey to students the importance of respect for different ethnic communities of Fiji, while taking strong action to promote intercultural education in the society.¹² It also requested Fiji to provide more detailed information on the Action Plan referred to by Mr Ligairi.¹³

The Fiji Human Rights Commission

Concern was raised with regard to the Fiji Human Rights Commission in that its Race Relations Unit, which deals with capacity building within the Commission to assist in harmonising inter-ethnic relations in Fiji, is no longer functional. Fiji’s head of delegation Mr Ligairi explained that this was the case because funding for this program has been withdrawn by the European Union Project Grant. Committee member Mr Kjaerum supplied the reason for this cessation, which is that the Fiji HRC sided with the military Government, whereas

¹¹ CERD/C/FJI/CO/17, paragraph 18. Available at: www.ohchr.org/english/bodies/cerd/cerds72.htm

¹² CERD/C/FJI/CO/17, paragraph 19. Available at: www.ohchr.org/english/bodies/cerd/cerds72.htm

¹³ CERD/C/FJI/CO/17, paragraph 24. Available at: www.ohchr.org/english/bodies/cerd/cerds72.htm

national human rights institutions need to maintain independence. This is a shame, he noted, as the Fiji HRC used to be a premier national human rights institution. Mr Kjaerum's opinion was joined by several other Committee members, such as Mr Regis de Gouttes and Mr Chris Maina Peter.

The delegation responded that although there are allegations that the funding was withdrawn due to the Fiji NHRC's alignment with the military, the withdrawal was in fact a part of a uniform policy of the EU pertaining to Fijian institutions in the former's refusal to recognise the latter's Government. He assured that the independence of the Fiji NHRC is in fact preserved, along with the ethnic composition of the Commission.¹⁴

Towards this issue, the Committee recommended in its concluding observations¹⁵ that Fiji to take all necessary steps to ensure the independence of the Fiji NHRC in accordance to the Paris Principles.¹⁶

Other issues

The suicide rate among the Indo-Fijian population is high. Mr Ligairi thus stated that this population has become the key target of the National Committee on the Prevention of Suicide (NCOPS). The NCOPS intervenes through awareness-raising and preventive measures against the phenomenon, especially for Indo-Fijian women in rural areas. Country Rapporteur Mr Thornberry and Committee member Mr Lahiri asked for studies on why this is happening, although there was no response from the Fiji delegation. The concluding observations recommended that Fiji place a comprehensive evaluation strategy of its suicide prevention programs, including the motives behind the pattern of suicides, and to present the results in its next periodic report to the Committee.¹⁷

The issue of detention has been brought up by the Committee members quite strongly, although the Fiji delegation was not able to present concrete information on the status of the issue in Fiji. The delegation merely stated that the aggrieved party can seek redress from the Fiji Human Rights Commission, the police, the courts, and the Ombudsman's office. This answer did not satisfy the Committee members, and Mr Peter observed that having no data on detention usually means that incidences of detention are either too numerous to count or there are none at all, the latter being unlikely. He inquired about the accessibility of the relief institutions mentioned by the delegation, and the level of the public's awareness of these procedures. The delegation did not respond to Mr Peter's inquiries, and thus in the concluding observations the Committee requested Fiji to present the relevant data in its next periodic report.¹⁸

Emigration is another phenomenon that occurs in high rates among the Indo-Fiji community. Mr Ligairi identified political instability as a cause of this, and highlighted a measure that has recently been introduced by the Fiji Government to lure these immigrants back, called 'Permanent Residence' status under Section 51(2) of the Immigration Regulations 2007, which allows former citizens to return and invest in Fiji. Committee member Mr Lahiri called for a sociological study as to what exactly caused the emigration in the first place, although this point was not made in the concluding observations.

Committee member Mr Huang commented on the protection of other minorities besides Indo-Fijians, such as the Chinese, which make up 4% of the population. Mr Ligairi answered that measures to protect such minorities are already ingrained in the Constitution and in the Bill of Rights. He also emphasised that there are awareness-raising TV-shows and workshops hosted by the Government, and related institutions are accessible on all islands. This point was also not mentioned separately in the concluding observations.

¹⁴ Out of the 24 people making up the Fijian NHRC, 50% are ethnic Fijians, 46% are Indo-Fijians, and the remaining 4% are of Chinese origin.

¹⁵ CERD/C/FJI/CO/17, paragraph 11. Available at: www.ohchr.org/english/bodies/cerd/cerds72.htm

¹⁶ A/RES/48/134, annex, 20 December 1993. Available at: www.un.org/documents/ga/res/48/a48r134.htm

¹⁷ CERD/C/FJI/CO/17, paragraph 23. Available at: www.ohchr.org/english/bodies/cerd/cerds72.htm

¹⁸ CERD/C/FJI/CO/17, paragraph 21. Available at: www.ohchr.org/english/bodies/cerd/cerds72.htm

Conclusions and next steps

In his concluding statements, head of delegation Mr Ligairi emphasised that Fiji is now on a new path of change, especially stressing the unifying role that will be played by the People's Charter for Change and Progress. He thanked the Committee for its interest in Fiji and extended an invitation to visit the islands.

The County Rapporteur Mr Thornberry responded to Mr Ligairi by asking the Fiji delegation to consider again the definition of indigenous people and how they may apply it to Fiji's context. He also brought the delegation's attention to some outstanding issues, such as the unanswered questions regarding public versus private schools, figures regarding detention, and equal opportunities, and requested that they be given as soon as they are answerable. Mr Thornberry concluded his statement by expressing his hopes that the People's Charter will in fact bring about healing in the situation in Fiji, and that the Convention's principles may help it along its way.

The Committee invited Fiji to submit its 18th, 19th and 20th periodic reports in a single document by February 2012.

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