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Committee on the Elimination of Racial Discrimination**Eighty-first session**

6 – 31 August 2012

**Consideration of reports submitted by States parties under
article 9 of the Convention****Draft Concluding observations of the Committee on the Elimination of
Racial Discrimination****Fiji**

1. The Committee considered the eighteenth to twentieth periodic report of Fiji (CERD/C/FJI/18-20), submitted in one document, at its 2181st and 2182nd meetings (CERD/C/SR.2181 and CERD/C/SR.2182), held on 15 and 16 August 2012. At its 2200th and 2201st meetings (CERD/C/SR.2200 and CERD/C/SR.2201), held on 30 August 2012, it adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the State party's report which is in conformity with the Committee's guidelines on the content and form of reports. It appreciates the State party's timeliness in submitting the report and the opportunity to engage in a constructive and frank dialogue with the State party. The Committee appreciates the efforts made by the delegation in responding to the questions and comments raised by Committee members.

3. The Committee notes with interest the involvement of civil society organizations in the reporting process.

B. Positive aspects

4. The Committee welcomes the withdrawal of reservations and declarations to articles 2 to 6, 15 and 20 of the Convention on 10 August 2012.

5. The Committee welcomes efforts made by the State party towards the elimination of institutionalized racism and the establishment of democratic institutions, including the adoption of the Roadmap for Democracy and Sustainable Socio-Economic Development 2009-2014.

6. The Committee welcomes the establishment of the Constitution Review Commission for the elaboration of a new constitution and notes the commitment made by

the State party to ensure the participation of all Fijians in the constitutional consultation process.

7. The Committee notes with interest a number of measures towards the elimination of racial discrimination in schools and promoting diversity, including the compulsory education of iTaukei and Hindi languages.

C. Concerns and recommendations

Disaggregated data

8. The Committee notes the comment made by the State party that the prohibition of collecting data based on ethnicity (CERD/C/FJI/18-20, para. 6) was established in pursuance of the Committee's previous recommendation (CERD/C/FJI/CO/17, paragraph 16), and was aimed at eliminating racial profiling, for example in immigration forms. However, the Committee regrets the lack of disaggregated data on the socio-economic situation of members of ethnic groups as well as the lack of gender analysis of data provided (arts. 1 and 5).

Recalling its revised reporting guidelines (CERD/C/2007/1 of 13 June 2008, paragraph 11), the Committee reaffirms that if progress in eliminating discrimination based on race, colour, descent, or national or ethnic origin is to be monitored, some indications of the number of persons who might be treated less favourably on the basis of these characteristics are needed. Also, the Committee recommends that in preparing data in accordance with the Committee's general recommendation No. 25 (2000) on gender-related dimensions of racial discrimination, the State party also take into account gender issues which may intersect with racial discrimination, and provide data disaggregated by gender.

In line with its general recommendation No. 8 (1990) on the interpretation and application of article 1 of the Convention, the Committee recommends that the State party ensure that data on the socio-economic situation of the population by ethnicity is collected on a voluntary and self-identification basis. It requests that the State party include such disaggregated data in its next periodic report.

Absence of comprehensive legislation on racial discrimination

9. Despite some provisions in domestic law that may address racial discrimination, including the revised Public Order Act which prohibits racial vilification, the Committee regrets the lack of a definition of racial discrimination in line with article 1 as well as the non-compliance of existing legislation with article 4 of the Convention. The Committee notes with concern that the State party has not adopted comprehensive legislation to prevent and combat racial discrimination (arts. 1, 2 and 4).

The Committee reiterates its previous recommendation (CERD/C/FJI/CO/17, paragraph 15) that the State party adopt comprehensive legislation on the elimination of racial discrimination that includes a definition of direct and indirect discrimination in line with article 1 of the Convention. The Committee also recommends that the State party ensure that its legislation is in full conformity with the provisions of article 4 of the Convention, including by establishing racial motives as an aggravating circumstance in the commission of crimes.

Absence of court cases on racial discrimination

10. The Committee expresses its concern about the absence of complaints, prosecutions and convictions relating to ethnically or racially motivated crimes lodged with courts or with the Fijian Human Rights Commission despite reports of institutionalized or de facto

racial discrimination in the country, including by law enforcement officials. The Committee is also concerned by the information regarding language barriers in court proceedings for minorities who do not speak English, iTaukei or Hindi (arts. 2, 4 and 6).

(a) Recalling its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system and noting that absence of complaints cannot be taken to mean that none exist, the Committee recommends that the State party assess the reasons for the absence of complaints relating to racial discrimination and address them.

(b) The Committee requests that the State party provide in the next periodic report updated information on complaints about acts of racial discrimination and on relevant decisions in court proceedings and by the Fijian Human Rights Commission, including on remedies provided to victims. It also encourages the State party to raise the level of public awareness of national legal remedies in the field of racial discrimination, and to disseminate the Convention in different languages.

(c) The Committee urges the State party to provide interpreters in court proceedings to minorities who are not speakers of the three common languages in order to guarantee the right of members of such minorities to a fair trial.

Mandate of the Fijian Human Rights Commission

11. While taking note of the 2009 Human Rights Commission Decree establishing the Fijian Human Rights Commission, the Committee is concerned by the information according to which this institution has worked without a Chairperson and Commissioners since its inception and lacks appropriate resources to protect and promote rights under the Convention. It is also concerned that the selection and appointment process is based on the discretion of the President of the Republic of Fiji (art. 2).

The Committee recommends that the State party provide the Human Rights Commission with adequate human and financial resources to carry out its mandate and appoint a Chairperson and Commissioners as soon as possible. The Committee encourages the State party to take all necessary measures to ensure the independence of the Commission by reinforcing its mandate in the new Constitution and revising the selection process in compliance with the Principles relating to the status of national institutions for the promotion and protection of human rights (General Assembly resolution 48/134).

Participation in public and political life

12. The Committee takes note of data provided by the State party on the representation of various groups of the population in public administration, police and the army. It reiterates its concern about the very low level of representation of minorities in public and political life. While taking note of the argument that recruitment is merit based (CERD/C/FJI/18-20, paragraph 28), the Committee is of the view that the State party should pay particular attention to the under-representation of minorities in public services, assess the reasons for this phenomenon and address it effectively (arts. 1, 2 and 5).

Reiterating its previous recommendations (CERD/C/FJI/CO/17, paragraph 20) and recalling its general recommendation No. 32 (2009) on the meaning and scope of special measures in the International Convention on the Elimination of All Forms of Racial Discrimination, the Committee recommends that the State party take special measures to improve the level of participation of persons belonging to minority groups in public administration and politics.

Economic, social and cultural rights of minorities

13. The Committee regrets the paucity of information on economic, social and cultural rights of persons belonging to less numerous minority groups. The Committee notes with concern that further efforts have yet to be taken to promote languages other than English, iTaukei and Hindi (arts. 5 and 7).

The Committee notes the commitment by the State party to assess the situation of the most vulnerable groups in need of specific assistance in order to take measures in allocating resources and designing appropriate programmes for their benefit. The Committee recommends that the State party promote minority culture and languages and include information on the economic, social and cultural rights of minorities in the next periodic report.

Rights of indigenous peoples

14. The Committee takes note of measures adopted by the State party in providing assistance on the basis of need rather than ethnicity, including various Land Use Decrees to ensure equal access to land for all. It is however concerned by reports of insufficient consultation and participation of indigenous people on issues affecting them such as equitable rent for the use of its land. The Committee notes the information about the dissolution of the Great Council of Chiefs without prior consultation(arts. 2 and 5).

The Committee reaffirms the importance of securing the free, prior and informed consent of indigenous groups regarding their permanent rights as a group, including issues affecting them and their ways of living. It urges the State party to enhance appropriate mechanisms for effective consultation with indigenous people around all policies affecting their identity, ways of living and resources, in line with the Convention, the United Nations Declaration on the Rights of Indigenous Peoples and the ILO Convention on 169 on Indigenous and Tribal Peoples. The Committee requests the State party to clarify the issue relating to the dissolution of the Great Council of Chiefs.

Ethnicity and freedom of religion

15. The Committee regrets the absence of information on measures taken to address discrimination based on ethnicity and religion in light of reports of religious intolerance, often linked with ethnicity. It is concerned by the information that some newspapers publish advertisements seeking tenants or house maids of particular ethnicity or religion (art. 5).

Taking into account the intersectionality between ethnicity and religion, the Committee recommends that the State party assess possible double discrimination that members of ethnic minorities belonging to specific religious groups may face. It also encourages the State party to prohibit discriminatory advertisements and ensure equal enjoyment of fundamental rights and freedoms to all.

Fighting racial discrimination in schools

16. The Committee notes the absence of information on the concrete results of a number of policies on the elimination of racial discrimination in schools, including the change of school names that bore an ethnic connotation, and the school zoning policy (art. 5).

The Committee encourages the State party to evaluate its policies aimed at eliminating racial discrimination in access to education and include this information in its next periodic report. It encourages the State party to further promote training on ethnic,

cultural and religious diversity in the country and to integrate these into the school curriculum in order to promote interethnic friendship and solidarity.

D. Other recommendations

Ratification of other treaties

17. Bearing in mind the indivisibility of all human rights, the Committee encourages the State party to consider ratifying those international human rights treaties which it has not yet ratified, in particular treaties the provisions of which have a direct bearing on the subject of racial discrimination, such as International Covenant on Civil and Political Rights (1966), International Covenant on Economic, Social and Cultural Rights (1966), International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990).

Follow-up to Durban Declaration and Programme of Action

18. In light of its general recommendation No. 33 (2009) on follow-up to the Durban Review Conference, the Committee recommends that the State party give effect to the Durban Declaration and Programme of Action, adopted in September 2001 by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, taking into account the Outcome Document of the Durban Review Conference, held in Geneva in April 2009, when implementing the Convention in its domestic legal order. The Committee requests 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.

Amendment to article 8 of the Convention

19. The Committee recommends that the State party ratify the amendments 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 in its resolution 47/111 of 16 December 1992. In this connection, the Committee cites General Assembly resolution 61/148, 63/243 and 65/200, in which the Assembly General strongly urged States parties to accelerate their domestic ratification procedures with regard to the amendment to the Convention concerning the financing of the Committee and to notify the Secretary-General expeditiously in writing of their agreement to the amendment.

Dissemination

20. The Committee recommends that the State party's reports be made readily available and accessible 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 other commonly used languages, as appropriate.

Follow-up to concluding observations

21. In accordance with article 9, paragraph 1, of the Convention and rule 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 to the recommendations contained in paragraphs 12, 13 and 14 above.

Paragraphs of particular importance

22. The Committee also wishes to draw the attention of the State party to the particular importance of recommendations in paragraphs 8, 10 and 14 and requests the State party to provide detailed information in its next periodic report on concrete measures taken to implement these recommendations.

Preparation of the next periodic report

23. The Committee recommends that the State party submit its 21-22 periodic reports in a single document, due on 10 February 2016, taking into account the guidelines for the CERD-specific document adopted by the Committee during its seventy-first session (CERD/C/2007/1), and that it address all points raised in the present concluding observations. The Committee also urges the State party to observe the page limit of 40 pages for treaty-specific reports and 60-80 pages for the common core document (see harmonized guidelines for reporting contained in document HRI/GEN.2/Rev.6, para. 19).
