



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

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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Seventy-second session

SUMMARY RECORD OF THE 1850th MEETING

Held at the Palais Wilson, Geneva,
on Wednesday, 20 February 2008, at 10 a.m.

Chairperson: Ms. DAH

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The meeting was called to order at 10.30 a.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (continued)

Sixteenth and seventeenth periodic reports of Fiji (continued) (CERD/C/FJI/17; HRI/CORE/FJI/2006)

1. At the invitation of the Chairperson, the members of the delegation of Fiji resumed their places at the Committee table.
2. Mr. LIGAIRI (Fiji) emphasized the fact that the sixteenth and seventeenth periodic reports, submitted in a single document, did not provide an accurate picture of the current interim Government's position on the implementation of its commitments under the Convention. In accordance with the draft People's Charter for Change and Progress, all policies relevant to the Convention were under review by the Government and civil society. The Government was aware of the need to combat corruption and to ensure that basic services, such as clean water supply, energy, public transport and decent roads, were available to all communities. The election timetable had been set, with endorsement from the Pacific Island Forum.
3. While the internationally accepted definition of indigenous peoples was not totally relevant to the Fijian context, Fijian citizens who were descendants of the country's original inhabitants related to the concept as outlined in ILO Convention No. 169. His delegation was aware that, under article 1 (3) of that Convention, the term "peoples" should not be interpreted in any way that could affect individuals' rights under international law.
4. The 2005 Reconciliation Bill had aimed to provide amnesty to several convicted ministers, their supporters and those who had still to be charged for their involvement in the May 2000 insurrection. Despite warnings from the military against passing the bill, the Government had pressed ahead with it, resulting in the military coup and subsequent withdrawal of the bill.
5. The Great Council of Chiefs had been suspended by the interim Government, which had established a task force to investigate the Council's membership. The outcome of those investigations was currently before the Government for consideration.
6. The results of the 2006 national census, which were yet to be published, would provide most of the statistical data requested by the Committee.
7. Section 30 of the Constitution recognized the delicate balance between freedom of expression and opinion, and acts intended to incite ill-will and hostility, as described in the periodic report and the replies to the list of issues.
8. The periodic report had been prepared in consultation with many NGOs. Those organizations had been invited to submit their views on government policies relevant to the Convention, and the report had been finalized only after completion of the consultations. The Government welcomed the submission to the Committee of NGO reports on the situation in Fiji.

9. The Fiji Human Rights Commission was an independent body. The interim Government had not intervened in its work. Despite challenging times, the Commission continued to strive to address all human rights issues in the country. His delegation had not had time to conduct adequate consultations in order to respond to the suggestion that a new human rights commission should be established.

10. The interim Government had repealed section 8 (1) (g) of the Immigration Act because of its racist implications. It had provided that non-Fijian citizens who were registered in the Vola Ni Kawa Bula (Indigenous Fijian Register of Births) could enter, reside and work in Fiji without a visa or permit. Ethnic Fijians were required to ensure that births and deaths were recorded in the civil register, as were all other citizens. Registration in the Vola Ni Kawa Bula, in order to record traditional heritage and lineage, was optional. Fiji had acceded to the Convention relating to the Status of Refugees in June 1972. The publication of the 2003 Immigration Act in the Official Gazette in January 2008 had given full legal effect to the provision on refugees and asylum-seekers, thus bringing domestic legislation into line with the relevant provisions of the Convention.

11. The interim Government was currently discussing Fiji's reservations to the Convention with all the relevant stakeholders as part of its efforts to develop a draft People's Charter for Change and Progress which could resolve the issues that had resulted in successive military coups. Only when acceptable solutions had been found to the issues of land ownership, education and elections would the Government be in a position to withdraw those reservations.

12. The interim Government was also reviewing the special measures that had been implemented in order to ensure that they did not result in discriminatory practices. Some measures had been suspended or extended to all disadvantaged groups instead of applying to one ethnic group only. In addition, steps were being taken to establish an effective monitoring mechanism.

13. Indo-Fijians were required to provide their fathers' names on official documents in order to distinguish between the many individuals who shared the same first and family names.

14. There was no racial segregation in relation to housing or communities. All ethnic groups mingled socially with no problems.

15. The Government provided funding to private schools on condition that the schools accepted students from all ethnic groups. If that condition was not fulfilled, the school was deregistered as a public school, and the fact that it did not receive government assistance or funding was publicized. The majority of schools did fulfil that condition and received assistance through funding for teachers. While some private schools in urban areas had better facilities than government-funded schools, that was not the case with all private schools.

16. The CHAIRPERSON said the Committee had taken note of the fact that the current periodic report had been prepared by the previous Government of Fiji. However, in accordance with the Committee's methods of work, it was important for the State party to submit any updated information, including its replies to the list of issues, before the beginning of the session in order to give Committee members time to review that information.

17. Mr. KJAERUM emphasized the importance the Committee attached to the work of national human rights institutions. It was his understanding that the Fiji Human Rights Commission was no longer functioning because the European Union (EU) had suspended its funding of the Commission's work after the Commission had supported the military coup of December 2006. He stressed that such institutions must remain impartial and even-handed in order to ensure that they enjoyed the support and trust of all segments of the population. His question the previous day had not been whether a new human rights commission would be established but whether any steps were being taken to ensure that the current Commission would resume operations as a truly independent and impartial body trusted by the whole population.

18. Mr. LINDGREN ALVES welcomed the delegation's explanation concerning its reservations to the Convention. He requested a further explanation of the system or systems for the registration of births and deaths of indigenous Fijian and non-indigenous individuals, including the Vola Ni Kawa Bula registry, and stressed that a single registry for all citizens would promote social cohesion. He recalled that the Committee's guidelines for the preparation of periodic reports specifically requested that the State party provide information on the number of children from mixed marriages. Lastly, he requested more information about the partnership with the New Zealand Government on awareness of "healing" mentioned in the periodic report (para. 72(g)).

19. Mr. PROSPER asked whether, when a public school with discriminatory admission policies was re-registered as a private school, the pupils were transferred to other public schools. He also asked how many public schools had been re-registered under those circumstances.

20. Mr. de GOUTTES recalled the State party's obligation pursuant to article 4 of the Convention to take measures to eradicate all incitement to, or acts of, discrimination. He was therefore concerned that there was no legislation specifically addressing the issue of racial discrimination. The Public Order Act 1969 addressed the issue of racial antagonism but fell far short of the comprehensive legislation required to comply with the provisions of the Convention. In that context, therefore, he welcomed initiatives undertaken by the current Government, such as the People's Charter for Change and Progress, as a sign of its commitment to equal treatment for all citizens and asked for information on whether the State party intended to enact legislation to comply fully with its obligations under the Convention.

21. Mr. PETER, referring to the delegation's written replies to question 10 of the list of issues, asked to what extent the population was aware of the redress mechanisms available for abuses of the rules and procedures governing detention and whether the population had ready access to mechanisms such as the Fiji Human Rights Commission and the Ombudsman, given the geographical obstacles inherent in a State composed of hundreds of islands.

22. Mr. DIACONU said he was encouraged by the State party's commitment to reconciliation and land reform. He stressed, however, the importance of enacting specific legislation prohibiting discrimination, especially in the light of the prohibition provided for in of section 38 of the Constitution. The current Constitution pre-dated the State party's reservations to the Convention and could be used to justify withdrawal of those reservations. He also expressed concern at the military forces' influence on the political and legislative process, for example their opposition to the Reconciliation Bill of 2005, which had prompted the forces to intervene. The military should be under civilian control and at the service of the country and its people.

23. Mr. HUANG Yong'an welcomed the State party's positive attitude towards its obligations under the Convention. While economic development improved the situation of all groups in the country, it was important that the Government show a firm commitment to the elimination of discrimination. In that context he noted that an ethnic Chinese community had lived in harmony with the rest of the population for generations and contributed to economic development. He hoped the rights of that minority would continue to be respected.

24. Mr. CALITZAY noted from the periodic report (para. 20) that the Constitution was in conformity with ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries and the draft Declaration on the rights of indigenous peoples. Although the delegation had stated in its oral responses that Fiji would not necessarily consider itself bound by definitions relating to indigenous peoples contained in international instruments, he wondered whether, given the General Assembly's recent adoption of that Declaration, which affirmed the right of indigenous peoples to self-determination, the State party might consider formally recognizing the right of indigenous peoples to self-determination.

25. Mr. MURILLO MARTÍNEZ requested more information on the status and effects of legislative initiatives in the area of land management and indigenous land rights. More information would also be appreciated on any indicators or data relating to the success of programmes to promote equality of opportunity for all ethnic groups.

The meeting was suspended at 11.45 a.m. and resumed at 12.05 p.m.

26. Mr. LIGAIRI (Fiji) begged the Committee's indulgence as some of the questions would require in-depth analysis and consultation with relevant bodies in Fiji in order to provide full answers that would be done as promptly as possible.

27. In response to the point regarding the withdrawal of funding from the Fiji Human Rights Commission, he explained that after the military takeover of 6 December 2007, the EU had withdrawn most of the funding for Fiji in all areas since it did not recognize the current Administration.

28. On the issue of the registration of indigenous people, he said that there were two registers in Fiji: one for births, deaths and marriages in which all citizens were entered; and one specifically for indigenous people. Some 86 per cent of Fiji was indigenous land, as the indigenous peoples had inhabited the Fiji islands since 3000 B.C. and other ethnic groups had arrived later. It was therefore essential that all persons entitled to ownership of indigenous land should be included in the separate register.

29. Regarding protection of minorities, he pointed out that the Fijian Constitution provided for the rights of minority as well as majority groups in chapter 2, entitled "Compact", and in chapter 4, entitled "Bill of Rights" (sects. 35, 38 and 39). Chapter 5, entitled "Social Justice", contained provisions to ensure that minority groups were represented in public service in proportion to their numbers in the adult population as a whole.

30. Ms. HARM SUKA (Fiji), on the issue of the deregistration of public schools, explained that the definition of a public school in Fiji was not necessarily the same as in other countries. The Ministry of Education listed schools as being either private or public mainly for the purposes of providing funding. When a public school was deregistered, it would remain open but would make other arrangements to compensate for the withdrawal of State assistance.

31. Mr. NAYASI (Fiji), in response to the point raised on article 4 of the Convention, acknowledged that Fiji did not yet have specific legislation in force to address racial discrimination, but the relevant government policies and legislation were currently being reviewed.

32. The reason why no figures had been provided with respect to detention was simply that the delegation did not currently have any available. They would, however, be included in the next periodic report.

33. The Human Rights Commission and NGOs in Fiji conducted awareness programmes on human rights, using methods such as newsletters, television programmes and workshops throughout the country. Regarding citizens' access to those institutions for the purposes of redress, he pointed out that since there were police stations on every island, access to justice was not a problem.

34. Mr. LIGAIRI (Fiji), in response to a question on the involvement of the military in national activity, recalled that there had been four military interventions in Fiji since 1987. One of the fundamental reasons behind the intervention in December 2007 was the fact that the political governance of the time had been characterized by deepening racial schism, demonstrating that democratic forms of governance could conceal undemocratic practices. The interim Government was attempting to capitalize on the chance it had been given to solve such problems and to bring about peace, harmony and goodwill. Fijians could achieve that by uniting as a multiracial, multi-ethnic and multi-religious people and by setting aside personal interest for the sake of the common good.

35. The CHAIRPERSON asked the delegation to provide more in-depth answers on issues that would be covered by the Committee's concluding observations.

36. Mr. LINDGREN ALVES, recalling his observation that it was odd to apply the term "indigenous people" to the majority group in power since it normally referred to persecuted minority groups, asked why the indigenous majority owned 86 per cent of the land. The argument that the indigenous peoples had inhabited Fiji since 3000 B.C. was irrelevant, since the function of the Committee was not to deal with the past. It was essential to build a unified society that accommodated both the indigenous and Indian peoples and granted them equal rights, including land rights.

37. Mr. AMIR said that when Fijians had gained their independence they had done so as an indigenous people. He wondered whether persons who had not been among the population when Fiji had acceded to independence could also be considered as indigenous Fijians. Indigenous Fijians had the right to dispose of their lands and to organize their society in keeping with such legislation as they saw fit to enact.

38. With regard to Fiji's declaration concerning article 4 of the Convention, it was difficult to know whether that declaration had been made on the basis of a sovereign decision by Fiji or had been imposed on Fiji by the international community. Once again, the people of Fiji had the right to decide for themselves whether or not to withdraw their reservations to the Convention after due consideration of the issues involved.

39. It was regrettable that the EU had taken the decision, following the upheavals in 2000, not to renew a project grant for the Fiji Human Rights Commission since that decision had the effect of denying Fiji the means to resolve its internal problems and conflicts and would in fact exacerbate them.

40. Mr. LIGAIRI (Fiji) said that his country was on a new path of change. The interim Government was in the process of formulating a People's Charter for Change and Progress whose objective was to turn Fiji into a non-racial, culturally vibrant, united, well-governed and truly democratic nation that sought progress and prosperity through merit-based equality of opportunity and through peace. The proposed Charter would serve as a beacon to help Fiji move forward. Its most valuable promise was the unification of the various communities, which the people of Fiji had not yet had the opportunity to experience. It was not confined to political issues, but also contemplated needed institutional, social and economic changes and would be formulated in consultation with the people. It summed up what the interim Government was trying to achieve as a means of ensuring progress. He thanked the Committee for the constructive dialogue which had been prompted by the consideration of Fiji's report and extended an invitation to the Committee to visit Fiji.

41. Mr. THORNBERRY, Country Rapporteur, said that it was indeed an unusual situation when an indigenous people was in a dominant position in a State, as was the case in Fiji; that raised questions about the definition of the term "indigenous peoples". The Declaration on the Rights of Indigenous Peoples did not offer such a definition, although it did place some limitations on indigenous rights. That issue illustrated the fact that much thought still needed to be given to the relationship between the norms of the Declaration and those of ICERD and other human rights instruments.

42. With regard to States parties' reservations, article 20 of the Convention outlined a specific procedure to be followed for determining their validity. But rather than focusing on Fiji's reservations as a subtraction from international norms, it might be helpful to focus on what indigenous rights could add to the protection of indigenous Fijians. Reservations were usually considered to be regrettable and the Committee always encouraged their withdrawal.

43. It was important to point out that the concept of affirmative action in the Convention was a rather narrow one in the sense that it involved temporary special measures that should not be continued after the objectives to which they were directed were achieved. On the other hand, if circumstances warranted them, such measures were mandatory. Affirmative action was usually introduced as an emergency measure to assist severely disadvantaged members of society.

44. The interim Government had placed tremendous emphasis on the promise held out by the People's Charter for Change and Progress in terms of the potential for reconciliation and balance it would achieve among the various population groups and political parties. There seemed to be a genuine process of national reflection under way, and he hoped that it would unfold peacefully and ultimately represent the authentic voice of the Fijian nation.

45. The principles of the Convention, which he trusted would inform discourse in Fiji, tended to be interpreted by the Committee in terms of small steps rather than dramatic changes. In its concluding observations, the Committee would indicate certain directions and results that it would like Fiji to achieve, but the precise means by which Fiji did so would ultimately be a matter of its sovereign responsibility.

46. The CHAIRPERSON thanked the members of the delegation for their constructive replies. She hoped that the dialogue with the Committee would help to further efforts to combat racial discrimination, especially since that had been established as one of the objectives of the proposed People's Charter.

The meeting rose at 1 p.m.