



**Coordinated by the Citizens' Constitutional Forum
on behalf of the NGO Coalition for Human Rights**

**NGO Alternate Report to the Committee on the
Elimination of Racial Discrimination for the
Republic of Fiji**

June 2012

1. Glossary and Contributions

1.1 Glossary

Glossary	
CCF	Citizens' Constitutional Forum
CERD	Convention on the Elimination of all forms of Racial Discrimination
FHRC	Fiji Human rights Commission
IG	Interim Government
NGO	Non-governmental Organisation
NGOHCR	NGO Coalition for Human Rights
POAD	Public Order (Amendment) Decree
RFMF	Republic of Fiji Military Forces
USP	University of the South Pacific

1.2 Contributions

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- Ecumenical Centre for Research, Education and Advocacy
- Fiji Women's Crisis Centre
- Fiji Women's Rights Movement
- Fem'Link
- Peoples Community Network
- Women's Action for Change
- Transparency International

2. Introduction

THIS report is a response to Fiji's 18th, 19th and 20th periodic reports to CERD, and has been developed with input from nine non-governmental organisations from across Fiji and one government statutory authority. These organisations work regularly with people who face racial discrimination and associated disadvantage. The contributions cite research and other evidence to demonstrate significant areas in which the State Party has failed to sufficiently meet its obligations under CERD. It addresses issues raised in Fiji's combined 18th, 19th and 20th periodic reports. Where appropriate, Recommendations have been offered. A summary of the Recommendations offered throughout the report is listed below.

The NGOCHR is a coalition of civil society organizations that works towards a Fiji that respects and protects human rights and fundamental freedoms within the framework of the rule of law. The work of the NGOCHR is grounded in the Universal Declaration of Human Rights including other international conventions.

The last Alternate Report submitted by CCF to the UN CERD Committee in Geneva was in February 2008. This was alongside the Fiji State Report that same year.

Although the alternate report received the firm backing of two other NGOs namely Women's Action for Change (WAC) and Ecumenical Centre for Research, Education and Advocacy (ECEA) this support was rather dismal when compared to the dozen NGOs who signed up the previous alternate report in year 2003. The 2006 military coup stirred a division amongst Fiji NGOs that divided them in their immediate respective responses to the 2006 political crisis. It took its toll, leaving behind a divided Fiji NGO community in 2008.

For the preparation of this current alternate report we are delighted to report that nine leading Fiji NGOs have been engaged over the 12 months since June 2011 and namely, Citizens Constitutional Forum; Ecumenical Centre for Research and Advocacy; femLINK Pacific; Fiji Women's Crisis Centre; Fiji Women's Rights Movement; Interfaith Search Fiji; Women's Action for Change; Drodrolagi movement; Transparency International Fiji. They have all been in scope for signatories to the 2012 Alternate report.

Fiji has been a signatory to CERD since 1973 but successive governments between 1985 and 2002 failed to submit reports to the committee and, therefore, reneged on their international obligations.

It is pertinent to note that after Fiji's last submission in mid-2006, the legally and democratically elected government was removed from power by the Republic of Fiji Military Forces in December of the same year with the army promising to remove corruption and introduce policies which would end what it described as racist legislation. It has also resolved to remove race-based voting – a feature of Fiji's electoral system since independence in 1970 - through progressive changes. The country has been administered by a military-backed regime since December 2006 and by decree following the abrogation of the Constitution in May 2009.

The Fijian non-government organisations present this critique of Fiji's progress since that time, not to suggest that Fiji has failed comprehensively in its implementation of CERD, but to demonstrate the areas where the country could and need to make further advances in meeting its obligations under CERD.

FOLLOWING an Executive Summary, this report will be divided into two principle sections:

PART 1

An in-depth consideration of some of the principles issues that were highlighted in the previous CERD session in relation to the Republic of Fiji:

- Withdrawal of Reservations;
- The position of iTaukei Fijians;
- Status of the Fiji Human Rights Commission;
- Anti-racial discrimination legislation; and
- The People’s Charter for Change, Peace and Progress
- Access to justice for non-English speakers

PART 2

A critique on progress made in relation to the Concluding Statements in Fiji’s last periodic report on CERD.

3. Executive Summary

3.1 Summary of Report

THIS report demonstrates that the Committee’s concerns and recommendations from their previous Concluding Observations have gone largely unheeded by the State Party.

It will demonstrate that despite the promulgation of several important laws, policies, and programmes the State Party has failed to sufficiently eliminate racial discrimination, particularly against ethnic Indians. At the same time, new policies threaten the iTaukei people. It will also show that deep-seated resentment based on past political events remains in parts of the community and is based largely on ethnic and religious differences, many of which are perceived rather than real.

This report will show that whilst attempts have been made to create a truly democratic, non-secular society in Fiji, important laws, policies, and programmes of the State Party have failed to sufficiently eliminate racial discrimination against Fijians from culturally and linguistically diverse backgrounds. In some areas there has been subtle retrogression marked by increased discrimination against members of these groups.

Current legislation falls short of prohibiting racial discrimination, as require by CERD Recommendation 15 and falls short of criminalizing racist organisations and amending the laws to the effect that racial motivation is an aggravating circumstance for crimes, as required by CERD Recommendation 20.

The CERD Committee has requested that the State Party, in a proposed new national constitution, creates legislation which entrenches guarantees against racial discrimination. It remains to be seen what will be included in the new constitution in this respect, although ‘elimination of discrimination’ was included in a list of so-called ‘non-negotiables’ referred to in a speech on the contents of the

constitution by the interim Prime Minister in March 2012.

On the issue of human rights the report will show that the Fiji Human Rights Commission exists without the requisite commissioners making it virtually impotent. Commission staff must refer all complaints to police and there is therefore no process for people to refer human rights abuses to an appropriate authority which can facilitate dialogue and solve differences, nor can it influence legislation and government policy in this important area.

The NGO Alternate Report will highlight the fact that the Republic of Fiji Military Forces remains a highly ethno-nationalistic organization, despite the absence of explicit legislation precluding the recruitment of other ethnic groups. While an Indo-Fijian has been appointed Chief of Staff (and effectively Deputy Commander) holding the rank of Brigadier, the officer cadre of the RFMF consists of less than 10 Indo-Fijian officers. Indeed, Indo-Fijians make up less than five per cent of the entire force, despite making up close to 35 per cent of the national population.

Discrimination of the Indo-Fijian and Chinese communities continues through the absence of specific plans for their development. A worrying trend is a weekly morning programme on State radio in which the presenter speaks in a faux-Chinese accent. Previously the same programme used a presenter speaking with an Indian accent. This does not augur well for a nation which is attempting to improve tolerance and inter-racial relationships.

In the area of education and rural development, State policies have been designed to ensure there is no ethnic discrimination in the distribution of assistance. However, budgetary provisions show that the iTaukei Affairs Board has been allocated funding in 2012 to provide scholarships for one particular ethnic group in apparent contradiction of State policy. Budgetary allocations also indicate that a major portion of government funding will assist the rural iTaukei community in the areas of shipping, road construction, water supply and electrification. No provision seems to have specifically been made to assist other ethnic groups

Minority ethnic groups – Vietnamese and Chinese – continue to be denied effectual judicial service because of the absence of qualified interpreters. Several unsuccessful attempts have been made by the Justice Ministry to recruit individuals with translation skills, but to no avail. It is likely that the concept of recruiting translators overseas for the duration of trials is considered financially prohibitive.

3.2 Summary of Recommendations

- 3.2.1** That the State Party withdraws its Reservations, showing a genuine commitment towards fulfilling all of the Articles of the Convention.
- 3.2.2** That the State Party makes public its position on the status of the iTaukei people so as to provide certainty to them of their position in the future society of Fiji.
- 3.2.3** That all necessary steps are immediately taken by the State Party to install a fully functioning, independent Human Rights Commission which is set up, and acts, in accordance with the Paris Principles (General Assembly resolution 48/134, annex, of 20 December 1993).
- 3.2.4** That the State Party puts in place comprehensive laws on the elimination of racial discrimination, including acts perpetrated by private persons and that it adopts unambiguous

legislation prohibiting racist organisations and that it also amends its laws to the effect that racial motivation constitutes and aggravating circumstance for crimes.

- 3.2.5** That the State Party ensures there are sufficient state-funded interpreters for all people who require it that are involved in the judicial process.
- 3.2.6** That the State Party publishes six-monthly updates on work done by ministries and departments to show what progress has been made on implementation of the Charter initiatives, detailing expenditure by sector to show whether spending has been adequately spread among ethnic groups, especially the disadvantaged.
- 3.2.7** That the State Party ensure that the principles of inclusive, free and open dialogue and consultation and education on all matters relating the Charter, particularly during the constitution consultation period, are used.
- 3.2.8** That the State Party engages with Civil Society to formulate a plan for community education on the Constitution in all ethnic communities once this new constitution has been passed.
- 3.2.9** That the State Party withdraws the Public Order Act (Amendment) Decree 2012 to allow for true participation and dialogue in the constitution consultation process and on elections.
- 3.2.10** That the State Party Ensures that the new constitution provides for the removal of race-based voting.
- 3.2.11** That the State Party repeals the Media Industry (Development) Decree.
- 3.2.12** That the State Party launches a national enquiry into the events of 1987, 2000 and 2006 to determine whether race was a factor in the removal of the respective legally-elected governments.
- 3.2.13** That the State Party takes action to ensure that recruitment policies for the RFMF are not discriminatory and that the composition of the armed forces is representative of Fiji's population.
- 3.2.14** That the State Party includes the teaching of all cultures, religions and languages in the school curriculum and ensures that these lessons are taught wherever practical
- 3.2.15** That culture and faith is included in the school curriculum as a means by which to increase tolerance of other ethnicities and faiths
- 3.2.16** That the State Party provides data on the names changes of schools and changes to composition of student and teacher population by ethnicity together with a comprehensive plan for continued integration for the next four years.
- 3.2.17** That the State Party makes public information on all affirmative action policies, stating the duration of specific projects, ethnic breakdown of recipients and expenditure by programme.
- 3.2.18** That the State Party ensures a programme of civic education in consultation with and including the participation of CSOs, faith-based groups and traditional leaders, addressing the

issue of the need for a common name and identity.

- 3.2.19** That the State Party remove any by-laws and which cater to specific sections of the community by ethnicity
- 3.2.20** That the State Party ensures its housing policies and those of the Fiji National Provident Fund do not discriminate against all minority groups and that all lease or rental agreements guarantee a fair deal for landowner and tenant.
- 3.2.21** That the State Party removes restrictions which prevent the Solomon Islands community from using FNPF contributions for rural housing.

PART 1

4. Withdrawal of Reservations

DESPITE recommendations in its previous concluding recommendations, no move has been made by the State Party to remove the current reservations and declarations. The maintenance of these reservations and declarations continues to seriously affect the full implementation of the Convention.

We do question CERD's assertion that the reservations should be removed as a result of developments in international law. We agree that they should indeed be removed, but question the reasoning. We assume that, in the concluding observations at paragraph 9 of the last session, reference to 'developments in international law with regard to the protection of indigenous rights', is reference to the United Nations Declaration on the Rights of Indigenous Peoples.

Assuming this to be so, we do have reservations as to whether 'indigenous Fijians' would be afforded the protection of this Declaration. There is substantial comment on the definition of 'indigenous peoples' and, for good reasons, no definitive definition is provided. However, much of the research and comment made on the area (in particular the apparently most persuasive work – that of Jose R. Martinez Cobo in his study on *The Problem of Discrimination against Indigenous Populations*). The principles he put forward included, inter alia, a requirement that they form 'non-dominant sectors of society'.

The newly-named iTaukei people form 53% of the population, own 87% of the land and form the overwhelming majority of the IG and the RFMF. It is difficult to derive from this that the iTaukei people are anything other than a dominant (if not the most dominant) sector of Fijian society. It is therefore also difficult to derive that they would be afforded the protection of the convention. Indeed, academic comment (for example by Litea Meo-Sewabu and Wheturangi Walsh-Tapiata of Massey University, New Zealand) has also supported this view.

The Government of the United Kingdom for Fiji made the Reservations prior to independence. The Reservations and interpretations on the Convention were based around the colonial administration and how the administration worked with the 'indigenous community' prior to independence. This type of administration continued during and after independence where there was continued differential treatment of 'indigenous Fijians' and the Indo Fijian community, with the interests of 'indigenous Fijians' being preferred.

The effect of this and the kind of administration systems that were in place, combined with introduced systems, only furthered the racial divide between the Indigenous Fijians and Indo Fijians who, at the time, made up a majority of Fiji's population.

This gave rise to race-based politics. Sadly many of Fiji's past leaders, chiefs, political elites and parties used the issue of race for personal gain (or for the benefit of a select few) and ambition at the expense of racial harmony, understanding, peace and religious tolerance.

Fiji's current legislation and policies are a reflection of Fiji's race-based politics over the years. This has resulted in certain aspects of the law which although are racially discriminatory have been allowed to continue by the State.

Not only have these practices, supported by the insistence of the maintenance of the reservations, adversely affected racial harmony as described above, it is the NGCHR's view that these practices (and the reservations that support them) **have not even succeeded** in the aim that was intended – to create a system which **promotes the progression and financial development of iTaukei Fijians**.

It is for these reasons, and not necessarily the existence of international laws, that we are of the opinion the reservations should be removed so as to create an environment which is both in compliance with the full terms of the Convention and allows the stated desired outcomes from the People's Charter for Change, Peace & Progress.

Recommendation

That the State Party withdraws its Reservations and shows a genuine commitment towards fulfilling all of the Articles of the Convention.

5. The position of iTaukei Fijians

THE concept of 'Indigenous Fijians' remains unclear in relation to Indigenous peoples, especially after:

1. Terms for ethnic groups having been changed by decree; and
2. the legal differentiation as referred to above in relation to the United Nations Declaration on the Rights of Indigenous Peoples.

The NGOCHR notes with concern the dismantling and restructuring of what have hitherto been identified as indigenous institutions without appropriate consultation with stakeholders. The State Party must conduct an open dialogue process with the iTaukei people on the change to their name, the removal of the Great Council of Chiefs (GCC) and revision of land laws in recognition of the 2007 United Nations Declaration on the Rights of Indigenous Peoples.

It is of particular note that the State Party unilaterally disbanded the GCC even after the announcement by the interim Prime Minister that the constitution process (the GCC being a constitutional matter) would allow for open consultation on all issues, apart from a few 'non-negotiables', of which the removal of the GCC was not one. This can only create a public sense that, despite assurances of public participation and consultation, the contents of the new constitution are, to a large extent, a foregone conclusion.

The position of the State Party has been that certain perceived indigenous institutions – including the GCC and the Methodist Church – must be removed from the sphere of national political influence. It has also stopped indigenous provincial councils with anti-government positions from meeting despite provisions for these councils to exist under law. There has been no attempt to involve the people in discussions on the disbanding of these institutions. The NGOCHR encourages the State Party to make clear its position on indigenous people in connection with its rights and the rights of other ethnic groups in a pluralistic society.

Recommendation

That the State Party makes public its position on the status of the iTaukei people so as to provide certainty to them of their position in the future society of Fiji.

6. Status of the Fiji Human Rights Commission (FHRC)

THE State Party's apparent lack of commitment to promoting human rights and the elimination of racial discrimination is evident in the inactivity of the FHRC, whose Commissioners were removed in 2006. In 2009 the Director of the FHRC was dismissed and no appointments have been made since then, leaving the Commission powerless to act on any issue of human rights abuse and racism.

Furthermore, FHRC field activities which promote racial tolerance and teach human rights have been sporadic at a time in Fiji's history when it is most important for communities to discuss the fears and misconceptions linked to human rights abuse and racial or religious intolerance. The obligation to spread the message of human rights and tolerance has fallen upon the NGO and CSO community.

The Bill of Rights that was enshrined in Fiji's 1997 Constitution (under Chapter 4, section 42) provided for the establishment of an independent Human Rights Commission. This led to the establishment of the FHRC. In 2009, after the Court of Appeal ruled that the military coup of 2006 was illegal and unconstitutional, the Commander of the Fiji Military Forces, Voreqe Bainimarama purportedly abrogated the Constitution. This meant that Constitutional offices and appointments were vacated and were perceived to have ceased operations temporarily. However the promulgation of the 2009 Human Rights Commission Decree gave room for the continuation of the Commission, despite the purported abrogation. The Promulgated Decree however greatly limits the work of the Commission.

Functions do not extend to the Proceedings Commissioner receiving complaints against or investigating, questioning or challenging the legality or validity of the Constitution Revocation Decree 2009 or any other Decrees made or as may be made by the President. This creates a situation where the State Party is immune from being accountable for human rights implications arising from the legislation that it passes.

Nothing in the Decree limits the State Party from giving general policy, administrative and financial guidelines to the Commission. Thus the Commission is not free of any interference from the government of the day, therefore seriously impeding on its independence from government.

Independence of the commission is further questioned as all members of the FHRC are appointed by the President acting in his or her own judgment following consultation with the Prime Minister. The HRC Act 1999 previously recognised the need to consider a diversity of personal characteristics in the membership of the commission.

There is currently no Legal Officer at the Fiji Human Rights Commission, which means there is no guarantee that complaints and cases before the Commission receive proper analysis and scrutiny for questions of jurisdiction and substance. While clearly worrying, this is not surprising in a situation where complaints can't be pursued in any case.

In 2006 after the military coup, Shaista Shameem was appointed as the Chairperson for the Commission. Her public support of the coup led to Fiji's suspension from the Asia Pacific Forum (a network of Pacific National Human Rights Institutions) and from the International Coordinating Committee - the coordinating and accreditation body of National Human Rights Institutes (NHRIs), both of whom heavily

criticized the stance of the Chairperson. Her support for the restriction of rights during the State of Emergency and her support for the coup was seen by the international community as a deviation from the Paris Principles. Shameem's appointment also ceased after the purported abrogation of the constitution in 2009. The Commission has since then been without a chairperson and are operating on a skeleton staff:

Current staff at FHRC:

Complaints Section: 4

Legal Section: 1 (clerical officer)

Education/Promotions & Media, IT Section: 4

Finance Section: 2

Admin Section: 3

Prior to the Dec 2006 takeover: Approximately 22 staff

The NGOCHR would like to reiterate the importance of having an impartial national human rights institution at all times but more so during times of political instability. It is during times of political uncertainty where minority and marginalized groups are more vulnerable to danger or exploitation. This is where the Commission should intervene, investigate and protect the rights and freedoms of minority or vulnerable groups.

There is anecdotal evidence to suggest that given the current political situation, the stance on the Commission in 2009, as well as the perception that the Commission was not fully independent after 2009, has resulted in very few complaints being brought to the FHRC. This is unfortunate, because prior to 2006 the Commission was growing in its work and had Commissioners who were expert in their areas of work in both human rights and the law.

In Fiji's UPR report in 2010, the State accepted recommendation 37 to 40 from the Human Rights Council. Under those specific recommendations the State was to ensure that the Commission is independent, fully functioning and align with the Paris Principles.

Recommendation:

That all necessary steps are immediately taken by the government to install a fully functioning independent Human Rights Commission which is set up, and acts, in accordance with the said Paris Principles (General Assembly resolution 48/134, annex, of 20 December 1993).

7. Anti-racial discrimination legislation

IN its previous concluding observations, the Coalition on Human Rights expressed concern over the absence from Fijian law of any entrenched guarantee against racial discrimination. There are still no adequate entrenched guarantees. Matters relating to racism or racial discrimination are referred to in various pieces of legislation, but there is no comprehensive domestic law on racial discrimination as such. The current principal pieces of legislation relating to race discrimination in Fiji are:

Legislation	Précis of how legislation relates to racial matters
s. 17 of Public Order Act [CAP 20]	<i>Inciting Racial Antagonism.</i> “(1). Any person who by words, either spoken or intended to be read or by signs or by visible representation or otherwise - (a) spreads any report or makes any statement which is likely to (i) incite racial dislike or hatred of any race or community; or (ii) promote feelings of enmity or ill will between different races or communities; or (iii) prejudice the public peace (b) makes any intimidating or threatening statement in relation to a race or community other than his own which is likely to arouse fear, alarm or a sense of insecurity amongst members of that other race or community; (c) spreads any report or makes any statement which incites to violence, counsels disobedience to law or any lawful order given by a member of the armed forces of the Crown, the Royal Fiji Police Force or Prisons Service acting in the course of his duty - shall be guilty of an offence and shall be liable on conviction.” [continues]
s.13 of Public Order (Amendment Decree) – POAD	<i>Amendment to s.17 of Public Order Act re inciting racial antagonism</i> Adds ‘inciting religious, ethnic or communal hatred or dislike’ to the definition of inciting racial antagonism under s.17 of the Public Order Act.
s.5 and s.6 of POAD	<i>Amendment to s.8 of Public Order Act re ‘racial vilification’</i> Defines ‘racial vilification’ as conduct that offend, insult, humiliate, incited hatred against, serious contempt for, or revulsion or severe ridicule of another person or group of people on the grounds of their race, colour, national or ethnic rights. Then provides that evidence of previous involvement with racial vilification is a reason for which the Commissioner of Police can refuse or withdraw a permit for a meeting or procession in a public place.
s. 77 of Crimes Decree 2009	<i>Defines and criminalises genocide</i> Provides detailed provisions of crimes against humanity, including genocide.
Part 3 of Human Rights Commission Decree 2009	<i>Defines ‘unfair discrimination’ and sets out basis by which the FHRC can instigate proceedings</i> Defines ‘prohibited grounds of discrimination’ as ‘actual or supposed personal characteristics, including: race, ethnic origin, colour...’ and sets out a reas to which this applies.

This legislation falls short providing a specific law that prohibits racial discrimination, nor does it specifically provide legislation prohibiting racist organisations or making racial motivation an aggravating circumstance for crimes, as suggested in paragraphs 15 and 20 of the Concluding Observations from the 2008 CERD Session.

The Public Order Act contains defence provisions and, in particular, a provision that no criminal action can be brought in this respect without the approval of the Director Public Prosecutions, making the dispensing of justice in that respective discretionary.

The Human Rights Commission Decree does provide some welcome progress but only makes racial

discrimination 'unfair' and makes it a civil matter, rather than criminal. Furthermore, it sets out the procedure by which a complainant may raise this with the FHRC and how it may be dealt with by them. As well as the issues within the FHRC referred to above, the decree provides various reasons why the FHRC may not investigate the matter. Some of these seem appropriate, but two – namely *“the Commission has before it matters more worthy of its attention”* and *“the resources of the Commission are insufficient for adequate investigation”* hardly fills one with confidence that matters that are important to a complainant will necessarily be taken seriously and pursued by the FHRC. After all, surely what is 'worthy' of investigation is entirely subjective. If the FHRC will not investigate then an individual may bring proceedings directly at court. However, one must seriously question who will have the financial means to do so.

Critically, the FHRC is not permitted to investigate complaints of discrimination (or any other human rights violations for that matter) on decrees promulgated by the State Party (including the decree that abrogated Fiji's 1997 Constitution nor can such decrees be legally challenged. Therefore, individuals have no protection from a decree that, directly or indirectly, results in racial discrimination.

Furthermore, the new definition in POAD of racial vilification may not be considered introduced solely in the public interest, but to provide the police with more power to restrict public meetings and processions etc., depending on how they decide to interpret racial vilification.

Indeed, whilst s.17 of the Public Order Act (as amended) is in place, newspapers continue to carry paid advertisements seeking tenants and/or house maids of particular ethnicity or religion which discriminate against potential tenants from leasing or applying for the advertised property or position respectively

As for cases before the courts specifically referring to ICERD as the basis of legal action, there are currently no such cases in court.

The State Party has hitherto shown no intention of taking a leadership role in community debate or legislative consultation about the need for legal reform to entrench protection against racial discrimination.

The NGOCHR has consistently, as a coalition or by individual members, called for the legislation of laws which protect all Fiji's people from discrimination by race or religion, recognizing that these two issues have been at the centre of the country's political problems for more than 130 years. No government has taken the initiative to introduce such legislation or to enshrine it in the constitution.

Recognising the need for removal of ethnic differences, the NGOCHR commends the positive steps in the People's Charter for Change towards removing ethnic discrimination. However, this Charter is not a legally binding document and no moves have been made towards the implementation of specific anti-discrimination laws.

It is necessary for consultation to take place between the State Party and civil society in order to facilitate community education on the anti-discrimination provisions of the charter. Full and inclusive public consultation and dialogue on the implementation of anti-discrimination laws in line with the charter and in compliance with the Convention must also be held.

Under Chapter 4 of Fiji's 1997 Constitution, there is/was a Bill of Rights which stipulates that a person must not be unfairly discriminated against on (inter alia) his or her race, ethnic origin, colour [or] place of origin. However, it is unclear whether the new constitution will contain a Bill of Rights on a similar

basis or indeed whether there will be specific provisions in the new constitution to criminalise violations of rights in connection with race, ethnicity and faith.

Recommendation

That the State Party puts in place comprehensive laws on the elimination of racial discrimination, including acts perpetrated by private persons and that it adopts unambiguous legislation prohibiting racist organisations and that it also amends its laws to the effect that racial motivation constitutes and aggravating circumstance for crimes.

8. The People's Charter for Change, Peace and Progress

THE NGOCHR notes that there are many positive, forward-thinking policies enshrined in the Peoples' Charter for Change, Peace and Progress, in particular the removal of ethnic-based voting.

However, we remain concerned at the lack of public consultation and dialogue on a way forward in terms of its implementation.

The NGOCHR notes that while the process of formulating the People's Charter for Change tried to be inclusive of all sectors of the community, the public relations campaign which followed was conducted in the presence of security forces personnel and was not conducive to free and open discussions on the document. It must also be noted that the State Party has not made public any reports of progress towards implementing the recommendations of the People's Charter for Change, despite it being announced back in November 2008

We recommend that the State Party engages with civil society and the public (without restrictions) to formulate a plan through which the concepts in the Charter can be put into practice in all ethnic communities, particularly through the constitution process.

We note the Fiji government's assurances that elections will be held in 2014 and call for a transparent system of voter education well in advance of the proposed elections to ensure an open and acceptable process. This system must involve the greatest possible number of eligible voters in a nation-wide outreach campaign.

In recognition of the fact that the State Party does not have adequate financial or human resources to reach all voters in the specified three-month public consultation phase of the constitution-making process, the NGO Coalition believes that the CSO community must be actively involved in urging the people of Fiji to take part in the constitution process and elections.

Recommendations

- **That the State Party publishes six-monthly updates on work done by ministries and departments to show what progress has been made on implementation of the Charter initiatives, detailing expenditure by sector to show whether spending has been adequately spread among ethnic groups, especially the disadvantaged.**
- **That the State Party ensure that the principles of inclusive, free and open dialogue and**

consultation and education on all matters relating the Charter, particularly during the constitution consultation period, are used.

- That the State Party engages with Civil Society to formulate a plan for community education on the Constitution in all ethnic communities once this new constitution has been passed.
- That the State Party withdraws the Public Order Act (Amendment) Decree 2012 to allow for true participation and dialogue in the constitution consultation process and on elections.
- That the State Party Ensures that the new constitution provides for the removal of race-based voting.
- That the State Party repeals the Media Industry (Development) Decree.
- That the State Party launch a national enquiry into the events of 1987, 2000 and 2006 to determine whether race was a factor in the removal of the respective legally-elected governments.

9. Access to justice for non-English speakers

A NUMBER of cases involving non English-speaking individuals remain before the courts because the Judiciary is unable to provide interpretation services for the accused or the witnesses.

Some of these cases have been pending for more than three years and the repeated advertisements seeking qualified interpreters have failed to find the necessary assistance for court officials. Due to the failure of the system, justice has been delayed to a number of Vietnamese, Chinese and Korean-speaking individuals.

The number of ethnic Korean and Chinese in Fiji is rising gradually as economic incentives are provided by the Fijian government. Also increasing is the number of Vietnamese fishermen who live for several months in Fiji.

There is, therefore, an urgent need for the provision of interpretation services for people who do not understand Fiji's official languages of English, Hindi and Fijian.

Recommendation

THAT the State Party ensures there are sufficient state-funded interpreters for all people who require it that are involved in the judicial process.

PART 2

NGOCHR comments on at Part D (Concerns and Recommendations) contained in the Concluding Observations of the CERD – CERD/C/FJI/CO/17	
Section D Paragraph Number	Comments
9.	See section 4 of Part 1 of this report.
10.	See section 8 of Part 1 of this report.
11.	See Section 6 of Part 1 of this report.
12.	The NGOCHR does not have detailed information on this, but would be very interested to see the state party's response.
13.	See sections 4 and 5 of Part 1 this report.
14.	The NGOCHR does not have detailed information on this, but would be very interested to see the state party's response.
15.	See Section 7 of Part 1 of this report
16.	<p>The NGOCHR does not have details on whether this recommendation has been fully implemented, although a cursory review of several government forms suggests that a question of ethnic identity still forms part of some.</p> <p>ON July 6, 2009 the State Party issued a promulgation that all Fiji nationals were to be referred to as 'Fijians'. Prior to this, there was a requirement to provide information on ethnicity or ethnic background.</p> <p>The NGO Coalition is concerned that a common name in itself does not ensure the end to racial discrimination or that racial tensions are eliminated. Workshops conducted by CCF clearly show that there are racial divides, which exist despite all nationals being called Fijians. This labeling of all nationals as Fijians is only a band-aid solution to a problem that has for many years affected the people, development and progress of Fiji.</p> <p>While on the one hand the State Party is trying to end racial discrimination, the NGOCHR is gravely concerned about recent efforts by the State Party to promulgate by-laws that adversely affect iTaukei communities only. These by-laws have been shelved after strong opposition from various human rights organizations, including the Fiji Women's Crisis Centre, the Fiji Women's Rights Movement and CCF.</p> <h3>Recommendations</h3> <ul style="list-style-type: none"> • That the State Party ensures a programme of civic education in consultation with and including the participation of CSOs, faith-based groups and traditional leaders, addressing the issue of the need for a common name and identity. • That the State Party remove any by-laws and which cater to specific sections of the community by ethnicity

17.	<p>THE NGOCHR notes the removal of Special Measures programmes in education and employment in favor of a policy based on merit.</p> <p>Of concern, however, is the high level of concentration of rural development work in iTaukei villages and settlements. We call on the State party to provide statistics by ethnicity on the provision of development funds.</p> <p>It is important that the State Party makes clear and public its revised policy on Special Measures programmes and to state its objectives for each initiative in terms of how these are implemented, monitored and evaluated.</p> <p>The NGOCHR is concerned that there have not been any clear commitments by the State Party to undertake a study to gather conclusive evidence on the need for special measures program. Data and statistics are essential to justify both the need for OR the removal of special measures programme.</p> <p>The removal of the Special Measures without data gathering and consultation can further the unequal status relationship of ethnic groups. The State Party must be committed towards providing equal opportunity for all ethnic groups. However, it must also have in place measures to ensure that all ethnic groups have an access to that opportunity.</p> <p>The NGOCHR remains concerned about the allocation of scholarships to Indo-Fijians and urges the Committee to recommend to the State to undertake a study to gather data on the need for Special Measures programmes.</p> <p>Recommendation</p> <p>That the State Party makes public information on all affirmative action policies, stating the duration of specific projects, ethnic breakdown of recipients and expenditure by programme.</p>
18.	<p>WHILE the commitment has been openly made by the State Party to tackle the problem, the NGOCHR is concerned at the composition of senior government positions. These positions are occupied by members of the Military who are predominantly indigenous Fijians. There a few appointments of individuals belonging to other ethnicities but a majority of the positions remain in the hands of the iTaukei.</p> <p>This leads the NGOCHR to raise another concern about the composition of the Fiji Military Forces itself, of whom majority of iTaukei Fijians make up the armed forces. The Deputy Commander of the RFMF is an ethnic Indian but there are less than 10 officers in the army's officer cadre who belong to this racial group. Ethnic Indians also make up less than five per cent of the total composition of the armed forces. In the past the RFMF has been instrumental in the destabilization of the country using race as a motivating factor.</p> <p>It has been suggested that the army is a highly discriminatory institution in terms of its composition and given the past experiences of non-iTaukei people at the hands of troops during political disturbances, it is vital that this is addressed.</p>

	<p>If the State Party has a genuine wish to end racial discrimination or raced based politics, it must ensure that its recruitment process, composition and senior positions reflect this commitment.</p> <p>Recommendation</p> <p>That the State Party takes action to ensure that recruitment policies for the RFMF are not discriminatory and that the composition of the armed forces is representative of Fiji's population.</p>
19.	<p>Where possible, mixed schools must be encouraged to teach both languages to all students as a means by which to promote understanding and tolerance. The progress made by the State party in the removal of discriminatory enrolment policies in schools and the teaching of Fijian and Hindi is commendable. The NGOCHR recognizes that due to distance and location it might not be possible to implement a mixed school policy at every institution.</p> <p>Where possible, student and teacher populations must be mixed and segregation removed. We call upon the state party to provide statistics on the number of name changes to schools and changes to composition of the student and teacher population by ethnicity together with a comprehensive plan for continued integration over the next four years.</p> <p>The State Party should show how many students are learning another language and culture in the move towards promoting non-discriminatory policies. The NGOCHR calls for specific provisions within the primary and secondary curricula to include lessons which reflect Fiji's plethora of cultures and religions.</p> <p>Also commendable is the attempt to remove ethnic labels from school names. But the NGOCHR cautions that the removal of ethnic labels is only a cosmetic procedure and does not guarantee a shift in the attitudes of the people. To this effect it is necessary to promote programmes which encourage inter-racial dialogue and promote tolerance and acceptance.</p> <p>Recommendations</p> <ul style="list-style-type: none"> • That the State Party includes the teaching of all cultures, religions and languages in the school curriculum and ensures that these lessons are taught wherever practical. Furthermore, that the State Party provides data on the names changes of schools and changes to composition of student and teacher population by ethnicity together with a comprehensive plan for continued integration for the next four years. • That culture and faith is included in the school curriculum as a means by which to increase tolerance of other ethnicities and faiths

20.	See Section 7 of Part 1 of this report
21.	The NGOCHR does not have detailed information on this, but would be very interested to see the state party's response.
22.	<p>With an increasing urban drift the need for decent, affordable housing has become an important issue for people of all ethnicities. To a large extent most land is owned by the indigenous iTaukei while generally, tenant farmers (often with expiring leases) are ethnic Indians.</p> <p>Because of the lack of land in urban areas, squatters of all ethnicities, but predominantly ethnic Indians, have entered into informal agreements to settle on iTaukei land. These arrangements do not guarantee security of tenure.</p> <p>Also an issue is the low return to iTaukei landowners on agricultural land leased to tenants. The NGOCHR believes that an equitable arrangement on tenure and return is central to the provision of land for housing purposes.</p> <p>It also recognizes that due to the exclusion of Solomon Island settlements as villages under the FNPF Act, this minority cannot use superannuation funds to purchase land or decent housing.</p> <p>Recommendations</p> <ul style="list-style-type: none"> • That the State Party ensures its housing policies and those of the Fiji National Provident Fund do not discriminate against minority groups and that all lease or rental agreements guarantee a fair deal for landowner and tenant. • That the State Party removes restrictions which prevent the Solomon Islands community from using FNPF contributions for rural housing.
23.	The NGOCHR does not have detailed information on this, but would be very interested to see the State Party's response.
24.	The NGOCHR does not have detailed information on this, but would be very interested to see the State Party's response.
25.	It would not appear that this Convention has been ratified
26.	The NGOCHR does not have detailed information on this, but would be very interested to see the State Party's response.
27.	The NGOCHR does not have detailed information on this, but would be very interested to see the State Party's response.
28-30	Procedural matters
31	The NGOCHR does not have detailed information on this, but would be very interested to see the State Party's response.
32	Procedural