UNITED NATIONS

CERD

International Convention on the Elimination of all Forms of Racial Discrimination

Distr.
GENERAL

CERD/C/SR.1567
1 July 2003

ENGLISH
Original: FRENCH

COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Sixty-second session

SUMMARY RECORD OF THE 1567th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 12 March 2003, at 10 a.m.

Chairman: Mr. DIACONU (Chairman)

later: Mr. YUTZIS (Vice-Chairman)

CONTENTS

GE.03-40788 (E) 300603 010703

The meeting was called to order at 10.10 a.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 5) (continued)

Fifteenth periodic report of Fiji (continued) (CERD/C/429/Add.1; HRI/CORE/1/Add.122)

1. At the invitation of the Chairman, Mr. Mataitoga, Mr. Naidu, Ms. Nam, Ms. Qionibaravi, Ms. Uluiviti and Mr. Wise (Fiji) took places at the Committee table.

2. Mr. SHAHI thanked the delegation of Fiji for presenting the fifteenth periodic report of Fiji which was both informative and thorough. Fiji had also distributed to the Committee a supplementary report in English only, which contained interesting additional information on the participation of the various communities in the different professional categories.

3. He was truly impressed by the way in which the Fijian authorities used affirmative action to enable indigenous Fijians to catch up with the development of the Indo-Fijians and other communities. In that regard, he noted that the Minister for Foreign Affairs had stated that, in a multiracial, multi-ethnic and multi-religious society like Fiji, it was important to respect the needs and values of the various communities.

4. According to paragraph 9 of the supplementary report, the Government was committed to reducing economic differences between communities through social justice programmes. Paragraph 39 of the same report stated that the authorities had taken measures to ensure the integration of indigenous Fijians in business and commerce, and that a key goal of the Government of Fiji was to use affirmative action not only for the benefit of indigenous Fijians but also for Rotumans and other disadvantaged communities. Thus, the Social Justice Act of 2001 provided for 29 affirmative-action programmes, 10 of which were exclusively for indigenous Fijians and Rotumans and 2 of which were exclusively for other communities. The 2001-2020 development plan, which was very comprehensive, was intended to increase the participation of indigenous Fijians and Rotumans in all aspects of social and economic development while safeguarding their traditions and rights, particularly their right to customary land and their fishing rights.

5. He hoped that the aforementioned affirmative-action programmes would not have any adverse effects on other components of society. If the objective of the development plan was to reach, by 2020, approximate parity between indigenous Fijians, on the one hand, and Indo-Fijians and the other communities, on the other, it would nevertheless be necessary to ensure that the affirmative-action programme was carried out in keeping with the provisions of article 1, paragraph 4, and article 4 of the Convention, the general recommendation concerning the rights of indigenous populations, and other relevant instruments.

6. He regretted the divergence of views between the Committee and the delegation of Fiji concerning article 4 of the Convention, which did not seem to be fully applied in Fijian legislation. Like a number of other delegations, the delegation of Fiji maintained that it was also necessary to consider article 5 of the Convention, which enumerated various civil rights,

including freedom of expression and assembly. While the wording of the Convention might give the impression that the right to freedom of expression took precedence over the need to prohibit organizations that encouraged racial discrimination and the dissemination of theories based on racial superiority, other international instruments, in particular the International Covenant on Civil and Political Rights, made it clear that it was perfectly legitimate to set limits on freedom of expression in order to avoid all incitement to racial hatred. He hoped that the delegation of Fiji would consider that aspect of the problem.

7. Mr. ABOUL-NASR said that he regretted that Fiji had submitted its voluminous supplementary documents too late to enable him to read them in their entirety. He wondered what could have been the reason for such a delay, which was particularly unfortunate since considerable efforts and financial resources had gone into the preparation of the reports. In his opinion, the Committee should be very cautious in its criticism of the way in which States respected human rights, since such criticism could have extremely serious consequences for human rights; such consequences could even include military aggression, as demonstrated by the current international situation.

8. He would like additional information about property. In particular, he wished to know how white people had taken possession of the land when they arrived in Fiji. He wondered whether they had bought the land at an equitable price, with the consent of the former owners, or whether they had simply seized it. When a Government announced that it was time for the indigenous peoples to repossess their lands, non-governmental organizations (NGOs) and Western public opinion waxed indignant and claimed that the rights of the owners of the lands were being flouted; however, before making judgements, it was important to be familiar with both the historical facts and the current situation. He wished to know what proportion of the best lands currently belonged to white people and Indo-Fijians, and whether that proportion corresponded to the respective percentages of the population that such groups represented. While there was no question of infringing on the human rights of white people, Indo-Fijians and other minorities, it was nevertheless necessary to take account of the interests of the indigenous population and to try to find out what had really happened since, if care was not taken, accusations of human rights violations against a small country that was only protecting the rights of its indigenous population could lead to acts of aggression and economic sanctions.

9. Mr. MATAITOGA (Fiji) said that the question of property and the use of lands in a multi-ethnic context was a delicate and controversial subject, and he asked for the Committee's understanding.

10. Throughout the history of Fiji, the problem of land had been one of fundamental importance, and had remained so to the present day. Fiji had acquired the status of colony in 1874 and, since that time, much land had changed ownership under circumstances that were, to say the least, dubious and perhaps even illegal; even the contractual trade arrangements that might have been concluded were open to question. The majority of the first Indians who had arrived in Fiji at the end of the nineteenth century had come to work on sugar cane plantations. They had become excellent farmers and had, unquestionably, contributed to the development of the country, which was very grateful to them for that reason. However, today the situation had changed. Currently, the indigenous population owned some 87 per cent of the land, the sale of

which was prohibited by the Constitution. Nevertheless, a considerable percentage of the land was leased indiscriminately to indigenous Fijians or to members of other communities, mostly Indo-Fijians, so that, in reality, more than half of the cultivable land was used by non-indigenous peoples. One of the difficulties was that Fiji's main export was sugar cane, and multilateral trade agreements stipulated that Fiji must limit the cultivation of sugar cane in order to maintain prices. In such conditions, indigenous or non-indigenous farmers had had to leave their lands and, as a result, their standard of living had fallen. The problem currently facing non-indigenous (mainly Indo-Fijian) people renting lands whose lease was about to expire was to find out whether or not their contract would be extended and, if so, at what price. While Government should take account of the fact that an increasing number of indigenous people wished to farm their own lands, it was committed to finding equitable solutions without losing sight of the human dimension of the problem; in that regard, the Government was carrying out a policy devoid of any racist connotations.

11. In order to clarify the problem relating to the extension of leases, he said that, of the total income from sugar cane in 2000, 70 per cent had gone to the planters, for the most part Indo-Fijians, and the remaining 30 per cent to factories, which meant that the owners had not received their share. While the Government was certainly in favour of extending the leases and was examining the question without any reference to ethnicity or race, it sought at the same time to address such inequalities in the distribution of income.

12. With regard to employment in the public service, he said that opportunities for employment were based on merit, as required by the Constitution. Measures were taken to ensure that the principle of equal opportunity was respected and that 63 per cent of public servants at all levels of the hierarchy were indigenous Fijians.

13. Fiji's affirmative-action policy was principally intended for all economically disadvantaged persons and particularly members of rural communities. Section 44 (Social Justice and Affirmative Action) of the 1997 Constitution required Parliament to make provisions for special assistance programmes with a view to reducing economic disparities between the communities. The Social Justice Act promulgated in December 2001 required the Government to draw up a list of the programmes that it intended to carry out in favour of disadvantaged groups, the type of assistance envisaged and the performance indicators to be used. It was an exaggeration to accuse that policy of having created inequalities between ethnic groups and reduced some of them to poverty, since it provided assistance, by turns, to the various communities that required it. Only the Banaban community was a little more privileged than the other minorities because the Prime Minister himself had taken charge of its welfare. Replying to those who claimed that that policy had led to increased immigration, he said that that phenomenon affected all communities, including the Fijian community. It was simply the well-known phenomenon of brain drain that led senior managers to accept more remunerative employment abroad. The Government would not be opposed to the return of such persons, especially since they would be potential investors, which would benefit Fiji.

14. He made a distinction between the Social Justice Act, which sought to put in place actions and programmes financed from the State budget in favour of target groups selected on the basis of precise criteria, and the Government's 20-year development plan, which provided the conceptual framework for measures to combat inequality. Under the development plan,

two institutional mechanisms - a special group within the Prime Minister's Cabinet, and the Special Advisory Committee in which the principal communities of Fiji were represented - had been established and given the task of monitoring progress and proposing solutions to improve the situation. By taking such measures, the Government intended to ensure that the communities felt - justifiably - that they were actively involved in the project and could affect its implementation.

15. He assured the members of the Committee that, in the definition of the crime of sedition contained in the Penal Code, the words "anyone" (who sought to foment feelings of hostility among different classes or races in the community) referred to any natural or legal person. Consequently, enterprises, associations, organizations and groups of persons were covered by that article to the same extent as natural persons. The same interpretation was applicable to the Public Order Act.

16. The funding of the Human Rights Commission fell not within the competence of the Government of Fiji but within that of international donors. The international assistance from which Fiji benefited was governed by bilateral agreements concluded with certain Governments and humanitarian organizations, which had free rein in distributing the funds that they released. They generally allocated some 50 per cent of those funds to public bodies, and the other half to NGOs and other institutions known for their good governance and their activities in the field of human rights.

17. He considered that the laws currently in force in Fiji were sufficiently effective to combat racial discrimination by natural or legal persons, and it was not necessary to adopt specific legislation on the subject as required by article 4 of the Convention. In Fiji, racist or extremist ideas fell under the Public Order Act and certain provisions of the Penal Code and did not need to be the subject of a special law. He stressed that racist propaganda and organizations were not tolerated in Fiji.

18. Mr. de GOUTTES said that the supplementary information provided by the delegation, particularly concerning the fact that the provisions of the Public Order Act also applied to legal persons, should soften the Committee members' comments on the State party's reservation concerning article 4. He invited the delegation to provide the Committee with the text of the Public Order Act and other relevant texts. He also wished to know why the suicide rate was higher among Indo-Fijians than in the rest of the population.

19. Mr. SICILIANOS said, with reference to Fiji's reservations to article 5 of the Convention, that he did not understand how the Electoral Act did not meet the requirements of article 5 (c), or how Fiji's school system was not in keeping with the provisions of article 2, article 3 or article 5 (e) (v) of the Convention. With regard to article 3, he wondered whether, in practice, the school system did not favour segregation.

20. The CHAIRMAN, speaking as a member of the Committee, said that article 4 of the Convention required States parties to declare certain acts punishable by law and to prohibit organizations that incited racial discrimination by adopting specific provisions. He added that, while legal persons were covered to the same extent as natural persons by the provisions of the

Public Order Act dealing with the crime of sedition and acts of racial discrimination and racial propaganda, legal persons could not be sentenced to prison terms. It was therefore necessary to provide in other instruments specific sanctions, such as the dissolution of organizations with legal personality that engaged in such criminal acts. The rights set out in article 5 of the Convention, such as freedom of opinion or expression, were not defined as absolute rights in other international instruments, such as the Charter of the United Nations and the International Covenant on Civil and Political Rights, and were even subject to restrictions in certain cases.

21. Mr. HERNDL said that he regretted the sharp difference of opinion between the Committee and the Government of Fiji concerning the prohibition of extremist organizations on the grounds of their political opinions. According to paragraph 89 of the report, the Government of Fiji had come to the conclusion that to ban such groups would not be seen as in keeping with the right to freedom of speech and would run counter to the object and purpose of the Convention; that approach was contrary to article 4 of the Convention, which required States parties to prohibit such groups. He wished to know whether the articles of the Public Order Act concerning the crime of sedition had already been applied by courts and if such acts had already been punished in the State party and, if so, what penalties had been applied. In conclusion, he said that the statute of the Fiji Human Rights Commission should be revised in order to allow the Commission not to investigate a case if it did not have the financial means to do so or if it had other more important cases to deal with.

22. Mr. YUTZIS thanked Ms. January-Bardill for her excellent work as rapporteur for Fiji. He endorsed the Chairman's comment concerning article 5 of the Convention, particularly the fact that the rights contained in that article were not absolute. In that regard, he invited the delegation to refer to general recommendation No. XX (48) on article 5 of the Convention in which the Committee indicated that "article 5 of the Convention, apart from requiring a guarantee that the exercise of human rights shall be free from racial discrimination, does not of itself create civil, political, economic, social or cultural rights, but assumes the existence and recognition of these rights".

23. Mr. MATAITOGA (Fiji) said that 95 per cent of the schools were managed by religious organizations or financed by ethnic communities. There were only five public schools, which were attended for the most part by indigenous Fijians. However, nothing prevented non-Fijians from sending their children to such schools, and a child from a community was not prevented from attending a school in another community, whatever his or her religion or ethnic origin. There was no segregation in that area.

24. The Government had very many reasons to maintain the electoral system currently in place, since it was aware that the primary objective was to determine the political framework that was most suitable to the Fijian context in order to enable all ethnic and religious communities to coexist in peace. He drew the attention of the members of the Committee to the very detailed report on the Fijian electoral system that had been distributed to them, which set out the reasons for which the Government of Fiji had made a reservation concerning article 5 (c) of the Convention.

25. He did not believe that the higher suicide rate among the Indo-Fijian community could have any relation to the ethnic origin of the persons concerned. The main causes of suicide were family problems, the school problems of teenagers, and poverty.

26. In 2001, a mission had been sent to Fiji to monitor the application of International Labour Organization (ILO) Convention No. 169 concerning indigenous peoples and tribal peoples in independent countries, and the Government hoped that there would soon be positive follow-up to that mission.

27. Mr. SICILIANOS said that, since there apparently was no segregation in education, Fiji should consider withdrawing its reservation to article 3 of the Convention.

28. Mr. YUTZIS said that he had taken note of the fact that the Fijian authorities considered poverty as one of the main causes of suicide in Fiji, and suggested that the authorities should conduct an in-depth study on the relationship between poverty and ethnicity.

29. Ms. JANUARY-BARDILL (Rapporteur for Fiji) welcomed the clarifications made by the delegation of Fiji, which had enabled the members of the Committee to gain a better idea of the situation in the country. She was aware that Fiji was a small island territory faced with the same economic difficulties as the developing countries. In order to eradicate poverty and ensure the economic and social development of all Fijians, the Government should adopt measures, which would perhaps be difficult, and consider abolishing certain practices that resembled privileges; in particular, efforts should be made to ensure that lands were distributed proportionally and were no longer reserved for members of one or another ethnic group. In that regard, article 1 of the Convention enabled States parties to take so-called “affirmative-action” measures to combat discrimination; in principle, nothing prevented the authorities from taking such measures.

30. She welcomed the adoption in September 2002 of the 20-year plan, the object of which was to improve, in an integrated, systematic and target-oriented manner, the social and economic situation of Fijians and Rotumans. She hoped that another objective of the plan would be to ensure respect for and to promote the principles of non-discrimination and national unity.

31. In order to ensure that power was shared among all the ethnic groups, Fiji should also enable non-indigenous Fijians to participate in the decision-making process, and it should rethink its political economy and culture so that measures to combat poverty benefited all inhabitants. She also hoped that Fiji would consider adopting specific anti-discrimination legislation in accordance with the Convention. She feared that the continued politicization of ethnicity in Fiji would reinforce the tendency towards ethnic hegemony, which in the long term could compromise prospects for sustainable economic and social development.

32. Mr. MATAITOGA (Fiji) said that he was pleased with the productive dialogue that had been established with the Committee. The Fijian authorities would duly examine and take into consideration all the comments made by members of the Committee with a view to preserving and enriching the multicultural and multi-ethnic character of Fijian society.

33. The delegation of Fiji withdrew.

The meeting was suspended at 11.50 a.m. and resumed at 12.05 p.m.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 2) (continued)

Reform of the United Nations treaty body system (E/CN.4/2003/126 (English only); A/57/587)

34. Ms. IZE-CHARRIN (Office of the United Nations High Commissioner for Human Rights) said that the word "reform" was too strong and that the word "discussion" would be preferable, since it was more informal. She recalled that, in his report (A/57/387), the Secretary-General made proposals on streamlining the work of United Nations treaty bodies but that he had also considered that it was primarily up to those bodies to decide what, in their view, was needed to improve their influence at the national level as well as their functioning.

35. The Commission on Human Rights would consider the note by the Office of the United Nations High Commissioner for Human Rights (OHCHR) on effective functioning of human rights mechanisms treaty bodies (E/CN.4/2003/126) and, in September 2003, the High Commissioner would submit his proposals on the matter to the Secretary-General.

36. The United Nations High Commissioner for Human Rights had requested all chairpersons of treaty bodies to submit their views on ways of improving the functioning of those bodies. In order to facilitate discussion, the views received would be issued in a document. She said that a brainstorming meeting should be held in May 2003, to which representatives of the six United Nations treaty bodies, States parties to international human rights instruments, representatives of NGOs and national institutions, and the President of the Interparliamentary Union would be invited.

37. Replying to the concerns raised by certain members of the Committee at a previous meeting, she said that no measure would be taken to streamline the work of treaty bodies without the approval of the bodies themselves. All treaty bodies, and the Committee in particular, should therefore consider the discussion as a historic opportunity for an in-depth examination of what could and should be improved.

38. In June 2002, a section had been created within OHCHR to follow up the recommendations of the United Nations treaty bodies. The section had proposed the inclusion, in a single document, of all the recommendations concerning a given State party as well as a chapter identifying the principal areas of concern. She recalled that a round table had been held in Ecuador, which had included representatives of States parties and NGOs, members of the Human Rights Committee and representatives of national institutions and specialized agencies, with a view to considering how States parties could implement the recommendations of the Human Rights Committee. A report had been unanimously adopted at the end of the meeting, and the Government of Ecuador had decided to establish an inter-ministerial body to follow up all the comments and recommendations made by the treaty bodies. Perhaps the Committee on the Elimination of Racial Discrimination might, like other treaty bodies, wish to hold a round table in order to consider ways of implementing its conclusions. OHCHR was prepared to consider that possibility with the Committee.

39. She said that four of the five treaty bodies received “country analyses” or “country profiles” prepared by the secretariat, dealing with each State party whose report would be examined. In general, the analyses contained basic information concerning the country’s ratification of human rights instruments and its reservations, if any, to such instruments and, in addition to the information submitted specifically to the Committee, comments on particular points or on certain provisions. The Committee on the Elimination of Racial Discrimination could perhaps re-examine its decision not to receive this type of analysis and consider adopting the practice of transmitting in writing and in advance to each State party concerned, a list of questions that the members of the Committee would ask during the consideration of its periodic report.

40. Mr. de GOUTTES said that the Committee wished to ensure the effective implementation of the Convention and to simplify reporting obligations, maintain the specificity of the various international human rights instruments and treaty bodies and prevent any weakening of the Convention in the face of an international situation marked by threats of the use of force in the Middle East, which could lead to the resurgence of racial and ethnic discrimination.

41. In that context, it was important, in the first place, to ask States parties what difficulties they encountered in the preparation of reports required under human rights treaties and on their views concerning the idea of introducing a consolidated report for all treaty bodies. If it was found that certain States parties were not fulfilling their obligations because they lacked the necessary means to prepare the requested reports, OHCHR should consider the technical assistance to be provided to such States. It should also make a comparative study of the guidelines established by the various treaty bodies concerning the form and content of periodic reports, study possible amendments to be made to the treaties if the proposal on a single report was approved, analyse the difficulties that the submission of such a report would entail for State parties, consider a mechanism that would make it possible to submit the report to all treaty bodies, and consider the proposal made by Mr. Diaconu and Mr. Sicilianos concerning the principle of a more detailed core document than the one currently in use; the core document should be regularly updated and include annexes that would be produced in time to be submitted to the treaty bodies.

42. Mr. SICILIANOS welcomed the suggestion made by OHCHR to hold a workshop to follow up the Committee’s conclusions and recommendations. He wished to have more information on the results achieved by the treaty bodies that had appointed a rapporteur to follow up their recommendations. He considered the Office’s plan to prepare country analyses for the Committee commendable but unrealistic, and suggested that the formula of country profiles should be retained, on the understanding that the resources allocated to OHCHR should be increased accordingly.

43. The treaty bodies should increase coordination of their activities and harmonize their working methods, as the Secretary-General recommended in his report on strengthening the United Nations (A/57/387). In that regard, OHCHR should undertake a study of the question without delay and make proposals.

44. Mr. AMIR proposed that country rapporteurs should be present at Committee meetings in order to supplement with their personal comments the information received from the State party concerned, NGOs and OHCHR. Moreover, the intersessional workshops held in the field could be used to establish working relations with other treaty bodies and to achieve greater mutual understanding between States parties and the Committee.

45. Mr. ABOUL-NASR said that, in the absence of a diagnosis of the problems to be resolved, a discussion on possible reforms of the special human rights procedures was meaningless. The Committee had reason to complain, particularly with regard to the late publication of summary records of meetings and the moving of its New York sessions to Geneva. On the other hand, he did not understand what OHCHR and States parties did not like about the current system.

46. Moreover, the objective of those who were in favour of a single report for all treaty bodies would be achieved just as easily by a core document that was regularly updated and included periodic reports that did not exceed five or six pages.

47. Mr. Yutzis, Vice-Chairman, took the Chair.

48. Mr. KJAERUM said that he was pleased that OHCHR was endeavouring to improve the application of the Convention at the national level and did not base its proposals on administrative imperatives. In that regard, he noted with interest the new section for the follow-up of recommendations by treaty bodies and the follow-up workshops that had been proposed by the High Commissioner. Such follow-up could also be strengthened by more official cooperation with the national focal points of the treaty bodies.

49. He welcomed the High Commissioner's promised support for country profiles. In order to be able to decide on measures to be taken with regard to countries that did not fulfil their obligation to submit periodic reports, it was important to ascertain whether the failure to submit reports was due to inadequate means or a negative attitude

50. He noted that the High Commissioner's suggestion to convene pre-sessional working groups had not met with much enthusiasm in the Committee. On the other hand, the use of special teams responsible for periodic reports, which had been tested by other treaty bodies, was perhaps an option that should be considered. He proposed that data processing technology should be used to facilitate drafting work during Committee sessions.

51. Mr. THIAM wished to know why some States parties did not submit the reports that were due from them. In the case of his country, he knew from experience that the Committee was perceived as a court prepared to infringe on the sovereignty of the State party. Moreover, States parties could experience difficulties of a technical nature.

52. Mr. TANG considered that the technical difficulties experienced by small countries in the preparation of their periodic reports would not be resolved by the proposed single report. On other hand, the national seminars that had been suggested would undoubtedly strengthen the dialogue with States parties.

53. Mr. HERNDL said that Ms. Ize-Charrin had informed the Committee of the intentions of OHCHR concerning the possible reform of the special human rights procedures. The Committee's task was to give its opinion on the proposed single report and consider ways of coordinating the activities of treaty bodies and simplifying the procedures for considering reports; all that was still far from a "reform" of human rights instruments and bodies. Moreover, for matters of interest to the Committee, a reading of the Secretary-General's report did not lead him to believe that major changes were in the offing.

54. Ms. IZE-CHARRIN (Office of the United Nations High Commissioner for Human Rights) invited the Committee to give serious consideration to the proposal by Mr. Diaconu and Mr. Sicilianos concerning the replacement of the current system of periodic reports by a core document with annexes. With regard to the support that OHCHR would provide to the treaty bodies, she confirmed that its services could provide country profiles and said that OHCHR had already begun to study ways of harmonizing the guidelines for the submission of reports. She said that the possibility of rapporteurs carrying out missions in the countries for which they were responsible should not be excluded.

55. With regard to the reasons for the Secretary-General's desire for change, she said that it would be useful to hear States parties' grievances concerning the current system, since OHCHR was interested in serving the treaty bodies as best as it could. She was convinced that, if some countries did not submit the reports due from them, it was not because they were reluctant to do so. The reasons were to be found in the difficulty of collecting the necessary information, in an unawareness of the type of information to be gathered or in the lack of human resources. The Office of the High Commissioner for Human Rights had drawn up a list of countries that had requested technical assistance. In conclusion, she said that other treaty bodies were making increasing use of pre-sessional meetings, with encouraging results.

56. The CHAIRMAN said that he was pleased that the Committee had had an opportunity to hold a working meeting with OHCHR and thanked the Office for the logistical and financial support that it provided to the Committee.

The meeting rose at 1.10 p.m.