

**FOLLOW-UP REPORT OF THE TALANOVA BI-PARTISAN
SUBCOMMITTEE**

May 5TH 2004

The Talanoa Bi-Partisan Subcommittee met on March 29th 2004 with the Chairman, Mr Walter Rigamoto, and Director, Dr. Shaista Shameem, of the Fiji Human Rights Commission (FHRC) concerning its work on the report from the UN Committee on the Elimination of all forms of Racial Discrimination with particular emphasis on the common commitment to addressing all forms of racial discrimination. The Commission was given a copy of the Bi-partisan Talanoa Subcommittee Report on CERD and a copy of the Talanoa VI Leaders Statement two weeks before this meeting took place.

We informed the FHRC's Chairman and Director of the initial recommendation, made in the Progressive Report of the Bi-Partisan Talanoa Sub-Committee on UN-CERD Report, September 10th 2003, that the Commission be the appropriate institution to monitor the Government's efforts to fulfil its obligations under CERD, and to take into account the Talanoa Talks' own recommendations. However, in Talanoa VI the Leaders were made aware of the fact that we did not discuss the issue of a 'monitoring role' with the FHRC before we made such recommendation in that Progressive Report.

In this connection we reiterated that, as a result of the deliberations on the Subcommittee Report on CERD in Talanoa VI, the Leaders agreed:

There was general agreement that Fiji should continue its efforts to eliminate all forms of racial discrimination whether in the public or private sector. It was noted that the Fiji Human Rights Commission, as a body established in the 1997 Constitution, has a constitutional duty to monitor human rights issues and act upon allegations of discrimination. It was also agreed that the government should be preparing information for the CERD on a regular and timely basis. The Talanoa noted that an interdepartmental committee of government has been established and has invited NGOs to help in the compilation of the reports to the CERD committee.

In view of the common commitment to addressing all forms of racial discrimination, it was agreed that the Sub-committee should continue its work and should undertake to meet with the Human Rights Commission concerning its work on this matter, with particular emphasis on CERD, and report back to the full Talanoa in April.

(TALANOA VI, LEADERS STATEMENT, 28 February 2004, Sheraton Denarau Resort, p.3, own underline).

This gave us the mandate for the discussions held with the FHRC focusing upon the expectations of the Progressive Report of the Bi-Partisan Talanoa Subcommittee on UN-CERD Report, and, in particular, on what may be considered an appropriate national institution or organization which could monitor CERD and racial discrimination in the public and private sector.

In relation to the Bi-Partisan Talanoa Subcommittee's meeting with the FHRC it was reported to the Leaders in TALANOA VII on 15 April 2004 that:

The meeting was highly informative and useful and the Human Rights Commission expressed its desire to provide a written response to the

Sub-committee. The Human Rights Commission recently submitted their response and the Talanoa Sub-committee has not had a chance to meet, review the Human Rights Commission's response, and finalize their own report to the Plenary.

It was agreed that the Talanoa Sub-committee would meet as soon as possible and provide a completed report to another full Talanoa session to take place on Saturday, 1 May 2004.

(TALANOA VII, LEADERS STATEMENT, *15 April 2004, Sheraton Denarau Resort*, p.5).

As a response to this directive given by the Leaders, the Subcommittee met on 16 April, 2004 to consider the written report from the FHRC. However, the Subcommittee found that the FHRC's written report did not fully reflect the substance of our discussions with them. As a result it was decided that our report to the Leaders should be based on notes from our original face-to-face talks with the HRC Chairman and Director. We met on May 5th 2004 to finalise this report.

The role of FHRC to make recommendations to government on matters affecting compliance with human rights is defined under Section 42 2(b), and its statutory 'powers and duties' are defined under the Section 7 (1) of the HRC Act 1999. However, the Chairman and Director of FHRC told the Subcommittee that, within the ambit of the existing law, they could only deal with the human right issues, providing advice, caution, and warning, that are related to the State Party, that they are unable to play a monitoring role with respect to CERD, and that they have limited intervention rights

into private business. Monitoring racial discrimination in the private sector is clearly the role of the State.

A comment was made that when the FHRC annual report was presented to Parliament there was no discussion of it. The FHRC would welcome debate and there is a need to bring this matter to the attention of the Parliament. All in all the FHRC expressed the view that parliamentarians are better situated than the Commission to monitor human rights violations and progress and to make recommendations regarding the common commitment to the elimination to all forms of racial discrimination, whether in the public or private sector. On the issue of the CERD report, the FHRC expressed the view that a six monthly or a yearly review would be appropriate.

There is a constitutional provision under Section **42** (4) which states that: *'The members of the Human Rights Commission referred to in paragraphs (3) (b) and (c) are appointed by the President on the advice of the Prime Minister, following consultation by the Prime Minister with the Leader of the Opposition and the sector standing committee of the House of Representatives responsible for matters concerning human rights.'* Here the understanding is that there is a sector standing committee, and this committee is concerned with matters of human rights and racial discrimination. This committee would make relevant recommendations on the common commitment to addressing all forms of racial discrimination in both the public and private sectors and any other matters referred to it.

The FHRC Chairman and Director together with the Subcommittee went through the recommendations emanating from the Progressive Report of the

Bi-Partisan Talanoa Sub-Committee on UN-CERD Report. Questions were raised and discussion was centred on whether or not FHRC could play a more proactive role. The FHRC stated their approach is to give advice to government on a number of issues including social justice and affirmative action legislation, immigration etc., and to advise and caution on issues, pursuant of the particular section of the Act, as quietly as possible as they saw no point in going public and getting involved in any kind of political football. However the Subcommittee suggested to the FHRC that it would be more practical, educational, and effective if FHRC were to make public those areas on which they had advised the government or state party. This would enhance the public awareness of the role of the FHRC, and at the same time provide a check on the institutions of government and of the private sector.

The position of FHRC is that the government is responsible for everybody in the country. Companies can only operate in Fiji under Fiji law and Constitution. The Bill of Rights states that the Constitution binds the State to all levels including private sector employers and employees, and public office-holders in central and local government bodies. Both in the Bill of Rights and the HRC Act, there is room to deal with the elements of racial discrimination and violations of human rights in the public and private sector. The responsibility is on the State to ensure that racial discrimination will not take place within its jurisdiction. Clearly the FHRC has the role to caution, warn, or advise Government as to its obligations under the constitution and the Human Rights Act.

More importantly for Fiji, a break down of race relations can severely undermine the stability, the confidence, and the various aspects of social, political, and economic investment in our society. Thus the subcommittee believes that, given the limitations and constraints within which the FHRC can operate, the way forward in this regard is contained in the following specific recommendations.

SPECIFIC RECOMMENDATIONS:

1. We recommend that the Inter-Departmental Committee, which includes NGOs and which is presently in place, be responsible for monitoring the CERD Report, the report of the Bi-Partisan Talanoa Subcommittee on UN-CERD Report, and other concerns raised by the Talanoa subcommittee; and their implementation. The Inter-Departmental Committee must submit an annual report of their progress through the Minister responsible to the Parliament, and, in doing so the Minister responsible is to refer the Inter-Departmental report to the Social Services Sector Committee of the House.
2. We recommend that FHRC continues to work independently and follow up in a more effective way on human rights issues, race relations, and matters referred to it by CERD and other individuals and bodies. Its role to advise, caution, and warn be taken more seriously by the parties concerned, and that its annual report be tabled in the House by the Minister responsible and referred to the relevant Sector Committee of the House.

In addition, the Subcommittee discussed further the few additional amendments included in the Bill but not included in the Progressive Report of the Bi-Partisan Talanoa Sub-Committee on Constitutional Change, July 21st, 2003. On these the Subcommittee received a verbal report from the convenor of Talanoa Talks conveying the Government's intention, expressed to him by the Attorney General and Minister of Justice, to withdraw the few amendments in question from the Bill.