

**PROGRESSIVE REPORT OF THE BI-PARTISAN TALANOA
SUB-COMMITTEE, SEPTEMBER 10th, 2003:**

We, the members of the Bipartisan Talanoa Subcommittee, met on July 31st, August 22nd and 23rd, 27th, 29th, September 3rd, 4th, 8th, and 10th, to discuss and make recommendations on the UN report of the Committee on the Elimination of Racial Discrimination (CERD). We acknowledge that, based on their Joint Statement on April 17th 2003, the two Leaders agreed that the issues and concerns raised by CERD are critical for our country today and need to be resolved.

Therefore the Leaders agreed that the Bi-Partisan Talanoa Sub-Committee would meet to discuss further these issues. In this connection and consistent with the spirit of talanoa which sustained the subcommittee's discussions and recommendations on land issues and Constitutional changes, we used the attached framework (see attachment I) to (re)construct our common understanding of the crucial areas for our qualitative judgement of *how* we can and ought to address, implement, and move forward with the CERD's "Concluding Observations of the Committee on the Elimination of Racial Discrimination."

The Talanoa subcommittee recognises that the central theme that permeates the different levels of the CERD report is the basic principle of upholding the international principles of non-racial discriminatory standards. Therefore the subcommittee approached the CERD report, paragraph by paragraph in the order stated in the original document especially under section IV of this report, with this common theme in mind and subsequently led us to the following summary of our discussions and recommendations which is given for the Leaders' consideration:

I. We recall that the Committee on the Elimination of Racial Discrimination (CERD)

--received and considered the sixth to fifteenth periodic reports of Fiji, which were due from 10 February 1984 to 10 February 2002, respectively, welcomed the sixth to fifteenth periodic reports, the supplementary report, and the additional oral information and responses from the

State party's high level delegation, welcomed the resumption of the dialogue after a lapse of 18 years, and appreciated, in particular, the efforts made by the State party to respond to the issues raised in the Committee's observations made at its 1582th meeting, held in 2002 during a preliminary dialogue with the representative of the government of Fiji, and at its 1582th meeting, held on 21 March, it adopted the concluding observations that were subsequently discussed by the Talanoa subcommittee, and

Therefore we recommend that State party should hereafter ensure the timely submission of all periodic reports, as required by article 9 of the Convention.

II. We note that the CERD:

--acknowledged that the State party provided detailed information, including statistical data, relating to the composition of the Fijian population and the situation of the various Fijian ethnic groups, and it (State Party) intends to promote stability in the multi-ethnic and multi-cultural Fijian society, to restore and rebuild confidence among its citizens and communities, to strengthen the foundation for economic growth and prosperity for all in Fiji and considers the Convention as a solid basis for dialogue and cooperation with civil society; welcomed the creation of a Ministry of Reconciliation to help unite all Fijians; appreciated that there was consultation with human rights NGOs in the compilation of the report, the assurances that the State party would continue this dialogue in the future, the inclusion, in the 1997 Constitution of Fiji, of a Social Justice Chapter (section 44), calling for the elaboration of programmes designed to achieve, for all groups or categories of persons who are disadvantaged, effective equality of access to education and training, land and housing, and participation in commerce and all levels and branches of State Public Services, the creation in 1999 of a National Human Rights Commission, in compliance with section 42 of the Constitution, and in accordance with the Principles relating to the status of national institutions for the promotion and protection of human rights ("Paris principles"), endorsed by the General Assembly in its resolution 48/134; and, welcomed the 2002 Agreed Statement by the Prime Minister and the

Parliamentary Leader of the Fiji Labour Party, urging their respective parties to abstain from making racial statements during parliamentary sessions.

III. We acknowledge the factors and difficulties impeding the implementation of the conventions, and note that the CERD also

--recognized the challenges faced by Fiji in respect of its historical legacies which separated rather than united Fiji's different communities.

Therefore we recommend that the State party and all the political parties, private sector and religious organizations, and various civil societies attempt to emphasize the elements that will unify rather than the ones that will divide us today and in the future.

IV. We recognize that the CERD

--in **paragraph 12** noted with concern that the State party has continued to express reservations relating to articles 2,3,4,5,and 6 of the convention, and suggested that the Fijian authorities review those reservations with a view to withdrawing them, taking into account paragraph 75 of Durban Plan of Action, and recommended that the State Party should ensure that the specific protection and enhancement of indigenous Fijians' rights comply with international standards relating to the prohibition of racial discrimination.

Therefore, in connection with paragraph 12, we recommend that the State party review those reservations to ensure that they comply with international standards relating to the prohibition of racial discrimination.

--in **paragraph 13** was deeply concerned about the damage to race relations caused by the 1987 and 2000 coups d'état in Fiji, and encouraged the State party to address perceptions that the State party continues to politicize culture, identity and ethnicity in order to maintain indigenous Fijian hegemony.

Therefore, in regard to paragraph 13, we recognize the challenge for the political leadership to (i) foster better understanding and appreciation, (ii) promote mutual respect and trust, and (iii) work toward taking away the real and perceived fear that exists in race relations, and we recommend that the Leaders consider tasking the Ministry of Reconciliation and Unity to identify the specific areas such as the use of words, information, media etc. to address the said perceptions and achieve the stated goals (i) to (iii), and to draw up an action plan to address these issues, and to focus on and emphasize those that unite rather than those that divide Fiji.

--in **paragraph 14** was deeply concerned that section 99 of the 1997 Constitution, which ensures power sharing between ethnic communities through the creation of a multi-party cabinet, and was not at that time being implemented, and welcomed, the assurance given by the State Party that it would comply with the Supreme Court ruling issued last month on this matter.

Therefore, in connection with paragraph 14, we refer the Leaders to paragraphs #2, and #3 in page 11 of our Progressive Report submitted on July 21st, 2003. Also we recommend that the Leaders consider continuing in the spirit of Talanoa, asking the Pacific Islands Development Program (PIDP) of the East-West Center, to study the multifarious aspects of the philosophy, all the implications, and working of a multi-party government. Such a study is expected to explore the relevant issues and make appropriate recommendations including those areas that may require constitutional amendments to facilitate the development of the concept of power-sharing as envisioned in the Constitution. We share the view that such an exercise will be necessary to provide better understanding of all the implications that arise out of the formation of the multi-party Cabinet. The proposed exercise is viewed in terms of a medium-term project stretching over a period of 12 to 18 months.

--in **paragraph 15** welcomed the commitment of the State party to ensure the social and economic development as well as the right to cultural identity of the indigenous Fijian community, and expressed the view that none of these programmes, however, should abrogate or diminish the enjoyment of human rights for all, which can be limited solely in accordance with the rules and criteria established under international human rights law, and in this regard strongly urged the State party to ensure that the affirmative action measures it adopts to

pursue the above objectives are necessary in a democratic society, respect the principles of fairness, and are grounded on a realistic appraisal of the situation of indigenous Fijians as well as other communities, and further recommended that the State party guarantee that the special measures adopted to ensure the adequate development and protection of certain ethnic groups and their members, in no case lead to the maintenance of unequal or separate rights for different ethnic groups after the objectives for which they were taken have been achieved (articles 1 paragraph 4 and 2 paragraph 2 of the Convention).

Therefore, in connection with paragraph 15, we recognize that the programmes of “affirmative action” are extended to help disadvantaged people in all communities and the needy in Fiji, and that the specific affirmative action programme designed to help the indigenous Fijians and other disadvantaged groups are continually reviewed in terms of its social, educational, and economic aspects of fairness. In this connection our next report to CERD will identify not only the starting point but also the direction in which the implementation and achievement of the objectives of the programmes of affirmative action is moving over time in Fiji.

--in **paragraph 16** noted that despite reports that levels of poverty among all Fijian nationals, including Indo-Fijians and Banabans, have worsened over the years, the State party's affirmative action programmes, as adopted under the Social Justice Act of 2001 and the 50/50 by year 2020 Plan, mainly target indigenous Fijians and Rotumans, and in light of this, strongly recommended that the State party ensure that its poverty alleviation programmes benefit all poor Fijian citizens, irrespective of their ethnic origin, to avoid undue stress on already strained ethnic relations, also recommended that the adoption of any affirmative programme be preceded by consultation involving all ethnic communities.

Therefore, in connection with paragraph 16, we recommend that there should be “national poverty alleviation programmes” targeting the poor in all communities in Fiji, and such programmes should focus to a greater extent on the “squatter settlements” in the different parts of Fiji as the “symbols of poverty” and as “symbols of the growing time bomb”. In addition we recommend using a holistic approach to consultation involving all the stakeholders (e.g., relevant government ministries, NLTB, FNPF, representatives of the private sector, of the religious organisations, of the poor, etc.) to address the “cycle of poverty” engendered by the squatter settlements, as well as to commission a study to (i) establish a national working definition of poverty, (ii) assess the extent of poverty based on such working definition, and (iii) identify what we need to do about it in a holistic way, taking into account the historical, social, and ecological background of the “poverty and squatter settlement cycle” in the multiracial context of Fiji, and the need for solutions in terms of how to reduce the growth in the process of the “poverty and squatter settlement cycle” in terms of housing, health, education, and employment problems as the inter-connected indicators of such cycle. We believe that the issue of quality growth & development in Fiji can and ought to be assessed and monitored by the State party in terms of the degree of reduction in these interconnected indicators of the “poverty and squatter settlement cycle” for all poor Fiji citizens over time.

--in **paragraph 17** was concerned about current perceptions amongst some Fijians that the State Party is not paying enough attention to the issue of reconciling the different population groups in Fiji, and encouraged the State Party to explicitly promote a national identity that unites rather than divides indigenous and Indo - Fijians, as well as other communities, and to include this objective in its development plans.

Therefore, in connection with paragraph 17, we refer the Leaders to the recommendation that we have made with respect to paragraph 13 stated before, that the Ministry of Reconciliation and Unity should include in its action plan a programme designed to explicitly (i) promote a national togetherness among the communities in Fiji and (ii) attempts to bring together the various government programs that encourage the two major races, indigenous Fijians and Indo-Fijians to better understand and appreciate each other cultures and to incorporate such action plan into Fiji’s national educational curriculum, and we also refer the Leaders to the recommendations made in paragraphs 15 & 16 which in our view are central to the issues addressed in this paragraph 17.

--in **paragraph 18** expressed concern about the under - representation of Indo-Fijians and other ethnic minorities in the police, the army, and other public services in general, and recommends that specific programmes be adopted to ensure appropriate representation of all ethnic communities in these services, and requested that updated statistics on poverty, unemployment and education disaggregated between and within ethnic groups be elaborated and included in the next periodic report, and also requested the State party to inform it of the results of all its affirmative action programmes, in particular those relating to poverty alleviation.

Therefore, in connection with paragraph 18, we recommend that the State party takes immediate steps to ensure the appropriate representation of all ethnic communities in the police, the army, and other public services in general and that the progress on the compilation of such disaggregated data be monitored by the Human Rights Commission. Also we recommend that the progressive results of the affirmative action and poverty alleviation programmes be periodically reviewed by the State party before they are included in the next periodic report to the UNCERD.

--in **paragraph 19** was concerned that the expiry of many leases of Native land has allegedly led to the "eviction" of numerous farmers, mainly Indo-Fijians, and that the resettlement programme of the State party appears to be insufficient, and underlined the State's responsibility to provide assistance to "exited tenants", and recommended that it increase its efforts to compensate and resettle affected families, and urged the State party to develop measures of conciliation between indigenous Fijians and Indo-Fijians over the land issue, with a view to obtaining a solution acceptable to both communities.

Therefore, in connection with paragraph 19, we see a need for the NLTB and land-owners to have better understanding and appreciation of the “human stories” about the short-term as well as the long-term effects on the cane farmers who face the trauma of the drastic reconstruction in their ways of life as they have to uproot their familiar “family farms and environment”, which had grown over many years to become a central part of their traditional life-cycle, to restart and regrow the roots of their family lives and to seek employment opportunities elsewhere in Fiji. Hence we see the need to provide proper counselling, moral support, and compensation to the affected farmers, as well as the need for the Leaders to meet and follow-up the recommendations made in our Progressive Report submitted on May 22, 2003, with respect to the need (i) for NLTB to disclose information on the leases that would be renewed and the ones that would not be renewed with the capital improvement values in all areas, (ii) for the government to reaffirm its commitment to help the farmers who are moving out, (iii) to minimize uncertainty by putting in place processes, for the better coordination of decision-making of the landowners and the relevant government agencies, to provide the necessary assurances needed under which the tenants can complete the transition, obtaining the benefits due, and the removal of their personal fixed assets from the land, and (iv) for NLTB to give an undertaking to review its current process of determining the position of the landowners as to whether or not to renew the leases and to assure the outgoing tenants in light of what is stated in (ii) and (iii).

--in **paragraph 20** wished to receive more detailed information in the next periodic report about the exact number of "exited", resettled and compensated persons, disaggregated by ethnic membership as well as on the way the State party plans to respond to the expiry of many more leases in due course.

Therefore, in connection with paragraph 20, we reaffirm the need for the State party to receive and disseminate the progressive information from the Ministry of Agriculture and Re-settlement on the number of farmers whose leases are not renewed, how many farmers have been compensated under the Government compensation plan, and how many farmers have been resettled “where” and this kind of progressive report will help to build up background information not only for the next report but also about those who are vulnerable and fall into the “poverty and squatter settlement cycle”, and those who become actively involved in the development process over time.

--in **paragraph 21** was concerned that, according to some information, hate speech and assertions of the supremacy of indigenous Fijians regularly occur, and recommended that the State party adopt all necessary measures to put an end to the dissemination of doctrines of

superiority based on ethnic origin, which are socially unjust and dangerous, as well as in breach of the Convention, and wished to receive, in the next periodic report, information relating to the effectiveness of the 2002 Agreed Statement relating to the prohibition of racial statements in Parliament, and to any other measures adopted to strongly oppose such statements in other public fora, including the media.

Therefore, in connection with paragraph 21, we recommend to the Leaders to talk with the Speaker of the House of Representatives, and the President of the Senate, and refer them to the Hansard to see the type of "hate" statement and words used, as we hold the view that if we can control the use of such statements and words in the House we can begin to control it outside the House including the media. We recommend that the Standing Orders should be tightened so that those responsible for such statements and words can be more easily referred to the Privileges Committee of the House, and these referrals would enable us to quantify the progress made with respect to such social/political phenomena for the future report. We reaffirm the 2002 Agreed Statement by the Leaders, urging the respective members of their parties to abstain from making racial statements during parliamentary sessions, as well as the need to curtail racial remarks and promote racial harmony stated in their Joint Statement on April 17th, 2003, and we encourage the Leaders to keep reminding the members of their parties at their respective caucus of these responsibilities.

--in **paragraph 22** noted that the word "person", in the provisions of the Penal Code (sedition) and the Public Order Act (incitement to racial antagonism), also includes any organisation, and would like to receive further details on this matter, and noted, however, such legislation makes provision for sentences such as imprisonment and fines, but not for the prohibition of racist organisations, and while taking note of the State Party's declaration on article 4 of the Convention, considered that the State party's legislation does not fully comply with Article 4 of the Convention, and thereby recommended that the State party adopt specific and unambiguous legislation relating to the prohibition of racist organisations, and was furthermore concerned that the State party has expressed in its periodic report, its reluctance to prohibit racist organisations, in order to preserve the freedoms of expression and association, and refers the State party to its General Recommendation XV (1993) on article 4.

Therefore, in connection with paragraph 22, we recommend the Human Rights Commission seek further information to ascertain which relevant legislations are affected including the relevant sections of the Human Rights Act. We recommend that, based on the availability of such information and clear criteria for that which constitute a racist organization, the State party should begin to not only identify the organizations that are considered to be racist organisations but also consider the necessary legal measures for dealing with such organizations.

--in **paragraph 23** was concerned by information relating to racist attacks and acts of religious intolerance against Indo-Fijians, in particular during the 1987 and 2000 coups, and underlined that no in-depth information relating to the prosecution of the authors of such acts, as well as on the adoption of preventative measures for the future, has been provided, and therefore requested that such information be provided in the next periodic report, including statistical data, on the practical implementation and efficiency of legislation implementing article 4 of the Convention is also requested.

Therefore, in connection with paragraph 23, we recommend to the Leaders to ensure the government is compiling the necessary data relating to these events and is taking the necessary steps to prevent this from happening in the future. We believe that affirmative action, fostering better understanding and appreciation, promoting mutual respect and trust, working toward taking away the real and perceived fear, and building religious tolerance, should be seen as integral parts of the long-term strategy to address this issue. Also, the State party should impress on the Police Force that sacrilege should be viewed very seriously and vigorously pursue the individuals involved and responsible for the damages incurred.

--in **paragraph 24** took note of the growing number of suicides among Indo-Fijians, and recommended that the State party conduct research into the causes of this phenomenon, and keeps the Committee informed.

Therefore, in connection with paragraph 24, we are aware that a task force called the National Committee on the Prevention of Suicide (NCOPS) was formed in January 2002 to combat the increasing rate of suicide among all ethnic groups and they can provide the updated figures, identify the social, psychological, and economic factors responsible, and provide the solutions for the possible causes in order to reduce the growth of this social phenomenon. And we recommend that the State party provides the necessary resources to support the departments and organisations that work in this area.

--in **paragraph 25** recommended that the State party continue to support the activities of the National Human Rights Commission, and would like to receive more information about the results of its activities, as well as on the practical implications of article 27 of the Human Rights Commission Act, authorising the Commission not to investigate a case, when it "has before it matters more worthy of its attention" or when the "resources of the Commission are insufficient for adequate investigation".

Therefore, in connection with paragraph 25, we recommend that the section 27 of the Human Rights Commission Act 1999 be reviewed for as it stands now it leaves no recourse for appeal over a decision not to pursue a case further. We believe that the Human Rights Commission should be pursuing its mission without constraints. The issue of inadequate resources should not be treated as a legitimate reason for non-investigation and in addition we recommend that the Commission should provide a breakdown of the number of cases that were rejected on the basis of 'Discretion whether to investigate' under section 27 mentioned above.

--in **paragraph 26**, while welcoming the assurance given by that State that schools are not racially separated in Fiji, wished to receive more information on the consequences and practical implementation of the Education (Establishment and Registration of Schools) Regulation, which states that "while a registered or recognised school may, when selecting pupils for admission give preference to pupils of a particular race or creed, no admission shall be denied solely on the grounds of race or religion", and also wished to know whether the State party enhances and finances multiracial schools, and would appreciate disaggregated data relating to any support provided to the various community and religious based schools.

Therefore, in connection with paragraph 26, we recommend that the State party can and ought to give figures in a clear and transparent manner. The State party should be upfront about the affirmative action for all schools so as to dispel uncertainty and any misunderstanding.

--in **paragraph 27** wished to receive, in the next periodic report, information on the legal status of persons of mixed ethnic parentage and of the various languages spoken in Fiji.

Therefore, in connection with paragraph 27, we recommend that the State party should advise the CERD on the legal status of persons of mixed ethnic parentage and of the various languages in Fiji.

--in **paragraph 29** [as there was no paragraph 28 in the original CERD report] noted the State party's view that the remedies provided under national and international law are sufficient, and that making the declaration provided for in Article 14 of the Convention is not necessary, and was stressing that the State party has not provided enough information to demonstrate that the available remedies are sufficient, and reminded the State party that the remedies provided in Article 14 of the Convention may be considered as complementary to the existing ones, and therefore invited the State party to reconsider its position, and to envisage the possibility of making such a declaration.

Therefore, with respect to paragraph 29 we reaffirm the invitation for the State party to reconsider its position and make such a declaration.

--in **paragraph 30** strongly recommended that the State party ratify the amendments to article 8, paragraph 6 of the Convention, adopted on 15 January 1992 at the Fourteenth Meetings of States Parties to the Convention and endorsed by the General Assembly in its resolution 47/111, and in this connection, referred to General Assembly resolution 57/194 of 18 December 2002, in which the General Assembly strongly urges State parties to accelerate their domestic ratification procedures with regard to the amendment, and to notify the Secretary-General expeditiously in writing of their agreement to the amendment.

Therefore, in connection with paragraph 30, we recommend the State party takes the necessary procedures to ratify the amendments.

--in **paragraph 31** encouraged the State party to consult with organisations of civil society working in the area of combating racial discrimination, during the preparation of the next periodic report.

Therefore, in connection with paragraph 31, we recommend that the State party should find a way to work cooperatively with the civil societies in order to collect the necessary information from them. Such data would be crucial for the preparation of the next report to the UNCERD.

--in **paragraph 32** recommended that the State party take into account the relevant parts of the Durban declaration and Programme of Action when implementing the Convention in the domestic legal order, in particular in respect of articles 2 to 7 of the Convention, and that it include in its next periodic report information on action plans or other measures they have taken to implement the Durban Declaration and Programme of Action at a national level, and also suggested that the State Party envisage elaborating a national plan of action to combat racism, and to this effect avail itself of the technical assistance offered by the Office of the United Nations High Commissioner for Human Rights.

Therefore, in connection with paragraph 32 we recommend that the State party, through the Human Rights Commission, should compile the information on these measures and consider putting in place such a plan of action to combat racism, and provide regular reports to the Parliament.

--in **paragraph 33** recommended that the State party's reports be made readily available to the public from the time they are submitted to the United Nations that the observations of the Committee on these reports be similarly publicized.

Therefore, in connection with paragraph 33, we recommend that the State party should make its report public as well as table it in the House after the said report is submitted to the UNCERD.

--in **paragraph 34** recommended that the State party submit its sixteenth periodic report jointly with its seventeenth periodic report, due on the 10 February 2006, and that it address all points raised in the present concluding observations.

Therefore, in connection with paragraph 34, we recommend that the State party should begin its sixteenth periodic report with two interim reports on a two-yearly basis, namely, 2004 and 2006 in its effort to address the issues raised in this document, and table these reports in the House of Representatives.

Finally, we recommend that the Fiji Human Rights Commission should take the overall responsibility for monitoring the progress made in respect of the CERD report and our recommendations, and “to encourage the ratification of international human rights instruments by the State and, where appropriate, to recommend the withdrawal of reservations entered to those instruments” as stated in section 7 (1) (g) under the *Powers and duties of the Commission*, of the Human Rights Commission Act 1999, and report the outcome independently to the national Parliament on an annual basis.