

**Совет по правам человека**

Тридцать пятая сессия

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**Расизм, расовая дискриминация, ксенофобия
и связанные с ними формы нетерпимости,
последующие меры и осуществление****Дурбанской декларации и Программы действий****Доклад Специального докладчика по вопросу
о современных формах расизма, расовой
дискриминации, ксенофобии и связанной
с ними нетерпимости о его миссии на Фиджи*****Записка секретариата**

По приглашению правительства Специальный докладчик по современным формам расизма, расовой дискриминации, ксенофобии и связанной с ними нетерпимости посетил Фиджи с 7 по 12 декабря 2016 года, где он провел встречи в Суве с представителями правительства и законодательной и судебной ветвей власти, сил безопасности, Комиссии по правам человека, органов Организации Объединенных Наций и международных и неправительственных организаций, а также членами общин и другими группами и лицами, работающими в сфере борьбы с расизмом.

В настоящем докладе Специальный докладчик рассматривает правовую и институциональную базу на Фиджи, направленную на борьбу с расизмом, а также различные стратегии и инициативы, принятые для борьбы с расизмом и ксенофобией.

Специальный докладчик анализирует основные проблемы в сфере борьбы с расизмом, расовой дискриминацией, ксенофобией и связанной с ними нетерпимостью, включая отношения между различными общинами, вопрос о земельном владении, отсутствие дезагрегированных данных и то, как обеспечить баланс между свободой выражения мнений и защитой от ненавистнических высказываний.

В заключительной части доклада содержатся рекомендации для всех ответствующих заинтересованных сторон.

* Настоящий доклад был представлен после установленного срока, с тем чтобы отразить самые последние события.



Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance on his visit to Fiji**

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** Circulated in the language of submission only.

I. Introduction

1. At the invitation of the Government, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance visited Fiji from 7 to 12 December 2016.
2. The Special Rapporteur travelled to Suva, where he met with representatives of the Government at the highest level, including the President, the Attorney-General, the Solicitor-General and the Minister for Education and Women, Children and Poverty Alleviation. The Special Rapporteur also had meetings with representatives of various ministries, including the Ministry of iTaukei Affairs. He also met with Members of Parliament of all political parties, the Chief Justice and other High Court judges, the Director of Public Prosecutions, the Director of Legal Aid, representatives of the police, the Human Rights and Anti-Discrimination Commission, the Media Industry Development Authority, the Supervisor of Elections, United Nations entities and international organizations, religious and faith-based organizations, political parties and movements and other non-governmental organizations, and community members, as well as other groups and individuals working in the field of racism and anti-discrimination.
3. The Special Rapporteur also attended the annual conference of the Attorney-General in Natandola on 10 and 11 December 2016, where he was honoured to be the keynote speaker at a session entitled “Black, white or purple — does it really matter?” He also visited Vatukarasa village near Sigatoka, where he was received with warm hospitality and had the opportunity to interact with traditional leaders and the community.
4. The Special Rapporteur wishes to express his sincere gratitude to the Government of Fiji, in particular the Office of the Attorney-General, for its cooperation and excellent coordination in the conduct of the visit. He is also particularly grateful to the Permanent Representative of Fiji to the United Nations Office at Geneva and to Switzerland for having personally arranged all the high-level meetings during his visit. He is indebted to his interlocutors from civil society and community organizations for the excellent cooperation they extended to him throughout the visit. He hopes his conclusions and recommendations will contribute to finding concrete ways and means of addressing the challenges raised in the present report in a peaceful and effective manner.

II. Background

5. The Republic of Fiji in the South Pacific is comprised of 332 islands and 522 smaller islets. Of those, more than 100 islands are permanently inhabited by a population of approximately 880,000. The two largest islands, Viti Levu and Vanua Levu, are home to approximately 80 per cent of the country’s population. Viti Levu accounts for over half of the country’s land area and is where the capital, Suva, is located. The population of Fiji is about 60 per cent iTaukei (which translates literally as “owners” in the indigenous language and is taken as meaning indigenous Fijians) and 35 per cent of Indian descent, with a few other ethnic groups, such as the Rotuman islanders and persons of Chinese and European descent. Nearly 99 per cent of iTaukei are Christian and Fiji islanders of Indian descent are Hindus, Muslims and Christians. Fiji recognizes three official languages: English, iTaukei and Hindi. iTaukei is spoken as either a first or second language by indigenous Fiji islanders. Fiji islanders of Indian descent speak a local variant of Hindi known as Fiji Hindi. English is widely used as a lingua franca in the more populated areas.
6. The Fijian islands were annexed in 1873 by Great Britain and declared a British colony on 10 October 1874. The colonial Government protected Fijian land rights by prohibiting the sale of land to foreigners. It also prohibited the employment of indigenous Fijians as plantation labourers and therefore brought in labourers from India. Between 1879 and 1916, nearly 61,000 Indians came to Fiji at a rate of about 2,000 per year. The vast majority remained in Fiji once their contracts had ended and settled on the two main islands, Viti Levu and Vanua Levu. The colonial Government discouraged interaction between Indians and Fijians and encouraged the separate economic development of the

different ethnic groups. By the late 1940s, Indians outnumbered Fijians, a trend which continued until the 1980s, causing indigenous Fijians to be concerned about their place and identity in their own land.¹ The system created a three-tiered economic structure with Europeans and Chinese at the top, followed by Indians in the middle and Fijians at the bottom.²

7. During the 1960s, there was a movement towards self-governance and the country gained independence on 10 October 1970. Between 1970 and 1987, a political party dominated by indigenous Fijians and known as the Fijian Alliance Party, led by Sir Kamisese Mara, ruled the country. The April 1987 elections brought a multiracial coalition between the Fiji Labour Party and the National Federation Party, led by Timoci Bavadra, into power. The majority of Members of Parliament in the new Government were Fijians of Indian descent. The election of the Government escalated racial tensions and on 14 May 1987 a Lieutenant Colonel in the army, Sitiveni Rabuka, supported by the Great Council of Chiefs, led a successful coup against the Government. In September 1987, the 1970 Constitution was declared invalid by presidential decree and Fiji was declared a Republic with Mr. Rabuka as Head of State. The coup caused economic hardship and escalated ethnic tensions.

8. The new Constitution, which took effect on 25 July 1990, increased the political power of the Great Council of Chiefs and the military. Mr. Rabuka was elected as Prime Minister in both the 1992 and 1994 elections. Following a constitutional review commission in 1995, the Government adopted a new Constitution in 1997, which was widely hailed as multiracial and democratic. In the 1999 elections the Fiji Labour Party again won a majority of seats and Mahendra Chaudhry became the first Fijian of Indian descent to be Prime Minister. On 19 May 2000, armed men entered the parliamentary compound in Suva and took 30 hostages, including Prime Minister Chaudhry. Under pressure to end the situation, President Ratu Mara announced he was removing Mr. Chaudhry from power and then resigned himself. The Commander of the Fijian Military Forces, Frank Bainimarama, announced martial law and after eight weeks the hostages were released and the 1997 constitution revoked. Mr. Bainimarama assumed executive authority over Fiji. The High Court ordered the reinstatement of the Constitution and in September 2001, a general election was held which was won by the Soqosoqo Duavata ni Lewenivanua party of the interim Prime Minister, Laisenia Qarase. In 2005, amid much controversy, the Government of Mr. Qarase proposed a reconciliation and unity commission with the power to recommend compensation for victims of the 2000 coup and amnesty for its perpetrators. However, the military strongly opposed the bill.

9. In late November and early December 2006, the military, under the leadership of Mr. Bainimarama handed down a list of demands to the Prime Minister and gave him an ultimatum date of 4 December to accede to those demands or to resign from his post. Mr. Qarase refused either to concede or resign and on 5 December 2006, after meeting with Mr. Bainimarama, President Ratu Josefa Iloilo signed a legal order dissolving the parliament. No significant protests or violence took place during the coup. In April 2009, the Fiji Court of Appeal ruled that the 2006 coup had been illegal. President Iloilo abrogated the Constitution and removed all office holders under the Constitution including all judges and the governor of the Central Bank. He then reappointed Mr. Bainimarama as Prime Minister under his “new order” and imposed a public emergency regulation limiting internal travel and allowing press censorship. The Great Council of Chiefs was abolished in 2012.

10. A new constitution was adopted in 2013, which includes protection of indigenous land rights. Under the new Constitution, all citizens of Fiji should be referred to as Fijians and have equal status and identity, which means that they are equally entitled to all rights, privileges, duties, benefits and responsibilities of citizenship. Elections were held in 2014 (the first ones since the 2006 coup), in which the Fiji First party won a majority of parliamentary seats. Mr. Bainimarama was elected Prime Minister.

¹ See Brij V. Lal, “Fiji Islands: from immigration to emigration”, Migration Policy Institute (2003).

² Vijay Naidu, “Fiji: the challenges and opportunities of diversity”, Minority Rights Group International (2013).

III. Legal framework for combating racism

A. International human rights instruments and mechanisms

11. Fiji is a State party to the following international human rights instruments: the Convention on the Rights of the Child, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. It is a signatory but, at the time of the Special Rapporteur's visit, not yet a party to the Convention on the Rights of Persons with Disabilities. It has also ratified the Convention on the Prevention and Punishment of the Crime of Genocide, the Rome Statute of the International Criminal Court, the Convention relating to the Status of Refugees of 1951 and the 1967 Protocol to the Convention.

12. Fiji has not yet signed or ratified other important international human rights conventions, including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Cultural and Social Rights, the International Convention for the Protection of All Persons from Enforced Disappearance, the International Convention on the Rights of All Migrant Workers and Members of Their Families, the four Geneva Conventions of 1949 and the Additional Protocols thereto.

13. Fiji is a party to the following International Labour Organization (ILO) conventions: the Forced Labour Convention, 1930 (No. 29), the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Equal Remuneration Convention, 1951 (No. 100), the Abolition of Forced Labour Convention, 1957 (No. 105), the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), the Minimum Age Convention, 1973 (No. 138) and the Worst Forms of Child Labour Convention, 1999 (No. 182). However, it is not a party to the Indigenous and Tribal Peoples Convention, 1989 (No. 169).

14. In 2016, Fiji announced its candidacy for a seat at the Human Rights Council for the 2018-2020 term, but subsequently postponed its bid. Fiji was reviewed under the second cycle of the universal periodic review in November 2014, during which the issues of concern included violence and discrimination against women, non-ratification of core United Nations human rights treaties and the broad constitutional grounds for restrictions on freedom of expression, opinion, association and assembly (A/HRC/28/8). Fiji issued a standing invitation to all special procedures mandate holders on 15 March 2015 and was visited by the Special Rapporteur on the right to education in December 2015 (A/HRC/32/37/Add.1).

15. Fiji was last reviewed by the Committee on the Elimination of Racial Discrimination in August 2012. The Committee regretted the lack of disaggregated data on the socioeconomic situation of members of ethnic groups, the lack of comprehensive legislation on racial discrimination, including the lack of a definition of racial discrimination in line with article 1, and the non-compliance of existing legislation with article 4 of the Convention (see CERD/C/FJI/CO/18-20, para. 9); the absence of complaints, prosecutions and convictions relating to ethnically or racially motivated crimes lodged with courts or with the Fiji Human Rights Commission, despite reports of institutionalized or de facto racial discrimination in the country, including by law enforcement officials (see para. 10); the very low level of representation of minorities in public and political life (see para. 12); and reports of insufficient consultation with and participation of indigenous peoples as regards issues affecting them, such as equitable rent for the use of its land (see para. 14). The Committee also noted the lack of information on measures to address discrimination based on ethnicity and religion as a result of reports of religious intolerance, often linked with ethnicity (see para. 15) and the absence of information on the concrete results of a number of policies on the elimination of racial discrimination in schools (see para. 16).

16. The Committee recommended that Fiji ratify a number of international human rights treaties, including the International Covenant on Civil and Political Rights, the International

Covenant on Economic, Social and Cultural Rights and the International Convention on the Protection of all Migrant Workers and Members of Their Families. The Committee also recommended that Fiji give effect to the Durban Declaration and Programme of Action and include in its next periodic report specific information on action plans and other measures to implement it at the national level.

17. The visit of the Special Rapporteur follows the visit conducted by the Special Rapporteur on the right to education from 8 to 15 December 2015, during which he analysed the important reforms initiated by the Government, along with national initiatives to overcome ethnic divides in the education system.

B. United Nations agencies present in Fiji

18. The Special Rapporteur was pleased to have interacted with the Regional Office for the Pacific of the Office of the United Nations High Commissioner for Human Rights, which has been located in Suva since 2005. The Office covers the countries of the South Pacific, including Australia and New Zealand. Its mandate includes providing expert advice and technical assistance to government offices and institutions, regional organizations, national human rights institutions, academic institutions, civil society, professional associations, and other stakeholders; encouraging and assisting Governments and civil society in the region to actively engage with the international human rights mechanisms: treaty bodies, special procedures and in particular the universal periodic review process. At the time of the visit, the thematic focus areas of the Regional Office included support to States and civil society in their engagement with United Nations human rights mechanisms; the establishment and strengthening of national human rights institutions; the prevention of torture and ill-treatment; the promotion of accountability and combating impunity; countering discrimination especially with regards to the rights of lesbian, gay, bisexual, transgender and intersex persons, indigenous peoples, migrants and asylum seekers; and the protection of human rights in emergencies.

19. The Special Rapporteur also met with the United Nations country team and its Resident Coordinator, as well as the heads of the United Nations agencies present in Fiji. The Special Rapporteur was informed that the United Nations Development Programme (UNDP) had launched a project on rights, empowerment and cohesion for rural and urban Fijians, which aims to promote peacebuilding, social cohesion and inclusiveness through awareness of rights, access to services, provision of legal advice and institutional capacity-building in Fiji.

C. Legislation prohibiting racism, racial discrimination, xenophobia and related intolerance

20. The Constitution of Fiji was adopted in 2013 and replaced the previous Constitution of 1997. The preamble makes reference to the unique cultures, customs, traditions, and languages of the iTaukei, the Rotuman islanders, the descendants of the indentured labourers from British-ruled India and the descendants of the settlers and immigrants to Fiji. It guarantees the right to life (sec. 8) and provides for the inviolability of personal liberty (sec. 9) and for freedom of assembly (sec. 18) and association (sec. 19) and freedom of speech, expression, thought, opinion and publication (sec. 17). Those rights may be limited to protect the right of people to be free from hate speech (sec. 17 (3) (b)). Furthermore, freedom of speech, expression, thought, opinion and publication do not protect against advocacy of hatred that is based on the grounds included in section 26, or that constitute incitement to harm (sec. 17 (2)). The 2013 Constitution also eliminated the quotas imposed on the parliamentary seats available to each ethnic group, as under the previous Constitution of 1997, the iTaukei were entitled to 23 seats, Fijians of Indian descent to 19 seats, Rotuman islanders to 1 seat, other ethnic groups to 3 seats and 25 seats were open to all ethnic groups.

21. Section 26 of the Constitution guarantees that every person is equal before the law and therefore entitled to equal protection and treatment and benefit of the law. It

specifically prohibits unfair discrimination against a person, directly or indirectly, on a broad range of grounds including race, culture, ethnic or social origin, colour, place of origin, sex, gender, sexual orientation, gender identity and expression, birth, primary language, economic or social or health status, disability, age, religion, conscience, marital status or pregnancy, or opinions or beliefs. There are several exceptions to this guarantee, including laws or administrative actions that appropriate revenue, relate to adoption or marriage, and give effect to the communal ownership of iTaukei, Rotuman, and Banaban lands and access to marine resources (sec. 26 (8)).

22. The Special Rapporteur notes that the Constitution provides protection against forced labour (sec. 10) and torture and cruel, inhumane, degrading, or disproportionately severe treatment or punishment (sec. 11). Every person who is arrested or detained has the right to receive legal counsel and be heard before a court (sec. 13) and all people charged with an offence have the right to a fair trial before a court of law (sec. 15). The Constitution guarantees the right to education (sec. 31), economic participation (sec. 32), to work and to receive a just minimum wage (sec. 33), to have reasonable access to transportation (sec. 34), to have accessible and adequate housing and sanitation (sec. 35), to have adequate food and water (sec. 36), to social security schemes (sec. 37), and to health (sec. 38). The Constitution has articles enumerating the specific rights of children (sec. 41) and of individuals with disabilities (sec. 42).

23. The Constitution also provides for the continuance of the Human Rights and Anti-Discrimination Commission, established under the Human Rights Commission decree of 2009 (sec. 45).

24. In addition to the Constitution, there are several decrees, acts and promulgations that relate to non-discrimination and prohibit racism and racial discrimination.³ Human Rights Commission decree of 2009 contains provisions relating to discrimination.⁴ Section 19 (1) defines unfair discrimination as being when a person, while involved in the areas outlined in subsection (3), directly or indirectly differentiates adversely against or harasses any other person by reason of a prohibited ground of discrimination. There are various areas listed in subsection (3) of section 19, including employment, provision of goods, services or facilities, provision of land or housing and access to education.

25. In terms of labour relations, the Employment Relations Promulgation of 2007⁵ sets out the prohibited grounds for discrimination, whether direct or indirect, which include race, culture, ethnic or social origin, colour, place of origin, sex, gender, sexual orientation, gender identity and expression, birth, primary language, economic or social or health status, HIV/AIDS status, disability, age, religion, conscience, marital status or pregnancy.

26. Section 17 of the Public Order Act criminalizes spreading any report or making any statement, whether spoken, intended, or by signs or visible representation, that are likely to incite racial dislike or hatred of any race or community, promote feelings of enmity or ill will between different races or communities, or prejudice the public peace. It also criminalizes making intimidating or threatening statements “in relation to a race or community other than his/her own which is likely to arouse fear, alarm or a sense of insecurity amongst members of that race”. A person convicted of this offence may be imprisoned for up to one year and/or receive a fine of up to F\$ 500.

27. That Act is complemented by the Public Order Amendment Decree of 2012, which defines racial vilification as conduct that offends, insults, humiliates, intimidates, incites hatred against, serious contempt for, or revulsion against or severe ridicule of another person or group of people on the grounds of their race, colour, national or ethnic origin. It also defines religious vilification as conduct that offends, insults, humiliates, intimidates, incites hatred against, serious contempt for, or revulsion against or severe ridicule of another person or group of people on the grounds of their religious belief or activity.

³ All decrees, acts and promulgations were consolidated at the end of 2016.

⁴ See www.fhrc.org.fj/images/doc/Decree%2011.pdf.

⁵ See also, Employment Relations (Amendment) Act No. 4 of 2015.

28. The Immigration Act 2003 is the main law governing migration and regulates the entry into Fijian territory and the deportation of individuals, as well as providing asylum procedures and defining the offences of trafficking and smuggling of persons. The Office of the United Nations High Commissioner for Refugees (UNHCR) has reviewed the Act and determined that part 6, which governs asylum seekers and refugees, is very brief and should provide more specific statutory guidance on refugee status determination. Additionally, according to UNHCR, some of the provisions of the 1951 Convention relating to the Status of Refugees covering the expulsion of refugees and exclusion and cessation of refugee status are not correctly reflected in the Act.⁶

29. In 2010, Fiji was the first Pacific island nation to decriminalize homosexuality after the Government repealed the anti-sodomy laws in 2010.⁷ The Constitution of 2013 also includes sexual orientation and gender identity as prohibited grounds for discrimination.⁸ In 2010, a decree was issued whereby all citizens of the country were to be known as “Fijians”, a term that was previously understood to refer only to indigenous Fijians or iTaukei.

30. In terms of schooling, the Government has mandated that schools with ethnic names remove the ethnic connotations to promote schools with mixed ethnic groups.⁹ The Government also launched an anti-bullying campaign in August 2012 directed at preventing the targeting of lesbian, gay, bisexual and transgender young people in schools. At a consultation on bullying in schools on the basis of sexual orientation and gender identity in the Asia-Pacific region, organized by UNDP in 2015, Fiji, along with other countries, committed to pursuing measures to raise awareness of bullying on the basis of sexual orientation and gender identity and to introduce safeguards into its educational systems.¹⁰

IV. Institutional framework for combating racism and discrimination

31. The Human Rights and Anti-Discrimination Commission, established under section 45 of the Constitution and the Human Rights Commission Decree of 2009, succeeds the previous Human Rights Commission, created by the Human Rights Commission Act of 1999.

32. The Special Rapporteur was informed that this institution is responsible for promoting the protection and observance of and respect for human rights; educating the public on the rights and freedoms in the Constitution; monitoring, investigating and reporting on human rights issues; making recommendations to government offices; receiving and investigating complaints about alleged human rights violations and taking steps to secure appropriate redress; and monitoring the compliance of the State with international human rights obligations. The Commission also discharges its mandate by educating the public about human rights and promoting and protecting the human rights of everyone in Fiji. The Complaints Division receives complaints of allegations of breaches of human rights or unfair practices, assesses and investigates those complaints and resolves them by conciliation, or refers them to the legal division for court action or to the appropriate government ministry or department.

⁶ Submission by the United Nations High Commissioner for Refugees to the second cycle of the universal periodic review.

⁷ The anti-sodomy laws were struck down initially by the courts in the case of *McCoskar v. The State* in 2005 and the Government made no attempt to reintroduce such laws in passing the Crimes Act in 2010.

⁸ See “Freedom in the world 2015: Fiji”, Freedom House, available at <https://freedomhouse.org/report/freedom-world/2015/fiji>.

⁹ See “NGO alternate report to the Committee on the Elimination of Racial Discrimination for the Republic of Fiji” (June 2012).

¹⁰ See www.asia-pacific.undp.org/content/rbap/en/home/presscenter/pressreleases/2015/06/19/asia-pacific-countries-stand-united-against-homophobic-and-transphobic-bullying-in-schools.html.

33. Section 45 (7) and (12) of the Constitution of 2013 requires that the Commission be independent in the performance of its functions or the exercise of its authority and powers and allows the Commission control of its own budget and finances. However, the law prohibits the Commission from investigating any human rights and discrimination cases relating to the 2006 coup and the 2009 abrogation of the previous Constitution.¹¹ In 2015, the Constitutional Offices Commission appointed five members to the Commission. Those positions had been vacant since the abrogation of the previous Constitution. Two Commissioners have resigned since then and have not been replaced. However, despite their resignation, the Commission has continued its functions and activities.

34. In 2000, the previous Commission had received an “A” classification from the Global Alliance of National Human Rights Institutions. In March 2007, the Commission’s accreditation was suspended, following a Commission statement supporting the military takeover in 2006.¹² As of the date of the visit of the Special Rapporteur, the Commission had not regained its “A” classification.

V. Public policies and initiatives to combat racism, racial discrimination, xenophobia and related intolerance

35. The Special Rapporteur is fully aware that the history of Fiji has been significantly shaped by its colonial past and that since its independence in 1970, the country has experienced political instability in the form of several military coups. He notes that Fiji is addressing that past by putting into place new institutions, laws and a new Constitution. He was informed of the stated commitment of the Government to guarantee equality for all citizens, irrespective of their race, ethnic background or religion, and of its efforts to redress past policies of racial and ethnic discrimination. He was also informed that the current governmental programmes have the stated aims of improving the social and economic welfare of all and that they are also intended to promote social cohesion and non-discrimination.

36. The Special Rapporteur was impressed by the government policy of inclusiveness, which has resulted in a comprehensive reform of the education system and, in particular, the end of the practice of separate ethnic schools and the policy of enhancing the accessibility of education at all levels through substantive aid and scholarship programmes based on merit and financial need. The comprehensive reforms Fiji has undertaken concerning its education system include the following main characteristics: (a) implementation of a curriculum framework to enhance spiritual, intellectual, social and physical development and strengthen instruction in iTaukei and Hindi, as well as English; (b) an improvement in the number and abilities of competent and motivated teachers, a reduction in pupil-teacher ratios and the increased use of standard improvement measurements in schools; (c) enhancement of the rural education programme by establishing an appropriate infrastructure, improving standards, reviewing school performance and piloting a distance education programme; (d) a strengthened partnership between the Government, communities, development partners, municipal councils, school management committees, developers and parents; (e) expanded technical and vocational educational and training for skills development; and (f) effective and efficient allocation of subsidies to tertiary institutions. Those reforms should be seen together with the Fiji national action plan for human rights education 2003-2005¹³ which set the tone for the start of a comprehensive reform of education and the teaching of human rights.

37. The Special Rapporteur on the right to education has welcomed those important reforms and the commitment of the Government towards implementing the right to education. As he has noted, the unprecedented increase in financial resources dedicated to

¹¹ See, for example, sections 11 (2), 38 (1), (2), (4) and (5) and 52 (3) of the Human Rights Commission Decree of 2009.

¹² See www.radionz.co.nz/international/pacific-news/168893/fiji-human-rights-commission-suspended-from-international-body.

¹³ Available at www2.ohchr.org/english/issues/education/training/docs/actions-plans/Fiji.pdf.

education demonstrates a deep commitment to overcoming the ethnic divide and building a better Fiji for all, in an era of stability and progress (A/HRC/32/37/Add.1)

38. The Special Rapporteur was also informed of several poverty alleviation programmes that the Government has undertaken to tackle social and economic challenges, faced in particular by persons living in rural and remote areas, and has noted that all government departments are working together in a cohesive and coordinated approach to ensure quality delivery of social services to beneficiaries.

VI. Challenges in the fight against racism, racial discrimination, xenophobia and related intolerance

A. The relationship between the iTaukei and Indo-Fijian communities

39. The Special Rapporteur was informed about the complex relationships between the iTaukei and Indo-Fijian communities, which have their roots in the colonial era when the colonial Government discouraged interaction between labourers of Indian descent and indigenous Fijians and encouraged the separate economic development of the various ethnic groups.¹⁴ Racial and ethnic groups had separate schools, places of worship, social clubs and sports activities.¹⁵ The subsequent changes in Government and transfers of power, many of which took place through military coups, reversed the balance of power in favour of one of the two ethnic groups, lasting until the next change of Government, whether peaceful or not.

40. Since the late 1980s, over 120,000 Fijians of Indian descent have left Fiji as a result of discrimination and the political and economic problems in the country.¹⁶ The rate of emigration increased significantly after 1987 and has resulted in a decrease in the population of Indian descent. Furthermore, the then political culture of racial patronage driven by coups claiming political leadership as a “birthright” and diminishing employment and advancement opportunities for Fijians of Indian descent has also had an economic impact through the loss of skilled workers, estimated at over US\$ 200 million.¹⁷ The Special Rapporteur was informed that before 2006, public policies had favoured iTaukei persons in areas such as employment and scholarships in education. Under those programmes, there were three categories of government scholarships for tertiary education: the Public Services Commission scholarships, the iTaukei Affairs Board scholarships and the multi-ethnic scholarships. The Public Services Commission awards were available to everyone, but 50 per cent were reserved for iTaukei and Rotuman persons. The iTaukei Affairs Board scholarships were available only to iTaukei and Rotuman persons. The multi-ethnic scholarships were available to all ethnicities but did include an income threshold of F\$ 10,000,¹⁸ which de facto excluded most Fijians of Indian descent.

41. The Special Rapporteur was informed that those scholarships have since been replaced by a new tertiary education loan scheme, which does not take account of ethnic origin. The scheme grants loans to students enrolling in tertiary educational institutions with interest rates that vary, depending on income, and includes the national toppers scheme that grants full scholarships for the top 600 applicants from priority areas (see CEDAW/C/FJI/5, paras. 2.13 and 2.14).

42. The Special Rapporteur was also informed of the removal of the Great Council of Chiefs, an institution from the colonial era which grouped together the traditional indigenous leaders and had gained significant power under previous Governments. The

¹⁴ See Vijay Naidu, “Fiji: the challenges and opportunities of diversity”.

¹⁵ See NGO submission to the Committee on the Elimination of Racial Discrimination, August 2007.

¹⁶ See Brij V. Lal, “Fiji Islands: from immigration to emigration”.

¹⁷ See Immigration and Refugee Board of Canada, “Fiji: Availability of state protection for Fijians of Indian descent, including protection available to women victims of sexual violence” (18 November 2009), available from www.refworld.org/docid/4dd226752.html.

¹⁸ See Vijay Naidu, “Fiji: the challenges and opportunities of diversity”.

Special Rapporteur recalls that the Committee on the Elimination of Racial Discrimination had expressed concern that various actions were taken in Fiji without consultation with the indigenous peoples, including the dissolution of the Great Council of Chiefs (see CERD/C/FJI/CO/18-20, para. 14).

43. The Special Rapporteur was also informed that over 50 per cent of iTaukei respondents in a recent survey had stated that inter-ethnic relations were not good or had deteriorated recently because of government policies that were seen as anti-iTaukei and undermining their status compared to other ethnic groups, especially Fijians of Indian descent, although recent natural disasters had helped communities come together to contribute to the rehabilitation of flood victims.¹⁹ Similarly, the Special Rapporteur was told of indigenous nationalists who remained an underground political force promoting “fijianization” of the country and reclaiming indigenous authority. In that regard, one of the main opposition parties is split into two factions between liberals and nationalists, the latter supported by individual pastors in promoting a Christian State.

44. On another subject, the Special Rapporteur was made aware of the underrepresentation of Fijians of Indian descent in the Government. Currently, the Cabinet and Parliament are slightly more diverse than in the past, as the Constitution of 2013 allows for more diversity in Parliament than the Constitution of 1997. In the private sector, where businesses are mainly split on ethnic lines, iTaukei persons are underrepresented.

45. In the 13-member Cabinet, there are five ministers of Indian descent and one Rotuman minister. In the 50-member Parliament there are 16 members of Indian descent, 2 of European descent and 32 iTaukei. In mid-2012, iTaukei accounted for nearly 70 per cent of the civil service and in the highest ranks of Government, that figure was nearly 90 per cent.²⁰ The division along ethnic lines is particularly striking in the police and the armed forces, which are more than 90 per cent iTaukei. In the armed forces, Fijians of Indian descent account for less than 5 per cent of personnel and in the police force for about one third.

B. Landownership

46. The Special Rapporteur was provided with information about the issue of landownership, which has been an ongoing source of contention between the iTaukei and Fijians of Indian descent. For many iTaukei, or indigenous Fijians, the underlying belief is that Fiji is their God-given land and, as owners of the land, they have special rights and privileges that override the rights of citizens of other ethnicities. That belief has been nurtured and reinforced historically by the notion of the paramountcy of Fijian interests.²¹

47. The Special Rapporteur was informed that under the colonial administration, Indian settlers were unable to own land. Many of them who were brought over as indentured labourers during the British colonial era decided to remain in Fiji and they and their descendants began leasing land from the iTaukei. Many of those leases were long, lasting up to 99 years. During the late 1990s to early 2000s many of them began to expire and iTaukei landowners began evicting tenants from the land, who were predominantly Fijians of Indian descent. By 2003, 70 per cent of the vacated farms were no longer productive and sugar cane production had decreased by one third. Many former tenant farmers were forced to relocate to urban areas and live in “squatter settlements”. Some settled on land allocated by the Government for “evicted” farmers, but the allocation was insufficient for the number of individuals affected. The majority moved to settlements of a precarious nature, consisting for many of makeshift homes.²² Other Fijians of Indian descent have entered into informal agreements to settle on iTaukei land.²³ Such settlements offer no security of

¹⁹ Ibid.

²⁰ Ibid.

²¹ Ibid.

²² Ibid.

²³ See “NGO alternate report to the Committee on the Elimination of Racial Discrimination for the Republic of Fiji”.

tenure, as arrangements usually grant right of use to one member of the household. The Special Rapporteur was informed that often when that member passes away, other members of the household may be required to pay the initial upfront fees again or may be forced to leave. Furthermore, informal settlements often have limited access to water and electricity. During recent years there has also been disagreement over what constitutes a fair rent for agricultural leases.²⁴

48. The Special Rapporteur was informed that the iTaukei currently hold approximately 87 per cent of all land, the Government 4 per cent and the remaining land is freehold land, which private individuals or companies hold. It is estimated that Fijians of Indian descent own about 3 per cent of the freehold land.²⁵

49. The Constitution of 2013 provides protection for the current system of landownership. The provisions listed in section 28 guarantee that iTaukei land will always remain with the customary landowners and it can never be alienated whether by sale, grant, transfer or exchange, except in accordance with section 27 of the Constitution. In the anti-discrimination section, an exception is provided for laws or administrative actions that give effect to the communal landownership of iTaukei, Rotuman and Banaban lands and access to marine resources. Section 28 of the Constitution concerns rights of ownership and the protection of iTaukei, Rotuman and Banaban lands. Among other protections, it states that the ownership of all iTaukei, Rotuman and Banaban lands shall remain with the customary owners of that land.

50. The Special Rapporteur was informed that one institution, the iTaukei Land Trust Board holds all indigenous land in a statutory trust. The Board was established in 1940 as the Native Land Trust Board under the iTaukei Land Trust Act. The rights given to landowners include the rights to occupy the land, use the land for their own maintenance or support, lease land to others and determine the terms and conditions of leases, and the right of reversion after the lease is over. The Board manages all dealings with iTaukei lands by negotiating leases and licences for their use by tenants, receiving rents on behalf of landowners and distributing them to the beneficiaries. The lands cannot be sold unless to the State and only for public purposes. Various leases are available, including leases for up to 30 years for agricultural purposes and up to 99 years for other uses, including residential, commercial and industrial purposes.²⁶

51. Most of the cash-crop farmers are Fijians of Indian descent, the majority of whom are the descendants of Indian indentured labourers. Almost all lease their land from iTaukei landowners. Concerns have been raised that the limits placed on their ability to own land and consequent dependency on the iTaukei constitutes de facto discrimination.²⁷ Currently there are ongoing tensions over the proposed restructuring of the sugar industry put forward by the Government. Those tensions have arisen between sugar growers and landowners, who find the restructuring acceptable, and tenants of Indian descent who are unable or unwilling to meet the higher rentals under new lease agreements in the context of a crash in the price of sugar. That is placing further strains on relations between indigenous landowners and tenant farmers of Indian descent.

C. The lack of disaggregated data

52. The Special Rapporteur was informed of the lack of disaggregated data, especially regarding the socioeconomic situation of members of the different ethnic groups and gender analysis, in relation to the different policies and programmes the current Government has put in place. He believes that in order to measure progress on the elimination of racism and racial discrimination and to evaluate the effectiveness of the policies of inclusiveness set up by the current Government, there needs to be an objective evaluation that can only be undertaken if statistics, and in particular disaggregated data, are collected and made

²⁴ Vijay Naidu, "Fiji: the challenges and opportunities of diversity".

²⁵ Ibid.

²⁶ See www.tltb.com.fj.

²⁷ Ibid.

available. That means not only data on race and ethnicity, but a whole range of different factors, such as gender, age, sexual orientation, geography, income, and access to social and economic services and rights. Without disaggregated data, it will be difficult to assess the effectiveness of the merit-based measures that the Government has adopted in recruitment and in awarding scholarships, as well as in other areas. Such data is valuable, as it provides the baselines upon which new policies and programmes can be designed.

53. The Special Rapporteur recalls that the Committee on the Elimination of Racial Discrimination, in its recommendations to Fiji in 2012, emphasized that if progress was to be monitored, such disaggregated data would be needed to measure whether the policies were effective and were reaching those most in need. More specifically, the Committee noted the government directive that all collection of data that typifies ethnicity was no longer to be conducted (see CERD/C/FJI/18-20, para. 8). While the directive was aimed at eliminating racial profiling, the Committee regretted the lack of disaggregated data on the socioeconomic situation of members of ethnic groups and the lack of gender analysis of the data provided. That concern was based on the premise that if progress in eliminating discrimination based on race, colour, descent, or national or ethnic origin was to be monitored, some indication of the number of persons who might be treated less favourably on the basis of these characteristics would be needed (*ibid.*). Other committees have expressed similar concerns. The Committee on the Rights of the Child regretted the lack of reliable and disaggregated data in many areas of the Convention and of any mechanism to systematically assess the impact of policies and programmes in relation to the implementation of the Convention (see CRC/C/FJI/CO/2-4, para. 14). The Special Rapporteur is fully aware that in some instances the law prohibits the official collection of ethnically disaggregated data and statistics. Under such circumstances, there are still innovative ways of ensuring that the data is available for policymaking and change. He recalls that in one such case, the collection of disaggregated data was undertaken by independent research institutes and universities with the support of the State.

54. The Special Rapporteur would also like to reiterate the recommendation made by the Committee on the Elimination of Racial Discrimination that Fiji adopt comprehensive legislation against racism and racial and ethnic discrimination, including a national action plan and the establishment of racial/ethnic motives as aggravating circumstances in the criminal legislation. In that regard, the Human Rights and Anti-Discrimination Commission has a fundamental role to play in providing guidance to the Government and in receiving complaints and providing assistance and guidance to victims of alleged acts of racism and discrimination. To that end, strengthening the Commission and providing it with the necessary resources to ensure that it can secure the necessary confidence and legitimacy of relevant actors as an independent and professional human rights body should be a priority, in accordance with section 45 of the Constitution, which states that Parliament shall ensure that funding and resources are made available to the Human Rights and Anti-Discrimination Commission to enable it to independently and effectively exercise its powers and perform its functions and duties.

D. Hate speech

55. The Special Rapporteur has been informed that although the Government has taken a clear and unequivocal stance against any form of hate speech and racial vilification, whether in the media, in Parliament or in public, such messages remain strong on the Internet and social media, where it is much more difficult to regulate and remove such messages, given the complexities of the system and the limitations of the various possible measures.

56. In that regard, although the Constitution grants the freedoms of speech, expression, thought, opinion and publication, those freedoms do not protect against the advocacy of hatred that “is based on any prohibited ground of discrimination listed or prescribed under section 26 and constitutes incitement to cause harm” (sec. 17 (c) (i)). Furthermore, section 17 also provides for laws to limit those rights and freedoms. Among other reasons, laws may limit the rights and freedoms for the protection or maintenance of the reputation, privacy, dignity, rights or freedoms of other persons, including the right to be free from

hate speech and to prevent attacks on the dignity of individuals, groups of individuals or respected offices or institutions in a manner likely to promote ill will between ethnic or religious groups or the oppression of, or discrimination against, any person or group of persons. The Constitution vaguely defines hate speech as “an expression in whatever form that encourages, or has the effect of encouraging discrimination on a ground listed or prescribed under section 26” (sec. 17 (4)).

57. The Special Rapporteur recalls that other laws also prohibit hate speech. Section 17 of the Public Order Act criminalizes spreading any report or making any statement, whether spoken or intended, or by signs or visible representation, that are likely to incite racial dislike or hatred of any race or community; promote feelings of enmity or ill will between different races or communities; or prejudice the public peace. It also criminalizes making intimidating or threatening statements “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 race”. The Public Order Amendment Decree of 2012 prohibits the grant of permits to any person or organization that on previous occasions has engaged in racial or religious vilification. Furthermore, the Media Industry Development Decree of 2010 prohibits media content that (a) is against the public interest or order; (b) is against national interest; or (c) creates communal discord.²⁸ The Special Rapporteur also recalls that the lack of a proper definition of what constitutes racist or hate speech gives wide-ranging discretionary powers to the Media Industry Development Authority and the executive to prohibit the publication of certain content by the media.

58. While appreciating the history of political instability that the people of Fiji are endeavouring to put behind them, the Special Rapporteur is concerned that the space and opportunities to constructively discuss issues of ethnicity and race within society at large remain quite limited. In order to address the troubled past effectively and ensure healing and reconciliation among all Fijians, there need to be open conversations and dialogue and forums where such issues can be discussed.²⁹

59. The Special Rapporteur recalls the essential role of civil society, the media, academics and religious groups and faith-based organizations in spearheading such conversations and dialogues. Such institutions are the building blocks for the emergence of a strong, open, and inclusive Fijian society. Measures to address racial and ethnic incitement on the Internet and social media should be designed and implemented from a multi-stakeholder approach, while keeping within the provisions of international human rights law and in particular the protection of freedom of expression and opinion. In that regard, he recalls the recommendations made in his report to the Human Rights Council in 2014, in which he addressed the challenges of racism and hate speech on the Internet and social media and provided several examples of good practices that could be followed (A/HRC/26/49).

60. The Special Rapporteur would also like to reiterate the responsibility of political leaders of all parties, who need to work together to address the crucial issue of reconciliation and move towards a more inclusive society. The elimination of racial and ethnic divisions will depend on the unequivocal commitment of the country’s political leadership and its willingness to denounce and reject those seeking to organize politics along ethnic or racial lines.

VII. Conclusions and recommendations

61. **In his meetings, the Special Rapporteur was impressed by the commitment of the Government and all other actors to building a strong, open, inclusive and resilient Fijian society, independent of ethnic or racial background or religion.**

²⁸ See www.fiji.gov.fj/getattachment/5765b9b4-1b96-4f0d-afc1-3a80e0e2a316/Decree-No-29---Media-Industry-Development-Decree-2.aspx.

²⁹ See, for example, the report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (A/67/357).

62. The Special Rapporteur is well aware of the history of Fiji, shaped by its colonial past, and of the political instability it has faced since it gained independence in 1970. The Special Rapporteur is encouraged by the fact that the Government is addressing the injustices of the past by putting in place new laws and institutions. He is also encouraged by the stated commitment of various political leaders to build a Fiji that guarantees equality for all citizens, irrespective of their race, ethnic background or religion, and of the efforts to redress past policies of racial and ethnic discrimination. They include the different programmes and policies put in place by the Government in order to improve the social and economic welfare of all, to promote social cohesion and non-discrimination, to tackle the social and economic challenges faced by those living in rural and remote areas and to ensure quality delivery of social services to all beneficiaries.

63. In that connection and in a spirit of constructive dialogue, the Special Rapporteur wishes to make the following recommendations:

(a) The Government should promptly sign and ratify the key international instruments, including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention against Discrimination in Education, the International Convention on the Rights of All Migrant Workers and Members of Their Families and the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169). The Government should also ratify the Convention on the Rights of Persons with Disabilities, signed in 2010;

(b) The Fiji Human Rights and Anti-Discrimination Commission should be strengthened to meet the requirements of the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles) and should seek accreditation as soon as possible, so that it can provide an independent mechanism for Fiji islanders to enforce their human rights. In particular, the vacant positions of Commissioners should be filled. Guidance should also be given to the Commission and the national courts on how complaints should be adjudicated. The experience of other national human rights institutions from the region can serve as a valuable example for strengthening the Commission;

(c) The Special Rapporteur is fully aware of the complexities of combating hate speech. In that regard, he recommends that measures to address racial and ethnic incitement on the Internet and social media be designed and implemented from a multi-stakeholder approach, while keeping within the provisions of international human rights law and in particular the protection of freedom of expression and opinion. The recommendations made in his 2014 report to the Human Rights Council, in which he addressed the challenges of racism and hate speech on the Internet and social media, can serve as examples of good practices to be followed (A/HRC/26/49);

(d) The Special Rapporteur recalls the essential role of civil society, the media, academics and religious groups and faith-based organizations in spearheading conversations and dialogues between the different ethnic, linguistic and religious groups. Such institutions are the building blocks for the emergence of a strong, open, and inclusive Fijian society and have an essential role to play in the promotion of a national dialogue among all Fijians beyond their ethnic, linguistic or religious backgrounds. Such a dialogue should address the injustices of the past, but also offer the possibility of redressing the current inequalities of wealth and distribution of resources. In that regard, United Nations agencies and programmes present in Fiji should play a facilitator role in helping to bring about that dialogue, as they are in the unique position of being both independent and having a good reputation with their Fijian counterparts;

(e) The Special Rapporteur calls upon the Government to evaluate the effectiveness of the policies and programmes of inclusiveness that have been put in place. That can only be achieved with detailed statistics and, in particular, disaggregated data, which need to be collected and made available. In order to measure progress in the elimination of racism and racial discrimination, a whole range of different factors, such as gender, age, sexual orientation, geography, income,

and access to social and economic services and rights need to be assessed in order to provide an objective evaluation of the different measures the Government has adopted and to provide the baselines upon which future policies and programmes can be designed;

(f) The Special Rapporteur is aware of the reluctance to gather ethnically disaggregated data and statistics officially. Under such circumstances, he recalls that there are innovative ways of ensuring that such data is made available for policymaking and change. In that regard, he calls upon independent research institutes and universities to collect the disaggregated data that is needed, with the support of the State, in order to be able to assess the progress made;

(g) The Special Rapporteur recalls the fundamental role of the Human Rights and Anti-Discrimination Commission in providing guidance to the Government on all the issues discussed above and also in receiving complaints and providing assistance and guidance to victims of alleged acts of racism and discrimination. To that end, strengthening the Commission and according it the necessary resources to ensure that it can function properly and secure the necessary confidence and legitimacy of relevant actors is an urgent priority for all stakeholders.
