



**International Convention on
the Elimination
of all Forms of
Racial Discrimination**

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COMMITTEE ON THE ELIMINATION
OF RACIAL DISCRIMINATION
Fifty-sixth session
6-24 March 2000

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 9 OF THE CONVENTION

Concluding observations of the Committee on the Elimination
of Racial Discrimination

Tonga

1. The Committee considered the fourteenth periodic report of Tonga (CERD/C/362/Add.3) at its 1384th meeting (CERD/C/SR.1384), held on 14 March 2000. At its 1395th meeting, held on 22 March 2000, it adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the report submitted by the State party and expresses satisfaction over the regularity with which it fulfils its reporting obligations under the Convention. Although regretting the absence of a delegation at the meeting, the Committee recognizes the difficulties inherent in the appointment of such a delegation for a small State like Tonga.

3. The Committee is particularly pleased by the special effort made by the State party to respond to questions contained in its previous concluding observations (CERD/C/304/Add.63).

B. Positive aspects

4. The Committee notes with appreciation the State party's information, in response to previous requests from the Committee, on the constitutional protection of the enjoyment of rights enumerated in article 5 of the Convention.

C. Concerns and recommendations

5. The Committee notes that the State party repeatedly asserted that there is no racial discrimination as defined in article 1 of the Convention. The Committee underlines, however, that the obligation of States parties to enact explicit legislation in accordance with article 4 of the Convention should not be seen merely as a means to ensure protection against existing violations of the Convention, but as a preventive measure. The Committee is of the opinion that the absence of complaints and legal action by victims of racial discrimination could possibly be an indication of a lack of awareness of available legal remedies, or a result of the absence of relevant specific legislation. The Committee recommends that the State party take steps to ensure that national legislation is in full conformity with article 4 of the Convention.

6. The Committee notes that the Convention has not been incorporated in domestic law and cannot be invoked before the national courts. It notes, however, that the State party asserts that the Convention is implicitly applied.

7. The Committee recommends, with reference to its revised general guidelines regarding the form and contents of reports (CERD/C/70/Rev.4), that the State party include in its next report information on factors affecting and difficulties experienced in ensuring for women the equal enjoyment, free from racial discrimination, of rights under the Convention, in order for the Committee to be able to assess whether any racial discrimination has an impact on women different from that which it has on men.

8. Particular concern is expressed at section 10 (2) (c) of the Immigration Act of the Laws of Tonga, according to which the right to marriage between a Tongan and a non-Tongan is conditioned by the written consent of the Principal Immigration Officer. The Committee considers that such legislation might constitute a breach of article 5, paragraph (d) of the Convention.

9. The State party is invited to provide further information in its next report on measures taken in the field of education and culture to combat and prevent racial discrimination.

10. The Committee recommends that the State party prepare a core document in accordance with the consolidated guidelines for the initial part of the reports of State Parties (A/45/636, para. 65).

11. The Committee recommends that the State party ratify the amendments to article 8, paragraph 6, of the Convention, adopted on 15 January 1992 at the Fourteenth Meeting of State Parties to the Convention.

12. It is noted that the State party has not made the declaration provided for in article 14 of the Convention, and some members of the Committee request that the possibility of making such a declaration be considered.

13. The Committee recommends that the State party's next periodic report, due on 17 March 2001, be a comprehensive report and that it address all the points raised in the present observations.
