



**Roundtable on the rule of law, justice sector reform and the UN Convention against Torture,  
Organised in the margins of the Commonwealth Heads of Government Meeting**

*Tuesday 17 April 2018, 18:30-19:30, London, UK*

**Summary Report**

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This panel discussion was organised by the Ghana High Commission in London and the Permanent Representation of Ghana to the United Nations in Geneva as part of the Convention against Torture Initiative, and with the support of the Commonwealth Secretariat. The discussion explored key issues related to the ratification and implementation of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT). It was organised during the 2018 Commonwealth Heads of Government Meeting (CHOGM) to raise awareness of good practices and challenges within the Commonwealth, and to see what the CTI and the Commonwealth Secretariat could do to promote better ratification and implementation across the Commonwealth.<sup>1</sup> The event called for greater engagement and cooperation between Commonwealth countries to learn and share experiences and positive practices for universal ratification and meaningful implementation.

**Programme**

**Chair:** Dr. Alice Edwards, Head of CTI Secretariat, Geneva

**Opening remarks:** Honourable Otiko Afisa Djaba, Minister of Gender, Children and Social Protection, Ghana

**Panellists**

H.E. Ms. Nazhat Shameem Khan, Fiji's Ambassador and Permanent Representative to the UN, Geneva

H.E. Mr. Ramses Joseph Cleland, Ghana's Ambassador and Permanent Representative to the UN, Geneva

Dame Anne Owers, National Chair, Independent Monitoring Boards (IMBs), United Kingdom

Mr. Steve Onwuasoanya, Human Rights Adviser, Human Rights Unit, Commonwealth Secretariat, UK

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<sup>1</sup> Commonwealth countries that have yet to ratify/accede to UNCAT: Barbados, Brunei Darussalam (s), Dominica, The Gambia, Grenada, India (s), Jamaica, Kiribati, Papua New Guinea, Malaysia, Saint Lucia, Samoa, St Kitts & Nevis, Singapore, Solomon Islands, Tanzania, Tonga, Trinidad & Tobago, Tuvalu. The (s) signifies that a country has signed the Convention.

## Opening remarks

1. In her opening remarks, Minister Otiko Afisa Djaba highlighted how the theme of CHOGM 2018 *“Towards a Common Future”* echoed the collective determination and aspiration of the participating Commonwealth States to synergise their efforts to share the positive impacts of ratification and address some of the challenges States face in the course of implementation. She emphasised the importance of UNCAT as *“one of the key international human rights treaties that fosters fair systems for the administration of justice, that reduces some of the worst excesses by government officials, sustains development and supports strong economies.”* She highlighted the role of the CTI in the process of ratification and the technical support CTI can provide to States to ratify and implement UNCAT.

## Fiji’s experience of UNCAT ratification

### *Reasons to ratify UNCAT*

2. Having worked previously as a prosecutor and a judge in her own country, Ambassador Khan underlined how i) the opening of Fiji’s Permanent Mission to the UN in Geneva, and ii) the Universal Periodic Review (UPR) process, made important contributions to its national practices. It provided the Fijian government with clarity regarding the ratification process (domestic and international), facilitated access to information, and allowed for active and direct engagement with relevant actors regarding ratification. Ambassador Khan also explained how ratification encouraged discussions between the police, the prosecution service, prisons and judges in the criminal justice system in terms of next steps following ratification. These discussions resulted in the launch of two projects designed to improve access to justice: i) a project on the right to legal aid; and ii) a project on the ‘First Hour Procedure’ and video recording.

### *Benefits and challenges*

3. The project on the ‘First Hour Procedure’ began in 2016. Ambassador Khan explained how within the first hour of arrest, when risk of torture and abuse is heightened, the police must notify the Legal Aid Commission, which is supplemented by voluntary services of private attorneys, to explain the detainee’s rights under the Constitution and provide free legal counsel if needed. In learning about others’ experiences of such a procedure, a delegation from the Fijian Legal Aid Commission participated in a training on the first hour procedure as it is implemented in Switzerland<sup>2</sup>. In addition, the Government of Fiji, through the British government and with the support of the Association for the Prevention of Torture, received EU access to justice funding to help train the police on video recording. Ambassador Khan highlighted that the projects were implemented with the full support of the police.
4. Moreover, Ambassador Khan stated that [Fiji’s Human Rights and Anti-Discrimination Commission](#) is Ghana’s only institution that i) has legislative responsibility to conduct visits

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<sup>2</sup> Human Rights Commission of the Geneva Bar Association in partnership with the Association for the Prevention of Torture, Workshop on the “Lawyer of the first hour” under Swiss Criminal Procedure Code and the related international human rights safeguards, 7- 8 March 2016 / Delegation from the Republic of Fiji, at <http://ow.ly/lbEq30jFWiQ>.

to prisons and; ii) can take complaints by prisoners and investigate those complaints. The Commission, which works very closely with Fiji's Missions to the UN as well as the Attorney General, plays a key role in progressing human rights related discussions.

5. The progress made notwithstanding, Ambassador Khan also raised a number of challenges in relation to the first hour procedure including the lack of adequate legal aid staff and resources, and changing police attitudes about torture and ill-treatment.

## **Ghana's OPCAT ratification and prison reform**

### *Reasons to ratify OPCAT*

6. Ambassador Cleland indicated that Ghana's decision to ratify the Optional Protocol to UNCAT (OPCAT) in 2016 was to place an obligation on law enforcers, such as prison administrators and their staff, to take all necessary measures to prevent torture and cruel, inhuman or degrading treatment or punishment (CIDTP) in prison facilities.

### *Benefits and challenges of the prison reforms*

7. Ambassador Cleland stated that Ghana's ratification of OPCAT provided a good opportunity to examine the status quo of the prison system and launch and adopt its latest prison reforms. He listed a number of benefits as a result of implementing the reforms, such as:
  - Prisons have become more transparent and more accountable to the public<sup>3</sup>;
  - Human rights trainings for police and prison staff have been conducted in order to promote the rights of citizens, professionalism, enhance human rights standards and reduce incidents of abuse. With the support of the UNDP in 2016, the Prisons Service developed training manuals for prison officers, for both old and new staff;
  - The Government of Ghana also introduced in 2007 the "Justice for All"<sup>4</sup> programme for remand prisoners to reduce the population of pre-trial prisoners and to address overcrowding conditions in the prisons generally. Ambassador Cleland indicated that since the inception of the programme, "the pre-trial population in prisons dropped from a rate of 30.6% in 2007 to 14.1% in 2018";
  - The "Open Camp Prison" where low risk prisoners are held to carry out agricultural work has assisted with i) decongesting prison facilities; and ii) gradually preparing prisoners for reintegration into the communities upon the completion of their sentences;
  - The Government also provided funds to ensure the universal registration of prisoners into the National Health Insurance Scheme which, as a result, improved the healthcare delivery for prisoners.

8. The following measures supported these positive outcomes:

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<sup>3</sup> The documentary, titled "Locked and Forgotten", shed light on the situation of prisons in Ghana. The public outcry following the release of the documentary resulted in the Government taking measures to build new prison facilities, to reduce overcrowding and to make prison conditions more humane. The documentary is available here: <https://www.youtube.com/watch?v=5jv1yHotvb4>.

<sup>4</sup> POS Foundation, Justice for All programme for remand prisoners, at <http://posfoundation.org/justice-for-all-programme-for-remand-prisoners/>.

- The establishment of a national mechanism to ensure the prompt investigation of allegations of torture and CIDTP. Where such allegations are proven, commensurate disciplinary actions are taken against the perpetrators. Ambassador Cleland mentioned that Article 1 of UNCAT is not incorporated in Ghana's criminal code which makes it almost impossible to criminally prosecute perpetrators of torture.
  - Allowing international independent organisations - such as the UN Special Rapporteur on Torture and Amnesty international - to conduct visits, to inspect the prisons and to make observations and recommendations; and
  - Extend the constitutional mandate of Ghana's national Commission on Human Rights and Administrative Justice (CHRAJ) to include conducting unannounced prisons visits and to observe the conditions under which prisoners are held. Following its visits, the CHRAJ submits a full report with observations and recommendations to Parliament.
9. Ambassador Cleland outlined however that the prison services continue to face a number of challenges, including:
- Severe overcrowding of prisons due to the overwhelming application of imprisonment as the first option rather than the last resort<sup>5</sup>;
  - Lack of reform and rehabilitation programmes for long sentence prisoners; and
  - Death penalty still remains a sentencing policy in Ghana and although there has been no execution since 1993, prisoners on death row have to wait a minimum of ten years before their sentence can be commuted to life imprisonment<sup>6</sup>.

### **UK's monitoring and investigation bodies**

10. Dame Anne highlighted that the prevention of torture involves investigating, monitoring and inspecting. In the UK, independent bodies have carried out these three aspects through i) **inspecting** what happens in prisons and the police stations; ii) statutory rights for citizen bodies to carry out regular visits to **monitor** what happens in these closed environments, and iii) **investigating** allegations of serious police misconduct or deaths in custody.
11. Based on her recent work on police complaints, Dame Anne noted that it was interesting to find out that the impetus for stronger independent investigation into policing in the UK, as well as Australia and Canada, has often come from incidents which involve persons from minority groups. The racist murder of Stephen Lawrence<sup>7</sup> which took place in South-East London in 1993 showed the failure of the police to properly investigate his murder. This led to the setting up of the Independent Police Complaints Commission (IPCC).

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<sup>5</sup> As of 13 April 2018, 14,487 prisoners were held in 43 prisons as against a total authorised capacity of 9,875 with a corresponding general overcrowding rate of 46%. Isolated overcrowding rates in walled prisons holding medium to high risk prisoners range from 100-300%.

<sup>6</sup> No execution took place since 1993, however, there are 161 prisoners on death row, see for instance Cornell Centre on the Death Penalty worldwide, at <https://www.deathpenaltyworldwide.org/country-search-post.cfm?country=Ghana>.

<sup>7</sup> BBC, Stephen: The Murder that Changed a Nation, at <https://www.bbc.co.uk/programmes/b0b0br42>.

12. This organisation, renamed in 2018 the [Independent Office for Police Conduct \(IOPC\)](#), investigates serious complaints and allegations of misconduct against the police. It automatically investigates any death that follows contact with the police, and it also decides and handles appeals from citizens who have made complaints about serious misconduct by police but have not been satisfied with the response. It also oversees the whole of the police complaints system and gathers data about complaints.
13. In terms of achievements, Dame Anne indicated that in the lifetime of the IPCC deaths in police custody have significantly reduced due to the buy-in and the cooperation of the service. She added that *“the interaction between the investigation of something that has happened and the learning that comes out of it and the guidance that has been developed is very crucial.”*
14. Moreover, Dame Anne highlighted that one of the things the IPCC did from the outset was to treat complaints as an important source of information to indicate when things are starting to go wrong: for instance, when and where use of force happens more frequently and towards which category of people or areas.
15. She further explained the responsibility of the Chief Inspector of Prisons (part of UK’s National Preventive Mechanism under OPCAT) including the right to inspect any prison, to see any prisoner, review documents and talk to staff. Inspections of immigration detention facilities, police custody suites and military detention sites are also conducted. In addition, Independent Monitoring Boards (IMB) – composed of groups of volunteers, drawn from the community - carry out regular visits to prisons every week, have access to prisoners and hear their complaints.
16. Dame Owers indicated that *“All of the above depends on the system working together. All of those bits, independent investigation, inspection and monitoring and national preventive mechanisms can successfully work better together as a group. But it also depends on the political will and buy-in of the service itself if it is to have the most effect and impact.”* She concluded that *“It is very important to shed a light on what is happening in these closed environments, otherwise things can become normalised behind these doors as those working within them don’t question what they do or why.”*

### **Views of the Commonwealth Secretariat**

17. Mr. Onwuasoanya provided an overview of the role of the Commonwealth Secretariat in promoting and advocating for ratification and active implementation of UNCAT and other international human rights conventions. He explained that in order to improve the human rights situation in a country, ratification must go hand in hand with implementation.
18. Mr. Onwuasoanya highlighted that the Secretariat’s work includes assistance towards legal and judicial reform, with strong human rights and gender dimensions. The Secretariat also has a vital role in strengthening engagement with individual Member States through Human

Rights Council sessions and/or the UPR in addition to assisting and following up on the implementation of accepted recommendations.

19. Mr. Onwuasoanya emphasised that the Secretariat is committed to continue working closely with the CTI on advancing the discussion on universal ratification with the remaining Commonwealth States that are not yet party to UNCAT as well as on genuine implementation.

## Discussion

20. The discussion following the presentations centred on the role of the UN in supporting States to effectively implement UNCAT and the link between the SDGs and UNCAT.
21. Ambassador Cleland highlighted how UN mechanisms can help States in making progress. The Special Rapporteur on Torture's report in 2013 on prison conditions and the issue of corporal punishment for instance advanced his Government's efforts to take action to remedy the situation in Ghana's prisons. In addition, the UNDP provided technical support to the Government of Ghana to ensure the successful implementation of a number of the treaties to which Ghana is a party, including UNCAT.
22. Ambassador Khan highlighted Fiji's collaboration with OHCHR to review prison cells. The outcome report detailed a number of recommendations which were welcomed and implemented by the Government.
23. Dame Owers shared the importance and the weight the international bodies bear in two settings: first through implementing OPCAT's provisions and obligations which enhance and protect the independence of both the IPCC and IOPC. As a result, this ensured conducting regular visits and communication with all stakeholders in prisons and places of detention. Second, ensuring the standards by which inspection of places of detention is done as well as understanding the way inspection bodies work and what they are capable of doing.
24. Dr. Edwards mentioned that the CTI, in its Fourth Annual Forum in New York in December 2017, examined the link between SDGs and UNCAT.<sup>8</sup> She shared Uganda's experience that when they conducted a survey into citizens' experience of abuse by police, they found that those most at risk of torture and ill-treatment by the police are those living in poverty and marginalised situations. This community-based survey informed their national anti-torture legislation.
25. She explained further that the CTI core States were encouraged to explore how the ratification of UNCAT and OPCAT could work towards assisting States in the implementation

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<sup>8</sup> CTI, *CTI wraps up 2017 with upbeat event on 2030 Agenda*, at <https://www.cti2024.org/en/news/cti-wraps-up-2017-with-upbeat-event-on-2030-agenda/>.

of SDG16 on peace, justice and strong institutions. This would be particularly timely as some States will report on SDG16 in 2019.

**CTI Secretariat**

**August 2018**