

CTI Seminar

Ratification and implementation of the UN Convention against Torture in the Pacific: Supporting Pacific States with the processes of legislative review and drafting anti-torture laws or amendments (6-8 February 2018)

Key Note Address by:

The Hon. Aiyaz Sayed-Khaiyum, Attorney-General and Minister responsible for Justice

The Hon. Prime Minister of the Republic of Fiji

Hon. Attorneys-General and Ministers of Justice

Members of the Judiciary

Your Excellencies

Ladies and Gentlemen

Bula vinaka and a very good morning to all of you.

1. I would like to thank you for this opportunity to provide a brief overview of Fiji's experience leading up to the ratification of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment ('**UNCAT**') and the challenges and lessons we have learnt since our ratification in March 2016.
2. Of course as highlighted earlier on, we are now one of the four Pacific Island countries to have ratified UNCAT, which includes Vanuatu, Nauru and Marshall Islands.
3. Ladies and gentlemen, since 2007, Fiji has undergone extensive legal reform to ensure our laws are in line with international human rights standards. Accordingly, Fiji was in a unique position prior to our ratification of UNCAT as we already had workable domestic legislative provisions and indeed common law jurisprudence in relation to torture and cruel, inhuman and degrading treatment.
4. As our supreme law, the 2013 Fijian Constitution has been held as one of the most impressive and progressive constitutions in the world today. As the cornerstone of our democracy, it enshrines a vast array of rights and protections, for all time, in its Bill of Rights provisions.

5. The Bill of Rights in the Fijian Constitution is extremely comprehensive and robust. For the first time in Fijian history, the Constitution actually facilitates the concomitant application of civil and political rights, and social and economic rights. It obligates the State, by law, to advance, protect and progressively realise these fundamental rights for all Fijians. These rights of course are enforceable through an independent judiciary, which continues to develop human rights jurisprudence under the Fijian Constitution. Of course the development of human rights jurisprudence is subject to the number of cases brought before the courts, which is why you need an active bar.
6. More importantly, the application of such rights in Fiji is no longer simply confined to what we call the vertical application of rights, it now extends horizontally; in other words, rights now can be enforced not against only the State, but also private actors.
7. Our Honourable Prime Minister highlighted section 11 of the Fijian Constitution which sets out the freedom to be safeguarded against torture and cruel and degrading treatment. Additionally, section 87 of the Crimes Act 2009 sets out torture as an offence where it is committed as a crime against humanity, section 24(2) of the Immigration Act 2003 specifically sets out torture as an element of the aggravated offence of smuggling of migrants, and section 61 of the Extradition Act 2003 allows judges to refuse to order the surrender of a person to a foreign jurisdiction if the person had been subject to torture in that jurisdiction.
8. These are just a few of the legislative provisions which, along with other common law cases, have shown our willingness to directly address the often sensitive topic of torture time and time again.
9. While we had a robust legislative and jurisprudential framework relating to torture prior to our ratification of UNCAT, the pre- and post- ratification processes provided us with a valuable opportunity to engage with key international institutions such as the Convention against Torture Initiative, Association for the Prevention of Torture, and the Universal Rights Group. Our engagement with our development partners has provided us with opportunities to train our Police and Corrections officers and to address the culture of violence that our Honourable Prime Minister has talked about, which has been prevalent in our society as it is in many societies across the world. We recognise that in order to overcome attitudinal barriers we must continue with the training of all of our relevant officers, including Police Officers and our Corrections Officers.

10. Fiji's implementation of UNCAT as mentioned by the Honourable Prime Minister, has focussed on, inter alia, reforms in police interrogation procedures and what has been referred to as the First Hour Procedure, and custody reforms.
11. Reforms in police interrogation procedures were aimed at shifting interrogations to a less confrontational nature; changing, if you like, the power dynamics and ensuring that witness statements were captured via video recordings.
12. In 2016, Fiji commenced the First Hour Procedure, which gives effect to the right to legal counsel, a right which is guaranteed under the Fijian Constitution. The First Hour Procedure was initiated as a pilot programme for six months, and it has already been a success with the provision of access to counsel to more than 3,000 Fijians since the inception of the programme in November 2016. Unfortunately, the programme has been carried solely by the joint efforts of our Police Force and the Legal Aid Commission. And by the way the Legal Aid Commission in Fiji used to only have, a few years ago, a budget of about \$350,000 but today has a budget of about \$10 million. We have not been able to gain much traction with the private bar, despite the provision of training on the Procedure to members of the private bar, such as the current President of the Fiji Law Society and a colleague in Geneva in 2016. There has not been much progress from the private bar.
13. Despite the lack of support from the private bar we are determined to ensure that all Fijians have access to legal representation within the first hour of their arrest — a time when they are at their most vulnerable. While the First Hour Procedure is provided at the CID Headquarters and what we call the Totogo Police Station in Suva formally known as the Central Police Station, the Legal Aid Commission has also received requests for the same service from other Police Stations around Fiji. The Legal Aid Commission has attended to these requests and will continue to do so.
14. The third focus area is in relation to prison reforms based upon the Nelson Mandela Rules as highlighted by the Honourable Prime Minister. We consider the conditions in which persons are kept in custody and the factors which contribute to these conditions.
15. As a Small State, of course many of us here are Small States, we are no stranger to financial limitations — limitations that can hold back the implementation of internationally acceptable standards. But also as Small States, we have to be equally familiar with finding nimble and creative solutions to overcome these constraints.

16. The solutions we have identified are reforms in three critical areas:

- (i) Firstly, we are working in collaboration with the United Nations Office on Drugs and Crime (**UNODC**), following our ratification of the United Nations Convention on Transnational Organised Crime in 2017, to help our prisons adopt the requirements under the Nelson Mandela Rules and promote humane conditions for imprisonment. The UNODC concluded their first scoping mission in December 2018 and expressed how impressed they were by the interest shown by the Fiji Corrections Service in ensuring our compliance with the Mandela Rules.
- (ii) Secondly, we are also providing an avenue for alternate and effective sentencing options, i.e. , by way of new laws. On 16 May 2018 Parliament enacted the Community-Based Corrections Act 2018 which seeks to provide for a community-based corrections system that fosters community-based sentencing options and the rehabilitation and reintegration of offenders. This Act allows for sentencing options other than imprisonment and will have the effect of relieving the demands on our corrections facilities. The Act will soon commence following proper training to all the different facilitators and stakeholders in this Act.
- (iii) Finally, the Fiji Corrections Service has been given funding under the 2018-2019 National Budget to continue with the construction of remand centres in major population centres throughout the country and to address various issues that may arise from a growing prison population. Some of these are related to mental health issues among inmates and the health and welfare of corrections personnel. We are also committed to the ongoing improvement of corrections facilities, operations and services.

17. We are confident that this three-fold approach will improve the conditions of imprisonment in Fiji and ensure that inmates are treated in a fair and humane manner.

18. The principles upon which UNCAT is based are fundamental to a free society. Fiji, under our Prime Minister, values these principles and we have not wavered in our

commitment to ensuring that these constitutionally guaranteed rights and protections are practically implemented to better the lives of all Fijians.

19. At our last Universal Periodic Review, Fiji undertook to ratify all nine core human rights Treaties and Conventions by 2020, and I am pleased to advise that we are on track to achieve this goal. To date, Fiji has ratified seven of the core Treaties and Conventions.
20. As we progress towards the ratification of all nine core human rights Treaties and Conventions, Fiji is honoured to be the first Pacific island country to be elected as a Member of the United Nations Human Rights Council and to be subsequently selected by the Asia Pacific Group as Vice President of the Council.
21. Ladies and Gentlemen, we look forward to working with you and urge those States that have not ratified UNCAT to take steps to do so. We are here as a Pacific Island country to share our experiences and we remain available to provide technical support and assist you as you embark on your own ratification processes.

Vinaka.