



HIGH-LEVEL REGIONAL SEMINAR

*Ratification and implementation of the UN Convention
against Torture in the Pacific:
Supporting Pacific States with processes of legislative
review and drafting anti-torture laws or amendments*

6th - 8th February 2019

Natadola, Fiji



Kindly hosted by the Government of the Republic of Fiji



Organised in partnership with



UNIVERSAL RIGHTS GROUP



Pacific
Community

Communauté
du Pacifique

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COMMONWEALTH
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Programme

As a region with strong democratic and rule of law traditions, the Pacific has strategic importance in accelerating ratification and active implementation of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT, or Convention). The region already has many good laws, policies and practices in respect of constitutional and legal frameworks, governance and the administration of justice, while challenges remain.

This high level regional seminar, being hosted by the Government of the Republic of Fiji and convened by the Convention against Torture Initiative (CTI), in partnership with the Universal Rights Group, the Regional Rights Resource Team of the Pacific Community and supported by the UK Government, aims to support Pacific Small Island Developing States (PSIDS) in overcoming some of the technical and capacity constraints preventing ratification and/or full implementation of the UN Convention against Torture. In particular, it will provide an opportunity for countries in the Pacific and beyond to share experiences and exchange on national practices around processes of legislative review and drafting anti-torture laws or amendments.

Objectives of the seminar

Within the overarching aspiration to inspire PSIDS to reach regional universal membership of UNCAT and to support implementation, the objectives of the seminar are to:

- Promote dialogue and cooperation among countries of the Pacific region and beyond on prevention of torture and ill-treatment;
- Hear good practices and success stories in the prevention and response to incidents of torture and other ill-treatment through legislative reform and existing legislative approaches;
- Identify elements needed to construct an effective anti-torture legislative framework;
- Reflect on and 'map' relevant national laws, to consider the degree to which they already cover obligations contained in UNCAT and to take stock of areas where legislative changes may be required or recommended;
- Explore and share successful approaches of States in adopting national anti-torture laws, taking account of national contexts.

DAY ONE - WEDNESDAY, 6 FEBRUARY

08:30 - 09:00

Registration & Coffee

09:00 - 09:30

Traditional Fijian Welcoming Ceremony

09:30 - 09:50

Welcome and Opening Remarks

Chaired by Dr. Alice Edwards, Head of CTI Secretariat

Welcoming Remarks

Hon. Mr. Josaia V. Bainimarama, Prime Minister of the Republic of Fiji (host)

09:50 - 10:00

Opening Remarks from CTI

H.E. Morten Jespersen, Ambassador and Permanent Representative of Denmark to the UN in Geneva

10:00 - 11:15

Keynote Addresses by Ministers of Justice and Attorneys General: Opportunities and challenges

The ministerial level opening session will provide State reflections on the strong rule of law tradition in the Pacific, with presentations focusing on constitutional and legal frameworks and procedures currently in place or under review to ensure the effective and fair administration of justice, remaining challenges, and how ratifying and implementing UNCAT can support these endeavours.

Hon. Mr. Aiyaz Sayed-Khaiyum, Attorney-General and Minister responsible for Justice, Republic of Fiji

Hon. Mr. Natan Teewe, Minister of Justice, Republic of Kiribati

Hon. Mr. Jose R. Gallen, Attorney General, Federated States of Micronesia

Hon. Ms. Ernestine Rengiil, Attorney General, Republic of Palau

Hon. Mr. Faaolesa Katopau T Ainuu, Minister of Justice, Independent State of Samoa

Hon. Mr. Sione Vuna Fa'otusia, Minister of Justice, Kingdom of Tonga

Hon. Mr. Jonathen Kawakami, Acting Attorney General, Republic of the Marshall Islands

11:15 - 11:45

Photograph followed by coffee & tea

11:45 – 12:00

Introduction

Dr. Alice Edwards, Head of CTI Secretariat

Dr. Audrey Aumua, Deputy Director- General, Pacific Community

12:00 – 13:00

Session 1: Ratification and implementation of the UN Convention against Torture -- sharing of global experiences and perspectives

Building on the opening addresses, this session will recap substantive legal provisions of UNCAT, including the role of the UN Committee against Torture. Speakers will highlight the benefits of UNCAT ratification and how the Convention can catalyse and reinforce various governmental objectives. Experiences of CTI Core States of Chile and Ghana will be shared.

Chaired by Dr. Alice Edwards, Head of CTI Secretariat

Remarks by:

Professor Diego Rodríguez – Pinzón, Member, UN Committee against Torture, recapping key substantive provisions of the UN Convention against Torture and the role of the UN Committee against Torture

H.E. Joseph Ramses Cleland, Ambassador and Permanent Representative of Ghana to the UN in Geneva, sharing the experiences of Ghana on major domestic changes inspired by UNCAT

H.E. Rodrigo Espinosa Marty, Ambassador of Chile to New Zealand, the Cook Islands, the Independent State of Samoa and the Kingdom of Tonga, and Ambassador-designate to Fiji, sharing their recent experiences of Chile on legislative reform

13:00 – 14:00

Lunch

14:00 – 15:30

Session 2: Approaches to developing UNCAT - compatible legal frameworks

In this session, a brief regional overview of anti-torture legislation will be provided, and States will share various approaches and perspectives on how legislation can be used to prohibit, punish and prevent torture and ill-treatment, and provide redress for victims. Participants will explore why particular approaches are adopted and how they work in practice. Why have particular approaches been adopted (e.g. constitutional guarantees, legislative amendments, specific anti-torture legislation, incorporation through case law)? What are the advantages and/or disadvantages of these different approaches?

Chaired by Ms. Rose Martin, Senior Human Rights Adviser, Regional Rights Resource Team

Mr. Jürgen Schurr, Senior Programme Manager, CTI Secretariat, providing a regional overview of anti-torture-related laws in the Pacific

Hon. Chief Justice Anthony H.C.T. Gates, Chief Justice of the Supreme Court, Republic of Fiji, highlighting how Fiji's Constitutional and other jurisprudence has endorsed international human rights standards

Mr. Graham Leung, Secretary of Justice and Border Control, Nauru, on decision-making processes on criminalizing torture through amending the Crimes Act 2016

Ms. Janet Anderson-Bidois, Chief Legal Advisor for the New Zealand Human Rights Commission, on decision-making processes leading to the adoption of stand-alone anti-torture legislation

15:30 – 16:00

Coffee break

16:00 – 17:30

Session 3: UNCAT's prevention focus: safeguards and procedures in law and practice

At its heart, UNCAT is an instrument to support States to prevent torture and other ill-treatment from occurring in the first place. Already a large majority of Pacific States have laws and regulations, for example covering the conduct of police and corrections services. This session will discuss how these existing good legislative and other practices reinforce safeguards and procedures in order to prevent torture and ill-treatment. What is the role of legislation (e.g. Police Acts, Prisons Acts), including secondary legislation, in reinforcing the professional conduct of authorities, and reinforcing the rights of persons who come into conflict with the law? What other non-legislative approaches have been effective (e.g. policy, instructions, codes of conduct, training, etc.)?

Chaired by Mr. Marc Limon, Executive Director, Universal Rights Group

Remarks by:

Ms. Jeehan Mahmood, Board Member, Association for the Prevention of Torture and former member of the Human Rights Commission of the Maldives and former Director of the National Preventive Mechanism, on the institutional and practical framework preventing torture in the Maldives

Mr. Philip Kanairara, Secretary, Law Reform Commission, Solomon Islands, on the legislative framework of the Solomon Islands introducing specific safeguards and its application in practice

H.E. Melanie Hopkins, High Commissioner of the United Kingdom to the Republic of Fiji, on legislation (Police and Criminal Evidence Act 1984) reinforcing the independent police complaints authority and how it works in practice

17:30

End of Day One

19:30

Welcome Dinner at the Kama Beach Front

DAY TWO - THURSDAY, 7 FEBRUARY

10:00 – 11:30

Session 4: Defining and criminalising torture and other ill-treatment

This session will focus on the experiences of States in prohibiting and criminalising torture and other ill-treatment. It will explore examples of the crime of torture in domestic laws, and associated issues around penalties, aggravation, modes of liability, superior orders and amnesties. How have States approached the criminalization of torture? What penalties have been applied? How has ill-treatment been regulated, or otherwise prohibited?

Chaired by Mr. Jürgen Schurr, Senior Programme Manager, CTI Secretariat, also introducing briefly the CTI-APT Guide on Anti-Torture Legislation

Professor Diego Rodríguez – Pinzón, Member, UN Committee against Torture, explaining the Committee's views on these issues

Ms. Jeehan Mahmood, Board Member, Association for the Prevention of Torture and former member of the Human Rights Commission of the Maldives and former Director of the National Preventive Mechanism, on Maldives' Anti-Torture Law 2013 and related legislation

Mr. Temmanengnga, Deputy Director, Human Rights Instruments, Ministry of Law and Human Rights, Indonesia, on ongoing legislative review processes and amendments

11:30 – 12:00

Coffee Break

12:00 – 13:00

Session 4 continued

13:00 – 14:00

Lunch

14:00 – 15:30

Session 5: Rules and practices on non-admission of torture-tainted evidence

Positively in the Pacific, almost all States have specific legislative provisions and rules that prohibit the admission of evidence in any proceedings that has been obtained through torture or related acts (the so-called "exclusionary rule"). This is a key safeguard to preventing torture and ill-treatment. Yet, confession-oriented systems can still incentivise coercive practices. This session will reflect on whether existing legislative provisions (as well as judges' rules) are adequate, and what else can be done to remove torture and coercion from practice.

Chaired by Dr. Chitrlekha Massey, Regional Representative of the Office of the High Commissioner for Human Rights

Remarks by:

Hon. Justice David Cannings CBE, National and Supreme Court of Papua New Guinea, on how judges can contribute to reduce the risk of torture and other ill-treatment in the administration of justice

Mr. Itendra Nair, Chief Administration Officer, Fiji Police Force, on the implementation of the "first hour procedure" as a complement to the rule of non-admission of torture-tainted evidence

15:30 - 16:00

Coffee Break

16:00 – 17:30

Session 6: Role of other actors in promoting and supporting legislative reforms

This session examines who is involved in carrying out a legislative review/preparation of Cabinet submission to ratify, and in drafting relevant legislative reform to incorporate international treaties at national level, and to what extent these processes could be supported by regional / international actors.

Chaired by Mr. Miles Young, Director, RRRT

Mr. Steve Onwuasoanya, Human Rights Adviser, Commonwealth Secretariat

Ms. Nola Fasaau, Legal Drafting Officer, Pacific Islands Forum Secretariat

Ms. Seema Chand, Senior Legal Officer, Office of the Attorney General, Republic of Fiji

Mr. Rupeni Nawaqakuta, Legislative Drafting Consultant, SPC

17:30

End of Day Two

DAY THREE - FRIDAY, 8 FEBRUARY

9:30 - 11:00	Break out groups Divided into smaller groups, these groups will discuss how best to carry out a comprehensive legislative review to assess conformity of a domestic legal framework with UNCAT, identify shortcomings and recommendations for the way forward. These groups will be tailored to the particular interests of States. Facilitators will provide advice on the spot.
11:00 - 11:30	Coffee Break
11:30 - 12:20	Plenary for reporting back from break out groups
12:20 - 12:30	Evaluation survey Completion of evaluation
12:30 - 12:50	Session 7: Next steps The final session will offer a space for participants to reflect on possible next steps, opportunities and remaining challenges, and how partners may be able to support States' efforts to ratify and implement UNCAT. <i>Chaired by Dr. Alice Edwards, Head of CTI Secretariat</i>
12:50 - 13:00	Concluding Remarks <i>H.E. Ramses Joseph Cleland, Ambassador and Permanent Representative of Ghana to the UN in Geneva</i> <i>H.E. Rodrigo Espinosa Marty, Ambassador of Chile to New Zealand, the Cook Islands, the Independent State of Samoa and the Kingdom of Tonga, and Ambassador-designate to Fiji</i>
13:00	End of Seminar, followed by Lunch