



CONVENTION AGAINST TORTURE INITIATIVE  
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## Report

### CTI High Level 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**

**Wednesday 6 – Friday 8 February 2019 | Natadola, Fiji**

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### 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

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#### Background

1. From 6-8 February 2019, the [Convention against Torture Initiative](#) (CTI), in collaboration with the [Universal Rights Group](#) (URG) and the [Regional Rights Resource Team](#) (RRRT) of the Pacific Community, held a regional high-level seminar in Natadola, Fiji, on “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” (Seminar). The Seminar was hosted by the Government of Fiji and supported by the Danish United Kingdom governments. It was aimed at raising awareness among and assisting 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 and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT or Convention).
2. As a region with strong democratic and rule of law traditions the Pacific has strategic importance in accelerating ratification and active implementation of the Convention globally. 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. UNCAT ratification in the Pacific is low, and constitutes around 25 % of the remaining non-State-parties worldwide. Amongst PSIDS, five are already party to UNCAT, with the welcome addition of Fiji in 2016, the Marshall Islands in 2018 and Samoa in 2019.<sup>1</sup> Positively, a number of Pacific States have supported recommendations to ratify at their Universal Periodic Reviews, while others have requested further collaboration with CTI as they consider and prepare for ratification.
3. The interventions and discussions during the Seminar underlined the political commitment of PSIDS to implement and/ or ratify the Convention, as also illustrated by the high-level participation. [Hon. Mr. Joasaia V. Bainimarama](#), Prime Minister of Fiji opened the Seminar, followed by welcome remarks from Ambassador and Permanent Representative of Denmark to the UN in Geneva, [H.E. Morten Jespersen](#), and keynote interventions from Ministers of Justice and Attorneys General from the [Republic of Fiji](#), Republic of Kiribati, the Federated States of Micronesia, Republic of Palau, the Independent State of Samoa, the Kingdom of Tonga and the Republic of the Marshall Islands. Other participants included senior experts from Nauru, Papua

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<sup>1</sup> Please note that the Independent State of Samoa ratified the Convention after the Seminar and before publication of this report, on 28 March 2019. The five PSIDS party to UNCAT are: Fiji; Marshall Islands; Nauru; Samoa; Vanuatu.

New Guinea, Solomon Islands and Tuvalu. Experiences were also shared by representatives of Ghana, Chile, Indonesia, the Republic of the Maldives, New Zealand and the United Kingdom. Representatives of the Commonwealth Secretariat, the Pacific Islands Forum Secretariat, the United Nations, including a member of the UN Committee against Torture (CAT or the Committee), as well as the diplomatic community in Fiji also participated.

4. The Seminar provided a neutral space for candid discussion, with discussions taking place under the Chatham House rule of non-attribution. This report summarises the main points and conclusions of the Seminar.

### **Seminar objectives**

5. Within the overarching aspiration to inspire PSIDS to reach regional universal membership of UNCAT and to support implementation, the objectives of the seminar were 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.

### **Reaching regional universal ratification of UNCAT in the Pacific**

6. Over the course of the meeting, participants from non-State-parties underlined their countries' commitment to ratify the Convention in the near future, moving the Pacific region closer to regional universality. Participants identified several reasons why there is a momentum for ratification (and implementation) of the Convention in the Pacific:
  - There are no political or legal obstacles to ratification. To the contrary, constitutions and/or legislation in all countries already includes important elements of the Convention and it was emphasised that regional universality of UNCAT ratification would reinforce Pacific values and strengthen the very foundations of Pacific societies.
  - The Pacific's tradition of collaboration and mutual support, through technical advice and sharing of experiences and lessons learned, will help to overcome potential capacity related

challenges. Offers were made by PSIDS that are party to UNCAT to share their experiences of ratification, including, for instance, in regards to the development of Cabinet papers and carrying out an initial legal assessment.

- It was also recognised that the Pacific enjoys a number of regional mechanisms relevant to advancing UNCAT ratification, and which are available to assist, such as the RRRT of the Pacific Community, the Pacific Islands Forum Secretariat (PIFS), and the Pacific Islands Law Officers' Network (PILON). At the international level, there was acknowledgment for the support being provided by the United Nations, CTI, URG, Association for the Prevention of Torture (APT), and others, and they recommitted to supporting PSIDS in these endeavours. Specific requests for support or guidance included technical advice on drafting of Cabinet submission and carrying out a legal assessment; capacity building; secondment of staff; and assistance with reporting to the UN Committee against Torture.
7. Participants also identified some of the **challenges** that have to date prevented swift ratification in the region, including:
- Lack of capacity and limited resources (including human resources to get familiar with UNCAT; to draft Cabinet papers; carry out a legislative review; prepare the treaty body report), parred with competing priorities.
  - Geographical isolation and spread of a country's population over a number of islands, making consultations and relevant data collection difficult.
  - A lack of awareness of UNCAT obligations and the extent of positive constitutional and legal frameworks already complying with many UNCAT obligations, and of what ratification would entail in terms of implementation. This is coupled with a misperception that a State's legal framework needs to be fully in line prior to ratification.
  - Translation of UNCAT terminology into relevant national and/or local languages which may not include key concepts of UNCAT. In some languages in the region, there is, for instance, no word for "torture", making the drafting of Cabinet submissions, of relevant legislation and of stakeholder consultations challenging.

### **Processes of ratification and journeys to implementation**

8. Throughout the Seminar, participants discussed questions of ratification processes, and how and when ratification should occur. Is extensive law and institutional reform required so as to comply prior to / upon ratification, or is it possible to ratify first and then embark upon a process of gradual implementation? Experiences shared by representatives of State parties, as well as experts, recommended strongly that while an understanding of UNCAT obligations prior to ratification is important, the **existence of a comprehensive anti-torture legal and institutional framework before ratification is not required**. Rather, ratification is the first step in an often long journey towards gradual improvement and often takes place in close consultation / dialogue with the Committee against Torture (CAT) and other stakeholders.

What is important is a genuine commitment to wanting to do better and to put in place, gradually, mechanisms and frameworks to prevent torture and other ill-treatment. Several representatives of State parties, for instance, highlighted how UNCAT ratification had helpfully prompted law reform processes post ratification and that such processes had taken several years. It was emphasised that legislative review is a constant task of government, with new good practices emerging or desired changes, keeping relevant domestic frameworks under review.

9. The discussion on ratification processes also highlighted that in most countries in the region, ratification of an international human rights treaty requires the development of a Cabinet submission, and a (preliminary) legislative review/ assessment to identify potential legal obstacles to ratification. Representatives from **Fiji** highlighted how regional and international organisations with relevant anti-torture expertise had assisted with the development of their Cabinet submission, while others such as **Samoa** mentioned that relevant technical workshops have helped to contextualise UNCAT obligations, raising awareness about what ratification entails and facilitating an initial legislative compliance review.
10. Several participants raised questions regarding reservations to UNCAT. While it is open to States to consider entering reservations upon ratifying UNCAT, except for reservations that conflict with the object and purpose of the Convention, it was noted that the Committee against Torture encourages full ratification to afford maximum protection under UNCAT.
11. Participants identified **several recommendations** to assist with the ratification process, including:
  - Ratification should be guided by an overarching policy commitment to the prohibition of torture, even as it was considered relevant to identify potential challenges to ratification (stakeholders, priorities, timing) in order to work to overcome them and prepare for implementation. Significant support is available to assist with implementation once a State has ratified.
  - A perception that torture is not a problematic issue in the region may lead to UNCAT ratification not being a made a priority in some countries. It is important to demystify UNCAT, highlight the benefits of UNCAT ratification for such policy goals as the administration of justice, professionalisation of police and other uniform services, and for contributing to achieving the sustainable development goals.
  - Available support identified at the outset of the UNCAT ratification process to address limited resources and capacity (such as the support mentioned above at paragraph 6).
  - While external assistance is important, the State should take ownership of the ratification process and take principal responsibility for ratification so as to ensure that obligations are contextualised and capture relevant contexts.

- Carrying out a legal and policy analysis of UNCAT, and identifying the necessary steps for ratification. The CTI [ratification tool](#) was highlighted to assist States in this respect.
- Responsibility for UNCAT ratification and implementation should be assigned to a lead ministry / government department, such as the Ministry of Justice, Ministry of Police or the Attorney General's Office, depending on the country context, which should then closely collaborate with the different entities that will be involved with UNCAT implementation processes. Mention was made of one State's experience of establishing a committee of relevant ministries to discuss and consult on ratification, ahead of presenting relevant Cabinet submission.

### **Post- ratification: developing legal frameworks against torture**

12. All countries in the region already have legislation in place providing for a range of standards relevant for UNCAT even in the absence of UNCAT ratification. This includes, for instance, the prohibition of torture, enshrined in all countries' Constitutions or sometimes, in other legislation. Safeguards to prevent torture and ill-treatment are also enshrined in a number of constitutions, police and prison acts, and most countries have provisions or procedures prohibiting the admission of evidence obtained through torture or ill-treatment, including coercion or intimidation (see further below). The legislation in place is complemented by an independent judiciary, which has in several countries upheld the prohibition of torture in case law, including for instance in regards to conditions of detention, the use of force by law enforcement and the admissibility of evidence.
13. Participants noted that the Convention requires State parties to incorporate certain elements into domestic legislation, while further elements are recommended by the Committee and/ or other treaty bodies. The [CTI – APT Guide on anti-torture legislation](#) identifies primary, recommended and optional elements, and also contains a checklist. The discussions during the seminar addressed a range of aspects to consider when incorporating UNCAT into domestic legislation, including in particular:

### ***Definition of torture and ill-treatment***

14. The Committee against Torture has emphasised that countries in criminalising torture should at a minimum follow the definition of Article 1 (1) UNCAT, yet may go beyond that definition to reflect specific domestic circumstances. This could, for example, mean that a country chooses to include private actors in its definition of torture, for instance where particularly egregious crimes are being or have been committed by militia groups or private citizens. Participants underlined that inclusion of private actors should not, however, result in avoiding responsibility of the State for torture or ill-treatment attributable to the State.
15. Where a country opts to include a list of acts or omissions that constitute torture in their national laws, which was considered a helpful reference tool for courts unfamiliar with the

crime of torture, this list should be explicitly non-exhaustive and be kept under review. In the **Maldives** it was decided to include such a list in the Anti-Torture Act of 2013, and the list of acts was drawn up in consultation with judges, and on the basis of previous cases of abuse in the country as well as international cases.

16. Several participants raised the issue of a potential link between the use of force by law enforcement and the prohibition of torture, and whether the definition of torture would prevent police from using force altogether. It was underlined that in most countries, use of force by law enforcement is usually well regulated, as well as complementary international standards on this,<sup>2</sup> with the main guiding principles being that any force must be legitimate, appropriate, proportionate and necessary in the circumstance.
17. Participants also discussed the relationship between the definition of torture and ill-treatment, and corporal punishment. It was highlighted that there is increasing recognition in the region that practices such as corporal punishment in schools and in the home should be practices of the past and do not befit the Pacific region's aspirations and "values of dignity, collective security, honour and love." Indeed, the vast majority of PSIDS are already State party to human rights treaties that outlaw such practices, such as the UN Convention on the Rights of the Child to which all PSIDS are party. The Committee against Torture furthermore has underlined that sanctions and punishments imposed domestically need to be lawful under international law.

#### ***Criminalisation and punishment of torture***

18. Legislation criminalising torture from **Australia, Nauru, New Zealand** and the **Maldives** were shared. In countries without an explicit crime, it was noted that where torture does occur, it needs to be investigated, prosecuted and punished as an *ordinary crime* such as assault or assault causing grievous bodily harm.
19. Participants discussed the importance of introducing a distinct crime of torture into national law with appropriate sentences. This is because "ordinary crimes" may not fully reflect the type or gravity of the offence, nor the symbolism of prosecuting public officials, with special responsibilities, for such acts or omissions. A distinct crime of torture can thus also contribute to disincentive abuses. The Committee against Torture has underlined that criminalising torture "will directly advance the Convention's overarching aim of preventing torture and ill-treatment" and has recommended the introduction of a minimum penalty of six years for torture.
20. Some countries have criminalised torture not as a distinct crime, but as an element of crimes against humanity or war crimes. This mostly reflects efforts to incorporate the Rome Statute of the International Criminal Court into domestic law, yet does not criminalise torture where it is committed outside the context of a widespread or systematic attack or outside an armed conflict.

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<sup>2</sup> See e.g. UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by the 8<sup>th</sup> UN Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, available at: <https://www.ohchr.org/en/professionalinterest/pages/useofforceandfirearms.aspx>.

### ***Approaches to developing anti-torture legal frameworks***

21. Participants discussed various ways to approach legislative reform. Two main options were identified namely through a **stand-alone anti-torture act** or **amending existing legislation**. The decision would depend on legislative traditions, the specific circumstances and preferences of the relevant country. There is no one-size fits all approach. To date, no PSIDS has adopted a stand-alone anti torture act, but positive examples of stand-alone acts in relation to other crimes exist for instance in **Kiribati**, which adopted specific legislation in 2014 [criminalising domestic violence](#), including in an effort to implement its obligations under CEDAW. In the **Maldives**, UNCAT was initially to be incorporated through amending existing legislation, yet as the existing legal framework had not fully implemented Convention norms, an entirely new, separate anti-torture act was drafted. This was also an opportunity to draft legislation from a *rights* perspective, rather than a *crimes* perspective, and to reflect more broadly on the norms enshrined in UNCAT and the purpose behind those norms.
22. Irrespective of the preferred option, **consultation** with a broad range of stakeholders is important for the development of an anti-torture framework. In considering who to include in a consultation process, participants highlighted representatives from the relevant ministries (justice, Attorney-General’s Office, foreign affairs, human rights, police, home affairs, defence, etc.), national human rights institutions or ombudsman’s offices, religious groups, civil society, as well as law enforcement, prison officials, prosecutors and judges. In the **Maldives** for instance, it was considered particularly important to consult judges as they would ultimately apply the law, and judges in this context, favoured the development of stand-alone legislation over the amendment of existing legislation.
23. Participants similarly highlighted a key role for [Parliamentarians](#) to ensure smooth passage of a bill, to foster a consensus and to drive the drafting process, particularly as law reform processes can take a long time. The **Commonwealth Secretariat** mentioned it has established a regional network of parliamentary human rights champions, called the **Commonwealth Pacific Parliamentary Human Rights Group**, which also covers the ratification and implementation of international human rights instruments.

### **Preventing torture in the Pacific through legislation: safeguards, procedures and practices**

24. The vast majority of Pacific States have specific legislative provisions and rules enshrining general safeguards against torture and ill-treatment, such as the rights to have prompt access to a lawyer, to communicate with family members upon arrest and to be promptly brought before a judge and judicial review of detention.
25. Important safeguards are found in **police acts** and regulations for law enforcement officials in place in the majority of PSIDS. These specifically address the prohibition of the use of excessive use of force of persons in their custody, thereby directly contributing to the prevention of abuse of persons arrested or held in police custody. The **Solomon Islands’** Police Act of 2013, for example, regulates as a disciplinary offence conduct by which an officer assaults, ill-treats or uses excessive force against a person.

26. All PSIDS have legislation in place regulating the conduct of **prison officers** with regard to treatment of prisoners by personnel and conditions of their imprisonment. **Tonga's** Prison Act of 2010 expressly bans the infliction of "corporal punishment, torture or cruel, inhumane or degrading treatment" on prisoners, while the **Marshall Islands' Child Rights Protection Act of 2015** sets out that "discipline at detention places shall preclude torture, cruel and degrading treatment."

27. Discussing these safeguards as well as specific procedures and practices in the region and beyond, participants identified some key additional issues that can further strengthen law enforcement and the courts while at the same time contribute to preventing torture and ill-treatment:

- **Use of audio/ video recording of police interviews** to protect against abuse and coercion, while providing an accurate record of the suspect's statement. In **Fiji**, interviews by police are increasingly video-recorded as part of the "First Hour Procedure Project", which also ensures the provision of counsel to every suspect at the police station, within one hour of arrest. The project has eliminated most of the complaints of ill-treatment at the police station and is important also for the courts as it reduces the challenges to confessional evidence in court, avoids unnecessary trials and thereby allows judges to deliver judgments in a timely manner.
- **Non-admission of evidence** obtained under torture or ill-treatment, including coercion or intimidation. Participants noted the importance that criminal investigations do not rely solely on confession-based evidence. In the Pacific, most States regulate the admissibility of such evidence in relevant legislation, such as Evidence Acts, to ensure that judicial discretion is applied appropriately when dealing with confession evidence. **Samoa's** Evidence Act and criminal procedure legislation provide that a judge "must exclude the statement (whether or not the statement is true) unless satisfied beyond reasonable doubt that the statement was not influenced by oppression," with oppression defined as "the deliberate exercise of violence on or the inhuman or degrading treatment of the defendant by a police officer." In **Papua New Guinea**, judges are allowed to initiate investigations into allegations of torture at their own initiative, including where they believe that a suspect has been forced into a confession. These **own initiative (*proprio motu*) investigations** by judges into allegations of torture and ill-treatment have also helped to remedy abuses and change practices.
- **Independent complaints mechanisms:** Participants noted the general importance of implementing an independent oversight authority to investigate complaints against law enforcement officials and hold them to account. While participants acknowledged that police officers may consider this a challenge to their work, States with such an oversight body found it fostered a general culture of torture prevention and non-violence, and ultimately protected police officers against false accusations.

It also helps build public confidence in the police and thus renders their work more effective and legitimate.

- **Capacity building** of all stakeholders in charge of implementing UNCAT, and in particular of law enforcement, was highlighted as a key component of prevention. This could include very practical training on the use of digital recordings during interviews, on how to conduct interviews, as well as more broadly on human rights standards and how they apply in different settings.

## **Acknowledgements**

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