



23 February 2015

## **Fiji Parliament Standing Committee on Foreign Affairs and Defence**

Written submission in relation to the United Nation Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT)

### ***Executive Summary***

The CCF strongly recommends the ratification of the UNCAT. It ensures that there is domestic redress for complainants, promotes good governance, rule of law and security through a system of accountability and international review. Ratification allows Fiji to become part of the international community committed to the prevention and eradication of torture and ill-treatment which encourages international partnership benefitting in aid and provision of technical assistance in achieving a full realization of this right. With administrative institutional and minimal legislative reform, Fiji is well on its way to a quick and effective implementation process in line with the Convention, further bolstering its international reputation and qualifying its candidature to the Human Rights Council in 2016.

### ***Whether the treaty should be ratified or not***

#### **CCF supports the ratification of UNCAT**

1. CCF strongly supports the ratification of UNCAT. The Convention would allow Fiji to improve its response to acts of torture and cruel, inhuman or degrading treatment, and demonstrate Fiji's commitment to respect the human rights of its citizens.
2. CCF, as the UPR Secretariat for the NGO Coalition on Human Rights, was pleased to hear Fiji's commitment to human rights reinforced at the Universal Periodic Review in Geneva last year. Fiji has set a 10 year timeframe to ratify all core human rights instruments and in pursuit of this, Fiji has undertaken to accelerate the ratification of UNCAT<sup>1</sup>.

#### **Domestic response to torture can be strengthened**

3. Fiji's Constitutional and legislative framework already reflects much of the Convention, and this can be greatly strengthened and complemented by ratification.
4. The definition provided for in the Convention specifically relates to:
  - a. The infliction of severe mental or physical pain or suffering;
  - b. By or with the consent or acquiescence of a public official;
  - c. For a specific purpose, such as gaining information, punishment or intimidation.

Unfortunately these cases are not unknown in Fiji, and instances of police and military brutality has been acknowledged by the State, and undertaken some measures to address the

<sup>1</sup> See [69] National Report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21, Fiji, and [99.8] Draft Report of the Working Group on the Universal Periodic Review, Fiji. Human Rights Council Twentieth session (27 Oct-7 Nov).



issue. Ratification would allow Fiji's domestic response to these situations to be stronger, as well as focus on preventative measures.

### **Ratification of UNCAT can strengthen domestic response**

5. UNCAT should not be seen as an imposition, but rather a tool to guide Fiji's development in this area and provide a right of remedy. It describes the minimum standard necessary for a responsive legal, policy and institutional response to acts of torture. Once CAT is ratified, these tools become accessible to Fiji to assist with prohibition and prevention of torture and ill-treatment, and redress for victims.

### **Ratification can raise Fiji's regional and international standing**

6. As a leader in the Pacific Islands, Fiji can set the standard in the region by demonstrating a commitment to uphold international standards of human rights. Ratification of UNCAT will not only strengthen Fiji's domestic response to torture, but it is widely seen as a key indicator of a country's willingness and commitment to uphold human rights and fundamental freedoms. Therefore, ratification will assist in facilitating foreign policy achievements, enhance Fiji's regional and international profile and create more opportunities for partnerships, including technical and financial support for human rights implementation.
7. Raising Fiji's international standing will be particularly advantageous in relation to Fiji's candidature to the Human Rights Council in 2016, as it will demonstrate to international partners that Fiji is committed to upholding international standard of human rights.

### ***The Impact of treaty ratification***

#### **Additional reporting requirements not too onerous**

8. Ratification of UNCAT will place additional reporting requirements on Fiji. Fiji will be required to report to the Committee Against Torture one year after ratification and every four years after that. Fiji is already a party to CERD, CEDAW and CRC, and is required to comply with reporting requirements under these instruments. Additionally, Fiji reports to the UN Human Rights Council for the UPR every 4.5 years. As such, a system is already in place for the preparation and adoption of reports which largely reduces the challenges of preparing a report for UNCAT.

#### **Domestic implementation of Convention not too onerous**

9. On ratification of UNCAT, Fiji undertakes to take measures for domestic implementation of the Convention. Domestic implementation often takes time and resources to implement in a sustainable way. However, in Fiji, the process toward progressive realisation of the Convention has already begun, and the adoption of UNCAT will not necessarily add an additional burden.
10. As mentioned above, Fiji's Constitutional Bill of Rights and domestic legislation provides a national framework to prevent and prosecute cases of torture. This includes:



- a. *Legislative*: The Constitution includes freedom from cruel and degrading treatment and upholds the rights of arrested and detained persons<sup>2</sup>. Any victim to these human rights abuse may apply to the High Court for redress<sup>3</sup>. The Crimes Decree also criminalises acts of torture as a crime against humanity, murder, manslaughter, assault and aggravated assault<sup>4</sup>. Ratification of the Convention will greatly complement these provisions, and allow them to be measured against an international standard.
  - b. *Judicial*: Courts may look to international law in the application of the Bill of Rights<sup>5</sup>. In practice, the courts have looked to UNCAT for guidance and jurisprudence has developed to apply the principles of UNCAT<sup>6</sup>. Ratification will encourage consistency in the application of the law in relation to torture and develop stronger, more persuasive, human rights jurisprudence in Fiji.
  - c. *Institutional*: With the establishment of the Human Rights and Anti-Discrimination Committee (HRADC), complaints in relation to torture may be made to the Commission, who has the power to investigate these complaints and apply to the Courts for appropriate redress<sup>7</sup>. Ratification of UNCAT will allow the HRADC to more effectively monitor, investigate and protect against torture and ill-treatment in a more effective and sustainable way.
11. Ratification would not necessarily require numerous new laws or policies, or even a great deal of additional resources, on top of already existing national plans. The ratification of UNCAT will allow these national plans to be attained easier, and more effectively, with increased guidance from international experts and financial and technical assistance.

### ***Other issues in relation to the treaty***

#### **CCF supports the declaration under Article 21 and 22**

12. CCF strongly encourages the State to make the required declaration under Article 21 and 22 recognising the competence of the Committee to consider individual and inter-State complaints.
- a. Individual complaints need to exhaust domestic remedies first. It is just a method to provide redress to victims in cases where the domestic framework may have gaps, and exists to support the domestic framework.
  - b. It may highlight gaps in the domestic framework that Fiji can then go on to improve, taking guidance from the Convention. Ensure that Fiji is still able to provide an effective measure of accountability.
  - c. Further, by recognising the competence of the committee Fiji is able to develop a cooperative relationship with the Committee. The Committee is able to provide

<sup>2</sup> Constitution of the Republic of Fiji 2013, ss 11 and 13.

<sup>3</sup> Constitution of the Republic of Fiji 2013, s 44.

<sup>4</sup> Crimes Decree 2009 (Decree 44 pf 2009), ss 87, 237, 239 and Div 5.

<sup>5</sup> Constitution of the Republic of Fiji 2013, s 7.

<sup>6</sup> *State v Boila* [2004] FJHC 255; *Naba v State* [2001] FJHC 127, *State v Pickering* [2001] FJHC 341.

<sup>7</sup> Constitution of the Republic of Fiji 2013, s 7.





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tailored advice to assist Fiji to implement the convention and effectively prohibit torture through collaborative dialogue.

13. CCF strongly encourages the State to make the required declaration under Art 21 and 22 recognising the competence of the Committee to consider individual and inter-State complaints. It is important to note the following points about the complaints procedure:
  - a. The Articles only provide an avenue for redress when a complainant has fully exhausted all domestic measures. It is a method to provide justice in cases where the domestic framework may have gaps.
  - b. It largely exists to support the domestic framework. If gaps in the domestic framework are highlighted through this process, the State can then take measures to improve its response, taking guidance from the Convention and international experts. This ensures that Fiji is still able to provide an effective measure of accountability.
  - c. By recognising the competence of the committee Fiji is able to develop a cooperative relationship with the Committee. The Committee can provide tailored advice to assist Fiji to implement the Convention and effectively prohibit torture through collaborative dialogue.

#### **Reluctance to make a declaration under Article 21 and 22 is not a barrier to ratification**

14. In the alternative, if the State of Fiji is unwilling to adopt the complaints mechanisms provided for by Articles 21 and 22 at this point in time, CCF strongly submits that this should not be considered a barrier to ratification. Noting the progress of recent domestic measures, the State may be inclined to withhold ratification of UNCAT until the domestic response has further developed. It is our submission that the Convention, and particularly Article 21 and 22, is drafted to ensure that the State still has primary responsibility in the response to torture and ill-treatment. This is evidenced by, as mentioned above, submitting a complaint is only an option once all the domestic avenues have been exhausted. Also, the State may still ratify the Convention, and withhold the necessary declaration under Article 21 and 22 if the State considers that it requires more time to progress domestic implementation. The State may make this declaration at any point in time, on or after ratification of UNCAT.
15. This ensures that domestic implementation and human rights development is carried out in a progressive and sustainable manner, and lead by the State. It has the additional advantage of allowing the State access to technical and financial assistance in the development of this area.

CCF greatly thanks the Committee for the invitation to make these submissions and looks forward to the Committee's report in relation to the ratification of the Convention. Please contact us on (679) 330 8379, or [ayabaki@ccf.org.fj](mailto:ayabaki@ccf.org.fj) for any queries or clarifications in relation to this submission.

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