

Opening Statement by Christopher Pryde, Director of Public Prosecutions for Fiji at the 33rd Session of the UN Human Rights Council at the side event organised by the Permanent Mission of Fiji to the UN in Geneva, Thursday 22nd September 2016

“Implementing UNCAT in Fiji-Police Interrogation and the Rights of Suspects in Custody”

Your Excellency, Madam Ambassador and Permanent Representative for Fiji;

Ambassadors and Representatives from other missions;

Secretary-General and Members of the Association for the Prevention of Torture;

Members of NGOs;

Fellow Members of the Panel;

Ladies and Gentlemen

1. I first wish to thank Fiji’s Permanent Representative to the UN in Geneva, Madam Nazhat Shameem Khan, for affording me the opportunity to appear today on this distinguished panel of speakers. It is two years since I was here in Geneva along with the Chief Justice, the Commissioner of Police and our Attorney General for Fiji’s 2nd Universal Periodic Review at the Human Rights Council.

2. At that review, Fiji candidly admitted to a number of shortcomings in the way in which people in detention are treated by the authorities and at the same time committed to putting in place measures that would give confidence to the people of Fiji and the international community that Fiji was serious about ending a culture of impunity.

3. Whilst Fiji has in place strong laws dealing with suspects in police custody many inherited from the British, we recognise the weaknesses in the implementation and enforcement of those laws. Two years ago at the review we also referred to our newly enacted Constitution which strengthened the rights of persons detained in custody including a strengthening of one of the most fundamental rights of an accused person, that of the right to silence.

4. Putting in place laws and ratifying international conventions such as UNCAT is however a first step and the hard work always lies in the practical implementation of those laws. In the case of the rights of suspects in police custody, it involves a complete cultural readjustment and a change of thinking that has guided the police force since their formation in the way they approach police interviews. It is a change in culture that has occurred in other jurisdictions and we noted the same just last week when we were invited to see first-hand how the British police now tackle police interviews and enforce a suspect's rights upon arrest. A major cultural readjustment was also required for the British police and changing the British police mindset took many years and faced much resistance. So it will be in Fiji but we have already begun this process.

5. In terms of the office that I head, the Office of the Director of Public Prosecutions, we experience difficulties on a daily basis in the criminal justice system that come from arrests that are made improperly, detentions that are unjustified, or caution interviews that are conducted without due process and are oppressive.

6. In Fiji, the DPP's Office does not investigate crime; that is the sole preserve of the Police. Once the police docket has been compiled by the police the completed file is sent over for us to prosecute. Most of the time, the police interview will be challenged by the defence as being inadmissible. If there is no evidence in the police docket other than the admissions in the interview and if we fail to have the caution interview admitted into evidence, the prosecution will fail. In order to have the caution interview admitted into evidence we need to prove that the admissions made in the interview were voluntary, in other words obtained in the absence of any "tyranny of fear or flattery of hope" and we must do so beyond reasonable doubt. It is time consuming and difficult. Naturally, if we have direct evidence that the police have used extra judicial methods in the obtaining of a confession we will not proceed with the prosecution but in many cases we do proceed since the allegations are refuted by the police and their evidence will require testing in court.

7. Another difficulty is the caution given to arrested persons in police custody. Although advised that they do not have to say anything and, under Fiji's law no adverse inference may be drawn by the court, suspects frequently waive their right to silence. Is this because they do not

understand the caution or the consequences or is it they feel compelled in the absence of legal advice to offer an explanation?

8. Compulsory video recording of police interviews and legal advice given to suspects within the first hour of detention will assist in these areas and the Deputy Commissioner and the Director of Legal Aid will say more on these measures.
9. We realise though we still have a long way to go. We also recognise that we need to work together to achieve our cultural change. That is why we are here together as representatives of the different agencies that operate in the Fijian criminal justice system. We also recognise the need to work with international organisations in a non-political way in order to strengthen our respective institutions. Our progress has not always been consistent and, on occasion, we take a step back, but that is true of many jurisdictions attempting to implement profound change.
10. We would therefore ask countries and international organisations interested in working with us to see Fiji in its own context as a small island developing nation with all the challenges which that brings. We are interested in working with countries and organisations that look to the long term with Fiji and not jump ship whenever a setback occurs which, alas, has occurred in the past. We need long term friends for long term solutions. We are committed to moving forward and for that we need the support of the international community in order to build on the progress already made and to entrench a new police culture that balances respect for individual human rights with the legitimate concerns of victims of crime and the general public.

11. I thank you for listening to me.

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