



**Opening Statement by Christopher Pryde, Director of  
Public Prosecutions for Fiji at the 36<sup>th</sup> Session of the UN  
Human Rights Council at the side event organised by the  
Permanent Mission of Fiji to the UN in Geneva at the  
Palais des Nations, Tuesday 12<sup>th</sup> September 2017**

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**“Implementing UNCAT in Fiji-Safeguards Against Torture-Police  
Interrogation and the Rights of Suspects in Custody”**

Your Excellency, the Permanent Representative of Denmark, Mr Carsten Staur;

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 wish to thank the organisers of this side event for the opportunity to present an update on Fiji’s ongoing efforts to overcome decades of entrenched mind-sets regarding the treatment of arrested suspects and to apply practical measures to eliminate the torture and ill treatment of people at the hands of the authorities.

2. As was mentioned at this event last year, implementing safeguards against torture requires a fundamental cultural change to a national mind-set where violence is seen as normal whether it is in the village in order to maintain discipline or whether it is parents and teachers who administer corporal punishment to children or whether it is police, encouraged by sections of the community to be “tough on crime” to administer some form of “butaraki” or beating. All communities in Fiji are affected and all communities need to adjust to a new norm in behaviour if we are to succeed.
  
3. This is not an easy task but Fiji’s new constitution in 2013 and Fiji’s ratification of the United Nations Convention Against Torture in 2016 together with the Police First Hour procedure and the digital recording of police interviews in the pilot project are important steps that move us in the right direction. For this update, I will confine myself to the issue of police treatment of arrested persons in police custody and from the perspective of the office that I head, the Office of the Director of Public Prosecutions.
  
4. My office is an independent office established under the Constitution and, importantly, makes decisions on criminal prosecutions independently of government. Accordingly and appropriately, the Director of Public Prosecutions (DPP) does not report to the Attorney-General nor confer with him or with any minister of government. I want to stress this because I am aware that some international reporting organisations do not appear to understand this important distinction and when we are talking about safeguards against torture, independent and non-political bodies such as the DPP’s office or the Office of the Commissioner for Human Rights and Anti-Discrimination have a particularly important role to play. For this reason when reports or

updates are commissioned, it is vital that independent office holders are consulted and are given an opportunity to contribute. My office is always open for discussion on these important issues. We regularly release statistics on criminal offending including cases against police officers and actively engage with NGOs conducting research but we must be approached directly for our input and not through government. So, I welcome the opportunity to be present today and to contribute to the discussion.

5. I wish to also note at the outset that the torture of suspects in police custody has always been unlawful in Fiji and if there is evidence that police have used extrajudicial means of obtaining a confession, the case will, in all likelihood, be discontinued and the matter referred to the police for action against the officers concerned. This has happened in a number of high profile cases recently where police and military officers were found to have beaten suspects in order to gain confessions. In one particularly egregious case one of the suspects died as a result of his injuries leading to those officers responsible being charged with a number of criminal offences and receiving lengthy gaol terms after conviction.
6. If the confessional evidence is challenged in court, a voir dire hearing is conducted and if the prosecution cannot prove beyond a reasonable doubt the confession has been voluntarily given then the confession will be excluded from the evidence before the court. If there is no other evidence, the accused will be acquitted.
7. For this reason, in my opinion, Fiji does not require a separate law against torture since judicially-made common law in the form of the Judges' Rules, statute law in the form of the Crimes Act, the oversight provided by the Office of the Director of Public Prosecutions and the

Office of the Commissioner for Human Rights, as well as section 11 of the 2013 Constitution guaranteeing all people the right to be free from torture all act as effective legislative, administrative and judicial safeguards against torture. It also should be noted that Fiji's reservations on the UNCAT, particularly Fiji's reservation on Article 1 of the UNCAT remain necessary in order to allow the broadest possible number of acts to be caught within the definition of torture and to allow the courts maximum latitude in dealing with acts of torture under the Constitution which may be excluded were the stricter and narrower definition of torture in the UNCAT to be applied.

8. The written laws in Fiji, therefore, in terms of criminalising acts of torture in my opinion are sufficient but the practical implementation of those laws is a different matter and so in 2016 Fiji ratified the UNCAT to provide further and better impetus and the police first hour procedure and the digitally recording of police interviews as a pilot scheme is an important commitment to practical measures to eliminate the torture and ill treatment of people at the hands of the authorities.
  
9. From the beginning of the pilot in November 2016, we realised that without the commitment of all agencies represented at this panel today, the police pilot project would not succeed. It was accepted early on that for the pilot to succeed it was necessary for all of us to work collaboratively to maintain the momentum and ensure the project would succeed. There was a recognition by all of us that it is only by meeting regularly to update each other that we would be able to overcome the inevitable teething problems and we were unanimous in our agreement that the pilot was a positive initiative and one that would result in considerable benefits to those involved in the criminal justice system. Those benefits stem not just in terms of promoting basic respect for the human rights of the suspect in custody but in eliminating the need for

costly and drawn-out voir dire hearings on evidential admissibility and potentially false claims of brutality against police officers. If the pilot succeeds and is implemented across the country as is the intention and commitment by the Police, it will represent one of the most significant and fundamental changes to the Fijian criminal justice system in many years.

10. What is the state of progress to date and how do we measure success?

The most obvious quantifiable measurement of success will be the drop off in the number of pre-trial voir dire hearings conducted in the courts and the number of complaints against the police.

11. My office has received a total of 10 digitally recorded interviews and none so far have moved through the courts. Of those, only four have both the English language translation and the transcript. The main problem appears to be the amount of time involved in having the interview that was conducted in one of the vernacular languages translated into English and then transcribed.

12. In order to overcome this difficulty my office is in the process of establishing a transcription unit to employ a number of people who will be solely responsible for the translating and transcribing of all digitally recorded police interviews similar to the way we had observed at the Norfolk constabulary in the UK last year. This should greatly speed up the number of interviews being ready to proceed to court. The other advantage to having the transcription unit based in the ODPP is to provide an independence from the police in terms of translation since we have observed in the past a tendency for police transcribers in the interview room interpreting certain words or phrases to fit a particular outcome or element of the offence. Translation is a very specialised skill and it is hoped that by providing a translation service one step removed

from the interview process, the resulting translation will be more neutral and more likely to be accepted by the suspect and the court as a correct record of interview.

13. There are other challenges such as police reluctance to change from a system of interviewing they have become familiar with over many years but as we receive fewer challenges to the caution interview in court and fewer complaints against police officers, I am confident the police will begin to accept the changes are for the better as their colleagues in other similar jurisdictions have done.

14. The multi-agency approach that Fiji has adopted to implement safeguards against torture including the combining of resources for specific projects such as the first hour procedure and digitally recorded interviews is an innovative approach that suits Fiji's circumstances and appears to be succeeding. There is more work to be done but we have exited the starting blocks.

15. I thank you for listening to me.

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