



THE ASIA PACIFIC FORUM
OF NATIONAL HUMAN RIGHTS INSTITUTIONS

... a partnership for human rights in our region

ABN 98 099 972 997

QUESTIONNAIRE

Advisory Council of Jurists - Terms of Reference on Torture Background Paper on Torture

Activities of National Human Rights Institutions

1. Has your Commission received complaints from individuals or groups claiming torture? If so, how many complaints and please describe some of the most important cases and the role of your Commission in resolving the complaints.

FHRC: The Commission had not received any complaints specific to torture. Complaints received were more of cruel and degrading treatment committed by authorities; particularly the police and military, during arrests, and while suspects and convicted persons are kept their custody. In 2004, the Commission received a total of 62 complaints against the Disciplinary Services involving of Police, Prisons and Military. Out of the 62 complaints, 37 were against the Police Force, 21 against the Prisons Services and 4 against the Military Forces.

One of the most important cases includes an application for bail pending trial by 7 accused charged for murder in the High Court. The Commission appeared as *amicus curiae*. The application was made on the ground that the living condition in the prison remand centre amounted to inhumane, cruel and degrading treatment. The High Court ruled in favour of the application, setting a precedent for Fiji. The case is cited as *Sailasa and Naba Others -v- The State HAC 0012 of 2000L*. Since this ruling a number of similar judgements have been made by the High Court.

The Commission has insufficient powers in resolving complaints against torture, cruel, inhumane and degrading treatment levelled against the disciplined services. All complaints are compiled, analysed from human rights perspective and forwarded to the disciplinary committee of the respective disciplined service for their investigation and ruling. The result of the investigation is then forwarded to the Director of Public Prosecution for his/her decision on whether to prosecute the relevant officer.

2. Has your Commission conducted research on the issue of torture? If so, please provide the results of this research.

FHRC: The Commission has not conducted any research on the issue.

3. Has your Commission undertaken awareness and education campaigns relating to torture? If so, please provide details of these campaigns, identify the individuals or groups who have been trained and estimate how many people have been trained.

FHRC: The Commission has not conducted any campaign specifically on torture. Instead it has conducted training of members of the military, police and prison on the provisions of the Bill of Rights relevant to their line of work, including also principles contained in public international law that are not contained in the Bill of Rights. These trainings also include issues of torture and cruel, inhumane and degrading treatment.

Such training targets were mainly senior officers within the authorities. It is hoped that these officers, who are either in charge of a unit, situated within a locality, or a number of junior officers, will execute his/her functions consistent with these human rights principles, thus passing the lesson down to his/her subordinates or colleagues.

The relationship between the Commission and the disciplined services recently resulted in the launching of the *National Security and Human Rights Handbook* in September 2004. The Handbook provides guidance to the disciplined services in protecting human rights (including rights to freedom from torture and cruel, inhumane and degrading treatment) during the course of their duties. A copy of the handbook can be located at the website of the Fiji Human Rights Commission: http://www.humanrights.org.fj/pdf/inside_pages_changes.pdf.

In 2004, the Commission secured funding from the British High Commissioner to complete a project aimed at designing a new medical reporting template for the documentation of incidences of torture, to replace the current police medical reporting form, which is over two decades old. This is aimed at recording and documenting alleged incidents of torture properly, and conversely will protect officers from false accusations of torture.

Has your Commission monitored the conditions in and visited centres of detention to assess the conditions in which detainees are kept and the treatment they receive? If so, please provide details of any findings.

FHRC: In 2004, the Commission, on the request of the High Court of Fiji and together with the three judges of the Criminal Division of the High Court of Fiji, made an onsite visit to the Suva Prison, the oldest and most densely populated prison in Fiji. The visit was organised pursuant to two separate bail applications by two remand prisoners on the ground that the general condition of the prison amounted to cruel, inhumane and degrading punishment or treatment. The visit was to allow the Judges and the Commission staff to compare the conditions in prisons with the guidelines set out in the *Standard Minimum Rules for the Treatment of Prisoners*. The visit found that both the conditions of the main prison and the remand centre fell far short of the minimum standards set out in the Standard Minimum Rules. Subsequent to the visit, the Commission prepared a report on the conditions inside prisons examining the conditions on accommodation, sanitation, personal hygiene, space and lighting. These reports were subsequently submitted to the court during argument of the two cases of *Tawake Cakacaka –v- State* and *Kelemedi Dreu –v- The State*, resulting in the granting of bail to both accused. The reports were also referred to in subsequent and similar applications of *Jason Zhong -v- The State* and *Senijieli Boila –v- The State*.

4. Has your Commission intervened in court proceedings on the issue of torture? If so, please provide details of the cases, the role of the Commission and the outcome of the cases. Please provide copies of any submissions and court decisions.

FHRC: The Commission has not intervened in several proceedings relating to torture or cruel, inhumane or degrading treatment. All its appearance in such cases has been on the invitation of the court as *amicus curiae*. Since its inception in 1999, the Commission has appeared as *amicus curiae* in 5 cases involving application for bail due to the poor living conditions existing at the prison remand centre or prison detention cells.

1. Sailasa Naba & others –v- The State HAC 0012/00L.
2. Tawake Cakacaka –v- The State Crim. Case No. HAM 045/04.
3. Kelemedi Dreu –v- The State Crim. Case No. HAC 023/04.
4. Senijieli Boila and Pita Nainoka –v- The State Crim. Case No. HAC 032/04.
5. Jason Zhong –v- The State Crim. Misc. Case No. HAM 68/04.

5. Has your Commission addressed the issue of torture in its annual reports? If so, please provide a copy of the relevant sections.

FHRC: In its annual report (AR) for 2002 and 2003, the Commission highlighted the number of complaints it received on torture and cruel, inhumane and degrading treatment, with a brief explanation of how these cases were dealt with by the Commission. These highlights are located on page 25 (AR 2002) and page 12 (AR 2003).

6. If your government has ratified the International Covenant on Civil and Political Rights, Convention Against Torture and/or Convention on the Rights of the Child, has your Commission been approached by the government to contribute to the periodic reports to the relevant Committees, or has your Commission provided a shadow report to the relevant Committees? If so, please provide copies of the sections relevant to the issue of torture.

FHRC: Fiji has not ratified the CAT and the ICCPR. It ratified the CRC in August 1993.

As required by the *Human Rights Commission Act 1999*, the Commission is not required to contribute to the initial drafting of the Government report on CRC or any other treaties. Instead, the Commission can advise on the contents of the draft reports, which the Government is expected to incorporate before the report is finalised. The Commission also has the power to file shadow report if it chooses to do so.

The Commission has not filed a shadow report to date. While it has provided advice to the Government in the past on the contents of its drafts reports on CRC, it has not seen it fit to advise on issues on torture.

7. Does your Commission have regional offices and are these offices involved in torture issues? If so, in what way?

FHRC: The Commission only has one office in Fiji, situated in Suva at 2nd Floor, Civic Tower. This is satisfactory due to the small size of the country. The Commission travels around the country or to a specific location when needed. The Commission expects to expand in 2008 to other towns in Fiji.

8. Does your Commission work in collaboration with civil society including the private sector, government or UN agencies or multilateral donors such as the World Bank on the issue of torture? If so, in what way?

FHRC: In 2004, having obtained funding from the British Embassy for the drafting of a torture template, the Commission is currently working in partnership with the Fiji Medical Association, and in consultation with the medical services in Fiji in drafting the template.

9. Has your Commission identified laws/policies/practices in your country that impact on torture?

FHRC: Section 25 of the *Constitution* gives every person a right to freedom from torture and other cruel, inhumane and degrading treatment.

10. Has your Commission proposed legislation relating to torture, or helped develop a national policy?

FHRC: The Policy Analysis Unit of the Commission has set as one of its objectives for 2005 to draft the Commission's policies on torture and other cruel, inhumane and degrading treatment. These policies would later be translated into a submission to Government to introduced legislative and policy measures to prohibit torture in Fiji, particularly targeting the disciplined services.

Documentation

Please send the following documentation to the APF Secretariat by e-mail or by mail:

Constitutional provisions relating to:

- torture, including references to other ill-treatment and refoulement or extradition;

FHRC: Section 25(1) of the *Constitution* prohibits torture, cruel, inhumane and degrading treatment.

- relevance of international law in the domestic jurisdiction.

FHRC: s43 (2) of the *Constitution* allows the courts to refer to public international law in analysing a particular provision of the Bill of Rights, including those that Fiji has not ratified.

Relevant legislation referring to:

- torture and other forms of ill-treatment;
- the treatment of individuals in all forms of detention; and
- legal and other safeguards aimed at the prevention of torture.

FHRC: The *Judges Rules* contained in the *Supreme Court Act* advises police not to obtain statements from suspected persons involuntarily, by fear of prejudice or hope of advantage.

The *Prison Act* and *Regulations* is currently being reviewed. A new Bill will be introduced sometimes in 2005 to replace them. They regulate the manners in which prisoners are to be detained in prison.

NGO Reports

- Reports by local, national or regional non-governmental organisations on torture within your country.

FHRC: The Commission has no knowledge of any research or enquiry conducted by any organisation or department on torture.

Issues raised in the Terms of Reference

1. Do the police and other disciplinary forces in your country currently follow set minimum standards of interrogation?

FHRC: The Commission has no knowledge of any known set minimum standards of interrogation specifically for use by military or prison. The *Supreme Court Act CAP 13* contains the *Judges Rules*, a set of rules that governs the conduct of investigations and interrogation by police to ensure that the investigation is done within the law and any statement given by the suspects are given freely and voluntarily, without fear of prejudice or hope of advantage.

If so, are you able to provide a copy of these minimum standards?

FHRC: A copy of the *Judges Rules* is attached.

Please provide any information about complaints received by individuals or groups about the methods of interrogation used by the disciplinary forces in your country.

FHRC: Complaints on method of interrogation include threat of physical violence, threat of further detention, use of physical violence, and use of leading questions (putting words in accused's mouth).

2. Do your national courts recognise customary international law as a source of law to be complied with? Include any cases that refer to the rule of customary international law prohibiting torture.

FHRC: Under section 43(2) of the *Constitution Amendment Act 1997*, the courts in Fiji are required to refer to public international law in interpreting human rights provisions of the Bill of Rights, even if such law have not been ratified by Fiji. A few judgments have been delivered by the courts where the application of customary international law have been discussed and applied. Similarly, judgments have also been delivered by the court referring to public international law in discussing Fiji's Bill of Rights. No judgement had been delivered yet specific to torture.

3. Does your constitution or national law allow for any derogation from the prohibition on torture and other forms of ill treatment? If so, please provide the relevant sections.

FHRC: Derogation from rights to freedom from torture and other degrading punishment or treatment is prohibited under the *Constitution* (s.187(3)), even where a state of emergency is lawfully declared.

4. Set out any legislation, rules or practices of courts in admitting or rejecting any statement that is made by an accused as a result of torture or any other form of ill treatment.

FHRC: Under the *Judges Rules*, failure to comply with the Rules may render answers and statements liable to be excluded from evidence in subsequent criminal proceedings.

Section 28(1)(e) of the *Constitution* prohibits unlawful obtained evidences being adduced against a charged person, unless the interest of justice requires otherwise.

5. Describe the remedies available and provided in practice to victims of torture and other forms of ill-treatment, including complaints systems, compensation mechanisms and medical rehabilitation.

FHRC: Under section 41 of the *Constitution*, a person subjected to torture or cruel, inhumane or degrading treatment may apply to the High Court for redress. Redress includes award of exemplary damages. In criminal cases, an application to the court may result in bail, if the applicant is incarcerated.

Where the Commission applies to the court, redress includes declarations, restraining orders, and damages (s.38). Order for damages includes pecuniary loss suffered resulting from breach, expenses incurred in seeking redress, loss of benefit, damages for humiliation, loss of dignity and injury to feelings.

The complaint system of the Commission does not have power to grant any form of remedies. It merely analyse the complaints and refer it to relevant disciplinary authorities.

6. Provide information about the protections afforded to persons being forcibly returned to a country in which they may face torture or other forms of ill treatment.

FHRC: The Commission has no knowledge of any guaranteed protections. There is no stipulation in the *Extradition Act 2003* or any other Act that allows for objections to an extradition order on the ground that the person concerned would be subjected to torture or other violation of his/her human rights. The Act defines as an extradition offence “*an offence against the law of the requesting country for which the maximum penalty is death or imprisonment, or deprivation of liberty, for a period of not less of 12 months.*” (s.3(1)).

7. Have the national courts been asked to consider any cases of alleged torture that have taken place outside the territory of your country and not involving citizens of your country? If so, please describe the position of national courts in exercising their jurisdiction in such cases. For example, General X was a Balkan military officer accused of torturing civilians during the regional conflict. He is currently holidaying in your country. What would the position of your national courts be if they were asked to try him for torture?

FHRC: The Commission has no knowledge of any known cases where the Fiji courts have been asked to preside over cases involving acts committed by a foreign national in a foreign territory, where the person is now present in Fiji. Prosecution of such cases would have been possible had Fiji provide the implementing laws on the *Rome Statute of the International Criminal Court*.

8. Have the national courts considered the extent of their jurisdiction over international intervention forces? If so, please provide details of the cases and copies of the judgments, if possible.

FHRC: The Commission has no knowledge of any known judgments by the Fiji courts concerning its jurisdictions over international intervention cases.

9. Describe the nature and extent of procedures and safeguards, both legal and practical, in place to protect against torture by non-state actors.

FHRC: The Commission has no knowledge of any known safeguards to protect against torture by non-state actors. Any acts of torture committed would most certainly be prosecuted under the *Penal Code* as assault or acts occasioning bodily harm or grievous bodily harm, depending on the degree of injuries sustained.

This is the end of our answers. Thank you.

Attachments

Constitution Amendment Act 1997
Human Rights Commission Act 1999
Judges Rules
Annual Report 2002, page 25
Annual Report 2003, page 12