



UNCAT Signature and Ratification

Briefing Paper

August 2014

This briefing provides background information on the Convention, and describes the main obligations deriving from ratification and the steps States should take on ratification.

1. What is the UN Convention against Torture?

All Member States of the United Nations have pledged to achieve the promise of the Universal Declaration of Human Rights: “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”.

The 1984 UN Convention against Torture (UNCAT) provides States with detailed provisions which establish the essential aspects of effective torture prohibition and prevention, to fulfil this shared promise.

2. What are the main obligations of the UN Convention against Torture?

There are 16 substantive articles of the UNCAT and various additional procedural provisions. However, the principal obligations may be grouped together under the headings of prohibition, prevention, punishment, redress and reporting.

A. Prohibition: The status of the absolute prohibition against torture or to cruel, inhuman or degrading treatment or punishment is a non-derogable principle of international law.

The prohibition includes not just the obligation of States not to torture (article 1), but also the corollary obligations not to send persons to places where they may be tortured (article 3), and the obligation not to benefit from the fruits of torture (article 15).

States should ensure the absolute prohibition against torture is adequately reflected in their domestic legal order, and included in the training materials of all relevant State actors (article 10).

- B. Prevention:** States must take effective legislative, administrative, judicial or other measures to prevent acts of torture (articles 2 and 11) and other ill-treatment (article 16).

The UNCAT does not list the measures that should be taken by States, only requiring that the measures be effective in practice. Various measures may therefore be undertaken by States.

Institutionalising safeguards against torture, such as providing early access to a lawyer and independent inspection of detention facilities, are recommended by the Special Rapporteur on torture among other experts as particularly effective measures to prevent torture.¹

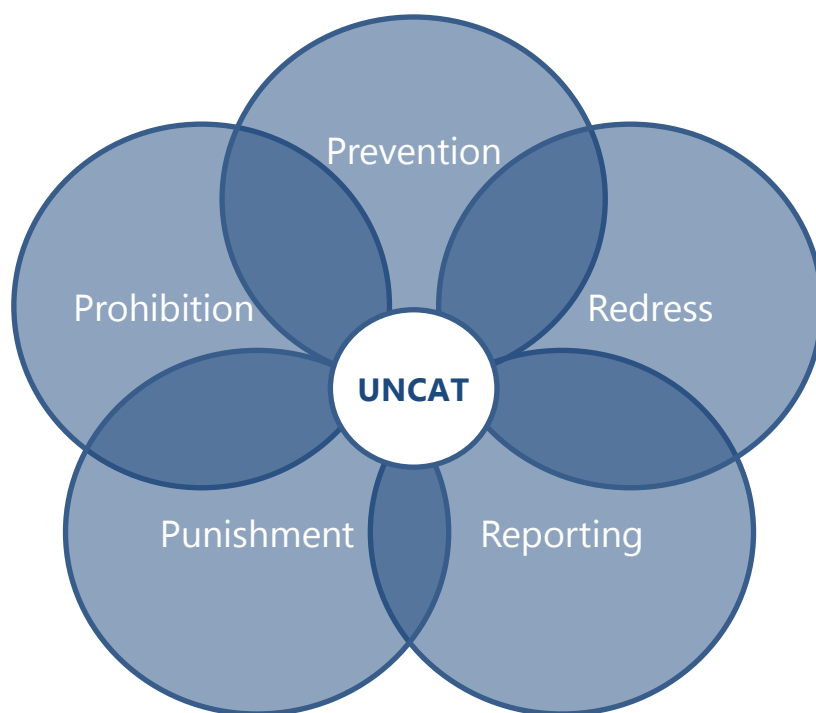
- C. Punishment:** All acts of torture must be investigated and prosecuted. States should ensure a specific offence of torture included in domestic law (article 4) and that all complaints are investigated (articles 5–9 and 12-13). Where there are reasonable grounds to believe torture has taken place, the alleged perpetrator should be prosecuted.
- D. Redress:** Victims of torture should be able to obtain redress and have an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible (article 14).

States should adopt legislation to provide victims with effective remedy and the right to obtain adequate and appropriate redress. Such remedies must be available against the State and not just as a civil complaint against the perpetrator, and be effective in practice.

- E. Reporting:** All States parties should provide the Committee against Torture with periodic reports describing the steps it has taken to implement the Convention.

Pursuant to article 19 of the Convention, States parties must provide an initial report to the Committee against Torture within one year of ratification. Periodic reports are due every four years after the initial review.

¹ For some good examples, see the General Recommendations of the Special Rapporteur on torture, at <http://www.ohchr.org/Documents/Issues/SRTorture/recommendations.pdf>.



Principal obligations of the UNCAT

3. What is the Optional Protocol to the UNCAT?

The Optional Protocol to the UN Convention against Torture (OPCAT) is designed to give States the practical assistance needed to effectively prevent torture and other forms of ill-treatment, and significantly help fulfil the obligations of the UNCAT.

The OPCAT does not set new norms or standards. It instead establishes a system of regular visits to all places of detention, conducted by national and international bodies, which work in close cooperation with national authorities, identifying gaps in laws and practice to protect the rights and dignity of all persons deprived of their liberty.²

A State may ratify the Optional Protocol at the same time as, or at any time after, ratifying the UNCAT.

4. What are the priorities on UNCAT signature or ratification?

Pursuant to the international law of treaties, a signing State does not undertake positive legal obligations under the UNCAT upon its signature. However, the signature indicates the State's intention to take steps to express its consent to be bound by the UNCAT at a later date. Signature also creates an obligation, in the period between signature and ratification to refrain in good faith from acts that would defeat the object and purpose of the UNCAT.

On ratification, a State agrees to formally consent to be bound by its obligations, engaging its international responsibility. The State must take steps to implement the obligations of the UNCAT in good faith, and to report to the Committee within one year on the steps it has taken.

² For more information on the OPCAT, please see the dedicated APT webpages, at <http://www.apr.ch/en/what-is-the-opcat/>.

Some of the most urgent first steps include (1) legal mapping, (2) planning for full implementation, (3) mainstreaming training for national actors in key sectors, and (4) preparing an Initial Report to the Committee against Torture.

4.1. Mapping for legal conformity

Many legal, administrative, judicial or other changes may be needed to effectively implement the Convention. The exercise of mapping the conformity of the national system should be conducted thoroughly so that States understand exactly what they must do in order to fully implement the UNCAT. Such an exercise may be achieved in collaboration with legal experts who understand how the Convention has been implemented elsewhere.

Many legislative amendments may be necessary to implement all the provisions of the UNCAT, and could include revisions to the following legal texts:

- Constitution,
- penal code,
- criminal procedure code and civil code of procedure,
- police legislation,
- prison legislation,
- extradition legislation, and
- various other laws.

In relation to the challenging step of criminalisation, several States have benefitted from expert advice from international NGOs, including the APT.³ Some States have passed amendments to their penal code, others have adopted specific laws dedicated to criminalising the offence. No single method is suitable for all States, and each should undertake a process of reflection to agree on a process of legal reform which is consistent with the national legal order.

4.2. Developing a domestic roadmap

Beyond legal reform, further steps may be contemplated by each government department and/or executive agency to enable full implementation.⁴ Once again, sharing experiences with other States parties, intergovernmental institutions and civil society may be sought to better understand exactly what further steps are appropriate.

³ For assistance, please see APT, *Key Issues in Drafting Anti-Torture Legislation* (2013), at <http://www.apt.ch/en/resources/key-issues-in-drafting-anti-torture-legislation-2013/>.

⁴ See, for instance, the recently adopted plan of action/roadmap for the implementation of the Uganda comprehensive anti-torture law, adopted after a workshop held on 7–8 February 2012 at http://www.apt.ch/en/news_on_prevention/uganda-roadmap-for-torture-prevention/#.U5auKvmSzxA.

A roadmap for domestic implementation of the UNCAT might include the following steps for each responsible government department and/or executive agency:

- The adoption of regulations, codes of practice, or policies to guide operational practices and bring about positive behavioural change;
- Institutional reform is also recommended to allow for independent and effective investigations, robust chains of responsibility, or visits by experts who can work with national authorities to reduce the risks of abuse;
- Capacity building and training are critical tools to change cultural barriers and educate operational officials; and
- Various further steps might be contemplated to react to unique national challenges.

4.3. Mainstreaming Training for key State actors

Raising awareness of the UNCAT among all relevant actors from multiple government departments is a significant challenge to new States parties, but one which may be overcome with the assistance and support of States, institutional partners and other actors.

Staff in key sectors, such as police and corrections officers, should be introduced to the Convention and its obligations at an early opportunity. Training should be mainstreamed so that all new staff are given training in full compliance with international standards and existing staff are re-trained in areas of inconsistent practice.

4.4. Preparing an effective Initial Report

All States parties to the UNCAT must submit periodic reports to the Committee against Torture (CAT). When a State party is reviewed by the CAT, the State must describe how it has implemented the obligations of the Convention and the Committee will make recommendations for further necessary reforms to enable better implementation.

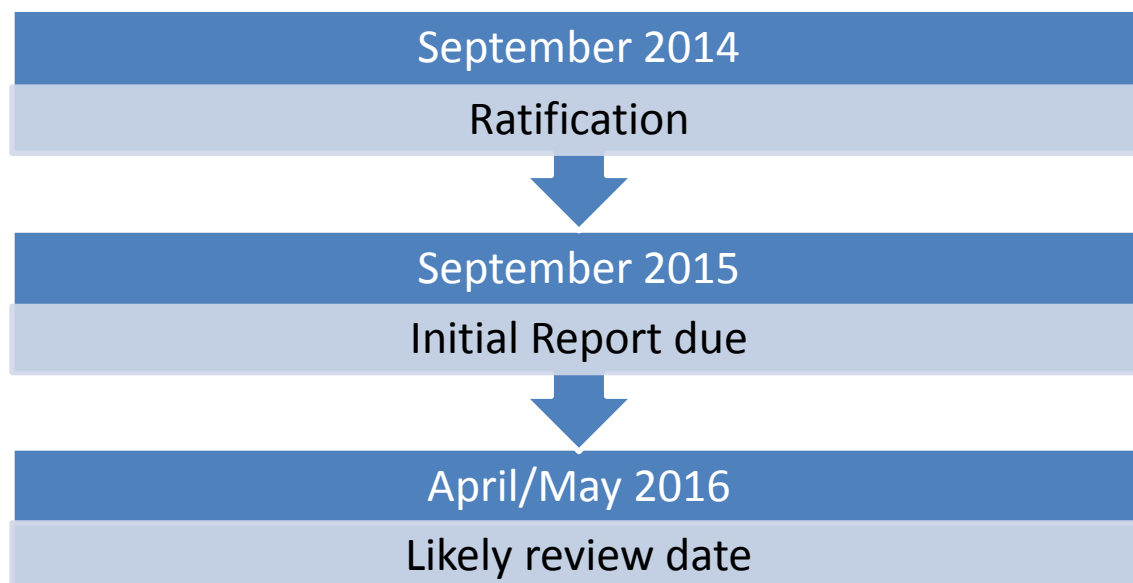
The perceived burden of reporting is often cited as one of the reasons that States do not ratify the UN Convention against Torture. Though the reporting process to the Committee against Torture does take time, it is an essential part of implementing the Convention. Reporting gives States an incentive to reflect on the steps taken to ensure national operation of the rights afforded by the Convention, and through a cooperative dialogue with the Committee, provides specific and practical advice to enable more effective implementation.

Pursuant to article 19 of the Convention, States parties must provide an initial report to the Committee against Torture within one year of ratification. Periodic reports are due every four years after the initial review.

The process of reporting has undergone some significant changes in the last few years to make the process more streamlined and less of a burden for States. However, the Initial Report to the CAT should be comprehensive, in order for the Committee to fully appreciate the challenges and obstacles to implementation in the State. After submission of the State report, the CAT will schedule a review as a priority in the next session of the Committee. The national report will be examined in detail with the State delegation during an interactive dialogue with the CAT. The CAT will then adopt concluding observations and recommendations, some of which should be followed up with the State Party within a year.

The Committee against Torture and international NGOs have provided much guidance for States to follow in the preparation of their initial and periodic reports.⁵ Much practical assistance in the preparation of Reports to the CAT is also available from OHCHR, other intergovernmental organisations and NGOs.

Example of timeline for preparation of Initial Report:



⁵ See CAT Guidelines on the Form and Content of Initial Reports Under Article 19 to be Submitted by States Parties to the Convention Against Torture, CAT/C/4/Rev.3, 18 July 2005; CAT, General Guidelines Regarding the Form and Contents of Periodic Reports to be Submitted by States Parties under Article 19(1) of the Convention, CAT/C/14/Rev.1, 2 June 1998; and APT, General Guidelines on Initial Reports to the Committee against Torture, May 2012, available at <http://www.apt.ch/content/files/UN/Initial%20Reports%20to%20the%20CAT.pdf>.

5. How can international partner organisations such as the APT assist States with ratification and implementation?

International partners, including the APT, can assist States with each stage of the ratification and implementation of the UNCAT and its Optional Protocol.

Both before and after ratification, partners can help *prepare key stakeholders for implementation* of the Convention, with trainings and materials to raise awareness of the Convention and its principal obligations. Most recently, the APT has been invited to Myanmar to deliver trainings and engage in discussions with the National Human Rights Commission and representatives from Government Departments, to answer questions and consider issues arising from possible ratification of the UNCAT, OPCAT and other human rights instruments.

The APT can also deliver more specific advice and assistance to key sectors, such as police and corrections services, if requested. As noted above, sustainable and systematic training should be mainstreamed into existing training curriculum, and States might welcome some assistance in the design and testing-phase of such training, and for partners to help develop specific training materials which respond to the unique character of any State.

Several international partner organisations, including the APT, routinely *provide advice and assistance to governments and parliamentarians on the adoption of key legal and policy frameworks* for the prohibition and prevention of torture. By providing long-term support to the process of legal reform, the APT has assisted in the adoption of legislation in Thailand, Nepal, South Africa, the Maldives, the Philippines among other countries.

In Uganda, the APT has recently been active to help facilitate meetings with key government stakeholders to *develop a plan for the implementation of the UNCAT*.⁶ The development of a roadmap is a useful tool for the effective implementation of key obligations among a number of government departments.

Finally, international partners should be able to signpost States to a number of other relevant partners who can further assist States in the implementation of human rights obligations. For instance, the APT is an implementing partner of the Convention against Torture Initiative (CTI),⁷ which bring States together to share legal advice and technical assistance for the ratification and implementation of the UNCAT.

⁶ See http://www.apr.ch/en/news_on_prevention/uganda-roadmap-for-torture-prevention/#.U5cEqPmSzxA.

⁷ See <http://www.apr.ch/en/convention-against-torture-initiative/>.