

CONVENTION AGAINST TORTURE INITIATIVE
CTI2024.ORG

UNCAT Ratification Tool

Constructive • Twinning • Inspirational

Prepared by the Association for the Prevention of Torture - APT

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UNCAT Signature and Ratification – *Template for executive action*

This template has been drafted to include information needed for executive actors and departments to present a paper to government recommending UNCAT ratification.¹

Several pull-out annexes accompany this tool that are intended to support this briefing, and offer answers to several of the most common questions raised by States as they move toward ratification.

1. What is the UN Convention against Torture?¹

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”* (article 5).

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. *The full Convention text is included as a separate resource.*

2. What are the main obligations of the UNCAT?

There are 16 substantive articles of the UNCAT which describe the obligations to respect, protect and fulfil the absolute prohibition against torture and other forms of ill-treatment, and various additional procedural provisions. As with other human rights treaties, the UNCAT is not prescriptive in how the articles should be achieved. This is deliberate, and encourages States to develop laws, policies, practices and mechanisms that conform to their own unique context and character while complying with the obligations of the UNCAT.

On ratification, all the obligations in the UNCAT become binding legal commitments. However, it is important to note that States do not have to achieve UNCAT obligations prior to ratification. Ratification is the beginning of an incremental process to implement the Convention which takes many years to achieve. *See ‘When to ratify the UNCAT and OPCAT’ for more information.*

Principal Convention obligations may be grouped together under the headings of prohibition, prevention, punishment, redress and reporting.

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.

¹ The term ratification is used here for simplicity, but is equally intended to refer to accession.

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 and other ill-treatment is adequately reflected in their domestic legal order, and included in the training materials of all relevant State actors (article 10).

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 must be taken by States, only requiring that the measures be effective in practice.² 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 and other forms of ill-treatment.³

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.

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).⁴

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.

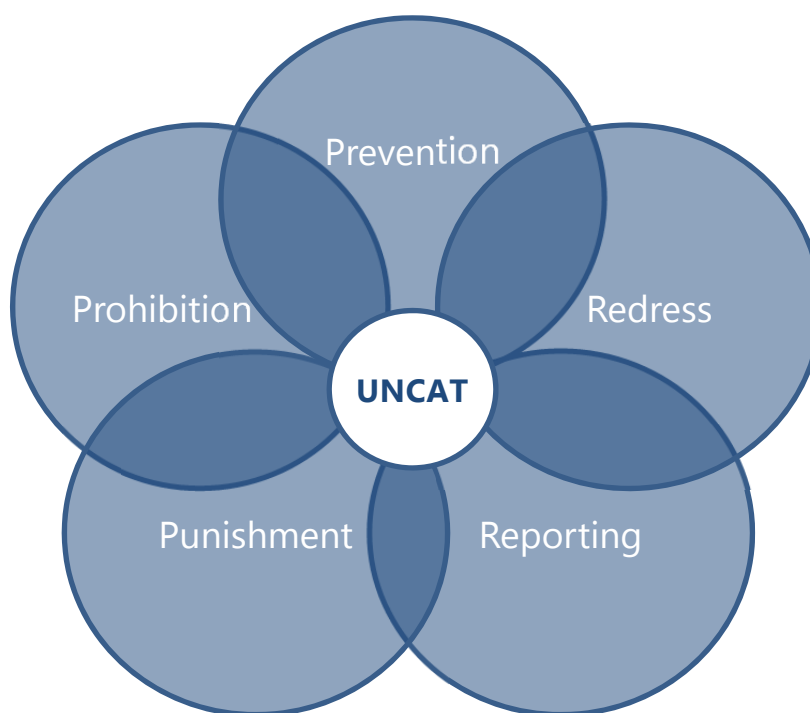
Reporting: All States parties should provide the Committee against Torture with periodic reports describing the steps it has taken to implement the Convention.

Pursuant to article 19 of the Convention, States parties must provide an initial report to the Committee against Torture within one year of ratification. See *'Initial Reports to the Committee against Torture, General Guidelines'* for more information. Periodic reports are due every four years after the initial review.

² The Committee against Torture has published a comment to help States parties understand how to understand the obligation and effectively prevent torture. See CAT, *General Comment N°2*, CAT/C/GC/2, 24 January 2008.

³ See *General Recommendations of the Special Rapporteur on torture*, E/CN.4/2003/68, §26.

⁴ Please refer to CAT, *General Comment N°3*, CAT/C/GC/3, 16 November 2012, in which the Committee examines the obligation to provide redress in detail.



Principal obligations of the UNCAT

In addition to these binding obligations, further provisions offer ‘voluntary’ mechanisms which may be either reserved on ratification (articles 20 and 30) or take effect only when they are adopted by the State party (articles 21 and 22). *See the separate briefing on ‘Reservations and Declarations’ for more detail.* Expert advice should always be sought prior to ratification to ensure that each obligation is fully understood.

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.

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

4. What are the financial implications of treaty implementation?

As with all human rights treaties, effective implementation of the UNCAT is not without financial implications, and the costs associated with necessary legal and policy reforms, the introduction of safeguards against ill-treatment in detention, awards of compensation to victims, or the training of staff, are commitments that come with financial considerations.

However, States which already demonstrate a good level of legislative compliance with international torture prevention standards experience comparatively few costs associated with UNCAT implementation. Equally, in States with small or few facilities where persons are detained, the implementation of the Optional Protocol to the UNCAT is also relatively simple and low-cost.

Other States have shown that the costs associated with implementing the UNCAT may be managed in a way which incorporates them into existing commitments on justice sector reform or bears them gradually over time, making full implementation of the Convention possible, even for small States.

States also note that reporting to multiple UN mechanisms, including the Committee against Torture, is burdensome for States with limited resources. However, States may overcome this challenge by seeking assistance from partners, including other States, OHCHR, UNDP, and civil society, who provide technical or financial assistance in order to facilitate the process of reporting to the Committee.

The State could also attempt to balance anticipated costs with likely benefits. For instance, in addition to effectively preventing torture and other ill-treatment in the jurisdiction, a number of tangible and non-tangible benefits are associated with UNCAT membership, such as sustainable development and improved security, thus becoming a more attractive investment and trading partner, which may significantly reduce the overall costs of ratification.

A number of partners, including the CTI and OHCHR, also offer assistance to States on request. For instance, the CTI has enabled exchanges between States which celebrate good practices in UNCAT implementation that may be replicated in a cost-effective way. Should the State also ratify the Optional Protocol, an OPCAT Special Fund has been established with the OHCHR to support States parties to implement specific recommendations of the treaty body.

5. 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, the State formally consents to be bound by its obligations. The State must take steps to respect, protect, and fulfil the obligations of the UNCAT in good faith, and to report to the Committee within one year on the steps it has taken.

One economic way to ensure coordination and effective implementation among various arms of State is to establish an inter-ministerial body to oversee implementation of the UNCAT including the submission of reports. The body could establish sub-groups to speed up decision-making on particular issues as appropriate.

Some of the most urgent first steps to be undertaken before or following UNCAT ratification include:

- (1) mapping (legal, institutional and capacity gaps, etc.),
- (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.

5.1 Mapping for legal conformity

Various legal, administrative, judicial or other changes may be needed to effectively implement the Convention after ratification. While legal reform will not automatically ensure that all rights in the Convention are enjoyed by all persons, ensuring their protection in law is a critical step towards fulfilling them in practice.

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 and other experts who understand how the Convention has been implemented elsewhere. See *'Laying the foundations: A Checklist for National Laws'* for more information.

Many legislative amendments may be necessary to protect all the provisions of the UNCAT in law, and could include revisions to one or more of 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 important step of criminalisation, several States have benefitted from expert advice from international partners. Some States have passed amendments to their penal code, while 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.

5.2. Developing a domestic roadmap

Beyond legal reform, further steps may be contemplated by each government department and/or executive agency to enable full implementation. 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.

States should be realistic, practical and achievable in setting goals for the implementation of UNCAT obligations. Fulfilment of Convention rights is an ongoing process, and may take years to achieve.

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;
- Development of reparations programmes and rehabilitation services for victims of abuse;
- Capacity building and training are critical tools to change cultural barriers and educate judicial and operational officials; and
- Public awareness programmes on the rights enshrined in the Convention.

5.3. 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, judges and prosecutors, health professionals, and others should be introduced to the Convention and its obligations at an early opportunity, targeted to meet each of their specific needs. 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.

5.4. Preparing an effective Initial Report

Pursuant to article 19 of the Convention, all States parties to the UNCAT must submit reports periodically to the Committee against Torture (CAT), and the initial report is due within one year of ratification.

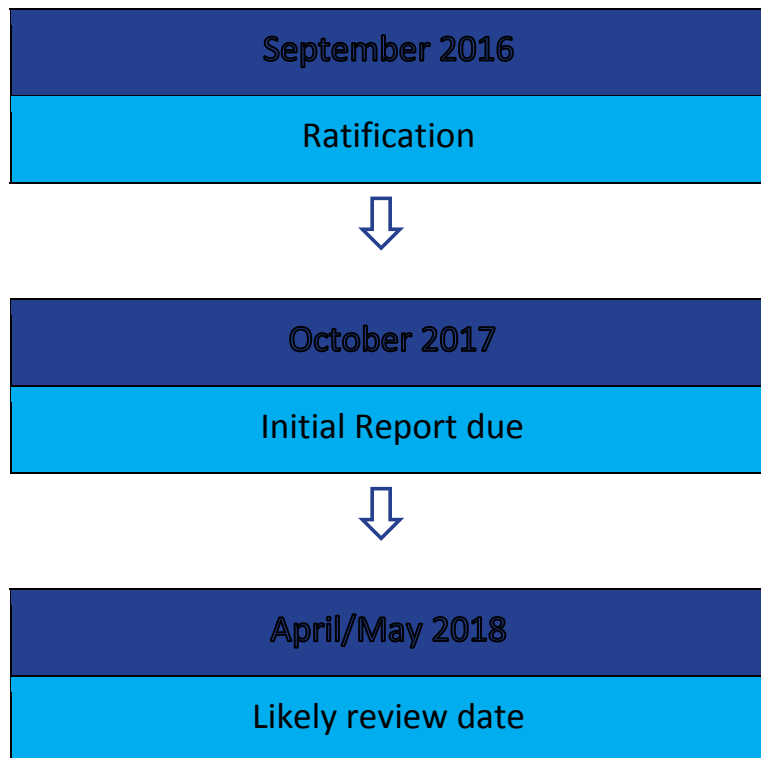
When a State party is reviewed by the CAT, the State must describe how it has implemented the obligations of the Convention and the Committee will make recommendations for further necessary reforms to enable better implementation.

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 provides an opportunity to rally the diverse national actors and authorities around the required reforms. Furthermore, the cooperative dialogue with the Committee often provides specific and practical advice to enable more effective implementation.

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. Further changes are likely, and up to date information should always be sought from the CAT Secretariat (+41 22 917 97 06, cat@ohchr.org) or on the CAT website (<http://www2.ohchr.org/english/bodies/cat/>).

After submission of the State report, the CAT will schedule an initial review with the State party as a priority. 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.

Theoretical timeline for preparation of an Initial Report and CAT Review:



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

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

The Convention against Torture Initiative (CTI) has been established to bring States together to share legal advice and technical assistance for the ratification and implementation of the UNCAT and its Optional Protocol. There are a number of international partners, including the CTI, UN bodies such as OHCHR and UNDP, and civil society organisations that can assist States with each stage of the ratification and implementation. *For more information see the separate briefing on 'How the CTI Can Help'.*

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. If relevant, international experts and civil society organisations may provide further technical assistance and legal advice.

CTI, August 2016

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Annex 1: When to ratify UNCAT and OPCAT?

There is no requirement to fully comply with the UN Convention against Torture or its Optional Protocol prior to ratification or accession. Nevertheless, States have typically been wary to ratify or accede before they can demonstrate that they have fulfilled many, if not all, of their obligations. Experience has shown that this belief is common to States seeking to adopt various human rights treaties.

“There is a common misconception, in the Pacific region and elsewhere, that full compliance with treaty provisions is a pre-requisite for ratification. This is not true. In fact, no country in the world manages full compliance. There is always room for improvement. Ratification should signal the beginning of a process to amend national legislation so that it conforms to international human rights standards. States should not regard their current domestic human rights situation as a barrier to treaty ratification. Instead, ratification should be seen as an opportunity to effect change.”⁵

At the first Forum of the Convention against Torture Initiative (CTI), held in September 2014, participants asked UN experts whether States should ratify immediately, or wait until after they have overcome implementation challenges. UN experts, including members of the UN Committee against Torture, explained that the Convention does not expect States to be in full compliance with its provisions prior to ratification.



During the process of periodic review with States parties, the Committee against Torture does not expect full compliance from States under review, but rather that a process is being undertaken towards satisfying those obligations. Indeed, it is often only after ratification, through cooperative

⁵ OHCHR Regional Office for the Pacific, *Ratification of International Human Rights Treaties: Added value for the Pacific Region* (OHCHR/PIFS, 2009).

dialogue with the Committee against Torture, that laws or policies may be identified as needing revisions to. Ratification or accession is therefore just the start of a process of incremental implementation.

“States should see ratification as the start of a process which brings them into compliance with obligations over time, through the mechanisms described in the Convention”

Claudio Grossman, former chairperson of the UN Committee against Torture⁶

States that wait to ratify or accede until certain steps have been taken risk missing key issues which could have been raised through early dialogue with the Committee against Torture. This process is a constructive dialogue, and OHCHR (or other UN agencies) and various international partners are better able to assist States with particular national challenges to implementation after the State has committed itself to the fulfilment of the treaty.

First Steps

In many States, the act of treaty ratification or accession is an executive act. Thus a government may ratify or accede to the UNCAT and its Optional Protocol without parliamentary endorsement. However, even if UNCAT and OPCAT ratification or accession can be undertaken immediately, if it is to lead to meaningful improvements in human rights compliance, it should only be undertaken when the implications are fully understood and when the State feels comfortable in accepting the obligations described in each of its provisions. If ratification or accession is undertaken without preparation, it could lead to promises being left unfulfilled.

It is therefore generally advised that ratification follows after consultations with government departments, parliament, civil society and other stakeholders. In many small island States, community leaders play a key role in governance, hence a full process of consultation which seeks the consent of key stakeholders will encourage better public support and likely lead to better understanding and fulfilment of Convention obligations.

UN experts have always been very open in discussing the opportunities and challenges associated with treaty membership. Members of the Committee against Torture and Subcommittee on Prevention of Torture have offered to begin discussions with States even before ratification or accession. The Special Rapporteur on torture, whose mandate is not limited to States parties of the treaties, has also offered to hear from interested States and share ideas on best ways to proceed.

Beginning the constructive dialogue with UN experts prior to ratification could allow key stakeholders to initiate a deep national dialogue to understand how each obligation applies in their unique national context.

Signature, Accession, or ratification

Following the decision to adopt the treaty, the actual physical act of signature, accession or ratification is very straightforward. **See the ‘Model Instrument of Ratification’ resource for more information.** Ratification of the UNCAT and the OPCAT follows the same procedure as all other treaties registered with the UN, so all States have already completed the requirements when adopting other UN treaties. Consent to be bound by the UN Convention against Torture and its Optional Protocol may be expressed by ratification or accession.

⁶ CTI, *First CTI Forum confirms Governments’ commitment to end torture*, Press Release, Geneva 3 September 2014.

For States that ratify, rather than accede to international treaties, the first stage is for a State representative with full powers of authority to sign the treaty. After a period of time, the representative may deposit an instrument of ratification with the UN Secretary General in New York to complete the process. Other States accede to treaties in a single step, by depositing an instrument of accession instead.

Signing a treaty creates a good faith expectation that the State will take steps towards full ratification. However, it is only after a State ratifies or accedes to the treaty will it become a State party and become subject to its obligations. The period between signing the UNCAT and ratification may be used for decisions to be taken at the national level or for consultations with relevant stakeholders.

Where a State cannot accept one or two provisions of the UNCAT due to inconsistent domestic legislation or other objections, it might consider whether ratification or accession subject to reservations is appropriate. ***See briefing on 'Reservations and Declarations' for more information.*** Reservations to treaties exclude or modify the legal effect of certain provisions in their application to that State. Reservations to the Convention should seek to be withdrawn when domestic changes overcome the objection or bring the law in line with the international obligation.

Optional Protocol before the UNCAT?

The OPCAT provides that a State may sign or ratify the Optional Protocol at the same time as, or at any time after, signing or ratifying the UNCAT. As with the UNCAT, its core obligations may be undertaken at any time prior to ratification.

Chicken or egg; implementation before treaty adoption

Though the UNCAT does not require fulfilment of its obligations prior to ratification or accession, some States prefer to take some concrete steps towards implementation before the adoption of legal obligations. For instance, New Zealand enacted its Crimes of Torture Act 1989 to coincide with its ratification of the UNCAT, on 10 December 1989. New Zealand later amended the law in 2007, to coincide with its ratification of the Optional Protocol in March 2007. In this way, New Zealand was able to demonstrate respect for obligations of the UNCAT on ratification, and move quickly to fulfil the requirement of establishing its National Preventive Mechanism within a few months of OPCAT ratification.

As an alternative model, Vanuatu ratified the UNCAT in August 2011, and was the first Pacific Island State party to the Convention. Thereafter, it undertook to fulfil the rights associated with its accession:

The Government of Vanuatu took a practical approach to accession of [the Convention], not requiring full compliance with the provisions of the [Convention] before its accession, rightly seeing accession as the first step in the process.⁷

The OHCHR has reported that membership of the UNCAT provided Vanuatu with the framework through which their law enforcement bodies have been able to consider their internal practices, and initiate institutional reform in line with the Convention.

⁷ OHCHR, *Torture Prevention in the Pacific: Sharing Good Practices and Lessons Learnt* (OHCHR, Dec. 2011), p.6.

Conclusion

Ratification or accession of the UN Convention against Torture and its Optional Protocol may be undertaken by States before they have achieved obligations contained in its provisions. Membership of both treaties may be understood as the start of an incremental process towards the fulfilment of the absolute prohibition against torture, supported by an ongoing process of dialogue with treaty body experts.

States which ratify treaties may choose to sign the UNCAT or OPCAT as a preliminary step towards full ratification, while consulting with national stakeholders.

Membership of all human rights treaties incurs legal obligations, and States should only ratify or accede when they fully understand the obligations and are ready to begin the process of implementation. If ratification of the Convention is undertaken without adequate preparation, it could lead to its promises being left unfulfilled.

Annex 2: Templates on Ratification, Accession, Reservations and Declarations to UNCAT

These templates set out model instruments for ratification, accession, reservations and declarations to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) with explanatory material and should be read in conjunction with the UN Treaty Handbook, published by the Treaty Section of the Office of Legal Affairs.⁸ They have been prepared by the Association for the Prevention of Torture (APT) on behalf of the Convention against Torture Initiative (CTI) and form an annex to the CTI's UNCAT Ratification Tool.⁹

The CTI and the APT remain available to provide any further information or advice that may be required. Please contact the CTI secretariat for further information, info@cti2024.org.

Becoming a State party to the UNCAT

There are two routes for a State to become party to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention, or UNCAT): A State may either (i) sign and ratify the treaty, or (ii) accede to it. Both are equally valid, and have the same legal effect. A legal unit in the ministry of foreign affairs would normally be consulted to determine whether it is customary to ratify or accede to international treaties.

(i) SIGNATURE AND RATIFICATION

Ratification requires two separate actions. The State first signs the instrument, before formally depositing an instrument of ratification. The UNCAT opened for signature on 10 December 1984, and remains open for signature by all States (see UNCAT article 25).

Signature. The procedure for signature is for the Head of State, Head of Government or Minister for Foreign Affairs, signing on behalf of the State, to meet the Treaty Section of the United Nations to physically sign the instrument, at UN Headquarters in New York. A State official other than the Head of State, Head of Government or Minister for Foreign Affairs may also sign a treaty if they are in possession of a valid instrument of full powers (a model instrument of full powers is included in this package).

By signing the Convention, a State indicates its intention to become a party to the instrument in the future.

Signing the Convention does not make the State a party to the agreement, legally bind it or require it to begin to implement all the provisions of the Convention. Signature does though create 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 Convention.

Ratification. To become formally bound by the Convention's provisions, a signatory State must subsequently ratify the UNCAT (see UNCAT article 25). Ratification of the UNCAT at the international

⁸ Available at: <https://treaties.un.org/>

⁹ Available at: www.cti2024.org

level requires the State to deposit an instrument of ratification with the UN Secretary-General (see model instrument of ratification in this package).

(ii) ACCESSION

An alternative route available to States to agree to be bound by the Convention is through the single action of accession (see UNCAT article 26). To become party to the Convention, an acceding State must formally declare its consent to be bound by the UNCAT with the deposit of an instrument of accession.

As with the procedure for ratification, accession may involve one or more of the steps described next. Accession is effected through the deposit of an instrument of accession with the UN Secretary-General (see model instrument of accession in this package).

Steps to ratification or accession

Step One. Action by the national government. At the national level, there may be specific procedures a State is required to undertake, prior to becoming party to an international agreement. For some countries, parliamentary authority is required to become party to international treaties; for others, only executive authority is needed. Irrespective of the domestic procedures, before a State formally agrees to become party to a treaty, it is generally recommended that State authorities discuss the obligations widely before ratification or accession, so that all the Convention's requirements are fully understood. There is no requirement that a State be fully in compliance with all UNCAT provisions prior to ratification or accession however, although it is expected that appropriate steps would be taken to ensure conformity with the Convention over time.

Step Two. Determine if any reservations or declarations are needed. As part of any relevant domestic process, the Government should determine whether any reservations or declarations need to be made with submission of the instrument of ratification or accession.

For example, a Government will need to submit a declaration at the time of ratification or accession to exercise the opt-out option for articles 20 and 30 of the Convention (see UNCAT articles 28 and 30(2) for authority for permitted declarations). Reservations and declarations are described more fully in the next section of this package.

Step Three. Prepare and sign instrument(s). Following the completion of any necessary domestic procedures, the Government office responsible for doing so will prepare the instrument of ratification or accession and any instruments of reservation or declaration.

In the practice of many countries, this responsibility belongs to the Ministry of Foreign Affairs. The Head of State, Head of Government or Minister for Foreign Affairs will then sign and date the instrument(s).

Step Four. Delivery to the Secretary-General through the UN Treaty Section. After domestic procedures have been followed and the decision to be bound by the Convention taken, a State must formally deposit the instrument of ratification or accession. Ratification or accession to the Convention becomes effective only when it is deposited with the Secretary-General of the United Nations at United Nations Headquarters in New York. The date of deposit is normally recorded as that on which the instrument is received at Headquarters.

The instrument may be delivered by hand, mail or fax to the Treaty Section of the United Nations, preferably including translation into English or French, where appropriate. If the instrument is deposited by hand, it is not required that the person delivering the instrument has full powers. In accordance with depositary practice, if a State initially faxes or sends by email a signed copy of an

instrument, such copy may be accepted for deposit but that State must also provide the original as soon as possible thereafter to the Treaty Section.

The contact information for the Treaty Section is as follows:

Treaty Section
Office of Legal Affairs
United Nations
New York, NY 10017
USA

Tel: 1-212 963 5047
Fax: 1-212-963-3693
Email: treaty@un.org,
TreatyRegistration@un.org

ENTRY INTO FORCE

The Convention enters into force on the thirtieth day after the date of the deposit of the instrument of ratification or accession (see UNCAT article 27(2)).

Reservations and declarations

Reservations to treaties modify or exclude the legal effect of its provisions. As provided in the 1969 Vienna Convention on the Law of Treaties, where they are allowed, reservations must be specific and must not be incompatible with the object and purpose of the treaty.¹⁰

The Convention against Torture (UNCAT) does not exclude the possibility that States may make reservations at ratification or accession. Indeed, the Convention explicitly provides that reservations may be made to exclude certain provisions related to visits described in article 20 (per article 28) and the resolution of disputes (article 30(1)). Further voluntary declarations may be made at any time after ratification or accession to allow for State and individual communications to the Committee against Torture.

Examples of reservations explicitly permitted:

China:

“(1) The Chinese Government does not recognize the competence of the Committee against Torture as provided for in article 20 of the Convention.

“(2) The Chinese Government does not consider itself bound by paragraph I of article 30 of the Convention.”

France:

“The Government of France declares in accordance with article 30, paragraph 2, of the Convention, that it shall not be bound by the provisions of paragraph 1 of [article 30].”

In addition to explicitly permitted reservations, recent reservations to human rights treaties, including the UNCAT, reveal a tendency for States to enter reservations which attempt to modify or exclude the legal effect of important treaty provisions. Such reservations could serve as stumbling

¹⁰ For more advice on the lawfulness of reservations to treaties, see the UN *Guide to Practice on Reservations to Treaties* (2011), adopted by the International Law Commission 63rd session.

blocks to the effective implementation of international standards, and States should think carefully about whether they are needed, and how soon they may be removed.

On one hand, reservations allow States to participate in a treaty that they would otherwise be unable to join. On the other, reservations lead to asymmetrical relationship between States parties. One State may opt-out of a provision which is valid for others, thus undermining the universality of commitments shared among all States parties. Some reservations may even attempt to reduce the significance or impact of the treaty itself.

Examples of other types of reservations:

Lao People's Democratic Republic:

"The Government of the Lao People's Democratic Republic declares that, pursuant to Article 8, paragraph 2 of the Convention it makes extradition conditional on the existence of a treaty. Therefore, it does not consider the Convention as the legal basis for extradition in respect of the offences set forth therein. It further declares that bilateral agreements will be the basis for extradition as between the Lao People's Democratic Republic and other States Parties in respect of any offences."

New Zealand:

"The Government of New Zealand reserves the right to award compensation to torture victims referred to in article 14 of the Convention Against Torture only at the discretion of the Attorney-General of New Zealand."

Thailand:

"With respect to the term 'torture' under Article 1 of the Convention, although there is neither a specific definition nor particular offence under the current Thai Penal Code corresponding to the term, there are comparable provisions under the aforesaid Thai Penal Code applicable to acts under Article 1 of the Convention. The term 'torture' under Article 1 of the Convention shall accordingly be interpreted in conformity with the current Thai Penal Code.

"The Kingdom of Thailand shall revise its domestic law to be more consistent with Article 1 of the Convention at the earliest opportunity."

Reservations to the UNCAT itself have been limited. At the time of writing, 50 States parties had entered reservations to the UNCAT on ratification. However, several have since been withdrawn and only 41 States' reservations remain operative. Many of the reservations describe areas explicitly permitted in the UNCAT, but a few are legally problematic and have attracted a high number of objections.

The International Law Commission encourages States to conduct a periodic review of reservations, to consider whether they continue to serve their purpose, and withdraw the reservation when they are no longer needed. Such a review should take into account the importance of preserving the integrity of the treaty, the usefulness of the reservation, and any developments in international law. The Committee against Torture also routinely recommends the removal of reservations during its interactive dialogues with States parties.

Art.21 and Art.22 Declarations

Article 21 and article 22 declarations may be made at any time after ratification or accession to the Convention. Such declarations provide the Committee against Torture with the competence to hear

‘communications’, or complaints from States parties and individuals, alleging violations of the Convention.

Both articles describe voluntary procedures. States may choose whether or not to accept either procedure. Where a State does not make the voluntary declaration, the Committee will have no jurisdiction to hear complaints.

Around a third of all States parties have made declarations under both article 21 and 22, and therefore accept the competence of the CAT to consider complaints from States parties and individuals.¹¹

The quasi-judicial function of the CAT is not an appeal procedure. The Committee only has the competence to determine whether there was a violation to the Convention and make recommendations for how such a violation may be redressed. The procedure therefore serves as a helpful opportunity to consider whether national implementation of the Convention is in full compliance with international law, and recommends States parties to take remedial steps where necessary.

Example of articles 21 & 22 declarations:

Algeria:

“The Algerian Government declares, pursuant to article 21 of the Convention, that it recognizes the competence of the Committee Against Torture to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under this Convention.

“The Algerian Government declares, pursuant to article 22 of the Convention, that it recognizes the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of a violation by a State Party of the provisions of the Convention.”

Last revised June 2016

¹¹ In 2014, the CAT reported that 58 States had made declarations provided for in both articles 21 and 22 of the Convention (62 States parties made the declaration under article 21; 66 made the declaration under article 22). The current status of reservations and declarations made by States parties to the UNCAT may be seen on the UN Treaty Collection website, at www.treaties.un.org.

MODEL INSTRUMENT OF FULL POWERS (for signature)

INSTRUMENT OF FULL POWERS

I, [name and title of the Head of State, Head of Government or Minister for Foreign Affairs],

HEREBY AUTHORIZE [name and title] to sign the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted on 10 December 1984, on behalf of the Government of [name of State].

Done at [place] on [date].

[Signature by Head of State,
Head of Government, or
Minister for Foreign Affairs]

MODEL INSTRUMENT OF RATIFICATION

INSTRUMENT OF RATIFICATION

WHEREAS the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention) was adopted at New York, on 10 December 1984,

AND WHEREAS the said convention has been signed on behalf of the Government of [name of State] on [date],

NOW THEREFORE I, [name and title of the Head of State, Head of Government or Minister for Foreign Affairs] declare that the Government of [name of State], having considered the above-mentioned convention, ratifies the same and undertakes faithfully to perform and carry out the stipulations therein contained.

IN WITNESS WHEREOF, I have signed this instrument of ratification at [place] on [date].

[Signature by the Head of
State, Head of Government or
Minister for Foreign Affairs]

MODEL INSTRUMENT OF ACCESSION

INSTRUMENT OF ACCESSION

WHEREAS the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention) was adopted at New York, on 10 December 1984,

NOW THEREFORE I, [name and title of the Head of State, Head of Government or Minister for Foreign Affairs] declare that the Government of [name of State], having considered the above-mentioned convention, accedes to the same and undertakes faithfully to perform and carry out the stipulations therein contained.

IN WITNESS WHEREOF, I have signed this instrument of accession at [place] on [date].

[Signature by the Head of
State, Head of Government or
Minister for Foreign Affairs]

*MODEL INSTRUMENT OF RESERVATION/DECLARATION MADE AT TIME OF RATIFICATION OR
ACCESSION*

INSTRUMENT OF RESERVATION/DECLARATION

I, [name and title of the Head of State, Head of Government or Minister for Foreign Affairs],

HEREBY DECLARE that the Government of [name of State] makes the following [reservation /
declaration] in relation to article(s) [---] of the Convention against Torture and Other Cruel, Inhuman
or Degrading Treatment or Punishment, adopted at New York, on 10 December 1984:

[Substance of reservation / declaration]

IN WITNESS WHEREOF, I have hereunto set my hand and seal.

Done at [place] on [date].

[Signature by the Head of
State, Head of Government or
Minister for Foreign Affairs]

MODEL INSTRUMENT OF DECLARATION ACCEPTING PROCEDURES DESCRIBED IN ARTICLES 21 AND 22

INSTRUMENT OF DECLARATION

I, [name and title of the Head of State, Head of Government or Minister for Foreign Affairs],

HEREBY DECLARE that the Government of [name of State] makes the following declaration(s) in relation to article(s) [21 and 22] of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted at New York, on 10 December 1984:

[In accordance with article 21, paragraph 1, of the Convention, [name of State] declares that it recognizes the competence of the Committee against Torture to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the Convention.]

[In accordance with article 22, paragraph 1, of the Convention, [name of State] declares that it recognizes the competence of the Committee against Torture to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of a violation by a State Party of the provisions of the Convention.]

IN WITNESS WHEREOF, I have hereunto set my hand and seal.

Done at [place] on [date].

[Signature by the Head of
State, Head of Government or
Minister for Foreign Affairs]

Annex 3: Initial Reports to the Committee against Torture – General Guidelines

Article 19 of UNCAT provides that all States parties shall prepare an initial report “on the measures they have taken to give effect to their undertakings under this Convention, within one year after the entry into force of the Convention for the State party concerned.”

Following its submission, the initial report of the State party will be considered by the Committee against Torture as a priority at one of its following sessions, and a delegation from the State party will be invited to participate and respond to questions from the Committee.¹²

To provide States parties with further advice on what should be included in their initial reports, the Committee has prepared a detailed guidance note.¹³ These supplementary *General Guidelines* offer replies to common questions raised by States which have yet to submit an initial report, and directs States parties to further resources as well as commended examples of initial reports so that States may better prepare, organise and prioritise the large amount of information which might be shared with the Committee during the initial review.

Important changes in the requirements for initial reports

As the practice of the CAT has evolved, the level of detail and the format of initial reports submitted has changed. Additionally, as a result of the recent efforts by the UN to enhance the efficiency of treaty body operations, new reporting requirements have been agreed. Consequently, any initial report which follows the format used in early sessions of the Committee against Torture (or other human rights treaty body) is unlikely to be adequate for the Committee to conduct a thorough review, and up to date information should always be sought from the CAT Secretariat (+41 22 917 97 06, cat@ohchr.org) or from the CAT website (www2.ohchr.org/english/bodies/cat/).

The changes to initial reports have been caused by at least two historic factors. First, the introduction of the ‘common core document’ (a requirement of human rights treaty reporting since 2006)¹⁴ and, second, the 2005 revisions to the guidelines on the form and content of initial reports.¹⁵ Both factors have made early examples of initial reporting less relevant for any State Party seeking to submit a report to the CAT.

¹² OHCHR with assistance of UN Country teams with access to video conferencing facilities have been requested to offer, at the request of a State party, the opportunity for members of its delegation to participate in the review of that State party by videoconferencing in order to facilitate wider participation in the dialogue. See UN General Assembly resolution A/Res/68/268, 21 April 2014, at 23.

¹³ 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.

¹⁴ See HRI/GEN/2/Rev.6, 3 June 2009.

¹⁵ 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.

More recent efforts by the UN General Assembly to make treaty body reviews more efficient has led to the establishment of word limits for all State party documentation. The **word limit for initial reports is 31 800 words**, and common core documents should not exceed 42,400 words.¹⁶

It should be noted that where States Parties submit initial reports which are manifestly inadequate, treaty bodies frequently ask the State to provide additional information or even return during the following session with an additional report and go through the process again. Equally, reports which exceed the set word limits are sent back to the State with a request to re-submit a new version complying with the word limit.

As a result of these changes in content and procedure, States Parties should use good practice examples of initial reports from States parties after the date when the changes in treaty body reporting were adopted, to guide their preparation of an initial report to the Committee.

Good practice examples

Despite being submitted several years late, the following States Parties received good feedback to their initial reports from the Committee, and might be useful good practice examples for States seeking to prepare an initial report.¹⁷

- **Madagascar**, CAT/C/MDG/1, 23 February 2011
- **Djibouti**, CAT/C/DJI/1, 18 January 2011
In its Concluding Observations for Djibouti (CAT/C/DJI/CO/1, 22 December 2011), “[t]he Committee welcomes the submission of the initial report of Djibouti, which generally follows the Committee’s guidelines on initial reports. The Committee commends the frankness of the report, which acknowledges shortcomings in the State party’s implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Committee regrets, however, that the report was submitted seven years late.”
- **Chad**, CAT/C/TCD/1, 22 September 2008
- **Honduras**, CAT/C/HND/1, 9 September 2008
- **Kenya**, CAT/C/KEN/1, 16 August 2007
- **Guyana**, CAT/C/GUY/1, 14 July 2006
- **Burundi**, CAT/C/BDI/1, 13 March 2006
The Committee’s Concluding Observations for Burundi (CAT/C/BDI/CO/1, 15 February 2007) “note with satisfaction the frankness with which the State party acknowledges the gaps in its legislation relating to the elimination and prevention of torture. It also appreciates the effort made by the State party to identify the corrective steps needed.”

What if the initial report is late?

While best practice requires that States parties submit their initial report within one year of ratification, the reality is that few States have been able to submit their reports on time.

There are many reasons States parties’ reports are delayed, from a shortage of resources or lack of capacity, to natural disaster or armed conflict. When a report is submitted after a prolonged delay, the CAT will indicate that it regrets that the report was not submitted on time, which significantly

¹⁶ UN General Assembly Resolution A/Res/68/268, Strengthening and enhancing the effective functioning of the human rights treaty body system, 21 April 2014, at 16.

¹⁷ At the time of writing the 2014 agreement of word limits has yet to be reflected in the practice of initial reports examined by the CAT. States should not rely on the examples as good practices for the length of an initial report.

reduces the Committee's ability to monitor the implementation of the Convention or offer advice to the State party during that time.

States should always endeavour in good faith to submit their initial report within one year. However, if this is not possible, States should engage with the Committee Secretariat as a priority and agree a date soon thereafter when the submission of the initial report will be possible.

States should also be aware that technical assistance and advice on reporting to treaty bodies is available from OHCHR, other UN bodies, the CTI and civil society organisations. ***See the separate briefing on 'How the CTI Can Help' for more information.***

From Concluding Observations of the Committee against Torture (CAT) issued following reviews of, various States parties' initial reports, several priorities emerge.

In initial reports, States parties should:

1. Comply with the Committee's general guidelines on the form and content of initial reports¹⁸ (and the new procedural requirements on word limits),
2. Add a common core document, as an essential complementary element of treaty body reporting,¹⁹
3. Provide specific examples and statistics of how the Convention is implemented by the State party in practice,²⁰
4. Be frank and acknowledge the State party's shortcomings in the implementation of the Convention,²¹
5. Report on the entire period under review,²²
6. Submit the initial report within a year after ratification, and
7. Encourage civil society to participate in the preparation of the report.²³

¹⁸ Compare the Concluding Observations for Iraq (CAT/C/IRQ/CO/1, 14 August 2015): "... The Committee welcomes the submission of the initial report of Iraq and the information contained therein. It regrets, however, that the report does not follow generally the Committee's Guidelines on the form and content of initial reports..."; with the Concluding Observations for Burundi (CAT/C/BDI/CO/1, 15 February 2007): "The Committee welcomes the submission of the initial report of Burundi, which is in conformity with the Committee's guidelines for the preparation of initial reports...".

¹⁹ Concluding Observations for Qatar (CAT/C/QAT/CO/1, 25 July 2006), §2.

²⁰ See Concluding Observations for the Congo (CAT/C/COG/CO/1, 28 May 2015): "[the CAT] regrets that the report does not contain statistical data and concrete examples relating to the implementation of the Convention". Or Mongolia (CAT/C/MNG/CO/1, 20 January 2011): "while generally following the Committee's guidelines for reporting, [the report] lacks statistical and practical information on the implementation of the provisions of the Convention." OHCHR have published a guide to the measurement and implementation of human rights, with illustrative indicators which might assist States in their collection of relevant data. See OHCHR, *Human Rights Indicators* (Geneva, 2012), available online at <http://www.ohchr.org>. See, in particular, illustrative indicators on p.91 (Table 4).

²¹ The Committee always appreciates efforts by the State party to present its shortcomings honestly. In the Concluding Observations for Burundi (CAT/C/BDI/CO/1, 15 February 2007), "[t]he Committee notes with satisfaction the frankness with which the State party acknowledges the gaps in its legislation relating to the elimination and prevention of torture. It also appreciates the effort made by the State party to identify the corrective steps needed." See also Concluding Observations for Guyana (CAT/C/GUY/CO/1, 7 December 2006, §2), Kenya (CAT/C/KEN/CO/1, 19 January 2009, §2), and Chad (CAT/C/TCD/CO/1, 4 June 2009, §2).

²² See Concluding Observations for Tajikistan (CAT/C/TJK/CO/1, 7 December 2006), §2.

²³ See Concluding Observations for Mongolia (CAT/C/MNG/CO/1, 20 January 2011), §2.

Annex 4: Laying the Foundations: A Checklist for National Laws

States parties are required to make such modifications to their national laws to protect obligations contained in the Convention. While putting in place a strong legal foundation is only one step in ensuring rights are fulfilled in practice, it is a critical foundation on which positive State practice can be built.

Various amendments to laws may be necessary. The following list is illustrative of the minimum legislative requirements which should be reviewed by States seeking to ratify or accede to the UNCAT, and more legal analysis may be required to understand exactly how each State should fulfil Convention provisions in their national law.

Secondary legislation, which may be drafted as regulations, practice documents, or other legal instruments, should add significant detail to supplement the principal legal texts.

- ☐ Torture and ill-treatment is absolutely prohibited in national laws and/or in the constitution
- ☐ A number of preventive safeguards are guaranteed in law (e.g. persons are given access to a lawyer promptly after detention; to contact family members and to a medical examination; all detainees are recorded in bound registers etc.)
- ☐ Redress is guaranteed for victims of torture and acts of cruel, inhuman or degrading treatment or punishment
- ☐ Torture is a criminal offence:
 - ☐ The definition of torture is in line with the international definition
 - ☐ Applies to all acts (or omissions) by commission, acts of complicity or other forms of participation, and to attempt
 - ☐ No defences apply to the crime of torture
 - ☐ The offence applies to all State actors, to those acting in an official capacity, and to private persons acting with the instigation, consent or acquiescence of State actors
 - ☐ Appropriate penalties take account of the serious nature of the offence
 - ☐ Torture is excluded from applicable periods of prescription or statutes of limitation
- ☐ Persons may not be removed to countries where they face a real risk of torture
- ☐ Evidence obtained by torture is prohibited in all proceedings
- ☐ Allegations or suspicions of abuse are promptly and impartially investigated by a competent body independent of the alleged offender
- ☐ Torture is an extraditable offence
- ☐ Mutual legal assistance shall be offered where an alleged perpetrator is prosecuted in another State

Annex 5: UNCAT States parties – organised regionally

As of February 2017, there are 161 States parties to the Convention.

For the official list of UNCAT States parties, updated with new States parties, see the UN Treaty Collection, at www.treaties.un.org.

AFRICA

Benin	Ethiopia	Niger
Botswana	Gabon	Nigeria
Burkina Faso	Ghana	Rwanda
Burundi	Guinea	São Tomé and Príncipe
Cameroon	Guinea-Bissau	Senegal
Cape Verde	Kenya	Seychelles
Central African Republic	Lesotho	Sierra Leone
Chad	Liberia	Somalia
Congo	Madagascar	South Africa
Côte d'Ivoire	Malawi	South Sudan
Democratic Republic of the Congo	Mali	Swaziland
Djibouti	Mauritius	Togo
Equatorial Guinea Eritrea	Mozambique	Uganda
	Namibia	Zambia

AMERICAS

Antigua and Barbuda	Cuba	Paraguay
Argentina	Dominican Republic	Peru
Belize	Ecuador	St. Vincent & the Grenadines
Bolivia (Plurinational State of)	El Salvador	Uruguay
Brazil	Guatemala	United States of America
Canada	Guyana	Venezuela (Bolivarian Republic)
Chile	Honduras	
Colombia	Nicaragua	
Costa Rica	Mexico	
	Panama	

ASIA PACIFIC

Afghanistan	Kazakhstan	Sri Lanka
Australia	Kyrgyzstan	Tajikistan
Bangladesh	Maldives	Thailand
Cambodia	Mongolia	Timor-Leste
China	Nauru	Turkmenistan
Cyprus	Nepal	Uzbekistan
Fiji	New Zealand	Vanuatu
Indonesia	Philippines	Vietnam
Japan	Pakistan	
Lao People's Democratic	Republic of Korea	

EUROPE

Albania	Greece	Portugal
Andorra	Holy See	Republic of Moldova
Armenia	Hungary	Romania
Austria	Iceland	Russian Federation
Azerbaijan	Ireland	San Marino
Belarus	Italy	Serbia
Belgium	Latvia	Slovenia
Bosnia and Herzegovina	Liechtenstein	Slovakia
Bulgaria	Lithuania	Spain
Croatia	Luxembourg	Sweden
Czech Republic	Macedonia (FYR)	Switzerland
Denmark	Malta	Turkey
Estonia	Monaco	Ukraine
Finland	Montenegro	United Kingdom of Great Britain and Northern Ireland
France	Netherlands	
Georgia	Norway	
Germany	Poland	

MIDDLE EAST AND NORTH AFRICA

Algeria	Kuwait	Saudi Arabia
Bahrain	Lebanon	State of Palestine
Egypt	Libya	Syrian Arab Republic
Iraq	Mauritania	Tunisia
Israel	Morocco	United Arab Emirates
Jordan	Qatar	Yemen

Correct at February 2017

Annex 6: States that have yet to ratify the UNCAT

Africa	Asia	Caribbean	Middle East	Pacific*
Angola (s)	Bhutan	Bahamas (s)	Iran	Kiribati
Comoros (s)	Brunei Darussalam (s)	Barbados	Oman	Marshall Islands
Gambia (s)	DPRK	Dominica		Micronesia
Sudan (s)	India (s)	Grenada		Palau (s)
Tanzania	Malaysia	Haiti (s)		Papua New Guinea
Zimbabwe	Myanmar	Jamaica		Samoa
	Singapore	Saint Lucia		Solomon Islands
		St Kitts & Nevis		Tonga
		Suriname		Tuvalu
		Trinidad & Tobago		

* - The Cook Islands and Niue are not UN Member States, but may still ratify the Convention

Correct at February 2017

Annex 7: Work of the Committee against Torture

The Committee against Torture

The Committee against Torture (CAT, or Committee) is the international body which monitors the implementation of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) by its States parties.²⁴

The Committee is made up of 10 independent experts elected by States parties to the UNCAT, drawn from a wide range of expertise, regions and professional backgrounds. The CAT is assisted by a professional secretariat based in the United Nations Office of the High Commissioner for Human Rights (OHCHR) in Geneva.

UNCAT ratification gives States parties the opportunity to nominate experts to sit as elected members on the UN Committee against Torture. New States parties to the UNCAT may therefore nominate experts for any election following ratification of the Convention.

Elections of CAT members take place every two years, at meetings of States parties in Geneva. States parties have the opportunity to choose five members for the CAT during each election.

The role of Committee members

The CAT has several responsibilities, as described in UNCAT articles 19-22. The Committee must review the implementation of the Convention by each State party through reports submitted to it and during meetings with national delegations (UNCAT article 19); conduct confidential inquiries in cooperation with the State party when circumstances indicate the possibility of systematic torture being practised (article 20); and consider communications (or complaints) from States parties and from individuals, in States parties which have accepted the procedure (articles 21 and 22).

The Committee meets in three sessions each year (11 weeks in total) in Geneva, Switzerland. Sessions are usually held in May, August and November. Many of these meetings are open to the public, and several are webcast by a coalition of NGOs, on www.tbwebcast.org.

In addition to their work in Geneva, CAT members may be asked to conduct a visit to a State as part of a confidential inquiry, and may also be asked to participate in related UN meetings on a range of subjects.

As recognised international experts, CAT members may also receive a number of invitations to participate in related events from State representatives and civil society. All members appear at such events in their personal capacity.

²⁴ See <http://www2.ohchr.org/english/bodies/cat/>

Guiding principles of CAT membership

Though members are nominated and elected by States parties, each member is independent from their State, and shall neither seek nor accept instructions from anyone concerning the performance of their duties.

Members are expected to maintain the highest standards of impartiality and integrity in the exercise of their responsibilities, and apply the standards of the Convention equally to all States and all individuals, without fear or favour and without discrimination of any kind.

Following standard UN rules and procedures, CAT experts do not work on their respective country (or any country where he or she may be seen to have a conflict of interest). Therefore, CAT members do not take part in the State party review, inquiries or communications related to their own country.

Skills and expertise of CAT members

The UNCAT describes the qualities sought from Committee experts. Committee members should:

- Be persons of high moral standing; and
- Have recognised competence in the field of human rights.

No further requirements are described for CAT membership. However, for the particular nature of the role it is also recommended that CAT members also demonstrate:

- Expertise and commitment in the prohibition of torture and other forms of ill-treatment;
- Practical experience working with a range of stakeholders, including high level national authorities, persons deprived of their liberty, potentially vulnerable or marginalised groups, and civil society;
- Drafting and analytical skills for research, report writing and editing; and
- Excellent proficiency in at least one UN language (Arabic, Chinese, English, French, Russian and Spanish).

Practical aspects of CAT membership

CAT members are elected for four years, and are eligible for re-election if renominated. This has happened on a number of occasions in the CAT as well as in various other human rights treaty bodies. Whilst there are some obvious advantages to maintaining experienced experts on the CAT, there are equally advantages of incorporating new and varied expertise in the Committee.

Similar to other UN experts, CAT members are not paid to perform their functions. However, their travel costs are paid by the UN and they receive a UN daily subsistence allowance (to cover hotels, etc.) for their participation in the CAT sessions and related meetings.

CAT members do not have a diplomatic or international civil servant status. However, they do enjoy the necessary privileges and immunities of UN experts during the exercise of their functions, in particular on official missions.

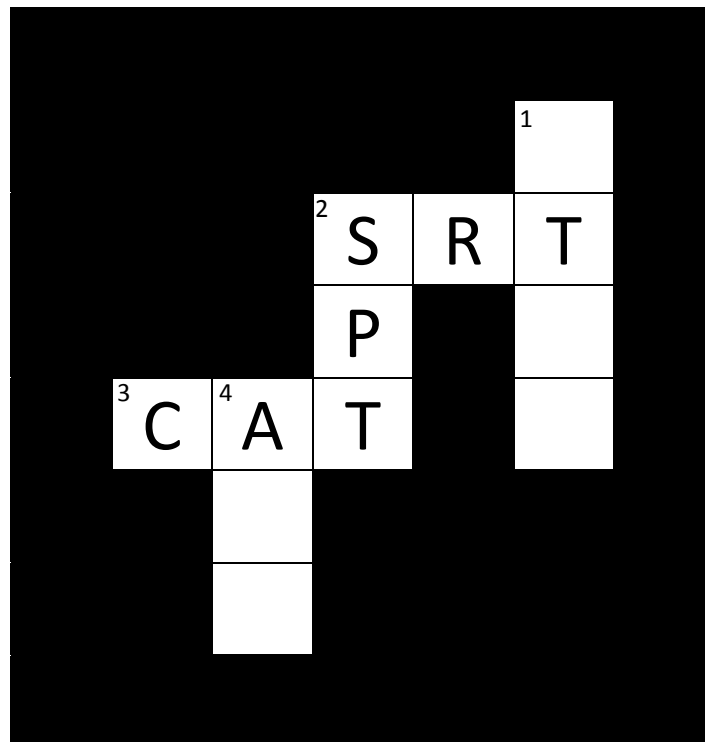
Proposing a candidate for CAT membership

Prior to an election for membership to the CAT, any States parties may nominate for election one of their own nationals for membership. States parties should send the nomination and biographical data by note of their Permanent Mission, to the Office of the High Commissioner for Human Rights (registry@ohchr.org, copied to cat@ohchr.org), and drafted in accordance with the OHCHR model.

The nomination should be submitted several months before the election of the CAT members, to enable the OHCHR to circulate information on candidates to all States parties prior to the elections. The deadline for nominations is published on the webpages of the CAT.

Annex 8: Difference between anti-torture mandate holders

What is the difference between anti-torture mandate holders? Which ones can conduct visits, publish reports and/or call States to account?



The UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (SRT) is an independent expert appointed by the Human Rights Council for a renewable period of three years to examine questions relevant to torture.²⁵

The Special Rapporteur's mandate extends to all countries, irrespective of whether a State has ratified the UN Convention against Torture. In urgent cases, the SRT transmits appeals on behalf of individuals reported to be at risk of torture. The Special Rapporteur also collects factual information such as institutional and legislative factors that contribute to torture and other forms of ill-treatment and conducts country visits at the invitation of a Government. Finally, the Special Rapporteur submits annual reports on activities, the mandate and methods of work to the Human Rights Council and the General Assembly. The reports of the Special Rapporteur are public.

The Committee against Torture (CAT) is a body of 10 independent experts that monitors implementation of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) by its State parties.²⁶

²⁵ See <http://www.ohchr.org/EN/Issues/Torture/SRTorture/Pages/SRTortureIndex.aspx>

The CAT considers reports by each State party and addresses its concerns and recommendations to the State party in the form of "concluding observations". In addition, the Committee may also, under certain circumstances, consider individual complaints or communications from individuals or States, and undertake confidential inquiries. Such inquiries are rare, but may be undertaken when the CAT receives reliable allegations that torture is being systematically practised in a State party and may include, with the agreement of the State party, a visit to its territory. Visits by the Committee are characterised by their confidential character and the pursuit of cooperation with the State party concerned.

The Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) is the UN body established by the Optional Protocol to the UN Convention against Torture (OPCAT), composed of 25 independent and impartial experts coming from different backgrounds and from various regions of the world.²⁷ The SPT is unlike other treaty bodies. It has a purely preventive mandate aimed at the achievement of a sustained, proactive approach to the prevention of torture and other ill-treatment.

The work of the SPT may therefore be distinguished from the work of the CAT. The SPT is proactive, maintaining a continuous dialogue with the State to offer forward-looking recommendations aimed at preventing violations from happening. While the CAT does have a preventive mandate, its work also looks at reacting to allegations, promoting effective investigations, and ensuring accountability for previous violations.

The SPT conducts visits to any place where people are or may be deprived of their liberty in any State party to the OPCAT and makes confidential recommendations to authorities to better prevent torture and other forms of ill-treatment. Although these reports are confidential, States are encouraged to make their reports public. The SPT also provides advice to States on the establishment and functioning of National Preventive Mechanisms (below).

The OPCAT also establishes a system of regular visits to places of detention conducted by **National Preventive Mechanisms (NPMs)**. NPMs are established by each State party to the OPCAT in response to the particular national context. Like the SPT, NPMs conduct visits to places of deprivation of liberty, collect information and make recommendations to implement solutions which improve the conditions of persons deprived of liberty, in a cooperative dialogue with the State authority

A number of regional anti-torture mechanisms have also been established. **The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)** was established pursuant to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.²⁸ In 2015, the CPT celebrated 25 years of operation.

In a similar way to the SPT, the CPT organises visits to places of detention, in order to assess how persons deprived of their liberty are treated. After each visit, the CPT sends a detailed report to the State concerned, including its findings and its recommendations. Principles of co-operation and confidentiality are also embodied in the working practices of the CPT. The Committee works in close cooperation with the national authorities and its reports and the governments' responses are confidential until such time that the State chooses to make the report public.

A Committee for the Prevention of Torture in Africa (CPTA) was established by the African Commission on Human and Peoples' Rights to offer assistance and advice to African States in the implementation of the African Union's Guidelines and Measures for the Prohibition and Prevention

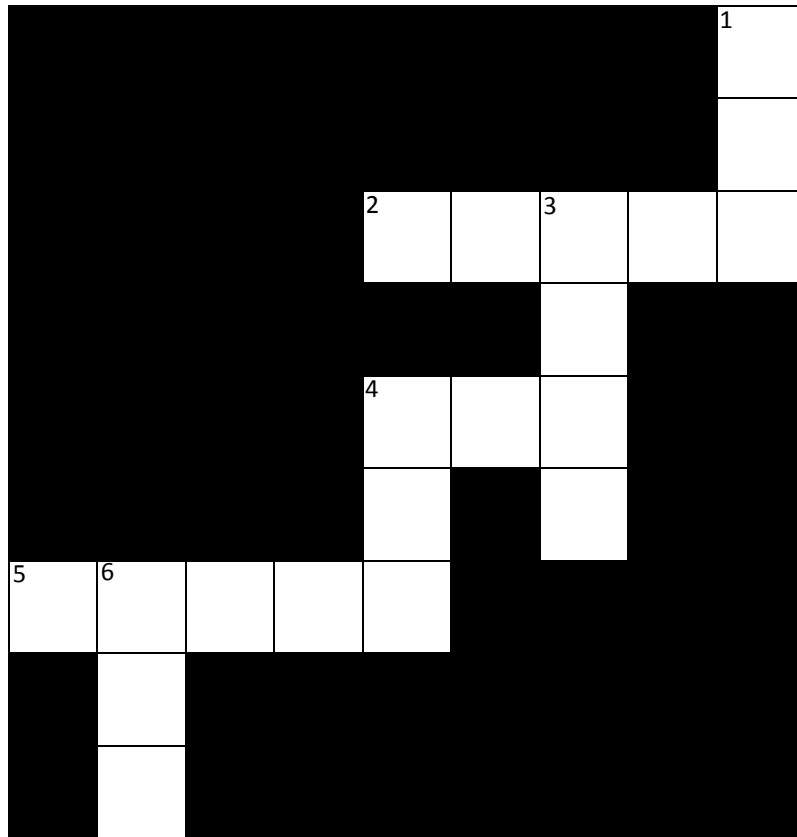
²⁶ See <http://www.ohchr.org/EN/HRBodies/CAT/Pages/CATIndex.aspx>

²⁷ See <http://www.ohchr.org/EN/HRBodies/OPCAT/Pages/OPCATIndex.aspx>

²⁸ See <http://www.cpt.coe.int/en/>

of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (The Robben Island Guidelines or RIG).

Quiz



1. Treaty body acting as guardian over its Convention; May conduct a confidential visit to a party of the Convention where there is evidence of systematic practice of abuse, with the consent of the State party.
2. Operational human rights treaty requiring the establishment of a national mechanism for monitoring all places where persons may be deprived of their liberty.
3. Regional mechanism tasked with designing and proposing to the African Commission strategies to promote and implement the Robben Island Guidelines at national and regional level.
4. (across) Treaty body expressly mandated to conduct visits to all places where persons are deprived of liberty in any State party; Provides confidential reports to States aimed towards the effective prevention of torture and other ill-treatment.
4. (down) Mandated by the UN Human Right Council; can conduct visits to any Member State of the UN, but may be granted access only after an invitation has been offered by the State.
5. Human Rights treaty which supplements the customary international law prohibition against torture with provisions on prevention, accountability and redress for acts of torture and other forms of ill-treatment.
6. National mechanism established under its treaty to conduct visits to places where persons may be detained and offer recommendations for the prevention of torture and other forms of ill-treatment.

Annex 9: Annotated bibliography of reports relevant to UNCAT ratification

The following annotated bibliography is a selected list reports relevant to States seeking to ratify the UNCAT. Each citation, organised alphabetically, is followed by a brief description, intended to offer uncritical analysis of each source. All citations and links correct at 22 February 2015.

- **Cosette Creamer and Beth A Simmons, 'Ratification, Reporting, and Rights: Quality of Participation in the Convention Against Torture', Human Rights Quarterly (August 2015), Forthcoming. Available at SSRN: <http://ssrn.com/abstract=2500337> or <http://dx.doi.org/10.2139/ssrn.2500337>**

The authors examine the quality and frequency of reporting to the Committee against Torture over a 25 year period to analyse how seriously States parties consider their obligations under the Convention. They find that late and non-reporting to the Committee is fairly common. The article considers that quality reporting from States parties is more likely where regional partners demonstrate their own commitment to report, and where domestic considerations, including the capacity of national human rights institutions and other domestic pressures, encourage the government to achieve its human rights commitments.

- **Christopher J Fariss, Human Rights Treaty Compliance and the Changing Standard of Accountability (16 November 2014). Available at SSRN: <http://ssrn.com/abstract=2517457>**

The author examines arguments that assert that States parties violate human rights more than non-States parties. He proposes that a changing standard of accountability risks masking real improvements over time. Once processes of data collection appreciate the changing standard of accountability, then the relationship between ratification of the UNCAT and respect for human rights becomes positive. This finding therefore contests reports which show that there is no correlation between treaty ratification and an improvement in human rights. Fariss concludes that the ratification of human rights treaties is associated with higher levels of respect for human rights over time and across countries.

- **Ryan Goodman and Derek Jinks, 'Measuring the Effects of Human Rights Treaties', Eur J Int Law (2003) 14 (1): 171-183. Available at <http://www.ejil.org/pdfs/14/1/404.pdf>**

In response to Hathaway's article, 'Do Human Rights Treaties Make a Difference' (See below), in which it is asserted that ratification of human rights treaties fails to improve human rights conditions on the ground, the authors examine whether Hathaway's empirical analysis was accurate. They find serious deficiencies with Hathaway's conclusions, and consider that Hathaway's analysis fails to take account of the ways that human rights obligations are transposed into national practice. Goodman and Jinks consider that the implementation of human rights is a process. The process starts with the adoption of the relevant treaty, but it does not end there. Absent more concrete knowledge about the full effects of human rights treaties, the traditional assumption that human rights treaties advance their core objectives remains sound.

- **Oona A. Hathaway, The Cost of Commitment (2003). John M. Olin Centre for Studies in Law, Economics, and Public Policy Working Papers. Paper 273. Available at http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1003&context=lepp_papers**

In this work, Hathaway again looks at the reasons why States join human rights treaties. The author recognises that, unlike other inter-State agreements, human rights treaties do not offer immediate reciprocal benefits. Ratification of human rights treaties also invites unwelcome international scrutiny. She hypothesises as a result that the cost of ratification is high for States with strong enforcement mechanisms. Hathaway tests her hypothesis and finds evidence to support it. She recommends that States consider ways in which the costs of human rights treaties may be offset, thus encouraging further States to ratify.

- **Oona A. Hathaway, 2002. Do Human Rights Treaties Make a Difference? Yale Law Journal 111:1935-2042. Available at http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1852&context=fss_papers**

In this widely cited and detailed article, Hathaway challenges the assumption that international law matters, and more precisely, that human rights treaties succeed in changing behaviour. The author undertakes a large scale quantitative analysis of the relationship between human rights treaties and countries' human rights practices, in areas including torture and fair trials. The author recognises deficiencies in her statistical model and compensates by drawing statistics from multiple sources. Hathaway considers that human rights in countries that ratify human rights treaties are generally better observed than in countries that have not ratified the same instruments. However, the author also recognises that noncompliance with treaties is common, and that in many cases, ratification also coincides with a worsening human rights situation. The article offers a number of reasons for these counter-intuitive results. The author does not dismiss the possibility that treaty ratification could have long-term positive impact.

- **Beth A Simmons and Richard Nielsen, 'Rewards for Ratification: Payoffs for Participating in the International Human Rights Regime?', October 2012, International Studies Quarterly. Forthcoming. Available at http://scholar.harvard.edu/files/bsimmons/files/nielsen_and_simmons_isq_1.pdf**

The authors critique traditionally cited reasons for treaty ratification, such as better relationships with international partners, increased investment, and legitimacy, as lacking empirical proof. Simmons and Nielsen find little evidence that States can expect such benefits on ratification. Instead, the benefits of treaty ratification may be better explained in terms of domestic politics. The ratification of human rights treaties may enable States to sustain momentum towards important law reforms or entrench important rights in national practice.

Also see region specific reports on the Pacific:

- **Natalie Baird, 'To Ratify or not to Ratify? An Assessment of the Case for Ratification of International Human Rights Treaties in the Pacific', November 2011, Melbourne J. of Int'l Law, vol. 12(2), at 2-41, available at <http://www.law.unimelb.edu.au/files/dmfile/download442c1.pdf>**

The author examines whether ratification of human rights treaties will have a positive impact in Pacific island States. The paper reviews the consequences of ratification and examines the benefits and challenges of ratification. Baird observes that a benefit of treaty ratification is better respect for human rights, but warns that States should be cognisant of the challenges and costs of effective implementation. She offers four alternative strategies for the region, ranging from wholesale treaty ratification, through to a moratorium on the ratification of further instruments. The author concludes that selective ratification of human rights treaties which respond to the particular needs of Pacific States is the best approach to advance human rights in the region.

- **OHCHR, *Torture Prevention in the Pacific: Sharing good experiences and lessons learnt* (OHCHR, December 2011), available at http://pacific.ohchr.org/docs/Torture_prevention_in_the_Pacific_Dec_2011.pdf**

OHCHR report that the Pacific region already has a low level of legislative compliance with international torture prevention standards, but that laws in themselves are not enough to ensure effective prevention in practice. OHCHR recommends ratification of the UNCAT and its Optional Protocol as two powerful tools to enable States to take forward necessary measures towards effective torture prevention. The report examines UNCAT ratification in Vanuatu, and OPCAT ratification in New Zealand, to explain some of the benefits and challenges of treaty ratification in the region. OHCHR further describe the work of the ombudsman institution in Papua New Guinea as a common model in the Pacific which can further advance torture prevention objectives.

- **OHCHR/PIFS, *Ratification of International Human Rights Treaties: Added value for the Pacific region* (OHCHR and PIFS, 2009), available at <http://pacific.ohchr.org/docs/RatificationBook.pdf>**

Noting the low number of core international human rights treaties ratified in the Pacific region, the OHCHR/PIFS explores what ratification means for Pacific States. Several small island States argue they are ill-equipped to assume legal obligations, citing the lack of financial resources and customary practices as reasons why they do not ratify. The authors reject these reasons and offer advice and arguments to show that any obstacles may be overcome. The report also examines the relationship between human rights and development to explain the benefits that ratification could bring to the region.

- **UNDP, *Pacific Handbook on Human Rights Treaty Implementation* (UNDP Pacific Centre, 2012), available at http://www.asia-pacific.undp.org/content/dam/rbap/docs/Research%20&%20Publications/Democratic%20Governance/PC_DG_Human_Rights_Treaty_Implementation_Handbook.pdf**

The UNDP handbook addresses challenges experienced by Pacific States in the ratification and implementation of human rights treaties. It is aimed at government officials, parliamentarians, civil society, community leaders, and other groups. The handbook documents in some detail all of the UN bodies and mechanisms which address themselves to human rights, and explains the process of treaty ratification. The UNDP handbook also explores ways in which to implement human rights norms within budgetary constraints, and in a complementary way to customary practices. Finally, the handbook offers practical advice to actors attempting to implement human rights and treaty obligations.

Annex 10: About the CTI

The Convention against Torture Initiative (CTI)

In March 2014, the Governments of Chile, Denmark, Ghana, Indonesia and Morocco marked the 30th anniversary of the UN Convention against Torture (UNCAT) by launching a ten-year global initiative for the universal ratification and implementation of the Convention.

Vision

By 2024, universal ratification of UNCAT will be a reality. The risk of torture will be reduced as all States parties will be working actively to implement the Convention.

Objectives

The immediate objectives of the CTI are:

- To identify challenges and barriers to ratification and implementation of the UNCAT
- To address these obstacles through inter-State cooperation, assistance and dialogue.
- To become a hub for sharing knowledge and good practices between governments.
- To build a global platform of States, the UN, national and international NGOs and experts to work jointly to achieve the CTI vision.

Operating principles

The work of the CTI is guided by three fundamental principles:

Constructive. The CTI takes a constructive approach to the push for ratification and implementation of UNCAT. It is not the role of CTI to “name and shame” but rather to support Governments in their efforts to pursue ratification of and to implement the Convention.

Twinning. CTI is an initiative by and for Governments, based on mutual respect and equality, seeking to enhance the exchange of experiences and knowledge in order to learn from others with similar challenges – typically in regional settings.

Inspirational. CTI will inspire, not prescribe. CTI will inspire, facilitate and motivate. It will inspire countries by exposing them to the experience of other countries; facilitate by creating a platform for informal meetings with experts and through the development of useful tools; and motivate by highlighting – in the UN and to the public – States’ efforts to ratify and implement the Convention.

Organisation

The Initiative is spearheaded by the Governments of Chile, Denmark, Ghana, Indonesia and Morocco and supported by a full-time Secretariat, based in Geneva.

The Association for the Prevention of Torture (APT) is designated to support the development of the CTI.

All UN Member States and relevant NGOs, experts and academia are invited to join the CTI’s Group of Friends. The Group of Friends will serve as a network for the exchange of knowledge, experience and ideas on how to overcome obstacles to ratification and implementation of the UNCAT and will be engaged in the CTI through participation in annual meetings and events in Geneva and New York.

The CTI Forum is the main annual event of the CTI and will provide a unique multi-stakeholder platform for sustained and informal exploration of the challenges related to UNCAT ratification and implementation. The CTI has the capacity to organise technical or capacity building support missions or visits to countries, as well as Geneva-based study visits.

The CTI's website, www.cti2024.org, provides an important repository of tools and information on CTI activities.

Annex 11: How the CTI can help

There are a number of ways that the Convention against Torture Initiative (CTI) can assist States that are considering ratification and States that have already ratified but are seeking advice on how to implement the Convention better.

Regional outreach: The CTI arranges “study visits” to Geneva for non-States parties to the Convention who have shown an interest in learning more about what it means to be a State party. The visits generally consist of expert briefings and meetings with high level UN and other Government officials to ensure delegations are briefed on the obligations of the Convention and the importance of ratification.

Expert visits: CTI can arrange for experts to visit States to provide assistance on a range of issues relating to the ratification and implementation of the Convention. Examples include advice on training police and other officials, reviews of legislation and how to initiate public awareness campaigns

Regional meetings: CTI works with local partners to arrange regional meetings on themes of relevance to states in a region. These meetings offer a unique opportunity for States to share experiences on the challenges and opportunities provided by ratification and implementation of the Convention with a view to building strong relationships between States at regional level.

High level events: The CTI holds regular meetings at the UN Human Rights Council in Geneva and the UN General Assembly in New York. Through these meetings, the CTI brings together States and torture prevention experts to discuss progress and opportunities for increased ratification and better implementation of the Convention.

Tools and guides: The CTI works with expert partners to prepare tools intended to assist officials to understand and implement the Convention more effectively. The tools are available and free of charge on the CTI’s website (www.cti2024.org). The tools that have been or are being prepared include:

- A tool to assist officials understand the [ratification process](#) with a view to briefing their senior managers and ministers effectively on what steps need to be taken to ratify the Convention.
- An [online torture law guide](#) which provides a valuable resource to state officials and legal advisers on the legislative amendments that may be required to meet the Convention obligations in respect of anti-torture legislation.
- An [Implementation Tools](#) to provide States with all the information they need to put together their own implementation strategy.
- A [compilation of training material](#) which will enable states to educate and inform officials and the general public to understand their rights and obligations under the Convention.
- CTI [videos and short films](#) highlighting key thematic areas in preventing torture and providing redress and rehabilitation to torture victims.

If you believe you could benefit from participating in any of the above activities or you have a suggestion for another useful tool or guide, please contact the CTI Secretariat for more details: Dr. Alice Edwards, Head of the CTI Secretariat, aedwards@cti2024.org, +41 (0)22 919 21 72 – Ms. Signe Lind, CTI Project Officer, slind@cti2024.org, +41 (0)22 919 21 67 – Jean Jacques Gautier Centre, Route de Ferney 10, PO Box 137, 1211 Geneva.

In March 2014, the Governments of Chile, Denmark, Ghana, Indonesia and Morocco marked the 30th anniversary of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) by launching a ten-year global initiative for the universal ratification and implementation of the Convention.

Objectives

The immediate objectives of the CTI are:

- To identify challenges and barriers to ratification and implementation of the UNCAT
- To address these obstacles through inter-State cooperation, assistance and dialogue
- To become a hub for sharing knowledge and good practices between governments
- To build a global platform of States, the UN, national and international NGOs and experts to work jointly to achieve the CTI vision.

UNCAT Ratification Tool

Several non-States parties to the UNCAT have indicated their willingness to examine ratification, but have a number of questions which must first be answered. This tool has been drafted to include information needed for executive actors and departments to present a paper to government recommending UNCAT ratification.

Several pull-out briefings accompany the tool that are intended to support this document, and offer answers to the most common questions raised by States as they move toward ratification.