Talking points for the Special Rapporteur on torture, Mr Juan Mendez

“Why ratification matters – personal perspectives of the three torture mandate holders”

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Introduction

2014 marked the thirtieth anniversary of the UNCAT’s entry into force. However, despite the absolute prohibition of – and protection from – torture, as a peremptory and non-derogable norm of international law universal ratification has still not been achieved.

It is with great concern that thirty years on, torture has not been eradicated but in fact continues to manifest itself in almost unimaginable ways. Torture and ill-treatment continues in the context of ongoing conflicts, in the fight against terrorism, in responding to social unrest and the practice of torture and ill-treatment is being ignored in the current international migration crisis.

Ratification of the Convention against Torture is an important step forward but is only the beginning of a process which must be supported by a well-coordinated approach among a whole array of actors involved in the realization of human rights including: governments, international and regional intergovernmental organizations, parliamentarians, the judiciary, legal professionals, academics, law enforcement, forensic experts and doctors, non-governmental organizations, civil society representatives, the media, torture survivors and rights holders themselves.

The 10 year campaign for the universal ratification and implementation of the Convention against Torture, launched under the Convention against Torture Initiative (CTI) is a project that I fully endorse and have been honoured with an invitation to join the Group of Friends of the CTI.

The CTI initiative can help reinvigorate our collective efforts to combat torture and ill-treatment and achieve universal ratification and implementation of the Convention - which would truly be a significant step forward.
Five reasons why ratification matters:

1. **Demonstrates a commitment to international human rights law**

By ratifying the Convention, a State explicitly declares that it will not tolerate torture or other cruel, inhuman or degrading treatment. **Ratification is a signal on the part of a State that it joins the international community in promoting fundamental human rights and dignity** and enhances its perception as a “good global citizen.” Ratification strengthens a State’s position within the UN’s human rights system.

Ratification represents a State’s political will to embark on the start of a very intricate process of ensuring that State’s laws and practices are in accordance with the **existing international legal framework which provides a broad range of norms and standards with the aim to prevent acts of torture and ill-treatment.**

2. **Strengthens national human rights legal frameworks**

**Ratifying the UNCAT commits a State to ensure a strong national legal framework and good governance.** The ratification and implementation process strengthens national human rights laws and raises awareness as to the importance of promoting and protecting human rights, particularly in preventing all forms of torture and ill-treatment. The government is held accountable under both domestic and international law to prohibit and prevent torture and to provide support and redress to victims, which builds confidence in the State from the international community.

Many States either do not have torture or ill-treatment expressly prohibited in their domestic legislation or it is not in compliance with Article 1 of the Convention. **Ratification is a first step towards having torture and other forms of ill-treatment explicitly prohibited in the constitution or in legislation that is given some form of constitutional protection.**

Even in States whose Constitution or legislation already include provisions prohibiting torture, by ratifying the UNCAT, States go one important step further in proclaiming their opposition to torture and all forms of cruelty and ill-treatment to the international community. In addition, such States go beyond a formal prohibition of torture by adopting a detailed normative framework to make that prohibition a reality in practice.

Ratification also supports an **improvement in the effectiveness of human rights within the State.** Brutality on the part of law enforcement officials leads to public mistrust, particularly if it is
surrounded by impunity. When a State ratifies the Convention, transparency is strengthened, which can lead to the improved performance of law enforcement officials and ultimately better community relations between State institutions and the citizenry. Law enforcement and correctional bodies can become more professional by establishing minimum standards for interrogations, investigations, and treatment of persons who are detained or arrested.

3. Become part of the international community and benefit from the support of international and regional mechanisms

It is imperative to approach the prevention of torture from an integrated, multidisciplinary and global perspective. The cooperation and support of the international community is crucial in the implementation of the universal prohibition of torture and ill-treatment and their prevention.

Upon ratification of the UNCAT new State parties become part of a network that can share experiences and best practices on how to prevent torture while also learning from each other on how to fulfil treaty obligations. Another benefit to ratifying the UNCAT is that international assistance becomes available to facilitate the implementation process and promotion of human rights standards.

Implementation at an international level is critical. Mechanisms such as State party reviews of the Committee against Torture (CAT) and the Universal Periodic Review (UPR) process must be effectively used to have States report on steps undertaken to ratify and implement the Convention and to ensure follow up on recommendations made by these bodies.

States who have ratified the Convention and who are leaders in their respective region can play a key role for States who have yet to ratify and contemplate what challenges lie ahead regarding ratification and implementation and how these obstacles can be overcome. Non-party States can undertake this initial analysis in partnership with legal experts who possess knowledge of how the Convention has been implemented in other States.

To help with this crucial first step, exchanges with partners with similar constitutional structures, legal traditions, institutional and resource challenges, are needed to help a State better understand the national footprint likely caused by UNCAT. Sharing experiences may enable a State to adopt and adapt good practices in order to achieve the greatest impact following the ratification process.

Ratification of the Convention will have an economic impact as the next step must be towards implementation (legal and policy reform, training of police and corrections officers etc), however,
States can manage the costs associated with ratification in a way which incorporates them into existing commitments or bears them gradually over time. For guidance on how other States have managed the process, non-States parties can seek the advice of States parties to share “lessons learned”. In fact, the CTI process specifically aims to fostering regional cooperation and sharing of experience.

Cooperation with regional partners could help illustrate how to build the cost of implementation into existing reform strategies. Potential rewards of treaty ratification, ranging from tangible advantages such as increased aid, trade, and investment, to intangible benefits such as improved relationships with partners.

4. Ratification must be meaningful

Governments, ultimately, are responsible for the ratification and implementation of human rights obligations, and thus are critical partners and the main interlocutors with whom we must engage to further this CTI campaign. Combatting torture and ensuring accountability depends primarily on efforts made at the national level.

It is a worthy goal to try and achieve 100% rate of ratification but for it to have real impact ratification must be meaningful and States should avoid the adoption of reservations which rob the Convention of much of its effect. A good faith interpretation of the Convention requires legislative and regulatory reforms and safeguards to reflect its obligations. Ratifications without effective implementation achieve very little in practice.

There are preventive obligations listed in the Convention against Torture, such as the absolute prohibition of torture and CIDT; the minimum standards established (Articles 1 and 16) regarding the national definition of torture and CIDT; the prohibition of refoulement (Article 3), the obligation to exclude evidence extracted by torture in any criminal proceedings against the victim of torture (Article 15), the obligation to provide education and training to law enforcement and other personnel (article 10), to systematically review interrogation methods and conditions of detention (Article 11), to investigate ex officio possible acts of torture (Article 12) and any torture allegations (Article 13), and, most important in my mind, the obligation to investigate, prosecute and punish every incident of torture (Article 4 to 9). Further, there are also positive obligations to provide victims of torture with an effective remedy and adequate reparations.
The umbrella clause in Article 2(1) requires States parties also to take other effective measures aimed at preventing torture. Such measures relate primarily to guarantees in the context of the right to personal liberty (prohibition of *incommunicado* detention and prolonged solitary confinement, right of detainees to have access to lawyers and doctors, obligation of States to maintain prison registers, etc.) and the right to a fair trial.

5. **Ratification is first step towards implementation**

In a number of countries, the **ratification of the Convention is in name only** – the documents has been deposited by States Parties and filed with the Secretary-General of the United Nations but **prevention and combatting of torture is not yet realised.** This is particularly true if there is a lack of genuine political will, however, even when a Government demonstrates good faith, there remain real challenges that must be acknowledged and addressed. It is important to take into consideration the political and legal framework and geographical and social context of a particular State.

By ratifying the UNCAT, a State formally consents to be bound by the obligations therein and takes affirmative steps to implement the Convention’s obligations and duties. States parties must take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction. Implementing the UNCAT involves ensuring that domestic legislation is compatible with that of the Convention, which includes analysing existing national laws and policies to establish whether they already conform to those of the UNCAT. If they do not, new laws may have to be enacted or existing laws may have to be amended. **Once the Convention has been ratified, a State cannot invoke conflicting national norms as a justification for not meeting its obligations.**

**Ratification of the Convention and the Optional Protocol is a binding contract of legal obligations** - this can understandably be daunting and appear onerous for States contemplating ratification. But it is an **important first step in a long process that starts with a dialogue on capacity building and an exchange of best practices.** If the Government comes to the table in good faith then all relevant interlocutors must work together to better understand how the obligations would impact on their national landscape. A commitment by the State to take the process forward, step by step, will hopefully result in moving national legislation and institutions towards full compliance with provisions of the Convention even before formal ratification. **At the end of the long road there must be a focus on implementation but each positive step forward towards ratification is a significant accomplishment in its own right.**
Conclusion

Some States may assert that UNCAT ratification is not necessary either because torture and other forms of ill-treatment are not domestic problems, or that torture is already prohibited by national legislation or in the Constitution, or that customary international law already obliges nations to refrain from torture and other forms of ill-treatment. No State is immune from the risk of torture and by ratifying the UNCAT a State demonstrates that it is dedicated to its effective prevention and prohibition. Finally, States are already bound to the obligations contained in the UNCAT because they are wholly reflective of customary international law, making it all the more essential that all States adhere to the Convention and its obligations.

Ongoing engagement and follow up is of utmost importance to try and achieve universal ratification and implementation. I have prioritised follow up during my Rapporteurship and developed a methodology that is reflected in my country and thematic reports to increase effective dialogue and cooperation between State and civil society. My mandate is able to engage any State and conduct official in situ visits to any State, if invited, even if they have not yet ratified the Convention.

Less than half of the States who have ratified the Convention have also ratified the Optional Protocol. Encouraging more States to ratify the Optional Protocol offers greater opportunities to prevent torture through the establishment of national prevention mechanisms responsible for managing an effective system of visiting places of detention to identify gaps in laws and practice to protect the rights and dignity of all persons deprived of their liberty.

Realising the CTI’s goal of universal UNCAT ratification by 2024 would be a significant achievement in the on-going struggle to prevent and prohibit torture and other cruel, inhuman or degrading treatment, in practice as well as in law.