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.”

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

\[\text{Which comes first?} \quad \begin{array}{c}
\text{Ratify or reform?}
\end{array}\]

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\[\text{\textsuperscript{1} OHCHR Regional Office for the Pacific, Ratification of International Human Rights Treaties: Added value for the Pacific Region (OHCHR/PIFS, 2009).}\]
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 Torture

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.

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2 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.⁢

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.

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.