

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.¹ 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.²

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

¹ Available at: <https://treaties.un.org/>

² 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: treatysection@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.³

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

³ 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, 52 States parties had entered reservations to the UNCAT on ratification. However, several have since been withdrawn and only 42 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.⁴

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."

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⁴ On the date of this publication, 58 States have made declarations provided for in both articles 21 and 22 of the Convention (62 States parties made the declaration under article 21; 67 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]

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]