

UN CONVENTION AGAINST TORTURE - EXPLAINER



The UNCAT Explainer summarises the main basic obligations of UNCAT. It may be used by non-State-parties in preparing Cabinet submissions or other documentation necessary for taking the decision to ratify or accede to UNCAT. It can be read in conjunction with [CTI's Ratification Tool](#). For States party to the Convention, this document may be used to support plans for implementing the Convention and identifying areas where reforms or changes may be needed.

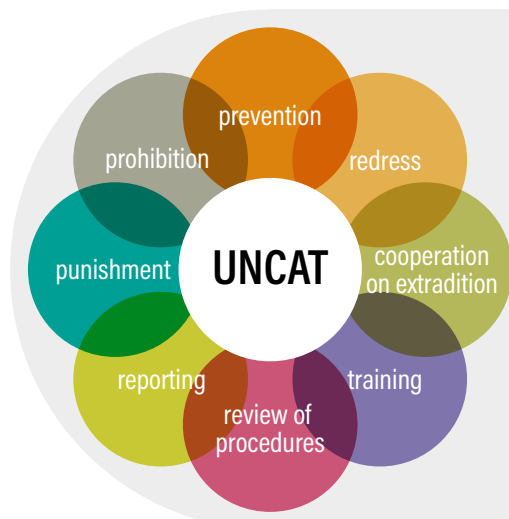
DEFINITION OF TORTURE

The definition in Article 1.1 of UNCAT contains 4 elements for an act to constitute “torture”:

- Severe pain or suffering, whether physical or mental;
- Intentionally inflicted;
- For a particular purpose (for example, obtaining information or a confession, punishment, intimidation or coercion, or for any reason based on discrimination of any kind);
- Inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity

The term “torture” does not include any pain or suffering arising only from, inherent in or incidental to lawful sanctions.

This UNCAT definition of torture is without prejudice to any international instrument or national legislation which does or may contain provisions of wider application (Article 1.2).



The UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) is the key global treaty guiding States on how to effectively prohibit and prevent such practices, as well as investigate, prosecute and punish perpetrators, and provide redress for victims. UNCAT was adopted 10 December 1984 and entered into force on 26 June 1987.

PROHIBITION

ARTICLES: 2 3 4 15

Torture is a *jus cogens* norm, and absolutely prohibited under customary international law. The UN Convention against Torture clarifies that there are no circumstances that justify its use: Neither war, threat of war, internal political instability nor any other public emergency may be invoked to justify torture (Art. 2.2). Orders by superior officers do not excuse torture (Art. 2.3), and all have a duty to stand up against such demands.

The large majority of countries worldwide prohibit the use of torture in their national constitutions or contain provisions in specific human rights and/or criminal legislation. Such provisions observe the Convention requirement that acts of torture are to be offences under national law, and punishable by an appropriate penalty which takes into account the grave nature of this offence (Art. 4). Such offences are not to be limited by a statute of limitations, nor are amnesties acceptable.

Executive, legislative and judicial branches of government all play their part in prohibiting torture and ill-treatment. New or reformed institutional, policy, legislative and practical approaches to prohibiting torture and ill-treatment may be considered. The prosecution service and courts have a particular role to play, for example, in de-incentivising the practice of torture, in particular by adopting or following rules and procedures that safeguard against:

- the admission of evidence extracted by torture in all proceedings (Art 15);
- the expulsion, return (*refouler*) or extradition of anyone to another State where they may be at risk of torture (Art. 3).

PREVENTION

ARTICLES: 2 16

An overarching and continuous obligation of UNCAT is that each State party “shall take effective legislative, administrative, judicial or other measures to prevent acts of torture” (Art. 2.1).



Legislative



Administrative



Judicial



Other measures

The Convention does not prescribe preventive measures, rather it recognises that there are many different approaches to prevention and gives flexibility so that such measures can be tailored to national contexts. It is not expected that a State has a perfect record ahead of ratification; what is important is that a State commits to reviewing and improving existing rules, standards, practices and procedures.

TRAINING

ARTICLE: 10

Training and capacity building are basic elements to prevent torture and ill-treatment. UNCAT requires States to ensure that education and information regarding the prohibition against torture and ill-treatment are included in training of law enforcement personnel, civil or military, medical personnel, public officials or other persons involved in custody, interrogation or detention (Art. 10.1), and to include the prohibition of torture and ill-treatment in the rules or instructions of such professions (Art. 10.2).

REVIEW OF PROCEDURES

ARTICLE: 11

States are to keep under systematic review interrogation rules, instructions, methods and custody arrangements and detention (Art. 11).

INVESTIGATION, PROSECUTION AND PUNISHMENT

ARTICLES: 4 5 6 12 13

To build accountability and trust in public institutions, UNCAT calls on States to adopt or adjust laws, procedures and institutions to receive, investigate and hear complaints of torture or ill-treatment.

A State is to put in place processes giving individuals the right to complain about allegations of torture or ill-treatment, and which are to be promptly and impartially examined by the competent authorities (Art. 13). Individuals need to be able to lodge their complaints safely, and States are required to take steps to ensure that the complainant and any witnesses are protected against ill-treatment or intimidation for having made the complaint or for having provided evidence (Art. 13).

The duty to investigate such complaints, promptly and impartially, arises wherever there are reasonable grounds to believe an act of torture or ill-treatment has been committed (Art. 12).

States may take into custody after examining all the information available to it a person alleged to have committed torture; such custody and other legal measures are to be provided by law and to continue only for such time as to enable criminal (or extradition, see below) proceedings (Art. 6). The normal procedural protections against the arbitrary deprivation of liberty would apply. In line with the drafters' shared goals to prohibit and respond to torture everywhere, States are to exercise the widest possible jurisdiction over acts of torture (Art.5).

In terms of sentencing, the Convention provides that torture offences are to be punishable with appropriate penalties taking into account the grave nature of the offence (Art. 4.2). Recommended terms of imprisonment range from 6-20 years, though some States have adopted longer periods including life imprisonment.

COOPERATION ON EXTRADITION

ARTICLES: 3 6 7 8 9

UNCAT enables and facilitates cooperation among States on extradition of those suspected of or responsible for offences of torture by establishing a scheme of cooperation. No State aims to be a safe haven for alleged perpetrators of torture.

The Convention requires that

Torture be included as – or deemed to be – an extraditable offence in any extradition treaty (Art. 8.1);

Where no extradition treaty exists between the States parties in question, they may consider the Convention as the legal basis for extradition in respect of such offences (Art. 8.2).

States are to include offences of torture as extraditable offences in domestic law (Article 8(3)).

The Convention provides that State parties shall afford one another the greatest measure of assistance in connection with torture proceedings, including the supply of all evidence at their disposal necessary for the proceedings (Art. 9.1). They are to respect any treaties on mutual judicial assistance (Art. 9.2).

Custody arrangements for suspects facing extradition are to be in place (Art. 6.1), with access to consular assistance provided (Art. 6.3) and notification of involved States (Art. 6.4).

UNCAT clarifies that where a State is not able to extradite an accused who is in its territory, the matter should be submitted to the competent authorities for prosecution (Art. 7.1). Decisions on whether there are sufficient grounds for prosecution should be taken in the same way as other serious offences (Art. 7.2) and fair treatment is to be guaranteed (Art. 7.3).

Persons shall not be extradited to where they themselves are at risk of torture or other ill-treatment or punishment (Art. 3), and for clarity, protection against *refoulement* should be included in any extradition treaties signed between States parties.

REDRESS

ARTICLE: 14

UNCAT pays attention to redress for victims of torture, and legal systems are to provide victims with an enforceable right to fair and adequate compensation (Art. 14), as well as the fullest rehabilitation as possible. Rehabilitation should aim to restore, as far as possible, torture victims' independence, physical, mental, social and vocational ability, as well as their full inclusion and participation in society.¹ Such rehabilitation may be provided either through the direct provision of rehabilitation services by the State, or through funding private medical, legal and other services, including those administered by non-governmental organizations.²

¹ UN Committee against Torture's General Comment No. 3 (2012): Implementation of article 14 by States parties, p.11.

² Ibid, p.15.

REPORTING

ARTICLES: [17](#) [18](#) [19](#)

A State's initial report to the UN Committee against Torture, a 10-person committee of independent experts (Arts. 17-18), is due one year after ratification and thereafter, periodic reports are submitted every four years (Art.19). The review is a constructive process of dialogue through which the Committee acknowledges positive action to implement the Convention and offers informed advice on areas where further reforms may be recommended. The dialogue (and any resulting recommendations) can support efforts by States to review, adjust or confirm their national laws, policies and practices, and give an opportunity to the State to put its own views on the public record about its practices and procedures.

For the reporting process to have the most practical benefit for States it is best approached as an ongoing process of implementation, reporting and follow-up, including as an opportunity to consult and engage with relevant national stakeholders.

RATIFICATION OR ACCESSION

ARTICLES: [25](#) [26](#) [27](#) [28](#) [31](#) [32](#)

The Convention is open to signature and ratification, or accession, by any State by depositing the relevant instrument to the UN Secretary-General (Arts. 25-28, 31). The treaty provides for denunciation (Art. 32). See, [CTI's Ratification Tool](#), which includes samples of instruments of ratification, accession, full powers, declaration and reservations.

UNCAT does not exclude the possibility that States may enter one or more reservations at ratification or accession. Such reservations must not however conflict with the object and purpose of the Convention. States are encouraged to review periodically any reservations to consider whether they continue to serve their purpose.

AMENDMENTS

ARTICLE: [29](#)

Amendments to the Convention may be proposed by State parties to the UN Secretary-General, requiring one-third of all State parties to favour a conference to consider the amendments, with the threshold of a majority of States parties attending the conference to accept the amendment (Art. 29).

DISPUTE SETTLEMENT

ARTICLE: [30](#)

Disputes between State parties that cannot be settled by negotiation shall, at the request of one State, be submitted for arbitration. If 6 months lapse without resolution, either State may refer the matter to the International Court of Justice in conformity with the Statute of the Court (Art. 30).

CTI Secretariat
November 2019