

ANNEX 1:

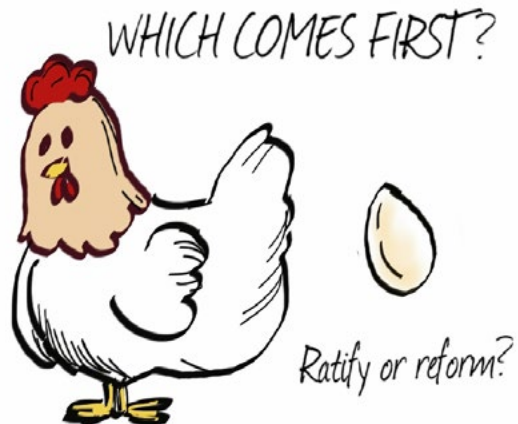
WHEN TO RATIFY UNCAT AND OPCAT?



There is no requirement to fully comply with the UN Convention against Torture or its Optional Protocol prior to ratification or accession. Nevertheless, in preparing for ratification/accession, States typically carry out a stocktaking of national laws, policies, institutions and procedures to see that they can demonstrate many, if not all, of their obligations.

“ 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

Participants in CTI seminars and workshops often ask experts whether States should ratify immediately, or wait until after they have overcome implementation challenges. CTI and other experts and partners, including members of the UN Committee against Torture, underline that the Convention does not expect States to be in full compliance with its provisions prior to ratification.



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

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

“ We must not forget that ratification is not the end of the process, but rather the beginning of an ongoing effort to implement the provisions of the Convention, and to harmonize national laws and practices with international norms, as they are defined in the Convention.”

Mr. Abdelwahab Hani, former member of the UN Committee against Torture (CAT)

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.

Chicken or egg: implementation before or after treaty adoption

Though 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 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 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 acceded to 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.⁶

The OHCHR has reported that membership of 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. This approach has become very common among the newer States parties.

When to ratify/accede to OPCAT?

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 UNCAT. As with UNCAT, States may begin to implement its core obligations at any time prior to ratification.

Conclusion

Ratification or accession of the UN Convention against Torture and its Optional Protocol may be completed by States before they have achieved obligations contained in its provisions. Membership of these 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 UNCAT or OPCAT as a preliminary step towards full ratification, while consulting with national stakeholders. Other States may opt for a one-step process of accession.

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.

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