

ANNEX 2:

RATIFICATION, ACCESSION, RESERVATIONS AND DECLARATIONS TO UNCAT



This explanatory material should be read in conjunction with the [UN Treaty Handbook](#), published by the Treaty Section of the Office of Legal Affairs.⁷

CTI and APT remain available to provide any further information or advice that may be required. Please contact the CTI Secretariat for further information, advicehub@cti2024.org.

Becoming a State party to 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.

1. SIGNATURE AND RATIFICATION

Ratification requires two separate actions. The State first signs the instrument, before formally depositing an instrument of ratification. 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

⁷ <https://treaties.un.org/>

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 UNCAT (see UNCAT article 25). Ratification of UNCAT at the international level requires the State to deposit an instrument of ratification with the UN Secretary-General (see model instrument of ratification in this package) through the UN Treaty Section in New York.

2. 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 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) through the UN Treaty Section in New York.

Steps to ratification or accession

Step 1 *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, although it is expected that appropriate steps would be taken to ensure conformity with the Convention over time.

Step 2 *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 annex.

Step 3 *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 4 *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
- Website: <https://treaties.un.org/>
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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 interpretative 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.⁸

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 its inquiry procedures into well-founded allegations of systematic torture and associated visits described in article 20 (per article 28) and the resolution of disputes (article 30(1)).

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 1 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 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 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.

⁸ 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.

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 relationships 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.”

Interpretative declarations

At the time of ratification/accession, some States have also decided to introduce interpretative declarations. An interpretative declaration is a clarification of the State's understanding or interpretation of a particular provision. Unlike reservations, interpretative declarations only clarify the State's position and do not exclude or modify the legal effect of a treaty.

Example of interpretative declaration:

Netherlands

“ It is the understanding of the Government of the Kingdom of the Netherlands that the term “lawful sanctions” in article 1, paragraph 1, must be understood as referring to those sanctions which are lawful not only under national law but also under international law.”

Reservations and interpretative declarations to UNCAT itself have been limited. At the time of writing, 51 States parties had entered reservations or interpretative declarations to UNCAT on ratification. However, several have since been withdrawn, leaving only 41 States' reservations or interpretative declarations operative. Many of the reservations describe areas explicitly permitted in UNCAT, but a few are legally problematic and have attracted a high number of formal objections from other States parties.

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.

Optional Declarations

Art.21 and Art.22 Declarations

UNCAT allows, under article 21 and article 22, optional declarations that may be made upon or 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 articles 21 and 22, and therefore accept the competence of the CAT to consider complaints from States parties and individuals.⁹

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 of 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.

⁹ 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; 68 made the declaration under article 22). The current status of reservations and declarations made by States parties to UNCAT may be seen on the UN Treaty Collection website, at www.treaties.un.org.

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.”

