

# ANNEX 5:

## CHECKLIST – COMPILED LIST OF ELEMENTS FOR ANTI-TORTURE LEGISLATION



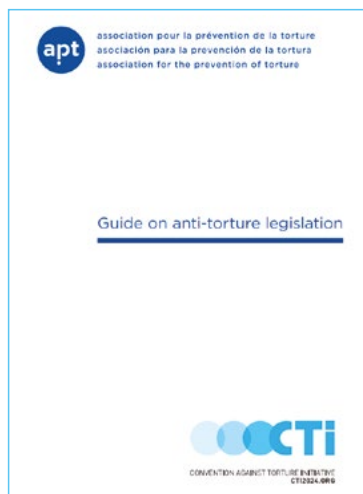
Upon ratifying or acceding to the UN Convention against Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT), States generally undertake to review their national legislative frameworks, and may need to amend existing laws or adopt new laws to give effect to the full range of obligations in the Convention.

This checklist is a compiled list of elements on legislative reforms, with the purpose of assisting States to identify existing UNCAT-compliant provisions, as well as areas where gaps may exist.

The checklist is as follows:

- **Primary elements:** where the Convention explicitly requires States parties to legislate;
- **Recommended elements:** where the UN Committee against Torture recommends States parties legislate to implement the Convention;
- **Optional elements:** where the UN Committee against Torture encourages States to consider legislating in a particular area, though there is no obligation to do so.

It is drawn from the APT-CTI [Guide on anti-torture legislation](#), where the original checklist is included in the Annex with full explanations provided in the text. It has been updated to include a new section on relevant questions regarding legislation in the context of detention/deprivation of liberty.



<b>Definition and criminalisation of torture</b>	
<b>Primary elements</b>	<b>Tracker</b>
A separate and specific crime of torture in national legislation is to be adopted.	
The definition of torture in national law is to encompass, at a minimum, the elements contained in the article 1 definition: torture is any act by which severe mental or physical pain or suffering is intentionally inflicted for a particular purpose by a public official or with his or her consent or acquiescence or by anyone acting in an official capacity.	
National legislation is to contain provisions affirming the absolute nature of the prohibition of torture; the defence of superior order is to be excluded.	
The penalty for the crime of torture is to take account of the grave nature of the crime.	
<b>Recommended elements</b>	<b>Tracker</b>
In order for the penalty for the crime of torture to be commensurate with the gravity of the crime, a minimum penalty of six years should be imposed.	
<b>Optional elements</b>	<b>Tracker</b>
National legislation includes acts of non-state and private actors in the definition of torture.	
National legislation criminalises cruel, inhuman or degrading treatment or punishment.	
<b>Modes of liability</b>	
<b>Primary elements</b>	<b>Tracker</b>
National legislation criminalising torture is to include explicit criminal liability for:	
• the commission of torture;	
• attempt to commit torture;	
• complicity in torture;	
• instigation of torture;	
• incitement to torture;	

<ul style="list-style-type: none"> <li>the commission of acts of torture by public officials who acquiesce or consent to torture;</li> </ul>	
<ul style="list-style-type: none"> <li>other forms of participation.</li> </ul>	
<b>Jurisdiction</b>	
Primary elements	Tracker
In establishing jurisdiction, legislative provisions are to include all bases of jurisdiction in article 5 of the Convention, namely:	
<ul style="list-style-type: none"> <li>Jurisdiction over alleged cases of torture in any territory under a State's jurisdiction</li> </ul>	
<ul style="list-style-type: none"> <li>Jurisdiction for cases committed by a State's national;</li> </ul>	
<ul style="list-style-type: none"> <li>Universal jurisdiction over any alleged offender present in the territory under a State's jurisdiction.</li> </ul>	
Recommended elements	Tracker
National legislation provides for jurisdiction over cases where a State's national has been a victim of torture.	
<b>Complaints, investigations, prosecutions and extradition</b>	
Primary elements	Tracker
National legislation is to include:	
<ul style="list-style-type: none"> <li>Provisions ensuring that individuals can exercise their right to complain to an independent body and to be protected against reprisals;</li> </ul>	
<ul style="list-style-type: none"> <li>Prompt and impartial investigations of all allegations of torture are available and undertaken;</li> </ul>	
<ul style="list-style-type: none"> <li>Provisions to prosecute alleged perpetrators of torture, or extradite them, subject to the prohibition on refoulement;</li> </ul>	
<ul style="list-style-type: none"> <li>Provisions on the extradition of alleged torturers, subject to the prohibition on refoulement;</li> </ul>	
<ul style="list-style-type: none"> <li>Provisions on mutual judicial assistance in criminal proceedings related to torture are to be included.</li> </ul>	

<b>Amnesties, immunity, statute of limitations and other impediments</b>	
<b>Primary elements</b>	<b>Tracker</b>
National legislation on amnesties and immunities is to preclude torture.	
National legislation is not to extend statute of limitations to the crime of torture.	
Other impediments to prosecution and punishment are not permitted for cases of torture.	
<b>Redress</b>	
<b>Primary elements</b>	<b>Tracker</b>
The right to redress for victims of torture is to be included in national legislation.	
National legislation on the right to redress also applies to victims of CIDTP.	
Forms of reparation in national legislation are to encompass restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.	
The term victim is to encompass not only the immediate victim, but also his or her family and dependants and anyone who suffered harm while assisting the immediate victim. All those victims have a right to redress to be recognised in national legislation.	
<b>Recommended elements</b>	<b>Tracker</b>
Legislative provisions enable victims of torture to obtain civil reparation without the prior conclusion of criminal proceedings.	
<b>Exclusionary rule</b>	
<b>Primary elements</b>	<b>Tracker</b>
National legislation is to exclude explicitly evidence obtained by torture in all proceedings.	
National legislation is to reflect that the burden of proof is on the prosecution to show that evidence was collected lawfully, where there is an allegation that evidence was obtained by torture;	
National legislation is to reflect that the exclusionary rule applies to evidence obtained by CIDTP.	
National legislation is to reflect that the exclusionary rule applies to all forms of evidence.	

<b>Non-refoulement</b>	
<b>Primary elements</b>	<b>Tracker</b>
The principle of non-refoulement is to be reflected in national legislation.	
<b>Recommended elements</b>	<b>Tracker</b>
National legislation is to reflect that the principle of non-refoulement applies to risks of CIDTP.	
<b><i>New! Legislation and/or regulations in the context of detention/deprivation of liberty</i></b>	
<b>Recommended elements</b>	<b>Tracker</b>
Constitutional and/or legislative provisions guaranteeing basic rights of persons arrested and/or deprived of their liberty.	
<b>Optional elements</b>	<b>Tracker</b>
Laws and/or regulations covering matters such as <sup>21</sup> :	
<ul style="list-style-type: none"> <li>• Prohibition of torture and ill-treatment;</li> </ul>	
<ul style="list-style-type: none"> <li>• Prohibition of corporal punishment;</li> </ul>	
<ul style="list-style-type: none"> <li>• Prohibition of excessive force in the context of arrest and detention;</li> </ul>	
<ul style="list-style-type: none"> <li>• Material conditions of detention and treatment of persons deprived of their liberty in line with international standards;</li> </ul>	
<ul style="list-style-type: none"> <li>• Living conditions and treatment of persons placed in psychiatric, psychoneurological and other social care or residential institutions (for example, by regulating means of restraint; contact with the outside world; drug administration; and external supervision).</li> </ul>	

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<sup>21</sup> The referred matters may be found, among others, in Police Acts, Prison/Correctional Services Act, Armed Forces Acts, Health Acts, Mental Health Acts, or laws relating to immigration/border control.