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Ending Torture, Seeking Justice for Survivors

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

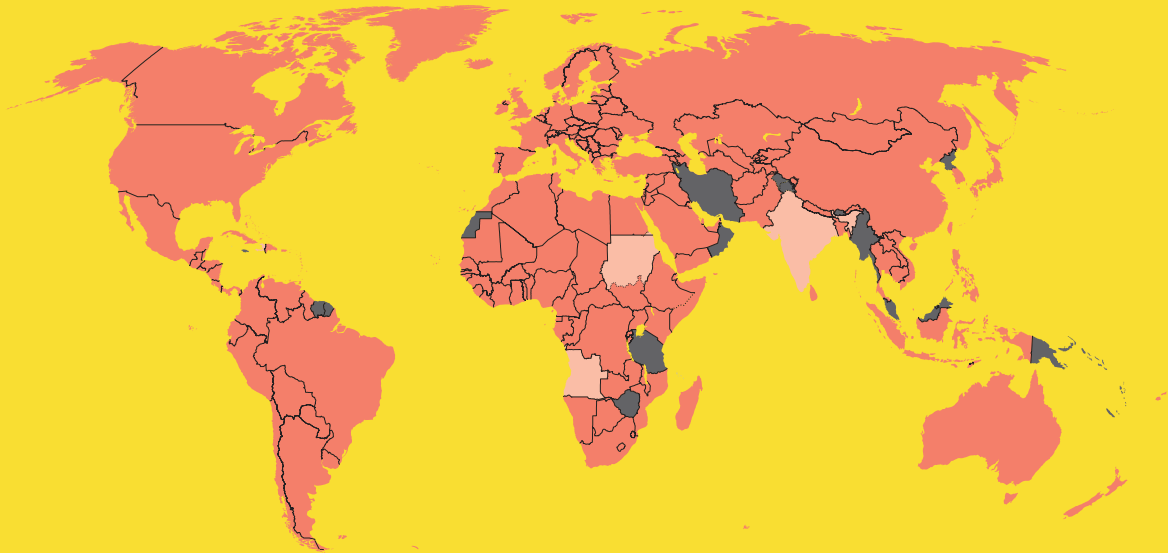
*A Guide to Reporting to the
Committee against Torture*

September 2018

Ratification Status of the Convention against Torture

Country Status

- State Party
- Signatory



State Parties to the Convention:

Afghanistan [^]	Congo [^]	Hungary ^{*,^}	Montenegro ^{*,^}	Slovakia ^{*,^}
Albania [^]	Costa Rica ^{*,^}	Iceland ^{*,^}	Morocco ^{*,^}	Slovenia ^{*,^}
Algeria ^{*,^}	Côte d'Ivoire [^]	Indonesia [^]	Mozambique [^]	Somalia [^]
Andorra ^{*,^}	Croatia ^{*,^}	Iraq [^]	Namibia [^]	South Africa ^{*,^}
Antigua and Barbuda [^]	Cuba [^]	Ireland ^{*,^}	Nauru [^]	South Sudan [^]
Argentina ^{*,^}	Cyprus ^{*,^}	Israel	Nepal [^]	Spain ^{*,^}
Armenia [^]	Czech Republic ^{*,^}	Italy ^{*,^}	Netherlands ^{*,^}	Sri Lanka ^{*,^}
Australia ^{*,^}	Democratic Republic of the Congo [^]	Japan [^]	New Zealand ^{*,^}	State of Palestine [^]
Austria ^{*,^}	Denmark ^{*,^}	Jordan [^]	Nicaragua [^]	Swaziland [^]
Azerbaijan ^{*,^}	Djibouti [^]	Kazakhstan ^{*,^}	Niger [^]	Sweden ^{*,^}
Bahamas	Dominican Republic [^]	Kenya [^]	Nigeria [^]	Switzerland ^{*,^}
Bahrain [^]	Ecuador ^{*,^}	Kuwait	Norway ^{*,^}	Syrian Arab Republic
Bangladesh [^]	Egypt [^]	Kyrgyzstan [^]	Pakistan	Tajikistan [^]
Belarus [^]	El Salvador [^]	Lao People's Democratic Republic	Panama [^]	Thailand [^]
Belgium ^{*,^}	Equatorial Guinea	Latvia [^]	Paraguay ^{*,^}	The former Yugoslav Republic of Macedonia [^]
Belize [^]	Eritrea	Lebanon [^]	Peru ^{*,^}	Republic of Macedonia [^]
Benin [^]	Estonia [^]	Lesotho [^]	Philippines [^]	Timor-Leste [^]
Bolivia ^{*,^}	Ethiopia [^]	Liberia [^]	Poland ^{*,^}	Togo ^{*,^}
Bosnia and Herzegovina ^{*,^}	Fiji	Libya [^]	Portugal ^{*,^}	Tunisia ^{*,^}
Botswana [^]	Finland ^{*,^}	Liechtenstein ^{*,^}	Qatar [^]	Turkey ^{*,^}
Brazil ^{*,^}	France ^{*,^}	Lithuania [^]	Republic of Korea ^{*,^}	Turkmenistan [^]
Bulgaria ^{*,^}	Gabon [^]	Luxembourg ^{*,^}	Republic of Moldova ^{*,^}	Uganda [^]
Burkina Faso [^]	Gambia	Madagascar [^]	Romania [^]	Ukraine ^{*,^}
Burundi ^{*,^}	Georgia ^{*,^}	Malawi [^]	Russian Federation ^{*,^}	United Arab Emirates
Cabo Verde [^]	Germany ^{*,^}	Maldives [^]	Rwanda [^]	United Kingdom of Great Britain and Northern Ireland [^]
Cambodia [^]	Ghana ^{*,^}	Mali [^]	Saint Vincent and the Grenadines [^]	United States of America [^]
Cameroon ^{*,^}	Greece ^{*,^}	Malta ^{*,^}	San Marino ^{*,^}	Uruguay ^{*,^}
Canada ^{*,^}	Guatemala ^{*,^}	Marshall Islands	Sao Tome and Principe	Uzbekistan [^]
Central African Republic [^]	Guinea [^]	Mauritania	Saudi Arabia	Vanuatu [^]
Chad [^]	Guinea-Bissau ^{*,^}	Mauritius [^]	Senegal ^{*,^}	Venezuela ^{*,^}
Chile ^{*,^}	Guyana [^]	Mexico ^{*,^}	Serbia ^{*,^}	Viet Nam
China	Holy See [^]	Monaco ^{*,^}	Seychelles ^{*,^}	Yemen [^]
Colombia [^]	Honduras [^]	Mongolia [^]	Sierra Leone [^]	Zambia [^]

State Parties who have signed but not ratified the Convention:

Angola	India
Brunei	Palau
Haiti	Sudan

Key

- * State Party has accepted individual communications procedure (Article 22)
- [^] State Party has accepted inquiry procedure (Article 20)

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A Summary of the Convention against Torture

• Article 1 – The definition of torture

For the purposes of the Convention, torture is defined as:

“any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is 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. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.”

• Article 2 – Prevention of torture

A State Party has an obligation to take effective measures to prevent acts of torture in any territory under its jurisdiction, including legislative, administrative, judicial or other measures. Article 2(2) states that “no exceptional circumstances whatsoever” may be invoked in justification of torture.

• Article 3 – Non-refoulement

A State Party cannot expel, return or extradite a person to another State where there are “substantial grounds” for believing that the person would be at risk of being subjected to torture.

• Article 4 – The criminalisation of torture

A State Party is required to ensure that all acts of torture are offences under their criminal law, including attempts to commit torture and acts by any person which constitutes complicity or participation in torture. The Committee against Torture requires that States use, as a minimum, the definition of torture included in Article 1 of the Convention.

• Article 5 – Universal jurisdiction over torture

A State Party must establish its jurisdiction over any persons found in its territory who are alleged to have committed torture, regardless of where the alleged act was committed or the nationality or residence of the alleged perpetrator.

• Articles 6-9 – The exercise of universal jurisdiction

Under Article 6(1) a State Party is required to secure the custody of an alleged perpetrator when they are “satisfied, after an examination of information available to them, that the circumstances so warrant.” Under article 6(2) a State Party is obliged to immediately initiate a preliminary investigation into the facts.

Article 7 requires a State Party to extradite a suspected torturer, or if that is not possible, to prosecute the individual.

Article 8 allows the possibility of extraditing a suspected torturer when a request is made. Where there is no extradition treaty, the Convention may be used as a legal basis for extradition.

Article 9 obliges States Parties to co-operate with each other and supply all evidence at their disposal necessary for criminal proceedings against persons accused of torture.

● **Article 10 – Training officials**

A State Party is required to ensure that all law enforcement personnel, medical personnel, public officials and other persons who may be involved in custody, interrogation or treatment of any person are trained regarding the prohibition against torture, and that the rules relating to their duties incorporate the prohibition.

● **Article 11 – Review of detention procedures**

A State Party must keep under systematic review interrogation rules, instructions, methods and practice as well as arrangements for the custody and treatment of persons under any form of arrest, detention or imprisonment.

● **Article 12 – Prompt and impartial investigation**

A State Party must ensure a prompt and impartial investigation where there is a reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.

● **Article 13 – Right to complain**

A State Party must ensure that victims of torture have a right to complain to competent authorities, and to have their case promptly and impartially examined. Steps must be taken to protect the complainant and any witnesses against all ill-treatment or intimidation as a result of the complaint.

● **Article 14 – Right to redress**

A State Party must ensure that victims of torture obtain redress and has an enforceable right to compensation, including the right to as full rehabilitation as possible.

● **Article 15 – The exclusionary rule**

A State Party must ensure that any statement made as a result of torture shall not be invoked as evidence in any proceedings, except in proceedings against an alleged torturer.

● **Article 16 – Ill-treatment**

Under article 16, each State Party is obliged to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in Article 1.

● **Articles 17-33**

Articles 17-24 deal mainly with the mandate of the Committee against Torture, including article 22 which allows for the Committee to receive and consider individual communications if a declaration by the State Party is made.

Articles 25-33 relate to technical matters, including the signature or ratification of the Convention, procedure for amendments, or reservations.

The full text of the Convention can be found here:

<https://www.ohchr.org/en/professionalinterest/pages/cat.aspx>

Abbreviations

ACHPR	African Charter on Human and Peoples' Rights
ACHR	American Convention on Human Rights
CAT or Committee	Committee against Torture
CAT or Convention	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
ECPTIDTP	European Convention for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment
IACPPT	Inter-American Convention to Prevent and Punish Torture
ICCPR	International Covenant on Civil and Political Rights
LOIPR	List of Issues Prior to Reporting
NGO	Non-governmental Organisation
NHRI	National Human Rights Institutes
OHCHR	Office of the High Commissioner for Human Rights
OPCAT	Optional Protocol to UNCAT
SPT	Subcommittee on the Prevention of Torture
UDHR	Universal Declaration of Human Rights

The Convention against Torture

The Prohibition of Torture and Other Forms of Ill-Treatment

The prohibition against torture and other forms of ill-treatment is well established as one of the few absolute human rights which must be respected without any restriction or **derogation** (under international law, this is known as a *jus cogens* norm). This applies even in times of war or threat of war, internal political instability or public emergency, and there are no exceptional circumstances whatsoever under which torture can be justified, including any threat of terrorist acts or violent crime, or religious or traditional justification.

The prohibition against torture and other forms of ill-treatment is embodied in several international human rights treaties and declarations, including:

- The **Universal Declaration of Human Rights (UDHR)** (1948), Article 5: “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”
- The **International Covenant on Civil and Political Rights (ICCPR)** (1976), Article 7: “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”
- The **Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT and hereafter the Convention)** (1987).

Similarly, several regional treaties and instruments reaffirm the prohibition against torture and other forms of ill-treatment:

- The **European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)** (1953), Article 3: “No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”
- The **American Convention on Human Rights (ACHR)** (1978), Article 5: “No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.”
- The **African Charter on Human and Peoples’ Rights (ACHPR)** (1986), Article 5: “Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.”
- The **Inter-American Convention to Prevent and Punish Torture (IACPPT)** (1987).
- The **European Convention for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment (ECPTIDTP)** (1989).

• **Derogation** is the partial suppression of a law, for example in times of war or emergency. The right to be free from torture is an absolute human right and is therefore non-derogable.

A right may be non-derogable without being *jus cogens*.

The Convention against Torture

The purpose of the Convention is to prevent and eradicate the use of torture and other cruel, inhuman or degrading treatment or punishment and to ensure accountability for acts of torture. There are currently **165 States Parties** to the Convention and a further six signatories (see page 2).

States Parties to the Convention are obligated under international law to uphold and implement the provisions of the treaty.

The Convention represents the most detailed international codification of standards and practices regarding the prohibition against torture. It sets out the most widely accepted definition of torture (Article 1) at the international level, obliges States to take all necessary legislative, administrative, judicial and other appropriate measures to prevent acts of torture (Article 2), and specifies a range of additional steps that States must take to adequately prevent, prohibit and redress torture and guarantee non-recurrence. This includes:

- An obligation not to extradite, deport, expel or otherwise transfer a person to a State where they would be at risk of torture or ill-treatment (*non-refoulement*) (Article 3).
- The criminalisation of torture under domestic law (Article 4).
- Establishing universal jurisdiction over torture (Articles 5-9).
- Training officials and reviewing detention procedures (Articles 10 and 11).
- Ensuring remedies for victims of torture, including the right to complain and the right to redress (Articles 13 and 14).
- Ensuring that torture evidence is not used in any proceedings (the exclusionary rule) (Article 15).

The Committee against Torture

The Committee against Torture (hereafter the Committee) is the **treaty body** created to monitor and encourage States to uphold and implement their international obligations under the Convention. The Committee is mandated to carry out several activities to monitor the implementation of States Parties' obligations under the Convention, including overseeing the reporting cycle for each State Party (see page 22) and issuing **general comments** to interpret and develop provisions of the Convention. Further information about the Committee can be found in Section Two.

Treaty bodies are the committees of independent experts that monitor the implementation of United Nations human rights treaties. Depending on the treaty body, they review periodic reports from States Parties, consider individual communications, and conduct inquiries.

Treaty bodies publish **general comments** to provide comprehensive and authoritative interpretations of provisions within a treaty, although they are not legally binding.

General Comments by the Committee against Torture

The Committee has issued four general comments in total over three issues. A contemporary interpretation of the Convention should be read in line with the developments provided in the Committee's general comments.

1. General Comment No. 1 (1998), replaced by General Comment No. 4 (2017): Implementation of article 3 (non-refoulement) by States Parties.
2. General Comment No. 2 (2008): Implementation of article 2 (preventative measures) by States Parties.
3. General Comment No. 3 (2012): Implementation of article 14 (right to redress) by States Parties.

The Scope of the Convention

• The **Inter-American Convention** includes a broader definition of torture including "... the use of methods upon a person intended to obliterate the personality of the victim or to diminish his physical or mental capacity, even if they do not cause physical pain or mental anguish."

• **Jurisprudence** in this context refers to a body of previous court decisions, otherwise known as case law or precedent.

The definition of torture

Although Article 1 of the Convention is generally considered to be the internationally agreed definition of torture, it contains a fairly narrow interpretation of torture. Other regional treaties have broader definitions and interpretations of what treatment amounts to torture, such as the **IACPPT**. Further definitions of torture have developed through the **jurisprudence** of regional courts such as the ECHR. In addition, the definition of torture under the Convention today should be read alongside the interpretations contained within the General Comments of the Committee against Torture (see page 8).

The definition of torture under the Convention contains four main elements:

- **The infliction of severe pain or suffering** - The Convention specifies that for an act to amount to torture it must inflict "severe pain or suffering, whether physical or mental" on a person. The Convention does not have a list of acts that are severe enough to satisfy the threshold for torture. Instead, the severity needs to be understood in terms of the suffering and impact on the victim rather than the conduct of the perpetrator.
- **The requirement of intent** - The Convention requires that for an act to amount to torture it must have been committed with intent. It is an accepted understanding that torture under the Convention must result from a purposeful act or omission of an act, for example, depriving a detainee of food or medicine on purpose.
- **The requirement of a specific purpose** - The Convention requires that an act must have been inflicted for a specific purpose, and lists such purposes as punishment, soliciting information or a confession, intimidation or coercion, "or any other reason based on discrimination of any kind". This list is non-exhaustive and has been interpreted broadly. However, it is important to recognise that some regional bodies and standards, including the ACHR, do not require a purpose for an act to be considered as torture.
- **The involvement of a public official** - The Convention specifies that an act of torture is inflicted "at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity". In its General Comment No. 2, the Committee recognised that indifference or inaction by the State for acts of torture and ill-treatment can provide *de facto* permission for torture and ill-treatment. The Committee made clear that where State officials fail to exercise due diligence to prevent, investigate, prosecute and punish acts of torture or ill-treatment committed by private actors the State bears responsibility and its officials should be considered as complicit or otherwise responsible. This principle has been applied in cases of gender-based violence, such as rape, domestic violence, female genital mutilation and trafficking.

Lawful sanctions

While the definition of torture under the Convention does not include “pain or suffering arising from, inherent in or incidental to lawful sanctions,” this limitation has been interpreted restrictively. A sanction considered lawful under national law may still constitute torture or other prohibited ill-treatment if it causes physical pain or mental suffering. In this regard, the prohibition against torture and ill-treatment **extends to corporal punishment**, including “excessive chastisement ordered as punishment for a crime or as an educative or disciplinary measure.”

This extension of corporal punishment comes from General Comment No. 20 by the Human Rights Committee, which is the treaty body established under the International Covenant on Civil and Political Rights (ICCPR).

The distinction between torture and other forms of cruel, inhuman and degrading treatment or punishment

Torture is a severe form of cruel, inhuman or degrading treatment or punishment (referred to collectively as ill-treatment). While Article 16 of the Convention obliges States Parties to prevent ill-treatment, the Convention does not include a definition of cruel, inhuman and degrading treatment or punishment and these concepts can be difficult to distinguish. Often, they will involve the same act.

Examples of issues considered by the Committee in practice regarding the prevention of torture and ill-treatment (Articles 2 and 16)

- The use of prolonged solitary confinement.
- The use of incommunicado detention.
- The length of police custody or pre-trial detention.
- Poor conditions of detention, including the lack of basic amenities and services, appropriate medical attention, poor hygiene, violence and sexual abuse.
- Corporal punishment.
- Excessive use of force by law enforcement officials.
- Acts committed by public officials by acquiescence, including violence by private parties, such as corporal punishment in the family and private schools, domestic violence, human trafficking, hate crimes, female genital mutilation, inter-prisoner violence in detention.
- Misuse of psychiatric hospitalisations.
- Women in detention.
- Juveniles in detention.
- Deaths in custody.
- Enforced disappearances.

The distinction between the torture and ill-treatment was introduced because some of the specific legal obligations for States under the Convention were initially meant to apply to torture only. This included the provisions of Articles 2-9 covering such issues as preventative “legislative, administrative, judicial or other measures” (Article 2) along with *non-refoulement*, criminalisation and universal jurisdiction.

However, the Committee has since clarified that it considers that the substantive provisions of the Convention (Articles 3 to 15) are “likewise obligatory as applied to both torture and ill-treatment.” This is because the conditions that give rise to ill-treatment frequently facilitate torture. Therefore, the measures that are required to prevent torture must also be applied to prevent ill-treatment. The Committee recognises that States Parties may choose the measures through which they fulfil these obligations. As a result, the Committee considers the prohibition of ill-treatment to be equally non-derogable to the prohibition against torture (see page 7).

Factors to take into account for when torture may be distinguished from ill-treatment under the Convention include the *purpose* of the conduct, the intention of the perpetrator and the situation of the victim, such as the victim’s vulnerability and powerlessness.

For example, ill-treatment inflicted upon a detainee during interrogation may amount to torture, rather than ill-treatment, because it is done intentionally for a purpose (such as extracting information or confessions). Cruel and inhuman treatment would also encompass excessive use of force by law enforcement officials outside of detention or direct control. Degrading treatment or punishment can be defined as the infliction of physical or mental suffering which aims at humiliating the victim. The treatment does not have to reach the threshold of “severe” to be considered as degrading treatment or punishment.

For some human rights mechanisms the difference between torture and ill-treatment is based on the severity of the treatment. This is the approach taken by the European Court of Human Rights, which has established that the assessment of the threshold of severity in each case should take into account the duration of the treatment, the physical and mental impact of the treatment, and the sex, age and state of health of the victim. Similarly, the **Rome Statute** differentiates torture and ill-treatment on the basis that torture causes “severe physical or mental pain or suffering” while inhumane treatment is the infliction of “great suffering, or serious injury to body or to mental or physical health”.

The **Rome Statute** is the treaty that established the International Criminal Court which has the jurisdiction to prosecute individuals for the international crimes of genocide, crimes against humanity (including torture) and war crimes (see page 20).

Non-refoulement

Article 3 of the Convention requires States that they do not deport, extradite, expel, return (refouler) or otherwise transfer persons to countries where there is a real risk that they would be in danger of being subjected to torture. The concept of *non-refoulement* under the Convention is absolute and not subject to exception and applies to all non-citizens, regardless of status, therefore not just to asylum seekers and refugees. The Committee has considered that *non-refoulement* should be applied to both torture and ill-treatment in its General Comment No. 2.

A State is required to undertake its own individual, impartial and independent investigations into any proposed removal to ensure that there is no real risk that the individual would be in danger of being

subjected to torture. Each case should be examined individually, not collectively. When determining such grounds, the Convention requires States to “take into account all relevant considerations”, including the human rights record of the destination State in question.

The Committee has considered that the initial burden of proof rests on the individual to present an “substantial grounds” regarding the risk of torture. However, this risk does not have to meet the test of being “highly probable”, after which the burden shifts to the State. In practise, the “substantial grounds” exist whenever the risk of torture is “foreseeable, personal, present or real.”

The Committee established in its General Comment No. 4 that States must consider the actions of non-State actors, including “groups which are unlawfully exercising actions that inflict severe pain or suffering for purposes prohibited by the Convention, and over which the receiving State has no or only partial de facto control or whose acts it is unable to prevent nor to counter their impunity.” The fact that a person is alleged to have committed a crime or an act of terrorism or is identified to be a risk to national security does not excuse the breach of the *non-refoulement* prohibition and does not lower the standard of protection under the Convention and other human rights protections.

States have adopted the practice of seeking diplomatic assurances from destination states to attempt to guarantee that the person will not be subjected to torture, particularly as a means to balance their obligations under the principle of *non-refoulement* with their obligation to protect the life of the people under their jurisdiction, when an individual is considered to be a risk of national security.

The Committee has stated clearly that **diplomatic assurances** from a State Party to the Convention to which a person is to be deported should not be used as a loophole to undermine the principle of *non-refoulement* where there are substantial grounds for believing that the individual would be in danger of being subjected to torture in that State.

The term **diplomatic assurances** as used in the context of the transfer of a person from one State to another, refers to a formal commitment by the receiving State to the effect that the person concerned will be treated in accordance with conditions set by the sending State and in accordance with international human rights standards.

Examples of issues considered by the Committee in practice regarding *non-refoulement* (Article 3)

- The adequacy of appeals mechanisms in expulsion procedures.
- Ensuring that public officials receive specialised training or instructions on Article 3 related obligations.
- The use of diplomatic assurances or guarantees as the basis for carrying out *refoulements*, extraditions and expulsions.
- Ensuring that jurisdiction for Article 3 extends to all areas under the de facto control of States' Parties.
- *Non-refoulement* for individuals sought for acts of terrorism.
- Enacting asylum legislation and a national asylum system.
- Ensure that proper screening and individual investigations take place before proceeding with expulsions or deportations.

The criminalisation of torture under domestic law

Under Article 4 of the Convention, States should ensure that torture is defined as a specific and separate criminal offence. Such criminalisation should ensure that there is criminal liability for any attempt to commit torture or any act which constitutes complicity or participation in an act of torture, with appropriate penalties which account for the grave nature of the crime.

Although there is no specific requirement under the Convention, one of the most effective ways to ensure compliance with the Convention is to ensure that all acts of torture are criminalised and to provide a definition of torture which is in conformity with the elements of torture in Article 1 of the Convention. This is often recommended by the Committee.

Many States do not have a specific criminal offence of torture in their national legislative frameworks which has been identified by the Committee. This applies in the case of states including the Seychelles, Belarus, Germany, Lebanon, Poland and Thailand, although some of these countries have reform efforts ongoing or draft legislation in place.

In other States there is no definition of torture in line with Article 1 of the Convention, or there is an insufficient or incomplete definition of torture. This applies in the case of states including Rwanda, Congo, Ecuador, Hungary, Lebanon, Lithuania, the United Kingdom of Great Britain and Northern Ireland, Congo and Pakistan.

In some States there are insufficient or inconsistent penalties for the crime of torture, which fail to recognise the grave nature of the crime of torture. This applies in the case of states including, Rwanda, Belarus, Chile and Pakistan. The Committee has also required legislative changes where there are statutes of limitation in place which prevent the effective prosecution of torture offences after a certain time has expired.

The Committee has considered in its General Comment No. 2 that Article 4 should be applied to both torture and ill-treatment, so to include the criminalisation of ill-treatment into domestic criminal law.

Examples of issues considered by the Committee in practice regarding the criminalisation of torture (Article 4)

- Introduction of a separate crime of torture in the domestic criminal law of the State under review.
- Introduction of a definition of torture in line with the Convention.
- Appropriate penalties for the crime of torture.
- Minimum age of criminal responsibility.
- Guaranteeing fundamental legal safeguards for detained persons.
- Statute of limitations on complaints of torture.

Universal jurisdiction over torture

Article 5 of the Convention establishes the principle of universal jurisdiction, or extra-territorial jurisdiction, and is one of the most important aspects of the Convention. By ratifying the Convention, States recognise that all countries have an obligation to see that perpetrators do not escape justice, either through extradition or prosecution (Article 7). The purpose of universal jurisdiction is to increase accountability of perpetrators of torture, as well as to reduce the existence of “safe havens” for torturers where they enjoy immunity because the State where the crimes were committed is unwilling or unable to conduct an effective investigation or prosecution. Where there is no existing extradition treaty between two countries the Convention may be used as a legal basis for extradition of an alleged perpetrator.

The incorporation of this form of universal jurisdiction into domestic law is fundamentally important to ensure that alleged perpetrators of torture can be held accountable anywhere in the world. It also increases victims’ opportunities to obtain justice where they have been denied justice in the courts of the country where the torture was committed.

Article 5 of the Convention requires States to either prosecute or extradite an alleged offender if they are present in any territory under the State’s jurisdiction, regardless of the nationality of the suspect or the victim, or where the alleged act was committed. Bearing in mind that the Convention prohibits States from extraditing individuals to States where there is a substantial risk of them being subjected to torture, and that often States where the crime allegedly took place do not request extradition, States Parties to the Convention must ensure that their domestic law expressly provides for them to establish jurisdiction over torture in cases where an alleged perpetrator is found in its territory.

Article 6 of the Convention also provides that State authorities must have the power to immediately initiate a preliminary investigation into the facts and take the suspected perpetrator into custody or to take other legal measures to ensure their presence at trial.

Examples of issues considered by the Committee in practice regarding universal jurisdiction (Articles 5-9)

- The implementation of legislative measure for the establishment of universal jurisdiction.
- The use of immunities and amnesty laws.
- State obligations to extradite or prosecute persons alleged to have committed torture.
- The failure to conduct preliminary inquiries.
- The obligation to remove any legal obstacles to the extradition of torture suspects.
- Information about mutual judicial legal assistance.

If a State is unable to prosecute the offence it is required to extradite the alleged perpetrator to a State which is able and willing to prosecute the crime.

In practice, there have been very few cases of universal jurisdiction in torture cases. The most well-known example of universal jurisdiction is the case of Augusto Pinochet, who was the leader of the military dictatorship in Chile between 1973 and 1990. Pinochet was arrested and placed under house arrest by UK authorities during a visit to London in 1998 under orders of a Spanish court. Although Pinochet was returned to Chile and died before facing prosecution, it was the first time a former head of state had been arrested and detained based on the principle of universal jurisdiction.

The Committee has considered in its General Comment No. 2 that Articles 5 to 9 regarding universal jurisdiction should be applied to both torture and ill-treatment.

Training officials and reviewing detention procedures

The provisions under Articles 10 and 11 constitute the most important safeguards for the prevention of torture and ill-treatment. States must apply certain basic guarantees to all persons deprived of their liberty in order to protect them from torture and ill-treatment. Such guarantees include, among others: maintaining an official register of detainees, the right promptly to receive independent legal assistance, independent medical assistance, and to contact relatives, the need to establish impartial mechanisms for inspecting and visiting places of detention and confinement, and the availability to detained and persons at risk of torture and ill-treatment of judicial and other remedies that will allow them to have their complaints promptly and impartially examined, to defend their rights, and to challenge the legality of their detention or treatment.

Article 10 requires States Parties to ensure that all law enforcement personnel, both civil and military, medical personnel, public officials, and all persons involved in the treatments of individuals in any form of arrest, detention or imprisonment, are aware of the provisions of the Convention and that breaches will not be tolerated and will be investigated, and offenders prosecuted.

Examples of issues considered by the Committee in practice regarding training officials and reviewing detention procedures (Articles 10 and 11)

- Regular training of all relevant personnel in the provisions of the Convention.
- The provision of anti-torture training on all aspects of the Convention, including the need to raise awareness of gender-specific issues such as sexual violence against women, and discriminatory practices against vulnerable groups.
- The establishment of regular and independent inspections of all places of detention, including access to NGOs.
- Improving material conditions in all places of deprivation of liberty, in line with the Nelson Mandela Rules (see page 20).

Such training must be conducted on a regular basis and included in the education curricula of relevant personnel. Training courses should be provided by governmental agencies, police training academies and also by relevant NGOs. Training should include all aspects of the Convention, including the absolute prohibition on torture and other relevant legal standards (see below x). The meaning of “personnel” has been extended to include personnel in local communities and at border areas as well as to those serving at officially administered institutions.

Article 11 requires States Parties to keep all rules of interrogation and arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction under “systematic review”. These rules and arrangements should comply with the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) and the United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (see page 20).

The wording “systematic review” requires the establishment of a system of regular and independent inspections of all places of detention, and to provide access to NGOs to such places of detention.

The Committee has considered in its General Comment No. 2 that Articles 10 and 11 should be applied to both torture and ill-treatment.

Remedies for victims of torture: the right to complain and the right to redress

Article 14 establishes an obligation to provide victims of torture with an effective remedy and an enforceable right to fair and adequate compensation. Article 14 is closely related to Article 13, which requires States to ensure that victims of torture have an effective right to complain to a competent body without fear of reprisals. States are required to investigate each case promptly and impartially. Article 13 aims to establish the facts, and therefore constitutes the basic remedy for torture victims.

The Committee has considered In its General Comments No. 2 and No.3, that such remedies for victims of torture, including the right to redress, should be applied to both torture and ill-treatment.

Examples of issues considered by the Committee in practice regarding the right to redress (Article 14)

- Failure to recognise survivors of torture, including survivors of sexual violence, as victims of conflicts.
- Difficulties in obtaining redress for victims of torture.
- Delays in complying with reparations awards.
- Implementing a legislative framework and procedure enabling all victims to enjoy their right to redress

The Committee also clarified in its General Comment No. 3 that redress includes the five forms of reparation:

- **Restitution** – re-establishing the victim to their situation before the torture was committed, taking into consideration the specificities of each case and including the structural causes of the violation, including any kind of discrimination (for example, relating to gender, sexual orientation, disability, political or other opinion, ethnicity, age or religion).
- **Compensation** – monetary or other non-monetary compensation given to the victim for any assessable damage resulting from torture or ill-treatment. This may include medical and rehabilitative expenses; loss of earnings and opportunities and earning potential due to disabilities caused by the torture or ill-treatment; legal assistance associated with bringing a claim for redress. The Committee has made clear that the provision of monetary compensation on its own is not sufficient for States to comply with their obligations under Article 14.
- **Rehabilitation** – a full holistic rehabilitation including medical and psychological care and legal and social services to restore a victim’s independence, physical, mental, social and vocational ability, and full inclusion and participation in society.
- **Satisfaction** – this includes the verification of facts and public disclosure of the truth; an official declaration or judicial decision restoring the dignity, reputation and the rights of the victim; effective measures to stop the violations; assisting in the recovery, identification and reburial of victims’ bodies; public apologies, including acknowledgement of the facts and acceptance of responsibility; commemorations and tributes to victims.
- **Guarantees of non-repetition** – measures taken to combat impunity for violations of the Convention.

The exclusionary rule

Under Article 15 of the Convention, confessions and other evidence obtained by torture are inadmissible in legal proceedings, except against a person accused of such treatment as evidence that the statement was made.

This is otherwise known as the “exclusionary rule”. The exclusionary rule prohibits the use of any evidence obtained by torture in any proceedings. It is not confined to criminal proceedings, nor to cases directed against the victim of the torture: statements procured through torture cannot be used in proceedings against any person. This is because the exclusionary rule is not only intended to guarantee the right against self-incrimination; it also is intended to guarantee the fairness of the trial as a whole.

The rule is not limited to the situation in which the tainted evidence is sought to be brought before the courts of the forum where the torture allegedly took place. It is irrelevant whether the state where the evidence is sought to be introduced had a role in the torture or not, it would still be inadmissible in the proceedings.

In General Comment No. 2, the Committee has considered that the exclusionary rule should be applied to both torture and ill-treatment.

The exclusion of evidence obtained by torture is an important aspect of States' obligations to prevent torture. It counteracts one of the main arguments in favour of torture – to elicit a confession.

The rationale for the exclusionary rule stems from a combination of factors:

- the unreliability of evidence obtained as a result of torture;
- the outrage to civilised values caused and represented by torture;
- the public policy objective of removing any incentive to undertake torture anywhere in the world;
- the need to ensure protection of the fundamental rights of the Party against whose interest the evidence is tendered (and in particular those rights relating to due process and fairness); and
- the need to preserve the integrity of the judicial process.

Examples of issues considered by the Committee in practice regarding Article 15 (the exclusionary rule)

- Introduce legislation to specifically outlaw coerced confessions or evidence obtained through torture or ill-treatment.

Other Mechanisms

Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment (OPCAT)

The OPCAT supplements the Convention. It entered into force in 2006 and is a treaty within its own right, and therefore needs to be ratified separately by States. There are currently 88 States Parties to OPCAT, with 14 additional States who have signed but not yet ratified it.

The OPCAT has its own treaty body, the **Subcommittee on Prevention of Torture (SPT)**. The SPT has two primary operational functions: to undertake visits to States Parties, and to serve an advisory function, providing assistance and advice to States Parties. Under the OPCAT, the SPT has unrestricted access to all places where persons may be deprived of their liberty, for example, pre-trial detention centres, immigration detention centres, youth justice centres, and mental health and social care institutions. The SPT is able to interview persons in such places privately.

The main obligation under OPCAT is to establish a **National Preventive Mechanism (NPM)**. This can be one or more visiting bodies which are functionally independent of the government.

United Nations Voluntary Fund for Victims of Torture (UNVFT)

The UNVFT is a universal humanitarian tool which provides assistance to victims of torture and their family members. The UNVFT provides grants for projects to support medical assistance to treat the physical effects of torture, psychological assistance, including counselling and support in preparation for attendance to trials, social assistance, such as material assistance such as accommodation, food, clothes and utilities, legal assistance, to pursue litigation of torture cases or supporting asylum applications for victims of torture, and financial assistance.

The United Nations Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SRT)

The SRT is an independent expert appointed to examine questions relevant to torture as part of the **UN Special Procedures of the Human Rights Council**. The SRT can transmit urgent appeals to States with regards to individuals reported to be at risk of torture or regarding past alleged cases of torture, undertake fact-finding country visits (upon invitation by a State) and submit an annual report on activities to the UN Human Rights Council and the UN General Assembly.

The Special Rapporteur on Torture is one of a number of other relevant special procedures which include the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, the Special Rapporteur on Violence against Women, its Causes and Consequences, the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-recurrence, the Working Group on Arbitrary Detention and the Working Group on Enforced or Involuntary Disappearances.

The **Subcommittee on Prevention of Torture** and other Cruel, Inhuman or Degrading Treatment or Punishment is made up of 25 independent and impartial experts. Members are elected for a four-year mandate and can be re-elected once.

National Preventive Mechanisms must have the power to regularly examine the treatment of persons deprived of their liberty in places of detention and to make recommendations to the relevant authorities on how to improve the treatment and conditions of the persons deprived of their liberty.

The UNVFT was established by the UN General Assembly in 1981 and is managed by the Office of the United Nations High Commissioner for Human Rights (OHCHR) with the advice of a Board of Trustees.

The **UN Special Procedures** are independent human rights experts with mandates to report and advise on human rights from a thematic or country-specific perspective. They cover all human rights: civil, cultural, economic, political and social. There are 44 thematic and 12 country mandates.

Unlike UN treaty bodies (such as the Committee), special procedures can be activated even where a State has not ratified the relevant instrument or treaty. Although they do not have any legal power, they play a key role in the promotion and protection of human rights and raising awareness of individual cases.

Other Relevant International Standards

Below is a non-exhaustive list of relevant international standards regarding the prohibition of torture and other forms of ill-treatment. Although these are not legally binding, they are recognised as international standards and are important tools for advocacy.

• The **Standard Minimum Rules** were first adopted in 1957 before they were revised and adopted by the UN General Assembly as the Nelson Mandela Rules in 2015 to recognise major developments in human rights and criminal justice.

Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) (2015). The Nelson Mandela Rules are often regarded as the primary source of standards relating to treatment in detention, and are the key framework used by monitoring and inspection mechanisms in assessing the treatment of prisoners.

• The **Basic Principles and Guidelines** were adopted by the UN General Assembly in December 2005.

United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparations for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (2005). The Basic Principles and Guidelines outline a comprehensive regime for redress based on general principles of international law and other developments. They define the scope of the right to remedy and reparation and allow for the future development of procedural remedies and substantive reparations. It covers the definition of “victims” and “victims’ rights”, international responsibility and States’ obligations, and other procedural issues.

Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) (1999). The Istanbul Protocol is the first set of international guidelines for the documentation of torture and ill-treatment by national authorities, lawyers, psychologists, doctors and other stakeholders. It provides a comprehensive framework for the assessment of torture and ill-treatment and for investigating such allegations and reporting findings to the judiciary or other investigative bodies.

• The **Rome Statute** was adopted by the United Nations Diplomatic Conference of Plenipotentiaries on 17 July 1998.

Rome Statute of the International Criminal Court (1998). The Rome Statute established the International Criminal Court. Under the Rome Statute, torture and “[o]ther inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health” constitute crimes against humanity, and therefore fall within the jurisdiction of the Court, provided they are committed “as part of a widespread or systematic attack directed against [a] civilian population”.

Other Standards include:

- Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990).
- Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1982).

Engaging with the Committee against Torture

The Committee against Torture

The Committee, established in 1987, is the treaty body created to monitor and encourage States to uphold and implement their international obligations under the Convention against Torture. The Committee comprises of ten independent experts who meet twice a year in Geneva for four-week sessions, in May and November.

The Committee is mandated to carry out several activities to monitor the implementation of State Parties' obligations under the treaties:

- Overseeing the **reporting cycle** for each State Party (see page 22), which follows several stages including:
 - Receiving and considering reports submitted by States, NHRIs, NGOs and civil society on the implementation of the Convention.
 - Conducting a **state examination** approximately every four years during a session through a constructive dialogue with the State Party.
 - Issuing **concluding observations** and recommendations to assist States in implementing their obligations under the Convention.
- Develop **general comments** to interpret and develop provisions of the Convention both substantially and procedurally (see page 8).

The Committee has three other procedures for bringing forward complaints of violations of the Convention, which are to:

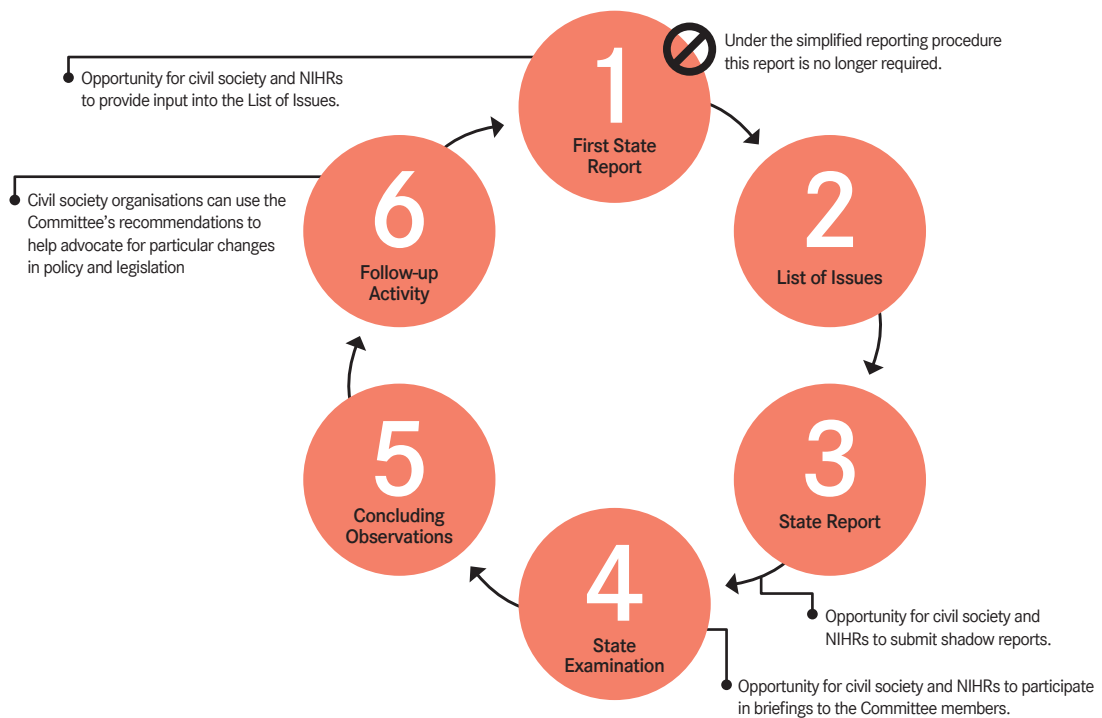
- Consider **individual communications** if a State has made the necessary declaration under article 22 of the Convention (see page 2).
- Undertake **inquiries** upon receipt of reliable information regarding grave or systematic violations by a State Party of the Convention, in accordance with article 20 of the Convention. States Parties may opt out from the inquiry procedure by making the necessary declaration at the time of signature or ratification or accession to the Convention (see page 2).
- Consider **inter-state complaints** from one State Party about violations of the Convention made by another State. This procedure only applies to States Parties who have made the necessary declaration under article 21. To date, it has never been used.

State Reporting Cycle to the Committee against Torture

Article 19 of the Convention requires States Parties to report on the measures they have taken to implement their obligations under the Convention as outlined in the previous section. This process of State reporting is a constructive dialogue between the Committee and States Parties, with opportunities for involvement by civil society.

The effectiveness of the reporting cycle is aided significantly by the involvement of civil society and non-governmental organisations (NGOs), in both providing fact and evidence-based information and advocating for the implementation of the Committee's findings (Concluding Observations).

The reporting cycle is summarised below:



1 First State Report

The State Party submits a periodic report on the measures taken towards implementation of the treaty provisions under the Convention, such as the adoption of legal, administrative, judicial or other measures. An initial report is required one to two years following the Convention's entry into force in the State concerned.

If a State Party has signed up for the simplified reporting procedure this report is no longer required, and the reporting process starts with the List of Issues Prior to Report (LOIPR) document prepared by the Committee.

2 List of Issues/List of Issues Prior to Reporting

Ahead of the State Examination, the Committee prepares a List of Issues (or LOIPR if the State in question has opted for the simplified reporting procedure). The List of Issues is based on information and recommendations highlighted by civil society, NGOs, National Human Rights Institutes (NHRIs) and other treaty bodies and mechanisms. It serves as a list of questions to help shape and supplement the State's response in the State Report (step 3) and is prepared about one year before the State Report is due.

Civil society, including NGOs, can submit information to be considered in the List of Issues/LOIPR. They can additionally lobby the State concerned to submit their State Report on time and participate in consultation events organised by the State, if possible.

3 State Report and Shadow Reports

The State Party is expected to reply to the full List of Issues/LOIPR in its State Report. This will form the basis of the Committee's questioning in the State Examination dialogue.

The Committee encourages alternative reports, known as shadow reports, from civil society organisations and NHRIs to provide a different perspective of progress achieved in the implementation of the provisions under the Convention. The shadow reports assist the Committee in considering questions to ask the State Party ahead of the State Examination.

4 State Examination

The Committee considers the reports and evidence received and designates two members to act as Rapporteurs to lead the examination. The State Examination is a dialogue between a delegation from the relevant Government and from members of the Committee, which usually takes place over two days.

Civil society, NGOs and NHRIs that have submitted information can participate in private briefings ahead of the State Examinations and can attend the State Examination as observers.

5 Concluding Observations

The Committee prepares its Concluding Observations which outlines what actions the State Party needs to do to comply with the Convention. It is a public document and is published on the Committee's website.

6 Follow-up Activity

This stage is crucial to ensuring that all the issues raised in the Concluding Observations are acted upon. The State Party must provide information on pressing issues identified in the Concluding Observations to the Committee within one year.

Civil society organisations, NGOs and NHRIs can use the recommendations within the Concluding Observations to advocate and campaign for changes to policy and legislation.

About REDRESS

REDRESS is an international human rights organisation that represents victims of torture to obtain justice and reparation. We bring legal cases on behalf of individual survivors, and advocate for better laws to provide effective reparations. Our cases respond to torture as an individual crime in national and international law, as a civil wrong with individual responsibility, and as a human rights violation with state responsibility. Through our victim-centred approach to strategic litigation we are able to have an impact beyond the individual case to address the root causes of torture and to challenge impunity. We apply our expertise on torture, reparations, and the rights of victims, to conduct research and advocacy to identify the changes in law, policy, and practice that are necessary. We work collaboratively with international and national organisations and grassroots victims' groups.

About this Guide



The purpose of this Guide is to raise awareness of the issues covered under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and to highlight opportunities for civil society and other stakeholders to use the Convention effectively to hold governments to account.

This Guide has been produced by REDRESS with support from the Equality and Human Rights Commission in preparation for the examination of the United Kingdom of Great Britain and Northern Ireland in April 2019.



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