



Report

Online Technical Workshop for Commonwealth Caribbean Countries on UNCAT: Sharing Experiences of Ratification, Legislative Reform and Reporting

Tuesday 1 – Thursday 3 December 2020

Via Zoom

In partnership with:



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Introduction

1. From 1 to 3 December 2020, the [Convention Against Torture Initiative \(CTI\)](#), in partnership with the [Redress Trust \(REDRESS\)](#) and the [Commonwealth Secretariat](#), held a technical workshop on the ratification of the United Nations Convention against Torture and Other Cruel, inhuman or Degrading Treatment or Punishment (UNCAT), as well as legislative reform and reporting for Commonwealth Caribbean countries. The workshop was held online and hosted by the Governments of Chile and Grenada. The seminar brought together experienced staff from the Ministries of Foreign Affairs and of Justice, as well as Attorney-General's offices of nine Caribbean countries (Antigua and Barbuda, the Bahamas, Grenada, Guyana, Jamaica, Saint Kitts and Nevis, Saint Lucia, Trinidad and Tobago, and Suriname¹), as well as experts from Uganda, the United Nations Committee against Torture (CAT), the Office of the High Commissioner for Human Rights (OHCHR), CTI, REDRESS and the Commonwealth Secretariat.
2. One of CTI's key priorities is to encourage States to adopt or align their national laws with UNCAT. The CTI has been working closely with a number of Caribbean governments – bilaterally as well as through regional seminars – over the past few years to support activities towards UNCAT ratification and implementation in the region².
3. About half of the countries represented had not yet become parties to UNCAT, and those that had become parties stated it had not yet been fully implemented into domestic law. Representatives expressed the need for reforms in their respective systems, in order to bring their countries into line with the obligations under UNCAT. The seminar gave an opportunity for participants to discuss ratification procedures, legislative drafting techniques, reporting to CAT, and sharing their experiences. It enabled them to learn about the different approaches to ratification, accession, and drafting legislative frameworks against torture (in particular the experiences of the Bahamas, Chile, Ghana and Uganda). Participants outlined the positive practices and challenges they face in their domestic systems in break-out group sessions. With the support of experts, they identified gaps in their systems for protecting against and combating torture, the different steps of the ratification process, and explored possible options to address these challenges. An expert from the OHCHR Office of the UN Resident Coordinator in Bridgetown, Barbados's resident office in Barbados explained the reporting requirements to CAT.
4. The seminar was held under the "[Chatham House](#)" Rule of non-attribution, in order to encourage frank dialogue and debate among the participants. All participants received materials to prepare for and guide them through the sessions and discussions and to enable them to consult relevant sources for the development and/or improvement of their anti-torture legislative frameworks. Ahead of the seminar, participants also had to review a note on

¹ Although Suriname is not a Commonwealth Caribbean country, they were invited in view of the UPR commitment to ratify UNCAT.

² See: CTI regional seminar on anti-torture national and legislative frameworks, held in Santiago, Chile, on 5-6 April 2017, report available here: https://cti2024.org/content/docs/Chile%20Seminar%20Report_FINAL_ENG.pdf; CTI Caribbean regional seminar on the fair administration of justice and UNCAT, held in Saint Lucia, on 4-6 June 2018, report available here: https://cti2024.org/content/images/WP1618%20Report_final%20v.pdf.

laws and regulations relevant to UNCAT of their respective countries prepared by REDRESS and CTI. They were asked to elaborate further during the seminar, in break-out sessions.

Objectives of the Workshop

5. The purposes of this technical seminar were to:
 - Discuss UNCAT ratification technicalities and legislative provisions;
 - Identify elements needed to construct an effective anti-torture legislative framework and reflect on and 'map' relevant national laws, to consider the degree to which they are already in conformity with UNCAT and to take stock of areas where legislative changes may be required or recommended;
 - Share experiences and exchange information on national practices around processes of legislative review for either Cabinet papers and/or drafting anti-torture laws or amendments;
 - Practice the technical skills of Cabinet drafting and/or legal drafting in the context of torture prevention and redress and receive feedback from experienced drafters;
 - Obtain advice from experts.
6. This report summarises the main aspects of the discussions and presentations, in order to better support and inspire other countries. We hope that other similar seminars can be organised for other countries and in other regions, depending on the needs and interest generated.

High level opening

7. During the High-Level Introduction, H.E. Carolina Valdivia, Acting Minister of Foreign Affairs of Chile, highlighted the importance of UNCAT as a tool to uphold human dignity and creating strong preventive frameworks. She illustrated this point drawing from Chile's experience in ratifying and implementing UNCAT. Hon. Oliver Joseph, Minister for Foreign Affairs of Grenada underlined Grenada's experience in ratifying UNCAT and the support offered by CTI and the Commonwealth Secretariat in this process. He then underscored some of the upcoming legislative changes planned in Grenada to bring its legislation in line with UNCAT. Dr Jens Modvig, Chair of the Committee against Torture (CAT), highlighted the many benefits that ratifying UNCAT can bring domestically, emphasised the universality of the prohibition against torture and ill-treatment, and the collaborative process of reporting to CAT, leading to legal developments and improvements.
8. In the course of their introductory remarks, Dr Alice Edwards, Head of the CTI Secretariat, Dr Tawanda Hondora, Head of the Human Rights Unit of the Commonwealth Secretariat, and Mr Rupert Skilbeck, Director of REDRESS, presented the various types of support and technical assistance that their respective organisations offer to government institutions for ratifying and implementing UNCAT.

The Prohibition of Torture in UNCAT

9. During the introductions and the first session, speakers outlined the core elements of anti-torture legislation in terms of States' obligations derived from UNCAT.
10. In Session 1, Ms Julie Bardèche, REDRESS Legal Advisor, gave a general introduction to UNCAT and presented in detail the elements necessary for a proper transposition of the Convention, using the UNCAT General Comments, the relevant case law and materials, including [CTI's Implementation Tools](#). The issues presented included the following: criminalisation of torture; modes of liability; rules of admissibility and exclusion of evidence derived from the use of torture; jurisdiction over acts of torture and other forms of ill-treatment; provision of a complaints system for victims of torture; protection measures for victims of torture; obligation to investigate and prosecute allegations of torture; extradition of suspected authors of acts of torture; amnesties, immunities, statutes of limitations and other impediments to prosecution; non-refoulement; and the right of victims to reparation.
11. It is important that the legislative drafters identify the various pieces of primary and secondary legislation that might be affected by the Convention implementation reforms, both by way of specific new laws, and by incorporation of relevant standards into pre-existing legislation. A large number of statutes (Criminal Offences Act, Criminal Procedure Act, Sexual Offences Act, Evidence Act, etc) will be affected, as well as extradition or mutual legal assistance agreements.
12. During a brainstorming session led by Mr Rupert Skilbeck, participants discussed how best to define torture and distinguish it from cruel, inhuman or degrading treatment or punishment. It is important to establish that the prohibition of torture is absolute, and to set torture as a specific offence.
13. The issue of the threshold of suffering was raised. It has not been decided by UNCAT and therefore is left – to an extent – to the discretion of the States, and the discretion of judges, based on all of the circumstances of each case. Participants asked about whether acts committed by non-State actors could be characterised as “torture”. They supported the application of the principle of due diligence of States in the context of acts of torture committed by private actors, and the extension of liability for acts of torture to non-State actors.
14. Participants raised a question on the tension between the obligation to prosecute acts of torture and the need to protect a person in the performance of his or her official duties through immunities from prosecution, particularly in the context of changes in political majorities. It is clear, however, that the position of international law in this regard on the non-derogable nature of the prohibition of torture justifies discarding immunities in the face of allegations of torture.³ Similarly, a superior order cannot be used as a defence against torture allegations.
15. Reparations were also discussed. They are not limited to damages and financial interests. The possibility of filing a complaint and obtaining a decision recognising the harm, the acts of torture and the responsibility of the

³ United Nations Committee Against Torture, *General Comment No. 3*, 13 December 2012, para. 38.

perpetrators are in themselves measures of satisfaction that form part of reparations, as are public apologies and guarantees of non-repetition. Collective and symbolic reparations were also addressed.

Principles and Techniques of Legislative Drafting

16. Ms Olive Zaale Otete, a Legislative Drafting Consultant from Uganda, explained the procedures, principles and techniques of good legislative drafting. She emphasised that legislative drafting is a form of communication of a policy intent, which, in the context of the prohibition of torture and ill-treatment, requires transposition of the UNCAT's legislative provisions into domestic legislation. It also means identifying the needs and pitfalls of existing legislation, and the type of legislation required. This entails identifying the object and purpose (intention) of the proposed law or amendments, communicated in a way that makes the rules easily implementable.
17. Some more specific legislative drafting techniques mentioned were:
 - One sentence per single legislative idea, using simple and practical words. Avoid archaic or Latin expressions except where necessary;
 - A preference for short sentences over long-winding ones;
 - Keep the number of sub-sections few and use clearly numbered sub-sections and sub-paragraphs;
 - A preference for positive over negative statements and using active over passive voice.
18. Ms Ruth Ssekindi, Director for Monitoring and Inspections, Uganda Human Rights Commission, then moderated a discussion amongst the experts and participants, in which it was observed that:
 - Having a constitutional prohibition against torture and ill-treatment is not sufficient to cover the scope of State obligations under UNCAT.
 - In implementing UNCAT, an array of domestic statutes and acts – covering e.g. criminal law, criminal procedure, police and military regulations, extradition and immigration laws, etc. – may need to be reviewed and amended.
 - Including a specific offence of 'torture', which contains the constitutive elements of the definition provided for in Article 1 of UNCAT. Explicitly incorporating both physical and mental harm would be expected. There was general agreement that providing for an offence of aggravated assault in criminal legislation was insufficient to capture the seriousness of the crime of torture.
 - An advantage of common law jurisdictions is that the courts play a very useful role in interpreting and applying the definitions of torture and ill-treatment.
 - Beyond laws, policies, practices and manuals may also have to be changed in order to bring a domestic system in line with UNCAT.

Models of anti-torture legislation

19. Two models of legislation – *i.e.*, stand-alone law or integration into existing criminal laws – were discussed. The advantages and disadvantages of both models were identified by the participants. In both cases, the legislative drafter must apply the fundamental principles of good legislative drafting: clarity, precision and consistency. Legislative provisions must present the concepts in a relevant and gender-neutral manner, implementing the underlying policy, responding to specific needs and communicating the policy and its effects to the public. Participants saw the advantages of stand-alone legislation, for clarity, ease of reference and advocacy purposes. This should be combined with a strong review of other laws to avoid conflicting norms.
20. Participants and experts stressed the importance of a preliminary screening of existing legislation in all aspects of an issue that is the subject of a new law or a legislative amendment. Indeed, in order to avoid internal contradictions of laws, it is essential, before undertaking a legislative reform on combating torture, to identify all existing texts relevant to the integration of the Convention and other regional and international texts into domestic law. The obligations relating to combating torture fall within several areas of legislation, which it is important to reform in order to bring it into line with international and regional texts. Participants were referred to the [APT-CTI Guide on anti-torture legislation](#), as it identifies the main legislative provisions in UNCAT and has a check-list where government officials can catalogue their own country's existing legislative framework.
21. Participants also raised that the political climate was important in starting a process of implementation, as a bill would have to be discussed in Parliament and may face opposition. In this regard, it was noted that stakeholder consultations are key.
22. Participants turned to the strengths and weaknesses of their domestic anti-torture frameworks. Antigua and Barbuda was the only country present which had a specific anti-torture statute. The others had, for the most part, a general constitutional prohibition of torture and other provisions scattered in various statutes. The importance of criminalising cruel, inhuman or degrading treatment or punishment was also raised.
23. Some participants underscored that while they did not have such comprehensive statutes, the domestic apparatus contained strong guarantees, for instance in relation to disciplinary procedures and guidelines governing the conduct of arrests, use of force and the prohibition of superior orders, as well as penal laws that could be used to circumvent the lack of such legislation. Others highlighted that witnesses of torture had the possibility of testifying via videoconference with protective measures.
24. Representatives also highlighted some shortcomings, such as: the need for the consent of the Director of Public Prosecutions before an investigation into torture allegations can be launched; the lack of a judicial avenues in cases of police abuse; and the absence of some jurisdictional grounds (such as extraterritorial jurisdiction). Some extradition acts contain a provision excluding extradition where torture is likely. The importance of having an evidence act containing an exclusionary rule to dismiss evidence obtained through the use of torture was also recognised. Other issues such as

immunities and complaints were also touched upon as being problematic in some instances.

25. Participants identified and suggested priorities for legislative reform in their respective countries, including increasing awareness-raising and training about the definition of torture; and reviewing the exercise of criminal jurisdiction for acts of torture to ensure it has extraterritorial effect and specifically provide for universal jurisdiction.

Sharing Experiences of Ratifying UNCAT for UNCAT non-States-Parties: Developing arguments for the Cabinet submission

26. Ms Jewel Major, Chief Counsel at the Office of the Attorney-General and Ministry of Legal Affairs, was the invited speaker and shared the experience of the Commonwealth of the Bahamas in ratifying UNCAT. She described the preliminary research on the Bahamas' legislation which was carried out in view of her participation in a CTI seminar; the consultations which were held ahead of ratification, the drafting of an opinion for the Attorney General and the tools that were used to help this process, encouraging participants to use the [CTI Ratification Tool](#). She highlighted the technical assistance provided by external organisations, such as CTI. On the basis of all these elements and consultations, a Cabinet paper was prepared. She emphasised the importance of such a paper being plain and simple, to make the process and obligations under UNCAT understandable to the readers.
27. H.E. Ramses Joseph Cleland, Ambassador and Permanent Representative of Ghana to the UN in Geneva, described the benefits of ratifying UNCAT for his country, Ghana. In Ghana, ratification of UNCAT triggered major changes in the professionalisation of the police, an efficient justice delivery system, and reforms in the prison sector. He also highlighted that a working group had been established specifically for reporting to CAT.
28. Dr. Alice Edwards, Head of CTI Secretariat, presented on the technical aspects of ratification/accession, including reservations and declarations. On reservations, she noted that most countries had not entered reservations. Of countries that had entered reservations, the most common permitted reservations were to Article 20 on confidential inquiry of the CAT for systematic allegations of torture, and Article 30(1) on the jurisdiction of the International Court of Justice.
29. During the exchanges between representative and experts, some representatives shared that reform processes had already begun even prior to ratification. It was stressed that UNCAT ratification does not require prior implementation and that the implementation process is an incremental one, after ratification.
30. Representatives reflected on what was needed by their respective domestic legislation for the ratification process. They also identified the different elements to be included in a Cabinet paper, and possible obstacles to completing this process. For instance, political willingness was raised as a potential issue, and the need for consultations and awareness-raising within government and beyond. In some countries, further advocacy is needed with members of Parliament as ratification/accession is subject to parliamentary approval. Clarification on a range of issues – such that the death penalty is not a barrier to ratification/accession – would also be needed.

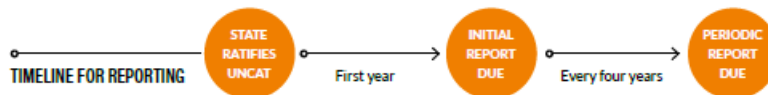
31. The participants then engaged in a drafting exercise for Cabinet papers for UNCAT ratification. It was emphasised that Cabinet submissions need to be tailored to the particular Attorney General, if the country does not have clear guidelines on Cabinet submission requirements. They should be as short as possible and highlight only the most relevant points, such as a short summary of the purpose of UNCAT, the status of global and regional ratification so the Government can understand what like-minded countries are doing, and the financial and other considerations such as legislative changes should they ratify/accede to the Convention. Annexes to the Cabinet submission, where additional details could be provided, are possible.

Reporting to CAT

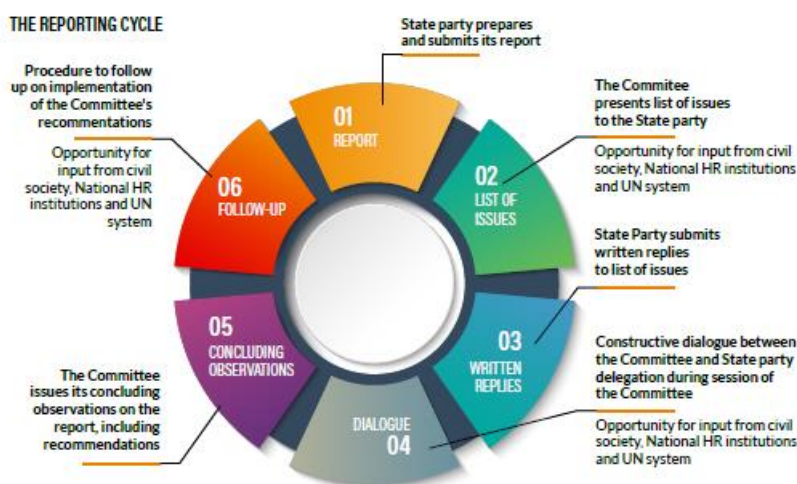
32. Ms Michelle Brathwaite, National Human Rights Adviser at the Resident Coordinator's Office for Barbados and the OECS, OHCHR, presented the treaty body (TB) reporting procedures and requirements with focus on CAT. She recognised that reporting can be perceived by States as a burden, particularly to Small Island Developing States (SIDS), especially given the large number of international and/or regional human rights treaties and the associated reporting requirements.
33. That said, the benefits of reporting were underscored: enabling the State party to access advice from a body of experts, enhance good practices and catalyse needed reform, raise awareness among authorities and the population alike, and provide authoritative guidance on international cooperation.
34. There are a number of strategies and mechanisms that States can use to streamline and ease their reporting burden, including:
 - Making use of the 'simplified reporting procedure' offered by TBs, which allows States to provide answers to a List of Issues Prior to Reporting (LOIPR) sent by the relevant Committee and those answers then constitute the State party's report.
 - Setting up a coordinated mechanisms to perform the task of reporting (also known as National Mechanism for Reporting, Implementation and Follow-up (NMRIF)). Ideally, this mechanism would be an interministerial body composed of members with a strong understanding of human rights and international obligations and from relevant ministries and departments. They should have the power to follow-up on the implementation of recommendations. In the Caribbean, The Bahamas and Jamaica have established an inter-ministerial mechanism.
 - Making use of information included in previous reports submitted as part of the UN Human Rights Council's Universal Periodic Review (UPR);
 - Looking at the Concluding Observations that other TBs have issued to your country, or to similar countries under review;
35. Using the OHCHR's National Recommendations Tracking Database, which can assist countries with reporting and data collection, monitoring and tracking the implementation of recommendations received from UN human rights mechanisms, including the UPR, TBs and Special Procedures. The reporting procedure of the CAT, a committee composed of 10 independent experts on

UNCAT, was explained. The process consists of the review of periodic reports on the status of implementation in the country. CAT issues concluding observations containing recommendations on what can be done to achieve fuller implementation.

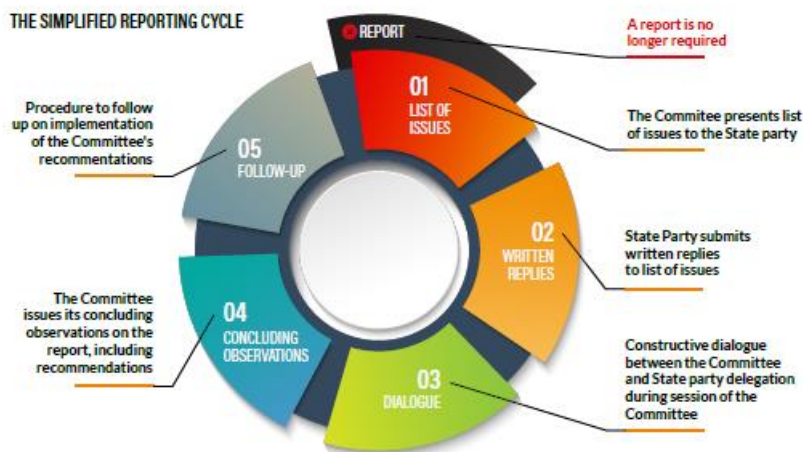
Reporting timeline



Standard reporting cycle



Simplified reporting cycle



Source: CTI UNCAT Implementation Tool 3/2017 on Reporting to the UN Committee against Torture, available at: https://cti2024.org/content/docs/CTI-Reporting_UNCAT_final.pdf.

36. The type of information which should be contained in a report to CAT, including the type of data to be submitted and relied on for each UNCAT obligation.
37. Beyond the mechanism tasked with coordinating the reporting process, each government department should be actively supporting the process of

researching, and that the views of civil society actors should be sought. It was recommended to set up a dedicated drafting group at the working level.

38. In subsequent discussions, some representatives gave updates on their reporting status. A question was raised about the reporting mechanism's structure. It was underscored that there is no one-size-fits-all regarding structure. Some countries decided to have the same body report to similar treaties and other countries chose to have different reporting structures for each treaty. Some countries went for a single body to report to all treaty bodies. In many cases, while all participants may be similar in the reporting body, it is usual to designate a 'lead agency' or ministry on specific treaties. For CAT, it could be logical that the lead agency or ministry would be the Ministry of Justice or Home Affairs, or other equivalent. A representative highlighted that the process of requesting input from various ministry offices could be a lengthy and difficult one. This is the reason why coordination amongst bodies is key.

Strategy and Next Steps

39. In a final session, representatives were asked to highlight some key take-aways from the workshop, and what could be the next steps for their own country, both in terms of strategy and potential assistance.
40. Some of the key take-away lessons included:
- The benefits of ratification and implementation for a country;
 - the fact that implementation is not required *prior* to ratifying UNCAT;
 - the need for broad stakeholder consultation and review prior to UNCAT ratification and implementation;
 - the fact that implementation goes beyond passing legislation, and involves enhancing best practices, including amongst law enforcement agents;
 - the importance of involving civil society actors in the reporting process.
41. Country representatives suggested and requested capacity-building and technical support and assistance in pursuing the following steps:
- Bringing the take-aways from the workshop to the relevant authorities through a mission report, with recommendations towards ratification and/or implementation of UNCAT and/or proposed reforms;
 - Reviewing the conformity of national legislation with UNCAT obligations. This review, based on the information provided during the seminar, the advice and the country notes, has become possible in the participating countries. It will include various stakeholders and will pave the way towards a global reform enabling the complete integration and implementation of UNCAT obligations;
 - Replicating trainings at the national level, in particular for legislative drafters, relevant Ministry officials (Justice, Legal Affairs and Attorney-General's offices), police and law enforcement officers, judges and prosecutors, and bar associations in order to sensitise them to their international obligations under UNCAT and to achieve the necessary buy-in towards UNCAT ratification and implementation; ; and

- Establishing inter-ministerial committees as National Mechanisms for Implementation, Reporting and Follow-up and using data collection tools such as the OHCHR National Recommendations Tracking Database Tool, which can assist countries in preparing reports to UN human rights treaty bodies, human rights regional bodies and reporting on the SDGs, and tracking implementation progress.

Conclusion

42. H.E. Ramses Joseph Cleland, Ambassador and Permanent Representative of Ghana to the UN in Geneva, and H.E. Frank Tressler, Ambassador and Permanent Representative of Chile to the UN in Geneva, jointly concluded the workshop. Ambassador Cleland shared once more how beneficial ratifying UNCAT was to Ghana. He also stated that through CTI Ghana could extend assistance for ratification to other countries. Ambassador Tressler highlighted that he was encouraged by the recent moves towards ratification of UNCAT among the Caribbean countries. He also reminded of the benefits of UNCAT ratification for Chile, and extended an offer for advice and assistance to other countries.