

UNCAT Implementation Tool 6/2019

COOPERATION ON EXTRADITION

The UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) enables and facilitates cooperation among States parties on extraditing those suspected of or responsible for offences of torture. This cooperation framework fulfills the general pledge of all UN Member States, under Articles 1(3), 55 and 56 of the UN Charter, to take joint action to advance human rights.

By adopting and giving effect to UNCAT's "extradition framework", States can secure the lawful surrender and transfer of people suspected of or responsible for offences of torture. This framework has been set up in pursuit of the shared goals of UNCAT States parties of ending impunity by bringing perpetrators of such serious crimes to justice and eliminating safe havens for criminals. While there remain challenges in realising extradition for offences of torture, the Convention offers much to States parties to facilitate such processes.

Thanks to UNCAT's extradition provisions, States parties are able to enlist each other's support in countering torture, and strengthening mutual assistance and cooperation in criminal law enforcement matters. The framework established under UNCAT also generates goodwill, and builds stronger bilateral and multilateral relations between States.

This tool outlines the different elements of UNCAT's extradition framework and, with a view to inspiring cooperation in extradition matters related to UNCAT, shares examples of States' treaties, laws, policies, procedures and practices that give effect to UNCAT's extradition-related provisions.

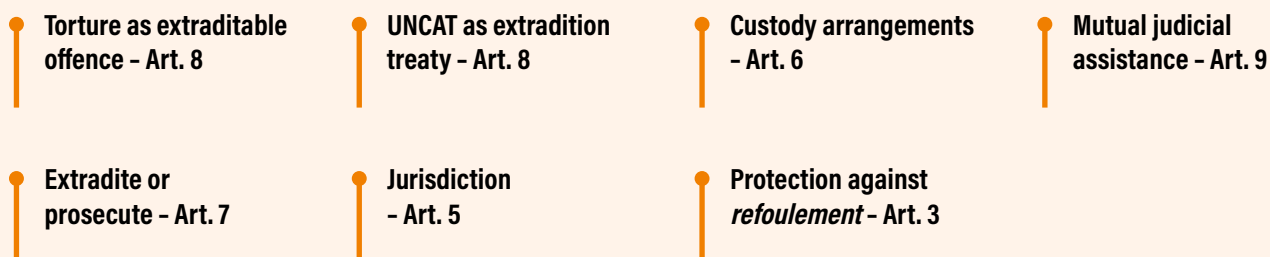
Offences of torture include all acts of torture or omissions, attempts, complicity, participation — such as aiding and abetting — conspiracy, instigation, incitement, as well as acts by public officials or other persons acting in an official capacity who consent to or acquiesce in torture (Articles 1 and 4, UNCAT).

Extradition is a lawful procedure by which States cooperate with one another in criminal matters, regulating the formal surrender of suspects and convicted persons from one jurisdiction to another with a view to their prosecution or serving sentences of imprisonment for prior convictions.



The CTI '[UNCAT Implementation Tools](#)' are a series of practical tools designed to share good practices among States on the implementation of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT). They offer thematic guidance and ideas for State practitioners and policymakers as they develop or revise context-specific strategies, mechanisms and procedures to prevent torture and other forms of ill-treatment or punishment, and provide remedies for victims.

THE UNCAT EXTRADITION FRAMEWORK



UNCAT's extradition framework provides for a bespoke approach to enabling States parties to facilitate the extradition of individuals for offences of torture, comprised of the following elements:

- Offences of torture are to be explicitly included as extraditable offences – or deemed to be so – in any extradition treaty to be concluded between States parties (Art. 8.1).
- If they are not included in an extradition treaty already existing between them, States parties are to treat offences of torture as extraditable offences (Art. 8.1).
- Where no extradition treaty exists between the States parties in question, they may consider the Convention as the legal basis for extradition in respect of such offences (Art. 8.2).
- Domestic laws to be amended to include offences of torture as extraditable offences (Art. 8(3)).
- Custody arrangements to be in place for suspects (Art. 6.1), with access to consular assistance provided (Art. 6.3) and other concerned States to be notified (Art. 6.4).
- States parties shall afford one another the greatest measure of assistance in connection with criminal proceedings, including the supply of all relevant evidence at their disposal necessary for such proceedings (Arts. 9.1; 15). They are to respect any treaties on mutual judicial assistance existing between them (Art. 9.2).
- UNCAT clarifies that when a State party is not able to extradite individuals suspected of torture offences who are on its territory, it should submit these cases to its competent authorities for prosecution (Art. 7.1).
- In line with the drafters' shared goals to prohibit and respond to torture everywhere, States parties are to exercise the widest possible jurisdiction over offences of torture (Art.5).
- No Person shall be extradited to another State where they would face a real risk of torture or other forms of ill-treatment or punishment (Art. 3).

Extradition via treaty

The most common way in which persons are extradited is through specific bilateral or multilateral extradition treaties or other agreements that make provision for extradition.



Economic Community of West African States Convention on Extradition

While torture is not expressly mentioned, the provisions of the Economic Community of West African States (ECOWAS) Convention on Extradition enable States parties to extradite those on their territory who are wanted for prosecution for the crime of torture or for the purposes of their serving a sentence of imprisonment for the same (Art. 2).



Geneva Conventions of 1949: High Contracting Parties may extradite suspects

The Geneva Conventions (GC) require High Contracting Parties to search for and prosecute persons alleged to have committed or ordered the commission of any grave breaches of the Conventions, and also allow for such persons to be extradited (“handed over”) for trial to another High Contracting Party if a “prima facie case” has been presented (Art. 49, GC (I); Art. 50, GC (II); Art. 129, GC (III); Art. 146, GC (IV)). Grave breaches expressly include torture or inhuman treatment, including biological experiments.



Inter-American Convention to Prevent and Punish Torture: a regional, multilateral treaty enables States to cooperate in torture-related extradition matters

Similar to UNCAT, States parties to the Inter-American Convention to Prevent and Punish Torture are to “take the necessary steps to extradite anyone accused of having committed the crime of torture or sentenced for commission of that crime, in accordance with their respective national laws on extradition and their international commitments on this matter” (Art. 11). In addition, torture is to be considered among the extraditable crimes in every extradition treaty between States parties; the crime of torture is to be included as an extraditable offence in every extradition treaty to be concluded between them; and the Convention itself, in the absence of an extradition treaty, may be considered as the legal basis for extradition in respect of torture (Art. 13).



United States of America and six Members of the Organisation of Eastern Caribbean States (OECS): bilateral extradition treaties



The United States of America has signed [extradition treaties](#) with six OECS countries, namely Antigua and Barbuda, Dominica, Grenada, St Lucia, St Kitts and Nevis, and St Vincent and the Grenadines in identical terms. While they do not mention the crime of torture explicitly, they keep the types of offences subject to extradition open-ended and broad, and they exclude extradition for prosecution of “political offences”.

UNCAT as an extradition treaty



Albania: Constitution allows UNCAT as basis for extradition

In Albania, Article 39 of the Constitution of 1998 states that, “[e]xtradition may be permitted only when it is expressly provided in international agreements, to which the Republic of Albania is a party”, and Article 122 clarifies that such agreements take precedence over domestic legislation, thus permitting the use of UNCAT as the legal basis for offences of torture.



Maldives: UNCAT as extradition basis in the absence of an extradition agreement

In the Maldives, the Prohibition and Prevention of Torture Act of 2013 stipulates that the crime of torture should be included in extradition agreements. If there is no extradition agreement, the Convention serves as a basis for extradition between two State parties.

Torture as an extraditable offence: Legislative provisions

Consistent with UNCAT, many States parties have amended or adopted national legislation dealing with specific areas to make offences of torture extraditable offences, including national anti-torture legislation.



Ireland: Extradition legislation amended to ensure compliance with UNCAT

In Ireland, the Criminal Justice (United Nations Convention Against Torture) Act 2000 (No. 11 of 2000), amended the Extradition Act of 1965 to give effect to UNCAT, including by recognising torture and “related offences” as extraditable offences.



Mongolia: Criminal Code permits extradition of foreign nationals based on international agreements

While prohibiting the extradition of Mongolian citizens, Article 15 of the Criminal Code of Mongolia allows the extradition of foreign nationals and stateless persons who committed crimes beyond the territory of Mongolia and are within the territory of Mongolia for the purposes of prosecution or to serve a sentence in compliance with “an international agreement to which Mongolia is a party”.



New Zealand: Anti-torture legislation makes torture an extraditable offence

In New Zealand, the Crimes of Torture Act 1989 “deems” the enumerated crimes of torture as extraditable if not included in existing extradition treaties.



Sri Lanka: Anti-torture law amends extradition legislation making torture an extraditable offence

Sri Lanka's Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment Act of 1994 provides that if no extradition treaty exists, UNCAT shall be treated as an extradition arrangement, including for offences of attempting to commit, aiding and abetting the commission of, or conspiring to commit, the offence of torture as defined in the UN Convention.



Uganda: Anti-torture legislation makes torture an extraditable offence

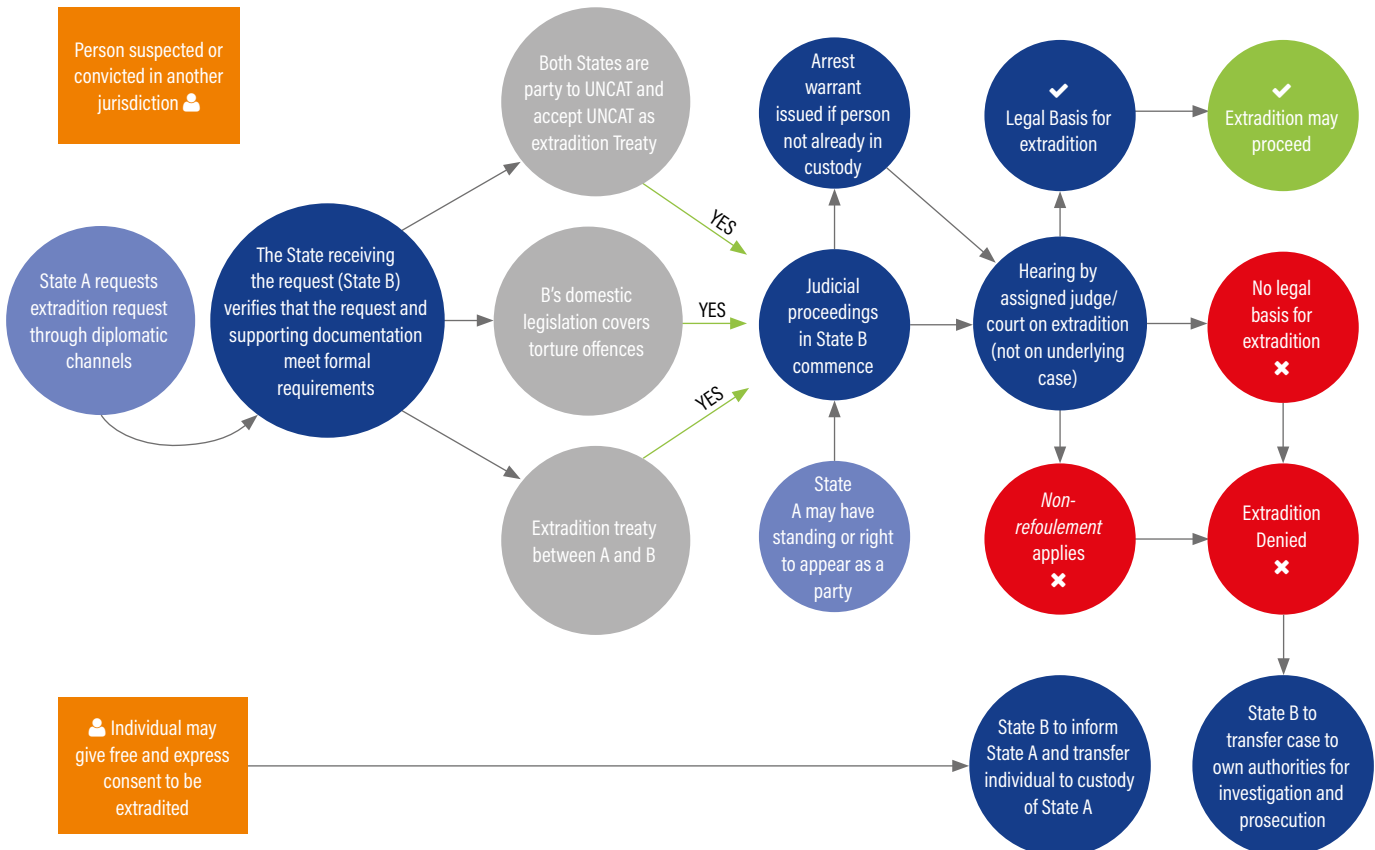
The Prevention and Prohibition of Torture Act of Uganda of 2012 provides that "torture is an extraditable offence".

Extradition processes

See a flowchart of the extradition process

EXTRADITION FLOWCHART

suspect/criminal ●
 State A - requesting State ●
 State B - receiving State ●





Argentina: Clear guidelines on extradition process with judicial review

Argentina's extradition process is regulated by Law on International Cooperation in Criminal Matters, Law 24.767, of 1996, which provides that an extradition request can be submitted through Interpol (International Police Organization), or through the Argentine Foreign Officer. The [process](#) provides for provisional arrest, judicial review and oversight.



Australia: Special authority for extradition

The International Crime Cooperation Central Authority of Australia's Attorney-General's Department (federal) is the designated central authority dealing with extradition requests, charged with ensuring that criminals cannot evade justice by crossing borders. Australia has "extradition relationships" with 148 countries worldwide, which are [publicly listed](#).

Custody arrangements



Eswatini (formerly Swaziland): Constitution empowers Courts to direct freedom of movement restrictions in response to extradition request

Article 26(3)(c) of the Constitution Act No. 001 of 26 July 2005 (Act No: 001 of 2005), enshrining the protection of freedom of movement, empowers the Courts to order restrictions on people's freedom of movement in connection with ensuring their appearance before a court in the context of proceedings relating to their extradition from the country.



Fiji: Extradition legislation provides for powers of arrest in response to an extradition request

Section 7(1) of the Fiji Island Extradition Act 2003 provides for the issue of provisional arrest warrants in connection with an extradition request.



Lesotho: Constitutional provision protecting right to liberty provides exception in extradition context

Article 6 of the Constitution of Lesotho of 1993, enshrining the right to personal liberty, provides powers of arrest or detention for the purpose of effecting extradition.



United States of America: Federal legislation authorises detention in cases of extradition

US Federal law authorises officers to take suspected offenders into custody, and hold them until extradition proceedings have begun, as a way of ensuring the suspects' presence, consistent with Article 6(1) UNCAT. Ordinarily, the apprehension and detention of a person suspected of having committed acts of torture for the purposes of extradition requires issuance of an arrest warrant by a federal district court judge or magistrate judge. In certain circumstances (e.g., when a suspect is identified trying to enter or leave the country at a port of entry), an arrest may be made without a warrant, and the suspect detained in accordance with normal procedure. Ordinary rules of consular notification apply, consistent with Article 6(3) UNCAT.

Consular access

Article 6(3) UNCAT guarantees to foreign nationals held in detention and facing extradition the right to immediate assistance to communicate, if they so wish, with their embassy or consular post or, if they are stateless, with representatives of the State where they usually reside. For asylum-seekers, refugees and stateless persons who are not able nor wish to seek consular assistance, it has been found useful to include specific provisions within national legislation or regulations granting officials of the Office of UN High Commissioner for Refugees – tasked with an international protection mandate for asylum-seekers, refugees and stateless persons – access to persons in detention at risk (see also “Safeguards against *refoulement*” below).



Vienna Convention on Consular Relations 1963

Consistent with Article 36 of the Vienna Convention on Consular Relations, Article 6(3) UNCAT requires foreign nationals detained pending extradition to be able to communicate immediately with representatives of their State of nationality.

Safeguards against *refoulement*

As extradition requests may raise *refoulement* considerations, many States have expressly legislated to prohibit extradition in such circumstances, or have incorporated clauses in bilateral or multilateral extradition treaties and agreements to comply with Article 3 UNCAT or other international obligations. Where there is a conflict between extradition obligations and protection against *refoulement* under UNCAT, the principle of *non-refoulement* prevails as an absolute bar on extradition. In such circumstances, and if the evidence so warrants, the State party where the person alleged to have committed offences of torture is present shall submit the case to its competent authorities for the purpose of prosecution (Art. 7(1) UNCAT, see below).

Article 3 (1), UNCAT

No State Party shall expel, return (“refouler”) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.”



European Convention on Extradition: a regional, multilateral extradition treaty provides protection on *refoulement* grounds

Article 3 of the European Convention on Extradition provides protection against extradition on broad *refoulement* grounds if there are “substantial grounds for believing that a request for extradition for an ordinary criminal offence has been made for the purpose of prosecuting or punishing a person on account of his race, religion, nationality or political opinion, or that that person’s position may be prejudiced for any of these reasons.”



Mozambique: constitutional protection

Article 67(3) of the Constitution of Mozambique of 2004 expressly bars extradition “when there are grounds to believe that the extradited person may be subjected to torture or inhumane, degrading or cruel treatment.”



Namibia: extradition legislation prohibits *refoulement*

The Extradition Act of 1996 prohibits the return of a person to a State where that individual would be at risk of being subjected to the death penalty, torture or inhuman or degrading treatment. The Act likewise specifically prohibits *refoulement* if it would be in conflict with Namibia’s obligations under any international instrument.



Poland: penal procedure code protects against *refoulement* in the extradition context

The Code of Penal Procedure 1997 bars extradition when there is a reasonable suspicion that the State seeking extradition could subject the person to be surrendered to torture.



Tunisia: anti-terrorism law provides *refoulement* protection in the extradition context

Article 88 of the Law No. 26 of 2015 provides, “extradition shall not be granted if there are real grounds to believe that the person who is the subject of the extradition request risks being tortured or that the extradition request is intended to prosecute or punish a person because of the person’s race, colour, origin, religion, sex, nationality or political ideas.”

Judicial review

Many countries include robust judicial checks on extradition requests, with the courts determining whether an extradition request can proceed. The courts are also involved in determining whether the requested individual will be provisionally arrested or detained.



Georgia: Constitution provides a right to appeal extradition decisions before the Courts

Article 13(4) of the Constitution of Georgia of 1995 provides that, “A decision on extradition may be appealed in court.” Upon receiving a request for extradition fulfilling all legal requirements, the Office of the Chief Prosecutor within the Ministry of Justice files a motion for extradition before a first instance court. The first instance court’s decision may be appealed before the Supreme Court of Georgia, whose decision, in turn, is final. If the extradition is found inadmissible by the courts, the Minister of Justice issues an order and denies the extradition.



Japan: Tokyo High Court to decide on extradition of detained persons

In Japan, under the Act of Extradition (Law No. 68 of 1953), bar certain circumstances, the Minister of Justice forwards the extradition request to the Superintendent Prosecutor of Tokyo High Prosecutors Office where a prosecutor applies to the Tokyo High Court for an examination of whether the case is extraditable. When necessary, prior to the application, the prosecutor may detain the individual concerned by obtaining a detention permit from a judge of the Tokyo High Court. The Tokyo High Court promptly starts the examination and makes a decision on whether the case is extraditable. If the person is in custody, the High Court makes a decision within two months since the start of detention.



Madagascar: judicial review of extradition decisions

Article 19 of the National Law against Torture (Loi N°2008-008 du 25 juin 2008 contre la torture et autres peines ou traitements cruels, inhumains ou dégradants) stipulates that no person shall be extradited by the Malagasy authorities to a State where he or she is at risk of being subjected to torture. Any extradition decision taken by the Minister of Justice is preceded by a judicial review conducted by the Court of Appeal, which includes consideration of the compliance of any prospective extradition with Madagascar’s obligations under international instruments.



Malta: Constitution provides that extradition must be ordered by the judiciary

The Constitution of Malta of 1964 provides that extradition shall be ordered by a judicial authority.



Timor-Leste: Constitution allows for extradition only after court decision

Section 35(1) of the Constitution of the Democratic Republic of Timor-Leste of 2002 provides that, “[e]xtradition shall only take place following a court decision.”

Extradite or prosecute

“ [T]he Convention imposes an obligation [on a State Party] to bring to trial a person, alleged to have committed torture, who is found in its territory” where they cannot be extradited, in order to try to prevent impunity for torture.

Marcos Roitman Rosenmann v. Spain, Committee against Torture, No. 176/2000, para. 6.7, concerning Spain's 1998 request to the United Kingdom for the extradition of General Augusto Pinochet Ugarte of Chile, to put him on trial for acts of torture committed against Spanish nationals in Chile during 1973-1990.

While Art. 7(1) UNCAT does not establish an obligation to extradite over prosecute, or to prosecute over extradite, the choice between prosecuting and extraditing only exists when an extradition request has been made, and when extraditing would be permissible under international law. Where, instead, extradition cannot take place – for example because there is no legal basis for it (e.g., no treaty, or the State does not accept UNCAT as the legal basis), or because of *refoulement* considerations (see “Safeguards against *refoulement*” above) would prevent it – the State party has an obligation to submit the case to the competent authorities for the purposes of prosecution (Art. 7.1). This is the customary international law principle of *aut dedere aut judicare* (extradite or prosecute). In such circumstances, the State party shall take such necessary measures to establish jurisdiction for offences of torture (Art. 5.2).

While prosecuting individuals for such crimes committed elsewhere may raise a number of challenges, including evidence collection, as of 2017, 14 countries had, for example, set up specialized war crimes units to investigate, prosecute and bring to justice suspects for the most serious crimes, including torture.¹

Belgium v. Senegal – In its 2012 judgment concerning the case of Hissène Habré, Chad's former President, for certain crimes including torture, the International Court of Justice observed that, if the State where the suspect is present receives an extradition request, then granting extradition may relieve it of its obligation to prosecute. On the other hand, a State has an international obligation to submit a case to its competent authorities for a decision, should it not extradite. [Questions relating to the Obligation to Prosecute or Extradite \(Belgium v. Senegal\)](#)



Denmark: State Prosecutor for Serious Economic and International Crimes

In Denmark, the State Prosecutor for Serious Economic and International Crime was set up to handle, among other things, serious crimes, primarily genocide, crimes against humanity and war crimes committed abroad, for which investigations and criminal prosecutions require “special knowledge and insight into conditions in areas outside Denmark, and the establishment of collaboration with authorities, institutions, organisations, etc., in other countries”.

¹ Fair Trials and REDRESS, [Make Way for Justice #4](#), report on cases in process under universal jurisdiction, 2018: Information from this report is dated for 2017. Of the 126 cases documented in the report, there were 55 charges of torture.



Germany: Central Unit for the Fight against War Crimes and further Offences

Set up in 2003, the Central Unit for the Fight against War Crimes and further Offences (ZBKV is its acronym in German) today is an independent unit within the Federal Criminal Police dealing with an ever-increasing workload. Between 2013 and 2015 alone, the number of leads increased by 8,500 percent, according to official records of the German parliament. The unit deals with the prosecution of crimes under international law such as genocide, crimes against humanity and war crimes committed anywhere in the world as German law does not require a connection with Germany.



Kenya: Anti-torture legislation provides for prosecution in lieu of extradition

Section 21 of Kenya's Prevention of Torture Act, 2017 not only makes torture an extraditable offence, it also provides that "Where a person is not extradited [...], the person shall be prosecuted in Kenya."



Luxembourg: Criminal Procedure Code provides for extradition or prosecution

Luxembourg's Criminal Procedure Code provides that authorities must either extradite or prosecute an alleged perpetrator of torture.

COOPERATING ON EXTRADITION: THINGS TO CONSIDER



States may consider carrying out a study of relevant existing laws – including those criminalizing torture and other ill-treatment, if such laws exist, and extradition laws for the purpose of ensuring that the national legal framework is capable of meeting UNCAT's obligations to extradite or prosecute alleged perpetrators who are found in the State's territory or under its jurisdiction. They may also consider reviewing their past extradition practice, if any, in relation to offences of torture with a view to ascertaining its consistency with UNCAT's extradition framework. Legislative amendments may be necessary to put in place UNCAT's extradition framework. Such revisions could include the following legal texts: Constitution; penal code; criminal procedure code and civil code of procedure; police legislation; prison legislation; extradition legislation; and extradition treaties and arrangements.

In their review of law and practice, States may consider seeking answers to the following questions.

1.

Are offences of torture (as detailed in Articles 1 and 4, UNCAT) legislated as domestic criminal offences? Are they extraditable offences under domestic law?

2.

If there is a stand-alone anti-torture law, does it need to be amended to ensure that offences of torture are both criminal and extraditable offences under domestic law, consistent with UNCAT?

3.

Does the State have a domestic extradition framework? If so, does it comply with UNCAT? If not, what legislative, administrative, judicial and other measures may be required to bring it into compliance with UNCAT?

4.

Are there other laws, such as extradition laws, criminal procedures codes, penal codes, that may need adjustment to reflect both the domestic criminalisation of offences of torture and their being extraditable offences domestically?

5.

Are any modifications required to the existing domestic legislative, regulatory and procedural frameworks governing extradition requests to ensure that in case of a conflict arising between the prohibition against *refoulement* under UNCAT and States parties' obligations pursuant to a multilateral or bilateral extradition treaties or agreements, the former will prevail?

6.

In addition to compliance with the *non-refoulement* principle, what else needs to be in place domestically for extradition to be permissible under existing bilateral and multilateral extradition treaties and agreements that each State may have and under international law, consistent with UNCAT?

7.

What practical obstacles, barriers, challenges may the authorities face in complying with or requesting extradition in respect of offences of torture, whether committed within their territorial jurisdiction or extraterritorially? Whether or not the perpetrators or the victims were nationals of the State?

8.

What, if anything needs to be in place to ensure that mutual assistance requests may be considered/extended/be responded to?

9.

What else needs to be in place for extradition requests for offences of torture to be receivable within the domestic legal order, and for such requests to be acted upon effectively?

10.

What other measures, if any, should be considered in practice to enable to authorities to request the extradition of people suspected of or responsible for offences of torture?

Additional resources

- UN [Model Treaty on Extradition](#)
- International Committee of the Red Cross, [Cooperation in extradition and judicial assistance in criminal matters](#), 2014
- [UN Model Treaty on Mutual Legal Assistance in Criminal Matters](#), 1990, amended 1999



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