

**STATE OBLIGATIONS UNDER THE UNITED NATIONS CONVENTION
AGAINST TORTURE (UNCAT): THE CONVERGENCE AND DISAGREEMENTS**

BY

UMAR ISA SULAIMAN ESQ*.

ABSTRACT

The UNCAT stands as the pre-eminent international legal instrument dedicated to the absolute prohibition of torture and the imposition of comprehensive obligations upon States Parties. Adopted by the United Nations General Assembly in 1984 and entering into force in 1987, the Convention has garnered near-universal ratification, with 173 States Parties as of June 2024. This paper undertakes a rigorous doctrinal and analytical examination of the convergence and disagreements surrounding State obligations under UNCAT. While there exists broad agreement on foundational obligations (namely the absolute and non-derogable prohibition of torture, the principle of non-refoulement, the duty to criminalize torture, and the obligation to provide redress to victims) significant areas of divergence persist. These disagreements encompass the scope of extraterritorial application, the use of diplomatic assurances in refoulement proceedings, the definition and threshold of torture versus cruel, inhuman or degrading treatment, the obligations of States in counter-terrorism contexts, and the adequacy of preventive mechanisms. Drawing upon the Committee against Torture's General Comments, recent concluding observations, comparative jurisprudence from regional human rights courts, and State practice from 2021 to 2026, this paper argues that while UNCAT has achieved remarkable normative convergence in establishing the architecture of torture prevention, persistent disagreements reflect deeper tensions between sovereignty and human rights, security and liberty, and universalism and cultural relativism. The paper made some recommendations requiring strengthening compliance through enhanced treaty body resourcing, universal ratification of the Optional Protocol, and the development of clearer interpretive guidance on contested obligations. The paper concludes that the Convention has established a robust normative architecture for the protection of human dignity.

Keywords: UNCAT, State Obligations, Non-Refoulement, Torture Prohibition, Diplomatic Assurances,

* Doctoral Candidate MAAUN and Lecturer, School of Law, Maryam Abacha American University of Niger/Nigeria
+2348028190921 uisulaiman48@gmail.com

1.0 INTRODUCTION

The prohibition of torture occupies a singularly exalted position in the pantheon of international human rights law. It is not merely a conventional obligation but a peremptory norm of general international law, binding upon all States regardless of treaty ratification.¹ The United Nations Convention Against Torture (UNCAT) represents the most comprehensive codification of this prohibition, establishing a detailed framework of State obligations designed to prevent torture, punish perpetrators, and provide redress to victims.² Since its entry into force on 26 June 1987, UNCAT has achieved remarkable success in normative terms. The absolute prohibition of torture is now universally acknowledged, and the Convention's monitoring mechanisms: the Committee Against Torture (CAT) since 2006, the Subcommittee on Prevention of Torture (SPT) under the Optional Protocol to the Convention Against Torture (OPCAT) have developed an extensive body of interpretive guidance through General Comments, concluding observations, and views on individual communications.³

The tension between the universal aspiration of UNCAT and the particularities of State sovereignty, national security imperatives, and divergent legal traditions has produced significant fissures in the international torture prevention architecture.⁴ This paper examines these convergences and disagreements through a multi-layered analytical framework. It begins with a review of the scholarly literature, proceeds to an analysis of the legal frameworks governing UNCAT, undertakes a foundational doctrinal analysis of core State obligations, identifies areas of broad agreement, and then interrogates the principal areas of divergence. The paper further examines comparative jurisprudence and State practice, assesses enforcement challenges, and proposes pathways to strengthening compliance. The significance of this inquiry cannot be overstated. In an era marked by resurgent authoritarianism, the securitization of migration, and the

¹ COESPU, 'Human Rights: A Focus on Torture Prohibition' (3 April 2023) <https://www.coespu.org/articles/human-rights-focus-torture-prohibition> accessed 27 April 2026.

² United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85 (UNCAT).

³ OMCT, 'Committee Against Torture (CAT)' (22 April 2026) <https://www.omct.org/en/what-we-do/committee-against-torture> accessed 27 April 2026.

⁴ See generally OHCHR, 'Human Rights, Terrorism and Counter-terrorism' (UN Publication) <https://www.ohchr.org/Documents/Publications/Factsheet32EN.pdf> accessed 27 April 2026.

normalization of extraordinary rendition and enhanced interrogation techniques, the integrity of UNCAT's normative framework is under sustained pressure.⁵

2.0 LITERATURE REVIEW

The scholarly literature on UNCAT State obligations is vast and multidisciplinary, spanning international law, human rights theory, political science, and criminology. Recent scholarship from 2021 to 2026 has focused on several critical themes that inform the present analysis. The foundational works of Nowak, Birk, and Monina in their comprehensive commentary on UNCAT and its Optional Protocol remain indispensable for understanding the treaty's drafting history and intended scope.⁶ More recent scholarship has examined the treaty's evolution through the lens of the Committee against Torture's interpretive practice. Steinbrecher's critical analysis of independence in torture prevention has highlighted the institutional vulnerabilities of National Preventive Mechanisms (NPMs), noting that 'independence shields NPMs from external interference, enabling them to expose detention conditions as they exist in practice, safeguard the rights of detainees, and promote transparency by reducing opportunities for concealment of abuse'.⁷

The intersection of UNCAT obligations with contemporary migration control policies has generated significant scholarly attention. Tabak's influential 2023 analysis in the *Yale Journal of International Law* introduced the concept of 'constructive refoulement,' arguing that 'constructive refoulement arises when a state orchestrates material conditions so intolerable for an asylum-seeker that she has no choice but to return to the country from which she fled'.⁸ This concept has proven particularly relevant in analyzing policies such as the United Kingdom's (UK) Illegal Migration Bill and the European Union's (EU) New Pact on Asylum and Migration, which critics

⁵ See Human Rights First, 'Special Rapporteur on Migrants Externalization Submission' (December 2025) <https://humanrightsfirst.org/wp-content/uploads/2025/12/Special-Rapporteur-on-Migrants-Externalization-Submission-December-2025.pdf> accessed 27 April 2026.

⁶ M Nowak, M Birk & G Monina (eds), *The United Nations Convention Against Torture and Its Optional Protocol: A Commentary* (Oxford University Press 2019).

⁷ L Steinbrecher, 'The Problem with Independence in Torture Prevention' (2020) <http://opiniojuris.org/2020/06/26/the-problem-with-independence-in-tortureprevention/> accessed 27 April 2026, cited in S. Adegalu., 'Ratification of the Optional Protocol to the Convention against Torture' (2025) 2 *AHRLJ*.

⁸ S Tabak, 'Refugee Detention As Constructive Refoulement' (2023) 48 *Yale Journal Int'l L* 289.

argue create conditions compelling asylum-seekers to ‘voluntarily’ return to countries where they face torture risks.⁹

The literature on diplomatic assurances has been substantially enriched by analyses of the Committee against Torture’s General Comment No. 4. EJIL Talk’s detailed examination of State pushback during the drafting process revealed that ‘diplomatic assurances was the issue to which states paid the most attention,’ with several countries responding exclusively on this issue.¹⁰ The final text’s softening of language from diplomatic assurances being ‘contrary to the principle of non-refoulement’ to the milder formulation that they ‘should not be used as a loophole to undermine the principle’, represents a significant concession to State sovereignty concerns.¹¹

Recent scholarship has examined the extraterritorial dimensions of Art 14 obligations. Naseer’s 2024 contribution to the Harvard Human Rights Journal argued that ‘Art 14 of UNCAT obligates states to ensure that all victims of torture are able to obtain redress within the state’s legal system,’ even where the torture occurred outside the State’s territory, provided a sufficient nexus exists.¹² The Committee against Torture’s General Comment No. 3 has been extensively analyzed for its expansive interpretation of redress, encompassing restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition.¹³

3.0 LEGAL FRAMEWORKS ON UNITED NATION CONVENTION ON TORTURE (UNCAT)

3.1 The Convention’s Architecture

UNCAT comprises thirty-three arts organized into three parts. Part I (articles 1 to 16) establishes the substantive obligations of States Parties, including the definition of torture (article 1), the absolute prohibition (article 2), the non-refoulement obligation (article 3), the duty to criminalize

⁹ REDRESS, ‘The Illegal Migration Bill’ (2023) <https://redress.org/storage/2023/05/Illegal-Migration-Bill-HoL-Briefing-v2.pdf> accessed 27 April 2026.

¹⁰ EJIL Talk, ‘Part 1: A Few Steps Forward, a Few Steps Sideways and a Few Steps Backwards: The CAT’s Revised and Updated GC on Non-Refoulement’ (20 March 2018) <https://www.ejiltalk.org/part-1-a-few-steps-forward-a-few-steps-sideways-and-a-few-steps-backwards-the-cats-revised-and-updated-gc-on-non-refoulement/> accessed 27 April 2026.

¹¹ Committee against Torture, General Comment No. 4 (2017) on the implementation of article 3 of the Convention in the context of article 22, CAT/C/GC/4, para 20.

¹² N Naseer, ‘Realizing the Right to Reparation by Reforming Domestic Crime Victims’ Funds’ (2024) 37 Harv Hum Rts J <https://journals.law.harvard.edu/hrj/2024/03/naseer-reparation/> accessed 27 April 2026.

¹³ Committee against Torture, General Comment No. 3 (2012) on the implementation of article 14 by States parties, CAT/C/GC/3.

torture (article 4), the principle of *aut dedere aut judicare* (article 7), and the obligation to provide redress (article 14). Part II (Article 17 – 24) establishes the Committee against Torture and its monitoring functions. Part III (article 25 – 33) contains final clauses.¹⁴

The Optional Protocol to the Convention against Torture (OPCAT), adopted in 2002 and entering into force in 2006, establishes a two-pillar system of preventive monitoring: the Subcommittee on Prevention of Torture (SPT) at the international level, and National Preventive Mechanisms (NPMs) at the domestic level.¹⁵ As of 2025, ninety-two States are parties to OPCAT, though significant gaps remain in its universal application.¹⁶

3.2 The Committee against Torture’s Interpretive Authority

The Committee against Torture has adopted four General Comments that clarify the scope and meaning of various Convention arts:

- General Comment No. 1 (1997) on the implementation of article 3 (non-refoulement) in the context of article 22;
- General Comment No. 2 (2007) on the implementation of article 2 by States parties, which provides the most comprehensive articulation of preventive obligations;
- General Comment No. 3 (2012) on the implementation of article 14 (redress); and
- General Comment No. 4 (2017) on the implementation of article 3 in the context of article 22, replacing General Comment No. 1.¹⁷

4.0 CORE STATE OBLIGATIONS

4.1 The Absolute and Non-Derogatable Prohibition of Torture

Article 2(2) of UNCAT provides that “no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.”¹⁸ This formulation leaves no room for derogation. The Committee against Torture has consistently reaffirmed that the prohibition of torture is absolute

¹⁴ UNCAT (n 2).

¹⁵ S. Adegalu., ‘Ratification of the Optional Protocol to the Convention against Torture’ (2025) 2 AHRLJ 252.

¹⁶ Ibid.

¹⁷ OMCT (n 3).

¹⁸ UNCAT (n 3) Art 2(2).

and non-derogable, and that the prohibition of ill-treatment under article 16 is “likewise non-derogable under the Convention.”¹⁹

The absolute nature of the prohibition is reinforced by article 2(3), which establishes that “an order from a superior officer or a public authority may not be invoked as a justification of torture.”²⁰ This provision addresses the defense of superior orders, which has historically been invoked to shield perpetrators of torture from accountability. The Committee has emphasized that ‘subordinates may not seek refuge in superior authority and should be held to account individually,’ while simultaneously holding that ‘those exercising superior authority... cannot avoid accountability or escape criminal responsibility for torture or ill-treatment committed by subordinates where they knew or should have known that such impermissible conduct was, or was likely, to occur, and they took no reasonable and necessary preventive measures.’²¹

4.2 The Definition of Torture

article 1 defines torture 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.’²²

Four cumulative elements must be established: (a) conduct inflicting severe pain or suffering, whether physical or mental; (b) intentional infliction; (c) a specific purpose (the list being illustrative rather than exhaustive); and (d) involvement of a State official, at least by acquiescence.²³ The Committee has clarified that ‘elements of intent and purpose in art 1 do not

¹⁹ Committee against Torture, General Comment No. 2 (n 21) para 3.

²⁰ UNCAT (n 3) Art 2(3).

²¹ Committee against Torture, General Comment No. 2 (n 21) para 30.

²² UNCAT (n 3) Art 1.

²³ REDRESS, ‘The UN Convention Against Torture: Module 2’ (June 2024) <https://redress.org/wp-content/uploads/2024/06/Training-Module-02-The-UN-Convention-Against-Torture.pdf> accessed 27 April 2026.

involve a subjective inquiry into the motivations of the perpetrators, but rather must be objective determinations under the circumstances.’²⁴

Notably, the definition excludes ‘pain or suffering arising only from, inherent in or incidental to lawful sanctions,’ a carve-out that has generated significant controversy regarding the scope of permissible punishment.²⁵

4.3 The Non-Refoulement Obligation

Article 3(1) provides that ‘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.’²⁶ This obligation is absolute and applies ‘whenever there are ‘substantial grounds’ for believing that the person concerned would be in danger of being subjected to torture in a State to which the person is facing deportation, either as an individual or as a member of a group that may be at risk of being tortured in the State of destination.’²⁷

The Committee has interpreted “substantial grounds” to exist “whenever the risk of torture is ‘foreseeable, personal, present and real.’”²⁸ This standard does not require proof beyond reasonable doubt or even a balance of probabilities; rather, it demands a forward-looking assessment of risk based on all relevant circumstances.²⁹

Article 3(2) requires competent authorities to ‘take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.’³⁰ The Committee’s General Comment No. 4 has expanded the range of relevant considerations to include risks from non-State actors, gender-based violence, and exposure to unfair trial systems, and the risk of indirect refoulement.³¹

²⁴ Committee against Torture, General Comment No. 2 (n 21) para 9.

²⁵ UNCAT (n 2) Art 1(1).

²⁶ Ibid Art 3(1).

²⁷ Committee against Torture, General Comment No. 4 (n 11) para 9.

²⁸ Ibid para 11.

²⁹ Ibid.

³⁰ UNCAT (n 2) Art 3(2).

³¹ Committee against Torture, General Comment No. 4 (n 11) paras 27-29.

4.4 The Duty to Criminalize and Prosecute

Article 4 requires States to ‘ensure that all acts of torture are offences under its criminal law,’ with penalties that ‘take into account their grave nature.’³² Article 5 establishes jurisdiction over torture committed in the State’s territory, on board a ship or aircraft registered in the State, or when the alleged offender is a national of the State.³³ Article 7 embodies the principle of *aut dedere aut judicare*, extradite or prosecute.³⁴ The Committee has stressed that ‘serious discrepancies between the Convention’s definition and that incorporated into domestic law create actual or potential loopholes for impunity.’³⁵ States are called upon to ensure that ‘all parts of its government adhere to the definition set forth in the Convention for the purpose of defining the obligations of the State.’³⁶

4.5 The Obligation to Provide Redress

Article 14 requires States to ‘ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible.’³⁷ The Committee’s General Comment No. 3 interprets ‘redress’ as encompassing ‘the concepts of ‘effective remedy’ and ‘reparation’,’ with the latter entailing restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition.³⁸

Significantly, the Committee has affirmed that ‘the application of art 14 is not limited to victims who were harmed in the territory of the State party or by or against nationals of the State party,’ and has ‘commended the efforts of States parties for providing civil remedies for victims who were subjected to torture or ill-treatment outside their territory.’³⁹

³² UNCAT (n 2) Art 4(1).

³³ Ibid Art 5.

³⁴ Ibid Art 7.

³⁵ Committee against Torture, General Comment No. 2 (n 20) para 9.

³⁶ Ibid.

³⁷ UNCAT (n 2) Art 14(1).

³⁸ Committee against Torture, General Comment No. 3 (n 13) para 2.

³⁹ Ibid para 7, citing Committee against Torture, Concluding Observations on the sixth periodic report of New Zealand, CAT/C/NZL/CO/6, para 18.

5.0 AREAS OF CONVERGENCE IN STATE OBLIGATIONS

5.1 The Absolute Prohibition as *Jus Cogens*

There exists near-universal agreement among States, international courts, and scholars that the prohibition of torture constitutes a peremptory norm of general international law (*jus cogens*).⁴⁰ This status means that the prohibition overrides any inconsistent treaty or customary law obligation and admits of no derogation under any circumstances.⁴¹ The International Criminal Tribunal for the former Yugoslavia, in *Prosecutor v. Furundžija*, affirmed that the prohibition of torture ‘has evolved into a peremptory norm or *jus cogens*, that is, a norm that enjoys a higher rank in the international hierarchy than treaty law and even ‘ordinary’ customary rules.’⁴²

State practice consistently affirms this position. Even States that have engaged in torture have typically denied doing so, rather than asserting a right to torture, thereby confirming the norm’s *opinio juris*.⁴³ The Committee against Torture has noted that “the prohibition of torture and other cruel, inhuman or degrading treatment or punishment is absolute under international law’ and “is a peremptory norm... non-derogable even in states of emergency threatening the life of the nation.’⁴⁴

5.2 The Non-Derogable Character of the Prohibition

Convergence also exists on the non-derogable character of the torture prohibition. Article 2(2)’s explicit rejection of any exceptional circumstances has been consistently interpreted by the Committee and regional human rights courts as establishing an absolute prohibition.⁴⁵ The European Court of Human Rights has held that article 3 of the ECHR ‘makes no provision for exceptions, and no derogation from it is permissible under article 15 § 2 even in the event of a public emergency threatening the life of the nation.’⁴⁶ This convergence extends to the non-

⁴⁰ See *Prosecutor v Furundžija* (Judgment) IT-95-17/1-T (10 December 1998) para 144.

⁴¹ Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331, Art 53.

⁴² *Prosecutor v Furundžija* (n 47) para 153.

⁴³ See J Herman Burgers & Hans Danelius, *The United Nations Convention against Torture: A Handbook on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (Martinus Nijhoff 1988) 1.

⁴⁴ OHCHR (n 4) 59.

⁴⁵ See Committee against Torture, General Comment No. 2 (n 20) para 2.

⁴⁶ ECtHR, *Guide on Case-Law of the Convention – Terrorism* (updated 31 August 2024) para 41 https://ks.echr.coe.int/documents/d/echr-ks/guide_terrorism_eng accessed 27 April 2026.

refoulement obligation. The Committee has affirmed that ‘the principle of ‘non-refoulement’ of persons to another State where there are substantial grounds for believing that they would be in danger of being subjected to torture is similarly absolute.’⁴⁷ The Human Rights Committee has echoed this position, stating that ‘no person, without any exception, even those suspected of presenting a danger to national security... may be deported to a country where he/she runs the risk of being subjected to torture.’⁴⁸

5.3 The Duty to Criminalize Torture

There is broad agreement that States must criminalize torture under domestic law. Article 4’s requirement that ‘each State Party shall ensure that all acts of torture are offences under its criminal law’ has been widely implemented, though with varying degrees of fidelity to the Convention’s definition.⁴⁹ The Committee has consistently called upon States to ensure that their domestic criminal codes incorporate the elements of torture as defined in Art 1, and that penalties reflect the gravity of the offence.⁵⁰

5.4 The Obligation to Investigate Allegations

The duty to conduct prompt and impartial investigations into allegations of torture enjoys broad acceptance. Article 12 requires States to ‘ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.’⁵¹ The Committee has interpreted this obligation as requiring investigation even in the absence of a formal complaint, ‘when there are reasonable grounds to believe that torture or ill-treatment has taken place.’⁵²

5.5 The Inadmissibility of Evidence Obtained by Torture

Article 15 establishes that ‘any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of

⁴⁷ Committee against Torture, General Comment No. 4 (n 11) para 9.

⁴⁸ Human Rights Committee, Concluding Observations on the second periodic report of the United States of America, CCPR/C/USA/CO/2, para 15.

⁴⁹ UNCAT (n 2) Art 4.

⁵⁰ Committee against Torture, General Comment No. 2 (n 20) para 9.

⁵¹ UNCAT (n 2) Art 12.

⁵² Committee against Torture, General Comment No. 3 (n 13) para 27.

torture as evidence that the statement was made.’⁵³ This exclusionary rule is widely accepted, though its application in practice (particularly in counter-terrorism proceedings) remains contested.⁵⁴

6.0 AREAS OF DISAGREEMENTS AND DIVERGENCE

6.1 The Scope of Extraterritorial Application

One of the most significant areas of disagreement concerns the territorial scope of UNCAT obligations. Article 2(1) requires States to take effective measures to prevent torture ‘in any territory under its jurisdiction.’⁵⁵ The Committee, in General Comment No. 2, interpreted this phrase expansively to include ‘all areas where the State Party exercises, directly or indirectly, in whole or in part, de jure or de facto effective control, in accordance with international law,’ including ‘during military occupation or peacekeeping operations and in such places as embassies, military bases, detention facilities, or other areas over which a State exercises factual or effective control’⁵⁶

However, this interpretation has faced significant State pushback. During the drafting of General Comment No. 4, several States, including the United Kingdom, the United States, Russia, Australia, Norway, Denmark, and Canada, ‘sought to limit the Committee’s position on the question extending the territorial reach of non-refoulement duties.’⁵⁷ The final text removed specific reference to ‘foreign military occupations,’ though the broader principle of application to areas under ‘factual control and authority’ was retained.⁵⁸

The disagreement reflects a fundamental tension between the universal aspiration of human rights and the territorial limitations of State jurisdiction. While the Committee’s expansive interpretation aligns with the object and purpose of the Convention, some States argue that it imposes obligations beyond what was contemplated by the drafters and interferes with the sovereignty of other States.⁵⁹

⁵³ UNCAT (n 2) Art 15.

⁵⁴ See OHCHR (n 5) 59.

⁵⁵ UNCAT (n 2) Art 2(1).

⁵⁶ Committee against Torture, General Comment No. 2 (n 20) para 16.

⁵⁷ EJIL Talk (n 10).

⁵⁸ Ibid.

⁵⁹ See generally M Milanovic, *Extraterritorial Application of Human Rights Treaties: Law, Principles, and Policy* (Oxford University Press 2011).

6.2 Diplomatic Assurances

Perhaps no issue has generated more controversy than the use of diplomatic assurances in refoulement proceedings. Diplomatic assurances are formal promises from the receiving State that the individual will not be subjected to torture or ill-treatment.⁶⁰ The Committee's initial draft of General Comment No. 4 proposed that "diplomatic assurances from a State party to the Convention to which a person is to be deported are contrary to the principle of 'non-refoulement.'"⁶¹ This proposal met with fierce resistance. Several States responded exclusively on this issue, and a joint submission by the United Kingdom, the United States, Canada, and Denmark challenged the apparent blanket prohibition.⁶² Many States referenced the European Court of Human Rights' judgment in *Othman (Abu Qatada) v. the United Kingdom*, which held that diplomatic assurances were not a priori incompatible with the ECHR, subject to an assessment of their credibility and reliability.⁶³

The final text of General Comment No. 4 softened the Committee's position, stating instead that diplomatic assurances 'should not be used as a loophole to undermine the principle of non-refoulement.'⁶⁴ This formulation leaves open the possibility that assurances may be relied upon if they are not being used as a 'loophole' to avoid Convention duties. However, the Committee cautioned that assurances 'should not be used where there are substantial grounds for believing that the person would be in danger of being subjected to torture in that State.'⁶⁵ The disagreement reflects deeper divergences regarding the evidentiary value of inter-State commitments versus individual risk assessments, and the balance between State sovereignty in migration control and the absolute protection of individuals from torture.⁶⁶

6.3 The Definition and Threshold of Torture

While the definition in article 1 is widely accepted in principle, its application in practice reveals significant divergence. The threshold of 'severe pain or suffering' is inherently subjective and

⁶⁰ See REDRESS (n 9).

⁶¹ EJIL Talk (n 11).

⁶² Ibid.

⁶³ ECtHR, *Othman (Abu Qatada) v the United Kingdom* App No 8139/09 (17 January 2012).

⁶⁴ CAT, General Comment No. 4 (n 11) para 20.

⁶⁵ Ibid.

⁶⁶ See generally C Costello, 'The Human Rights of Migrants and Refugees in European Law' (Oxford University Press 2016).

context-dependent.⁶⁷ The Committee has acknowledged that ‘severe pain or suffering cannot always be assessed objectively’ and ‘depends on the negative physical and/or mental repercussions that the infliction of violent or abusive acts has on each individual, taking into account all relevant circumstances of each case.’⁶⁸

Disagreement persists regarding whether certain practices (such as prolonged solitary confinement, sleep deprivation, waterboarding, or stress positions) meet the threshold of torture or constitute cruel, inhuman or degrading treatment falling under article 16.⁶⁹ The Committee has taken the position that the distinction between torture and ill-treatment is often unclear in practice, and that “the conditions that give rise to ill-treatment frequently facilitate torture and therefore the measures required to prevent torture must be applied to prevent ill-treatment.”⁷⁰ However, some States have resisted this conflation, arguing that maintaining a distinction is necessary for proportionality in sentencing and for preserving the special gravity of the torture label.⁷¹

6.4 Counter-Terrorism and Security Exceptionalism

The post-9/11 era has witnessed sustained pressure on the absolute prohibition of torture in the name of counter-terrorism. While no State openly asserts a right to torture terrorist suspects, practices such as extraordinary rendition, ‘enhanced interrogation techniques,’ and the use of secret detention facilities have effectively circumvented the prohibition.⁷² The Committee has consistently rejected any security-based justification for torture, recalling that ‘no exceptional circumstances whatsoever... can be invoked as a justification for torture.’⁷³ Yet, the ‘ticking bomb’ scenario continues to animate public and political discourse, with proponents arguing that torture may be necessary to prevent catastrophic attacks.⁷⁴ Professional interrogators have countered that ‘interrogation can be conducted much more effectively without the use of torture and relying on it renders detectives less active in exploiting other investigative opportunities.’⁷⁵

⁶⁷ CAT, General Comment No. 4 (n 11) para 17.

⁶⁸ Ibid.

⁶⁹ See REDRESS (n 28).

⁷⁰ CAT, General Comment No. 2 (n 20) para 3.

⁷¹ See Nowak, Birk & Monina (n 8) 97-102.

⁷² See OHCHR (n 4) 59.

⁷³ CAT, Conclusions and Recommendations, CAT/C/CR/31/4.

⁷⁴ COESPU (n 1).

⁷⁵ Ibid.

The disagreement here is not merely legal but existential: it pits the foundational values of human dignity and the rule of law against the visceral fear of terrorism and the political imperative to be seen as ‘tough on terror.’⁷⁶

6.5 The Obligation to Provide Redress

While the obligation to provide redress under article 14 is broadly accepted, its scope and territorial application remain contested. The Committee’s General Comment No. 3 interprets Art 14 as applying extraterritorially, requiring States to provide remedies even for torture committed outside their territory where a sufficient nexus exists.⁷⁷ Some States have resisted this interpretation, arguing that article 14 should be limited to torture committed within the State’s territory or by its nationals.⁷⁸ New Zealand’s reservation to article 14; reserving ‘the right to award compensation to torture victims referred to in article 14... only at the discretion of the Attorney-General’, has been criticized by the Committee, which recommended in its 2023 periodic review that New Zealand consider withdrawing the reservation.⁷⁹

6.6 National Preventive Mechanisms (NPM) and Institutional Independence

Under OPCAT, States are required to establish or designate independent NPMs within one year of ratification.⁸⁰ However, significant disagreement exists regarding what constitutes adequate independence. The Committee has called for NPMs to enjoy ‘functional, financial and institutional independence, together with adequate resources and unrestricted access to information, facilities and persons deprived of liberty.’⁸¹

Nigeria’s National Committee Against Torture (NCAT), for example, was found by the Committee in its 2021 ‘**Concluding Observations**’ not to meet OPCAT requirements, in part because it was anchored in a presidential order rather than constitutional or legislative text, raising concerns about

⁷⁶ See D Cole, ‘The Ticking Bomb Scenario’ in S Levinson (ed), *Torture: A Collection* (Oxford University Press 2024) 35.

⁷⁷ CAT, General Comment No. 3 (n 13) para 7.

⁷⁸ See Naseer (n 12).

⁷⁹ New Zealand Cabinet Paper, ‘Redress for Survivors of Torture at the Lake Alice’ (19 December 2024) https://www.abuseinquiryresponse.govt.nz/assets/Uploads/Cabinet-papers/Redress-for-Survivors-of-Torture-at-the-Lake-Alice-Combined_Redacted-v2.pdf accessed 27 April 2026.

⁸⁰ Optional Protocol to the Convention against Torture (adopted 18 December 2002, entered into force 22 June 2006) 2375 UNTS 237, Arts 1, 3, 17.

⁸¹ Ibid Arts 18-23.

its independence from executive interference.⁸² Greece's NPM, while operationally active, has faced challenges including 'overcrowding combined with inadequate infrastructure, poor cleaning services, disparities in educational services... a lack of medical (especially psychiatric) services and interpretation services.'⁸³ The tension between the ideal of institutional independence and the reality of executive control over budgetary and administrative processes remains a persistent source of disagreement.⁸⁴

7.0 COMPARATIVE JURISPRUDENCE AND STATE PRACTICE

7.1 The European Court of Human Rights

The European Court of Human Rights (ECtHR) has developed an extensive jurisprudence on torture and ill-treatment under Art 3 of the ECHR. In *Soering v the United Kingdom*, the Court established the principle that extradition to a State where there is a real risk of torture violates Art 3.⁸⁵ This 'Soering test' has been applied consistently, with the Court holding that 'the prohibition of inhuman or degrading treatment... is one of the most fundamental values of democratic societies' and 'a value of civilization closely bound up with respect for human dignity.'⁸⁶

In *El-Masri v North Macedonia*, the Grand Chamber applied 'particularly thorough scrutiny' to allegations of torture, reflecting the gravity of the prohibition.⁸⁷ The Court has also addressed the use of diplomatic assurances in *Othman (Abu Qatada) v the United Kingdom*, establishing that such assurances are not incompatible with Art 3 but require rigorous assessment of their reliability.⁸⁸

7.2 The Inter-American System

The Inter-American Court of Human Rights has adopted an expansive approach to the prohibition of torture, emphasizing State responsibility for preventing torture by both State and non-State

⁸² S Ibe, 'Localising Global Norms: An Examination of Nigeria's Implementation of Part IV of the Optional Protocol to the Convention against Torture' (2025) 25 *AHRLJ* 251

⁸³ Greek Ombudsman, 'National Preventive Mechanism Against Torture: Annual Special Report 2024' (May 2024) <https://www.ohchr.org/sites/default/files/documents/hrbodies/spt-opcat/npm/npm-report-en-2024-compressed.pdf> accessed 27 April 2026.

⁸⁴ See Steinbrecher (n 7).

⁸⁵ ECtHR, *Soering v the United Kingdom* App No 14038/88 (7 July 1989).

⁸⁶ ECtHR (n 53) para 41.

⁸⁷ ECtHR, *El-Masri v North Macedonia* [GC] App No 39630/09 (13 December 2012) para 155.

⁸⁸ ECtHR, *Othman (Abu Qatada) v the United Kingdom* (n 73).

actors.⁸⁹ The Court's jurisprudence on reparation has been particularly influential, ordering comprehensive measures including compensation, rehabilitation, and guarantees of non-repetition.⁹⁰

7.3 The African System

The African Commission and Court on Human and Peoples' Rights have interpreted the prohibition of torture under article 5 of the African Charter as encompassing not only physical torture but also conditions of detention that violate human dignity.⁹¹ The African system's emphasis on collective and community-based reparations offers a distinctive contribution to the jurisprudence on redress.⁹²

7.4 State Practice

In 2024, New Zealand's government proposed a comprehensive redress package for survivors of torture at the Lake Alice psychiatric unit, acknowledging that 'torture requires three specific elements to be present and is the only form of abuse to have its own international convention.'⁹³ The package included monetary compensation, a formal apology, and access to rehabilitative services, reflecting the multi-dimensional nature of redress under General Comment No. 3.⁹⁴

In January 2025, Lebanon deported Abdulrahman Al-Qaradawi to the United Arab Emirates despite pending appeals and substantial evidence of potential torture, violating its obligations under article 3.⁹⁵ This case illustrates the persistent gap between legal obligation and State practice, particularly in contexts of political pressure and regional security cooperation.⁹⁶

⁸⁹ See Inter-American Court of Human Rights, *Velásquez Rodríguez v Honduras* (Judgment) Series C No 4 (29 July 1988).

⁹⁰ See Inter-American Court of Human Rights, *Myrna Mack Chang v Guatemala* (Judgment) Series C No 101 (25 November 2003).

⁹¹ See African Commission on Human and Peoples' Rights, *Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa* (2003).

⁹² See African Court on Human and Peoples' Rights, *Zongo v Burkina Faso* (Judgment) App No 013/2011 (28 March 2014).

⁹³ New Zealand Cabinet Paper (n 88) para 6.

⁹⁴ *Ibid* paras 7, 29-31.

⁹⁵ MENA Rights Group, 'Lebanon: Seven Years of Enacting a Torture Law Without Effective Implementation' (26 June 2025) <https://menarights.org/en/articles/lebanon-seven-years-enacting-torture-law-without-effective-implementation> accessed 27 April 2026.

⁹⁶ *Ibid*.

Recent documentation by Human Rights First has revealed that ‘U.S. officials have at times stated during the transfer process that the person would be sent onward, directly contradicting binding court orders prohibiting their return.’⁹⁷ A woman from Sierra Leone who had been granted CAT protection by a United State of America (USA) judge was deported to Ghana and then sent back to Sierra Leone, based on undisclosed ‘diplomatic assurances’ that were ‘neither legally sufficient nor effective.’⁹⁸

Greece’s NPM 2024 annual report documented ‘the inadequate infrastructure of detention facilities and detention centers for aliens, which, combined with the long duration of immigrant detention, make living conditions inhuman.’⁹⁹ The report also highlighted the impact of the European Union’s (EU) New Pact on Asylum and Migration on detention conditions at borders.¹⁰⁰

8.0 CHALLENGES IN ENFORCING UNCAT OBLIGATIONS

8.1 Institutional Fragility

The UN treaty body system faces a profound crisis of resourcing and political support. The Committee against Torture’s 2025 annual report revealed that ‘sixteen treaty body sessions were at stake, and the Subcommittee on the Prevention of Torture had had to postpone four of its eight visits planned for 2025.’¹⁰¹ The ‘sudden cessation of hybrid meetings’ has ‘negatively impacted the work of the Committee members, civil society organizations, national human rights institutions, national preventive mechanisms and other stakeholders.’¹⁰² This institutional fragility undermines the Committee’s capacity to monitor compliance, examine individual complaints, and provide authoritative guidance to States.¹⁰³

8.2 The Asymmetry of Power

The enforcement of UNCAT obligations is hampered by the fundamental asymmetry between the Committee (a body of ten independent experts) and sovereign States. The Committee lacks

⁹⁷ Ibid.

⁹⁸ Ibid.

⁹⁹ Greek Ombudsman (n 92).

¹⁰⁰ Ibid.

¹⁰¹ UN Geneva (n 16).

¹⁰² Ibid.

¹⁰³ See generally P Alston & R Goodman, ‘The United Nations and Human Rights: A Critical Appraisal’ (2nd edn, Oxford University Press 2023).

coercive enforcement powers; its concluding observations and views are not legally binding in the same manner as judicial judgments.¹⁰⁴ While States are legally obligated to comply with the Convention, the mechanisms for ensuring compliance remain largely dependent on State goodwill and international political pressure.¹⁰⁵

8.3 Political Resistance and Sovereignty Claims

Many States resist what they perceive as intrusive monitoring and interpretive overreach by the Committee. The pushback on diplomatic assurances, extraterritorial application, and post-deportation redress reflects a broader pattern of State resistance to the expansion of human rights obligations beyond their traditional territorial boundaries.¹⁰⁶

8.4 Resource Constraints

Effective implementation of UNCAT obligations requires significant financial and human resources. The establishment and maintenance of independent NPMs, the training of law enforcement personnel, the provision of rehabilitation services to victims, and the conduct of prompt and impartial investigations all demand sustained investment.¹⁰⁷ Many States, particularly in the Global South, lack the capacity to meet these demands fully.¹⁰⁸

9.0 PATHWAYS TO STRENGTHENING COMPLIANCE

- i. **Universal Ratification of OPCAT:** The Optional Protocol's two-pillar preventive system represents the most promising mechanism for reducing torture in practice. Universal ratification would ensure that all States are subject to both international and domestic preventive monitoring.¹⁰⁹ The Committee should intensify its engagement with non-party States to encourage ratification.¹¹⁰
- ii. **Enhanced Treaty Body Resourcing:** The current crisis in treaty body resourcing demands urgent attention. The UN General Assembly must ensure adequate funding for treaty body

¹⁰⁴ See UNCAT (n 2) Arts 19-22.

¹⁰⁵ See A Bayefsky, 'The UN Human Rights Treaty System: Universality at the Crossroads' (Transnational Publishers 2021).

¹⁰⁶ See EJIL Talk (n 10).

¹⁰⁷ See Committee against Torture, General Comment No. 3 (n 13) para 12.

¹⁰⁸ See Ibe (n 91).

¹⁰⁹ Ibid.

¹¹⁰ See Committee against Torture, General Comment No. 2 (n 20) para 28.

sessions, SPT visits, and the technical assistance necessary for State compliance.¹¹¹ The restoration of hybrid meeting formats would enhance accessibility for civil society and national stakeholders.¹¹²

- iii. **Clarification of Contested Obligations:** The Committee should consider issuing additional General Comments or interpretive guidance on areas of persistent disagreement, including: the precise scope of extraterritorial obligations; the criteria for assessing the reliability of diplomatic assurances; the relationship between counter-terrorism measures and the absolute prohibition; and the modalities of extraterritorial redress.¹¹³ Such guidance would help to reduce uncertainty and promote convergence in State practice.¹¹⁴
- iv. **Strengthening NPM Independence:** States must ensure that NPMs are anchored in constitutional or legislative texts, enjoy functional and financial independence, and have unrestricted access to all places of detention.¹¹⁵ The Committee's recommendations regarding NPMs should be followed by concrete technical assistance and capacity-building support.¹¹⁶
- v. **Enhancing Individual Complaint Procedures:** The individual complaints procedure under Art 22 remains underutilized, with only a fraction of States having made the necessary declaration.¹¹⁷ Encouraging wider acceptance of the Committee's competence to receive individual communications would enhance accountability and provide victims with an additional avenue for redress.¹¹⁸

¹¹¹ UN Geneva (n 15).

¹¹² Ibid.

¹¹³ See generally M Nowak, 'Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment' in D Moeckli et al (eds), *International Human Rights Law* (3rd edn, Oxford University Press 2018) 161.

¹¹⁴ See CAT, General Comment No. 4 (n 12).

¹¹⁵ See Ibe (n 91).

¹¹⁶ Ibid.

¹¹⁷ See UNCAT (n 3) Art 22.

¹¹⁸ See CAT, General Comment No. 2 (n 20) para 28.

10. RECOMMENDATIONS

Based on the foregoing analysis, the following recommendations are proffered:

- i. All States that have not yet ratified UNCAT and OPCAT should do so without delay, and States Parties should withdraw reservations that are incompatible with the object and purpose of the Convention.
- ii. The United Nations General Assembly should ensure adequate and predictable funding for the Committee against Torture and the Subcommittee on Prevention of Torture, including the restoration of hybrid meeting formats.
- iii. The Committee should issue supplementary guidance on the scope of extraterritorial obligations, particularly in relation to military operations, peacekeeping, and the activities of private military contractors.
- iv. States should refrain from relying on diplomatic assurances in refoulement proceedings where there are substantial grounds for believing that the individual would face a real risk of torture. The Committee should develop clear criteria for assessing the reliability of such assurances where they are nevertheless sought.
- v. States must ensure that all counter-terrorism measures are designed and implemented in full compliance with the absolute prohibition of torture, including by rejecting the ‘ticking bomb’ scenario as a justification for torture and by prohibiting the use of evidence obtained by torture in all proceedings.

11. CONCLUSION

The United Nations Convention against Torture represents one of the most significant achievements of international human rights law. Its near-universal ratification, the absolute and non-derogable nature of the torture prohibition, and the comprehensive framework of preventive, punitive, and reparative obligations have established a robust normative architecture for the protection of human dignity.