

Who can torture? Criminalising torture by state and nonstate actors under the UN Torture Convention

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Key points of interest:

- Nearly two-thirds of the State Parties to the UN Torture Convention have criminalised torture as an autonomous crime, with a quarter of these extending criminal liability to nonstate actors beyond the UNCAT definition, including private individuals.
- State Parties differ not only in whether they criminalise torture, but also in how they define torture perpetrators, illustrating important variation in the domestic interpretation of international human rights obligations.
- The findings indicate that international commitments, domestic political dynamics, policy learning, institutional and legal fit, and historical experiences of violence interact in shaping national approaches to defining torture perpetrators – illustrated by the processes of the anti-torture laws' adoption in Uganda and Kenya.

Abstract

Introduction: Although State Parties to the United Nations Convention against Torture (UNCAT) are called on to criminalise torture in domestic law by the Committee against Torture, national legislation varies considerably in both the adoption and design of torture offences. This article examines how states have domesticated UNCAT's prohibition of torture, focusing in particular on whether domestic criminalisation limits criminal liability to state-linked perpetrators or extends it to a broader range of nonstate actors. **Method:** Drawing on original global data on domestic torture legislation, the article maps patterns in the criminalisation of torture across UNCAT State Parties. It complements this analysis with qualitative case studies of Uganda and Kenya, using theories of the domestic implementation of international human rights obligations to explore how international commitments, domestic political dynamics, institutional and legal frameworks, and historical experiences of violence shaped different legislative approaches. **Results:** The findings reveal substantial variation in how States criminalise torture. Drawing on the new dataset, the article shows that nearly two-thirds of State Parties have criminalised torture as an autonomous crime, and around a quarter of these extend criminal liability to all nonstate actors. The case studies suggest that while international commitments encouraged legislative reform in both countries, different combinations of strategic adaptation, institutional and legal fit, and historical patterns of violence contributed to divergent legislative designs. Uganda adopted a broad definition encompassing private actors as torture perpetrators, whereas Kenya largely retained UNCAT's state-centred approach. **Conclusions:** The findings indicate that international human rights obligations are not incorporated uniformly into domestic law but are interpreted and adapted through domestic political, institutional, and historical contexts. By shifting attention from whether states criminalise torture to how they design torture legislation, the article contributes to scholarship on the domestication of international human rights law and

offers new hypotheses about the sources of variation in national anti-torture legislation in terms of the definition and scope of torture perpetrators.

Keywords: United Nations Convention against Torture, human rights, criminalisation of torture, state and nonstate actors

Introduction

Despite the absolute prohibition of torture under international human rights law, including the United Nations Convention against Torture (UNCAT), torture remains widespread. Recent reports document alleged incidents in 125 countries across all regions (Mark et al., 2023).¹ The UN Committee against Torture (CAT) has consistently called on State Parties to criminalise torture in domestic law, a step intended to strengthen accountability and reduce impunity. Under the Convention, torture consists of severe pain or suffering intentionally inflicted for a specific purpose by a public official or a person acting in an official capacity (UNCAT, Art. 1). This study examines how State Parties to UNCAT have domesticated the Convention's provisions on the criminalisation of torture, focusing in particular on variation in the scope of perpetrators covered by domestic legislation.

International and regional treaties encompass the prevention, prohibition, prosecution and redress of torture with elaborated protection mechanisms. Yet torture continues with impunity (UN Special Rapporteur on Torture, 2021, para. 1), committed not only by state actors like police and military, but increasingly also by nonstate actors such as armed groups and criminal gangs. UNCAT only captures this development in part, as it considers nonstate actors comparable to state agents as torture perpetrators – that is, nonstate actors that have functions that are akin to governments or that are acting as *de facto* authorities (Zach, 2019, para. 125). The focus on state actors as torture perpetrators has been the object of feminist critiques ever since the conception of the crime under human rights law; however, this will not be the focus of study or analysis of this article. State practice diverges on whether the prohibition of torture extends to nonstate actors beyond the ones included in UNCAT, including actors with no comparable governmental role, such as businesses or even private individuals. This results in major inconsistencies in how states criminalise torture, with profound and concrete repercussions for the prosecution of the crime at the domestic level. Criminalisation determines

which acts—and whose acts—can be prosecuted, and it shapes how redress and rehabilitation for survivors are defined. Thus, State Parties to UNCAT may, in practice, have very different means of indicting, prosecuting, and sentencing perpetrators of torture. The shared international legal regime (UNCAT) may, thus, play out very differently in labelling crimes over time and across State Parties, with major consequences for whether, and if so which, actors are held accountable for their crimes and how redress and rehabilitation are articulated. Criminalising torture in national law provides a legal framework for prosecuting purposes and securing remedies; if the national legal framework is insufficient, acts of torture may go unpunished. Also, labelling a specific act of grave violence as torture brings with it international obligations for states, such as ensuring appropriate penalties, modes of liability,² universal jurisdiction, excluding it from statutes of limitations, as well as eliminating it from amnesties and immunities.

This article examines how State Parties to UNCAT have domesticated the Convention's provisions on the criminalisation of torture. We provide a global mapping of domestic torture legislation, identifying both whether states have enacted an autonomous offence of torture³ and whether they restrict criminal liability to the perpetrators encompassed by UNCAT or extend liability to a broader range of nonstate actors. Building on scholarship on the domestic implementation of international human rights commitments, we then use Uganda and Kenya as illustrative examples to explore how domestic actors interpret and adapt international legal obligations in different political and historical contexts.

The article makes three main findings. First, it uncovers significant variation among State Parties to UNCAT: while most have criminalised torture as a separate offence, only a minority extend liability to all nonstate actors. Second, the case studies of Uganda and Kenya suggest that different combinations of international pressure, strategic adaptation, institutional and legal fit, and historical experiences of violence may contribute

1 This dataset is built on the yearly reports of the US Department of State Country Reports on Human Rights Practices. Data capture cases where torture was practiced frequently or occasionally in the most recent reporting year (2022).

2 For the commission, attempt, complicity, instigation, consent, or acquiescence of the act of torture.

3 Either in a stand-alone act or integrated in the Criminal Code.

to variation in the design of domestic torture legislation. Third, these findings show the value of placing variation in torture legislation within broader theories of the domestication of international human rights obligations, thereby generating new hypotheses for future research on the design and implementation of national anti-torture laws.

These findings contribute to previous research in three ways. Empirically, we offer a global dataset that captures not only whether torture is criminalised in line with UNCAT but also whether criminalisation includes a wider set of nonstate perpetrators.⁴ It thus distinguishes itself from existing datasets by including not only the liability of state actors, or actors with an official capacity, but also a wider set of nonstate actors. Theoretically, we contribute to scholarship on the domestic implementation of international human rights obligations by shifting attention from the adoption of torture legislation to variation in its design. Drawing on broader theories of human rights implementation and domestication, we explore how international commitments, domestic political dynamics, policy learning, institutional and legal fit, and historical experiences of violence interact in shaping national approaches to defining torture perpetrators. Methodologically, we bridge legal and social science approaches. Classical legal interpretation is used to interpret the meaning and scope of torture and its perpetrators in national legislation,⁵ while quantitative analysis of the original global dataset identifies broader comparative patterns. These analyses are complemented by qualitative case studies of Uganda and Kenya, which use process-based evidence to explore the mechanisms that may underlie the legislative variation identified in the global mapping.

Literature review and analytical framework

The research on torture criminalisation is comparatively limited to that on the reasons behind treaty ratification (Goodliffe & Hawkins, 2006; Sandholtz, 2017; Simmons, 2009; Vreeland,

2008) or on the impact of UNCAT (and other treaties) on the respect for human rights (Fariss, 2018; Goodman & Jinks, 2003; Hathaway, 2002; Simmons, 2009). Legal scholars have explored legislative and constitutional provisions on torture, including its definition under international law and the interpretation of the scope of perpetrators (Boulesbaa, 1999; Casey-Maslen, 2025; Cheah, 2021; Clapham & Gaeta, 2018; Fernandez & Muntingh, 2016; Gaeta, 2021; Marchesi, 2008; Oette, 2024; Rodley & Polard, 2006, 2009). Casey-Maslen (2025) contributed a global mapping of national anti-torture legislation, and while it covers how torture is criminalised nationally, it lacks information on the status of torture perpetrators as state or nonstate actors. Studying the prohibition of torture in national constitutions, Chilton and Versteeg (2015) find that such prohibitions do not affect the rate of torture on an aggregate level. Berlin (2020) examines the diffusion of domestic criminal laws concerning genocide, war crimes, and crimes against humanity. In a study directly relevant to torture criminalisation, Berlin (2023) examines the adoption and strength of domestic torture laws, conceptualised as the number of UNCAT elements included in the law, covering the adoption and amendment of laws from 1920 to 2017. Drawing on these data, Berlin (2023) finds that countries with stronger torture laws, more closely aligned with UNCAT provisions, on average experience reduced rates of police torture.

While these existing studies describe or evaluate torture legislation, we know comparatively little about why states adopt different legislative models. To understand variation in torture legislation, we therefore draw on broader scholarship examining how states domesticate international human rights norms and obligations. Such research suggests several broad factors and mechanisms through which treaty commitments become reflected in domestic legislation. One line of research emphasises domestic political conditions, including the level of respect for human rights (Fariss, 2018), influence from civil society and international organisations (Wotipka & Tsutsui, 2008), and regime type or democratisation (Goodliffe & Hawkins, 2006; Ryckman, 2016). A second perspective focuses on governments' responses to international norms, emphasising processes such as strategic adaptation, where governments act instrumentally in response to growing pressure; moral persuasion, where governments adopt the discourse of human rights and perceive themselves to be bound by human rights obligations; institutionalisation, where human rights norms become a normalised standard in policy and behaviour; and socialisation, where norms are fully internalised (Risse & Sikkink, 1999). A third body of work examines policy diffusion, in which governments are influenced by the actions of others or, for example, by international organisations (Shipan & Vold-

4 The dataset and replication materials for this article, including information on whether and when State Parties adopted an autonomous torture offence and the scope of perpetrators covered by the legislation, is available through Harvard Dataverse.

5 Classical legal interpretation draws on the sources of international law, including international conventions, international custom, general principles of law as well as national judicial decisions and legal publications, as set out in Article 38 of the Statute of the International Court of Justice. Classical legal interpretation builds on general rules of interpretation in international law, as codified in Articles 31 and 32 of the Vienna Convention on the Law of Treaties, UNTS 1155 331, 23 May 1969.

en, 2008; Simmons et al., 2006). These diffusion mechanisms include learning, where governments draw on the successes or failures of others to inform their action (Meseguer, 2005); coercion and pressure, through which the costs and benefits of governments are affected (Nielsen & Simmons, 2015; Simmons et al., 2006); and imitation, emulation, or mimicking, where governments adopt “appropriate” policies or do so more unreflectively (Simmons et al., 2006). Finally, these processes are often conditioned by domestic institutional opportunities, including the fit with existing legislation, policy and institutions, political prioritisation, and windows of opportunity in the form of reform moments such as democratisation, peace agreements, or constitutional change (Baird, 2011; McKibben & Western, 2020; Molloy, 2021).

Rather than offering an exhaustive account of implementation, this review identifies the principal mechanisms that may shape the domestication of international human rights obligations. Existing scholarship primarily explains why states adopt human rights legislation but offers less guidance on variation in the substantive design of such legislation. In particular, it says little about why some states define torture in line with the perpetrator categories contained in UNCAT while others extend criminal liability to a broader range of nonstate actors. We therefore use these perspectives as complementary analytical lenses for examining how domestic actors interpret, negotiate, and sometimes strategically reshape international legal obligations. The empirical analysis explores how these mechanisms interact with countries’ historical experiences of torture and political violence in shaping the design of domestic anti-torture legislation.

Method

This study examines variation in how State Parties to UNCAT criminalise torture in domestic law, focusing in particular on differences in the scope of perpetrators covered by national legislation.

Our methodological approach combines classical legal interpretation with empirical social science methods. Classical legal interpretation allows us to identify how states define torture in national legislation, how they delimit the category of perpetrators, and how closely these definitions align with (or diverge from) UNCAT and the interpretation of the torture prohibition under human rights law. Through close reading of statutes, preparatory works, and constitutional provisions, we assess how governments interpret the meaning and purpose of the torture offence.

Quantitative and descriptive methods are used to shed light on whether and how State Parties to UNCAT have criminal-

ised torture as a separate offence. We follow CAT’s interpretation that torture is criminalised when it is incorporated into domestic criminal law, either as a stand-alone act or as a specific offence in the Criminal Code.⁶ This global analysis draws on an original dataset covering the period from 1984 (when UNCAT was adopted) to 2023.⁷ The dataset captures two core aspects of national anti-torture legislation. First, we examine whether torture is criminalised as a separate crime. This coding draws on information from national legislation, reports, and concluding observations from and/or state reports to the Committee against Torture (CAT); where missing, we used corresponding documents from the UN Human Rights Committee.⁸ In rare cases, we consulted reports or documents from other international organisations.⁹ While nearly all constitutions prohibit torture (Elkins et al., n.d.), and some countries may regulate it through other legal provisions, these are beyond the scope of this article, as are provisions criminalising torture specifically as a crime against humanity or a war crime. Nor do we address how courts in monist countries implement UNCAT, as access to relevant case law is both limited and uneven.

Second, we examine how national legislation defines torture perpetrators, asking whether domestic laws follow the perpetrator categories contained in UNCAT or extend criminal liability to a broader range of nonstate actors. The Convention defines torture as an act “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” (Convention against Torture, 1984, Art. 1). This formulation has been interpreted as encompassing certain nonstate actors who exercise authority or control over territories or populations comparable to that of state officials (Zach, 2019; see *S. S. Elmi v. Australia*, 1999, para. 6.5).

Our interest lies in legislative approaches that go beyond this minimum scope by extending criminal liability to nonstate actors who do not exercise governmental authority or functions comparable to those of the state. Such actors can include

6 This excludes countries that treat torture solely as an aggravating circumstance to another offence, as well as countries that criminalize torture only when committed extraterritorially.

7 The caveat is that there might be other or newer versions of criminal codes and stand-alone acts that may show other results than our dataset. We encourage anyone with information in this regard to reach out to us.

8 This is the case for the Gambia, Georgia, Guyana, Jamaica, and the Dominican Republic.

9 This is the case of Libya where resources of the UN Office of the High Commissioner for Human Rights have been used: <https://www.ohchr.org/sites/default/files/Documents/Countries/LY/TortureDeathsDetentionLibya.pdf> accessed 11 June 2024.

armed nonstate actors, organised criminal groups, private security companies, and even private individuals.

We code this dimension as a binary variable, distinguishing between State Parties that follow the UNCAT definition and those that interpret the UNCAT definition as a minimum threshold. The category of State Parties that widen the circle of nonstate perpetrators does so in four distinctive ways. States may (1) define torture perpetrators as private individuals, (2) define perpetrators in generic terms, such as “anyone” or “whoever”, (3) define only the prohibited act without specifying the status of the perpetrator (e.g., referring simply to “any act”), or (4) explicitly extend liability to armed or criminal groups irrespective of their ‘official capacity’. Although this group of countries have slightly different conceptions of nonstate torture perpetrators, they are coded together because they represent the group of States conceiving the UNCAT definition not as a standard but rather as a core level of protection, fit for adapting to their national contexts. Details of this coding are provided in connection with Figure 2.

Qualitative analysis is used to explore the processes through which states interpret and domesticate UNCAT’s provisions on torture, drawing on the analytical framework outlined above. The qualitative analysis examines how mechanisms identified in the literature, such as strategic adaptation and domestic political opportunity structures, are reflected in the legislative processes surrounding anti-torture laws. The case studies also explore how these broader mechanisms interact with countries’ historical experiences of torture and political violence in shaping the scope of domestic torture legislation. As such, the qualitative analysis is intended to develop theoretically informed explanations and generate hypotheses about the factors that may contribute to variation in legislative design. The analysis draws on parliamentary debates, reports to UN bodies, legislative drafts and preparatory works, reports by legislatures and parliamentary committees, and publications from civil society organisations and national human rights institutions (NHRIs).

Uganda and Kenya were selected as illustrative examples because they represent the clearest divergence identified in the global dataset. Uganda’s legislation explicitly extends criminal liability for torture to private actors, whereas Kenya largely follows the perpetrator categories contained in UNCAT. This contrast makes the cases well suited for exploring alternative pathways through which states interpret and translate international legal obligations into domestic legislation. The two countries also share several important contextual characteristics. Both have a common-law legal heritage, belong to the same regional human rights system, have experienced long

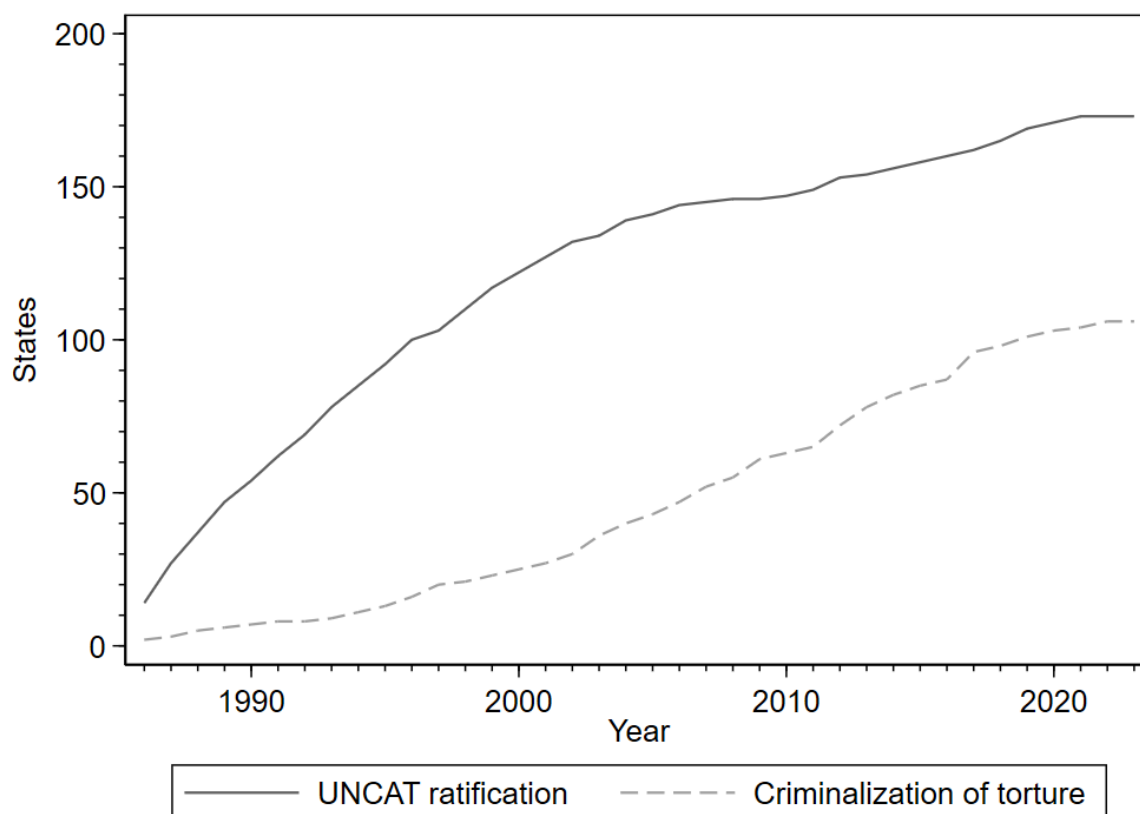
histories of torture, and have undergone periods of constitutional and political reform. Both have active civil society organisations and NHRIs that engage with international human rights mechanisms, and both criminalised torture as a separate offence within a relatively short period of time. Yet despite these similarities, they adopted markedly different legislative approaches to defining torture perpetrators. While the analysis cannot establish causal relationships, it provides insight into plausible mechanisms linking broader theories of human rights implementation to variation in the design of domestic torture legislation.

Findings: Global patterns of criminalisation of torture

In the following, we present descriptive statistics on how states have criminalised torture as a separate offence. We begin by examining the relationship between UNCAT ratification and the criminalisation of torture. The Convention against Torture (1984, Art. 4.1) establishes that State Parties shall “ensure that all acts of torture are offences under its criminal law”, including torture that is committed outside the context of an armed conflict or that is not part of a crime against humanity. According to the Convention’s preparatory works, states may fulfil this obligation either by enacting a stand-alone torture offence or by making acts of torture punishable under other criminal offences in national law (Burgers & Danelius, 1988, p. 129). The travaux préparatoires therefore indicate that the Convention leaves states some discretion regarding the legislative form through which torture is criminalised (Burgers & Danelius, 1988, p. 129).

The Committee against Torture has subsequently adopted a more specific interpretation. The commentary to UNCAT warns that the absence of a specific offence of torture in the criminal law “may cause a legal *vacuum*” (Katona, 2019, para. 3.3.1), and CAT has consistently, in its concluding observations and General Comments, held that it is of utmost importance to name and define torture under a specific criminal label in national law to alert to the special gravity of the crime.¹⁰ Consist-

10 See for instance: UN Committee against Torture, General Comment No. 2 Implementation of Article 2 by State Parties, CAT/C/GC/2 paras 9–11 (2008). The Committee often reiterates the message to explicitly name the offence of torture in national law, most clearly put in General Comment 2 on the implementation of Article 2 of the Convention, and the obligation to effectively prevent acts of torture. General Comment 2 affirms that “Serious discrepancies between the Convention’s definition and that incorporated into domestic law create actual or potential loopholes for impunity”, the General Comment continues stating that naming and defining torture in national law will “directly advance the Convention’s overarching aim of preventing torture and ill-treatment”, promoting its aim,

Figure 1. Number of State Parties to UNCAT and number of these that have criminalised torture

ent with this interpretation, and for the purposes of this study, we focus on the existence of an autonomous offence of torture in domestic criminal law. This reflects our view that a distinct offence provides the clearest legal basis for accountability and facilitates consistent comparison across national legal systems.

Figure 1 shows the number of State Parties to UNCAT over time and how many of these have criminalised torture as a separate offence.¹¹

Figure 1 shows that although UNCAT is a widely ratified treaty, with 173 State Parties by the end of 2023, the criminalisation of torture as an autonomous crime has lagged signifi-

cantly behind. Ratifications were rapid and widespread until roughly 2010, but the criminalisation pattern follows a slightly different trajectory. A persistent gap – indicating delays in domestic implementation – appears when comparing the two lines (of ratification and criminalisation, respectively). In 2000, only about 20% of State Parties had criminalised torture as a separate crime; by 2010 the figure had reached over 40%, and by 2020 nearly 60%. A few countries, such as Argentina and Sudan, enacted torture offences before ratifying UNCAT,¹² while others – New Zealand and Sri Lanka among them – criminalised torture in the same year as ratification.¹³ Among

and “alerting everyone, including perpetrators, victims, and the public, to the special gravity of the crime of torture”.

11 States enter the analysis when they ratify UNCAT, i.e., when they become State Parties. This includes, for example, Argentina, which adopted legislation before ratifying the Convention. This choice ensures that comparisons take place between the same population of states.

12 The other State Parties criminalizing torture before ratifying UNCAT are: Andorra, Canada, the Central African Republic, Cyprus, the Dominican Republic, Egypt, Greece, Ireland, Montenegro, Guinea-Bissau, and Sao Tome and Principe.

13 The other State Parties adopting legislation in the same year as ratification are: Antigua and Barbuda, Honduras, Malta, and the United Kingdom.

the relatively late adopters, the average time between ratification and criminalisation now exceeds 13 years.

While these figures are descriptive, they reveal an important pattern: many State Parties have not interpreted—or at least have not implemented—UNCAT as requiring a stand-alone torture offence in law. Whether the Convention itself requires such an offence remains a matter of legal debate and is beyond the scope of this article. As discussed above, the issue can be traced to the Convention's preparatory works, which indicate that states retain some discretion regarding the legislative form through which torture is criminalised.

The dataset's patterns suggest that ratification and criminalisation are not only temporally distinct but also driven by different political, legal, and strategic logics. Ratification has been widespread and relatively quick, often reflecting international pressure, reputational incentives, or low domestic political cost. Criminalisation, however, involves deeper legal reform which may have implications for security forces and legislative processes that may trigger more direct domestic contestation. Overall, it is clear that criminalisation of torture as a separate crime has been both rarer and more of a drawn-out process than ratification of UNCAT has been. Beyond timing, the substance of criminalisation also varies. As discussed, states may choose to criminalise torture committed solely by state actors or persons acting in an official capacity, as defined in UNCAT, or extend criminal liability to nonstate actors without a comparable governmental function. Extending criminal liability to all nonstate actors would be in line with Article 1.2 of UNCAT, establishing that the definition of torture in the convention "is without prejudice to any international instrument or national legislation which does or may contain provisions of wider application". Consequently, in addition to the variation in ratification of UNCAT and in subsequent criminalisation of torture, there is also variation in how torture has been criminalised domestically, specifically in the range of perpetrators covered. Figure 2 shows the variation over time among State Parties to UNCAT when it comes to which actors their criminalisation encompasses.¹⁴

Three main findings emerge from the patterns in Figure 2 on the scope of perpetrators covered by criminalisation. First, most State Parties that have criminalised torture as a separate offence have adopted UNCAT's scope of torture perpetrators, limiting liability to state agents and nonstate actors exercising

comparable official functions. By the end of 2023, only 30 out of 106 State Parties that criminalised torture as an autonomous crime had extended the offence to also cover nonstate actors, beyond those with comparable governmental functions. We have not found any State Party that criminalises torture exclusively by nonstate actors. The widened scope of torture perpetrators is conceived very differently across countries, and CAT shows no consistent stance on the scope of perpetrators. In some concluding observations (specifically Mexico, Costa Rica, and Slovenia), the Committee (2008, 2011, 2019) does not remark on the definition of torture covering also private individuals as perpetrators. However, in others (Belgium, Armenia, Italy, Montenegro, and Ecuador) this is underlined as problematic (CAT, 2009, para. 14; 2012, para. 10; 2014, para. 6; 2017a, para. 11; 2017b, para. 10).

Among the 30 countries that include nonstate actors (beyond the UNCAT definition), most use broad and general phrasing such as "anyone",¹⁵ "who",¹⁶ "a person",¹⁷ "any other person",¹⁸ "whoever",¹⁹ "he",²⁰ or "when the perpetrator is not a public official".²¹ Some countries make it clear in the legislative text that torture can be committed by private individuals; this is the case of Uganda,²² the Maldives,²³ Mexico,²⁴ and Nigeria.²⁵ A third group of eight countries does not define the status of the perpetrator at all, but instead frames the offence solely in terms of the prohibited conduct, using formulations such as "any act", "actions", or "constranger/submeter alguém".²⁶ Because these provisions do not restrict liability to particular categories of perpetrators, they appear to permit the prosecution of torture committed by private individuals as well as public officials.

Bolivia and Guatemala stand out among the 30 countries that criminalise torture by nonstate actors, as they extend lia-

14 The category of State Parties criminalizing torture by all nonstate actors includes two exceptions: Bolivia and Guatemala, which restrict liability to criminal groups. Importantly, this limitation does not hinge on the exercise of a comparable governmental function.

15 Belgium (quiconque), Montenegro, Algeria, Rwanda and Luxembourg (toute personne), and Italy (chiunque).

16 Costa Rica and Nicaragua (quién), Cabo Verde (quem)

17 Latvia and Ecuador ('la persona').

18 Nepal.

19 Serbia.

20 Colombia (él).

21 Paraguay ("cuando el autor no fuere funcionario").

22 "any person whether a public official or other person acting in an official or private capacity".

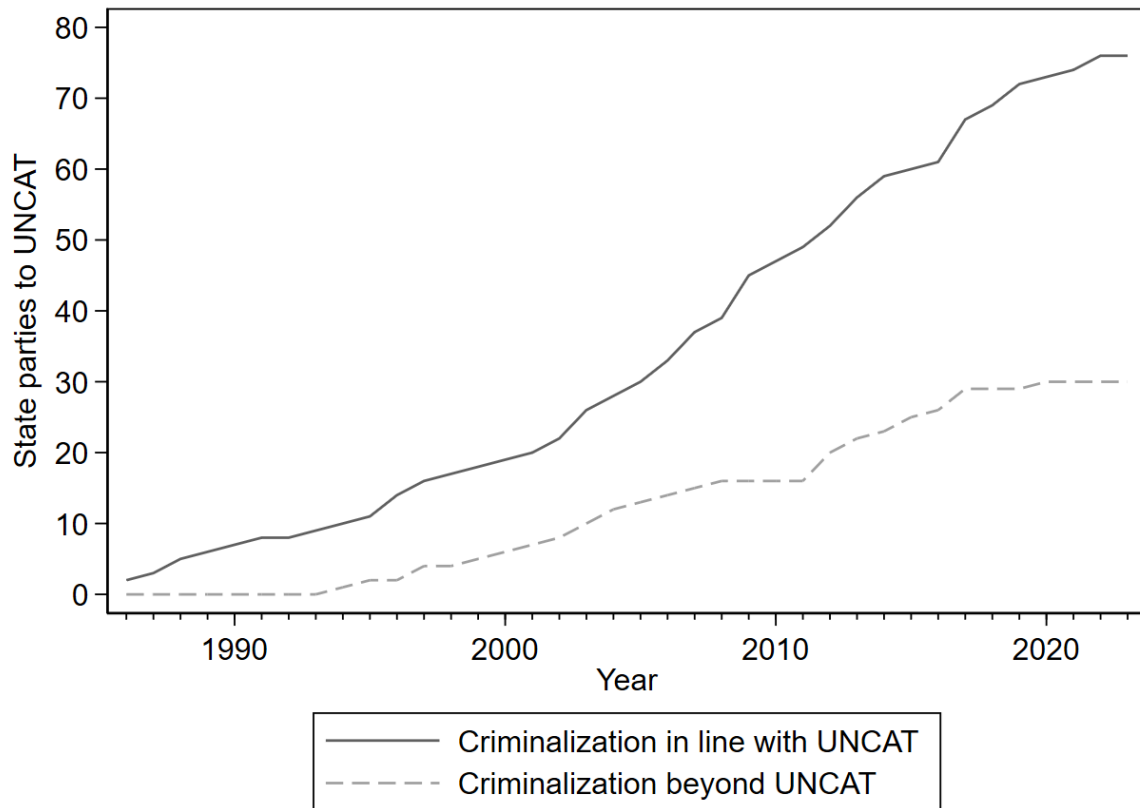
23 "'Torture' is defined as an act, or deed, of a public servant, or by the instigation of, or with the consent of, or with the acquiescence of the public servant, or by private individuals".

24 "También comete el delito de tortura el particular que".

25 "tout autre individu".

26 France and Central African Republic ("le fait de soumettre une personne à des tortures"), Dominican Republic, Brazil, Armenia, Ukraine, Georgia and Bangladesh.

Figure 2. Number of State Parties to *UNCAT* criminalising torture by state agents and persons acting in an official capacity, compared with those extending criminalisation to nonstate actors beyond the *UNCAT* definition.



bility only to criminal groups. In 10 of the 30 countries, torture committed by a public official is an aggravating circumstance.²⁷ Three countries stipulate that the public official who commits torture will also be subject to a ban on exercising public functions for a set period of time.²⁸ These different definitions of nonstate torture perpetrators in law influence the scope of implementation of the legislation: given the phrasing of the laws, in 28 of the countries' instances of private violence can most likely be considered torture when reviewed by courts,²⁹ while in Bolivia and Guatemala, the law delimits nonstate torture perpetrators to criminal groups.

The second finding is that State Parties typically decide both to criminalise torture and to define its scope of perpetrators at the same time. States rarely revise their legislation. We found no cases where State Parties later broadened the scope of legislation (i.e., went from covering only state actors or non-state actors with comparable functions to also including all nonstate actors), and only two countries initially included nonstate torture in their respective legislation but later changed stance. Argentina's torture criminalisation includes nonstate torture in the legislative text, but this has later been refused in Argentinian jurisprudence to better correspond to the definition in *UNCAT*.³⁰ Togo also initially included nonstate torture

27 Bolivia, Brazil, Belgium, Montenegro, Algeria, Georgia, the Central African Republic, Ecuador, Italy and Serbia.

28 Colombia, Costa Rica and Nicaragua.

29 If the rest of the constitutive elements of torture are met (severe pain or suffering, intentionality of the acts and if committed for a specific purpose).

30 Andrada Gustavo Marcelo s/ recurso de Casación, Sala 1ª del Tribunal de Casación de la Provincia de Buenos Aires, en Causa N° 33.747, (13 October 2011) "...la tortura es un delito especial que sólo puede ser cometida por un funcionario público o por un particular que actúa bajo su amparo (...) El Código Penal, es tributario en este tema de los textos convencionales y de

in its criminalisation, but this was later amended to better align with the Convention's definition (World Organisation against Torture [OMCT], 2024).³¹ Thus, in practically all cases the adoption of legislation and the definition of perpetrators were simultaneous decisions; decisions which only in rare cases have been revisited.

Finally, the earliest adopters of autonomous torture laws did not include nonstate actors. France was the first to include nonstate actors beyond those included in UNCAT in its legislation in 1994, followed notably by many Latin American countries such as Guatemala (1995), Brazil (1997), and Paraguay (1997). Although criminalisation has become more widespread over time, this has not been matched by an increase in the inclusion of a wider circle of nonstate actors as perpetrators. The patterns in Figure 2 indicate that the time trend in including nonstate actors as perpetrators, beyond those included in UNCAT, is not increasing at the same rate as overall criminalisation. Thus, over time, a relatively increasing proportion of State Parties has opted to criminalise torture by state actors and nonstate actors with comparable functions, rather than to also include acts of torture by all nonstate actors. While descriptive data cannot fully explain this trend, one plausible interpretation is that states increasingly prefer to align their legislation with the definition of perpetrators found in UNCAT. This interpretation is consistent with Berlin's (2023) finding that domestic torture laws have increasingly converged toward the elements contained in UNCAT. Combined with the observations that states very rarely change the scope of perpetrators, this means that these trends persist – and increase – with time.

In sum, variation exists not only in whether State Parties criminalise torture at all but also in which perpetrators are covered. While 106 State Parties to UNCAT have criminalised torture, the majority (76) limit the definition to state actors or nonstate actors with comparable functions, and only 30 extend it to a wider set of nonstate actors. To better understand the variation identified in the global mapping, we now turn to the illustrative examples of Uganda and Kenya.

Kenya and Uganda as illustrative examples: Understanding the variation in the definition of 'torture perpetrators'

As shown in Table 1 below, while both countries criminalise torture as a separate offence, they differ markedly in their definition of perpetrators. Uganda extends criminal liability to persons acting in both official and private capacities, whereas Kenya

largely limits liability to public officials or persons acting on their behalf. Rather than seeking to establish definitive causal explanations, the case studies draw on the analytical framework developed above to explore how international commitments, domestic political dynamics, institutional and legal fit, and historical experiences of violence may have contributed to these divergent legislative outcomes.

Table 1. *Scope of perpetrators under the torture legislation of Kenya and Uganda*

Kenya	Uganda
“For the purposes of this Act, “torture” means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person [...] when such pain or suffering is inflicted <i>by or at the instigation of, or with the consent or acquiescence of a public officer or a person acting on behalf of a public officer</i> [...]” (Prevention of Torture Act 2017, Art. 4).	“In this Act, torture means any act or omission, by which severe pain or suffering whether physical or mental, is intentionally inflicted on a person <i>by or at the instigation of or with the consent or acquiescence of any person whether a public official or other person acting in an official or private capacity</i> [...]” (The Prevention and Prohibition of Torture Act 2012, Art. 2(1)).

Uganda: Torture has played a prominent role in Uganda's history. It was pervasive under Idi Amin's dictatorship (1971-79), and although the National Resistance Movement government presented itself as a rights-respecting alternative, torture has persisted throughout President Museveni's tenure (Centre for Policy Analysis [CEPA], 2017). Torture has been committed by a wide range of actors, including state security agencies such as the Police, People's Defence Forces, and Prisons Service; armed insurgent groups, most notably the Lord's Resistance Army (LRA); and private actors, including vigilante groups and mobs (Ssengendo et al., 2015, p. 20; Uganda Human Rights Commission [UHRC], 2015a, p. 19, 2020). While human rights violations have long been widespread, violence in Uganda has often been characterised by both state repression and conflict involving nonstate actors (Schmitz, 1999, pp. 72–73).

su génesis histórica.” Given this evolution in jurisprudence, Argentina is coded as only criminalizing torture by state actors.

31 Togo is coded as criminalizing torture by nonstate actors 2015-2022 (when the study ends).

This broader context continued into the period when the anti-torture legislation was developed. The Committee against Torture (2022b, para. 11) has expressed concern about the widespread and frequent practice of torture in Uganda. Torture and ill-treatment remain among the most frequently recorded human rights violations (Ssengendo et al., 2015, p. 28; UHRC, 2024, p. 137), and state security forces continue to be implicated in torture and unlawful detention (Human Rights Watch [HRW], 2022). At the same time, violence by nonstate actors has remained a salient feature of the Ugandan context. Monitoring documented hundreds of killings linked to mob justice in 2021 (CAT, 2022b, para. 41), while data from the Uganda Human Rights Commission (2015a, p. 19) show that, in 2014, the Defence Forces accounted for 74 complaints alleging torture and ill-treatment, followed by 28 complaints against “private individuals”. These patterns formed an important backdrop to the legislative process, suggesting that torture in Uganda was understood not solely as a practice of state officials but also as violence committed by armed groups and private actors.

Uganda adopted the Prevention and Prohibition of Torture Act (PPTA) in 2012, followed by implementing regulations in 2017. The Act defines torture in accordance with international standards—requiring severe pain or suffering, intent, and purpose—but extends the category of perpetrators beyond UNCAT by including persons acting either in a public or private capacity (see Table 1) (Uganda, 2012, Art. 2(1)). The legislative process reflects several mechanisms highlighted in the broader literature on the domestication of international human rights obligations.

First, the legislative process was broadly consistent with mechanisms of normative commitment and international pressure. Uganda’s preparatory works identify alignment with UNCAT as a key “policy objective” (Parliament of Uganda, 2010, p. 1), while emphasising the need to strengthen the protection of human rights (Parliament of Uganda, 2010, p. 3). Uganda had also been encouraged by international and regional human rights bodies to strengthen its legal framework. The African Commission on Human and Peoples’ Rights (2009, 2011, 2015) urged Uganda to adopt anti-torture legislation and later to operationalise it through implementing regulations, while CAT (2005) criticised the absence of specific anti-torture legislation following its review of Uganda’s initial report. Together, these developments are consistent with research emphasising the role of international institutions and human rights commitments in encouraging domestic legislative reform.

Second, the Ugandan case is also consistent with strategic adaptation, as emphasised in parts of the literature on human rights implementation (e.g., Simmons, 2009). The timing of

the legislation coincided with Uganda’s engagement with the International Criminal Court (ICC). Uganda ratified the Rome Statute in 2002 and became the first country to self-refer a situation to the ICC in 2004, requesting investigation into crimes committed by the LRA in Northern Uganda (ICC, 2004). Not only the ICC investigation, but also the government’s decision to broaden the scope of perpetrators in the PPTA appears consistent with a broader strategy of adapting international legal institutions to domestic political priorities (e.g., REDRESS, 2006, p. 54). Similar strategic considerations have been suggested to underlie Uganda’s engagement with the ICC itself, with recent research arguing that the Museveni government used the Court strategically to target political opponents while limiting scrutiny of abuses committed by state actors (Johns & Parente, 2024; Kasande, 2024). Similarly, contemporary analyses suggest that broadening the definition of torture to include private actors enabled Uganda to extend criminal liability to nonstate (armed) groups while simultaneously demonstrating commitment to international human rights norms (REDRESS, 2006, p. 54, 2016, p. 18). Although the available evidence does not permit firm conclusions about governmental motivations, these developments are consistent with a strategic adaptation perspective in which governments implement international norms in ways that also advance domestic political interests.

Subsequent implementation provides some support for this interpretation. Although Uganda’s legislation encompasses both state and nonstate actors, civil society organisations report that prosecutions under the PPTA have remained extremely limited with respect to public officials despite persistent allegations of torture by state security forces (African Centre for Treatment and Rehabilitation of Torture Victims [ACTV] & International Rehabilitation Council for Torture Victims [IRCT], 2021; ACTV et al., 2022). At the same time, the broader definition created a legal framework through which torture committed by nonstate actors could be prosecuted. While these implementation patterns cannot demonstrate that the legislation was intentionally designed for this purpose, they are consistent with the strategic adaptation argument outlined above: broadening the definition of torture expanded the state’s legal tools for addressing violence by nonstate actors without necessarily strengthening accountability for torture committed by state officials.

Third, the legislative process also displays elements of policy learning. During the drafting of the legislation, the Parliamentary Committee on Legal and Parliamentary Affairs undertook study visits to Burundi and the Philippines, where anti-torture legislation had recently been adopted (Parliament of Ugan-

da, Committee on Legal and Parliamentary Affairs, 2012). Meetings with legislators, government officials, and civil society organisations informed the drafting process. Rather than simply mimicking or emulating foreign legislation, Ugandan policymakers appear to have selectively adapted comparative experiences to domestic conditions. Although neither Burundi nor the Philippines extended criminal liability to all nonstate actors, Ugandan policymakers drew on broader conceptions of torture in international criminal law and comparative legal practice to conclude that torture committed by private actors could also be criminalised in domestic legislation (Parliament of Uganda, Committee on Legal and Parliamentary Affairs, 2012, para. 5(iv)). This process corresponds closely to learning mechanisms identified in the broader literature on policy diffusion.

Finally, the Ugandan case illustrates how domestic institutional and historical factors conditioned the domestication of international norms. The literature suggests that the domestic implementation of international obligations is shaped also by the degree of institutional and legal fit with existing domestic frameworks. In Uganda, the 1995 Constitution appears to have provided such a foundation. Articles 24 and 44 establish respect for physical integrity and freedom from torture as non-derogable rights and frame these protections broadly rather than exclusively in relation to state actors. This constitutional framework therefore provided a legal basis that was compatible with extending criminal liability beyond the perpetrator categories contained in UNCAT. At the same time, the preparatory works and legislative comments repeatedly situate the legislation within Uganda's own experience of violence, referring not only to torture committed by state agents but also by private security actors and armed groups "such as Kony" (founder of the LRA) (UHRC, 2015b, p. 13). They further explain that persons acting in a private capacity "may or may not be acting on their own initiative", suggesting an awareness of the blurred boundaries between private actors, criminal organisations, and actors linked to the state (UHRC, 2015b, p. 13). At the same time, the preparatory works emphasise deterrence, reparations for victims, and the financial costs associated with state compensation awards (Parliament of Uganda, Committee on Legal and Parliamentary Affairs, 2012, para. 5(iii); Parliament of Uganda, 2010, p. 2), illustrating how international norms were interpreted through domestic legal and political priorities.

Kenya: Torture has long been associated with state repression in Kenya. The country acceded to UNCAT amid contested elections and constitutional changes that marked its transition to formal multiparty politics (Ajulu, 1998, p. 275). These developments unfolded alongside growing domestic and inter-

national pressure regarding human rights violations (Schmitz, 1999). Throughout the Moi era, torture, incommunicado detention, and the operation of torture houses were closely associated with state security agencies (Schmitz, 1999). The government responded with some institutional reforms, including the establishment of the Standing Committee on Human Rights in 1996 and amendments to the Police Act in 1997 explicitly prohibiting torture by police officers (Kenya, 1961; Republic of Kenya, 1996).

This historical experience shaped later understandings of torture in Kenya. Although human rights violations were not committed exclusively by state actors, torture during the 1980s and 1990s was predominantly associated with state repression and executive overreach (Schmitz, 1999). The Truth, Justice and Reconciliation Commission (2013) similarly concluded that successive governments and security agencies had consistently been the principal perpetrators of torture and related abuses. This understanding also emerged in parliamentary debate on the Prevention of Torture Act. During debate on the 2017 legislation, Hon. Wetangula described the state as the biggest perpetrator of human rights violations (Kenya National Assembly, 2017, p. 14). Together, these accounts suggest that torture was widely understood as a state-centred practice, providing an important backdrop to the approach to torture criminalisation.

The Kenyan legislative process reflects several mechanisms identified in the broader literature on the domestication of human rights obligations.

First, the Kenyan case supports the importance of normative commitment and international pressure. The Prevention of Torture Act emerged after a prolonged period of constitutional and legislative reform, during which both domestic and international actors consistently called for dedicated anti-torture legislation (Schmitz, 1999). Regional and international human rights bodies—including CAT (2013; United Nations Office at Geneva, 2008) and the African Commission on Human and Peoples' Rights (2014), particularly through its Committee for the Prevention of Torture in Africa—repeatedly urged Kenya to adopt legislation implementing UNCAT. Reviewing Kenya's reports in 2008 and 2013, CAT (2013; United Nations Office at Geneva, 2008) criticised the absence of domestic legislation criminalising torture and called on Kenya to enact a dedicated anti-torture law as a matter of urgency. Civil society organisations actively relied on these recommendations in their advocacy, contributing to sustained pressure for legislative reform (ICJ Kenya Section et al., 2012; Kenya Stakeholders Coalition for the UPR, 2012; World Organisation against Torture, 2024).

The emphasis on international commitments is clearly reflected in the legislative materials themselves. The Bill identifies two principal purposes: implementing the constitutional prohibition of torture and fulfilling Kenya's obligations under UNCAT (Kenya National Assembly, 2016, pp. 1021, 1038). Legislators further emphasised that the legislation would establish mechanisms for preventing torture, punishing perpetrators, and providing reparations to victims (Kenya National Assembly, 2016, pp. 1021, 1038). These developments are consistent with broader scholarship highlighting normative commitment and international institutions as important drivers of domestic implementation.

Second, compared to Uganda, the Kenyan material provides relatively little evidence that strategic political adaptation shaped the scope of perpetrators. Rather than expanding criminal liability beyond the categories contained in UNCAT, legislators largely sought to reproduce the Convention's definition in domestic law. As shown in Table 1 above, the resulting Act (Kenya, 2017, Art. 4) adopted a somewhat narrower formulation than UNCAT, but the available evidence suggests that this may have reflected legislative interpretation rather than a deliberate effort to narrow or redirect accountability. When questioned by CAT, the Kenyan delegation argued that persons "acting on behalf of a public officer" should be understood as encompassing persons acting in an official capacity, while offences committed by other private actors would continue to be prosecuted under the Penal Code (Office of the United Nations High Commissioner for Human Rights, 2022). Unlike Uganda, therefore, the Kenyan case offers little evidence that governments strategically reshaped the scope of perpetrators to pursue broader political objectives.

Third, the Kenyan case illustrates the importance of institutional and legal fit. The post-election violence of 2007–2008 constituted a critical juncture that culminated in Kenya's far-reaching constitutional reforms. The 2010 Constitution established one of Africa's most comprehensive Bills of Rights and entrenched freedom from torture as a non-derogable right (Articles 25 and 29). Although the Constitution did not define torture or identify potential perpetrators, it created a strong constitutional foundation for subsequent legislation. The Prevention of Torture Act itself explicitly presents implementation of the constitutional prohibition as one of its central objectives (Kenya National Assembly, 2016). These developments are consistent with the broader implementation literature, which emphasises that existing legal institutions and constitutional frameworks shape how international obligations are incorporated into domestic law.

At the same time, this constitutional and legal framework developed within a political context in which torture was primarily understood as an abuse committed by the state. Amnesty International Kenya has argued that the legislation "borrows heavily" from UNCAT but does not sufficiently adapt the definition to Kenyan circumstances, particularly by failing to encompass situations in which police officers operate in collaboration with criminal groups (Legal Resources Foundation, 2020, p. 72). Similarly, political debate surrounding the legislation consistently framed torture as a problem of state violence, leaving comparatively little conceptual space for extending criminal liability to private actors (ICJ Kenya Section et al., 2012, pp. 47–48).

Implementation patterns are broadly consistent with this interpretation. Despite legislation directed specifically at torture by state officials, prosecutions under the Prevention of Torture Act have remained rare, while reports continue to document widespread allegations of torture committed by police and other security agencies (CAT, 2022a; Independent Medico-Legal Unit [IMLU], 2022, 2023). The Kenyan experience therefore indicates that defining torture primarily as a state crime does not by itself ensure effective accountability in practice.

Taken together, the two case studies suggest several hypotheses that warrant broader investigation in future research. One is that states whose histories of torture involve both state and nonstate actors may be more likely to extend criminal liability beyond the perpetrator categories contained in UNCAT. A second is that strategic political incentives may encourage governments to broaden torture legislation where doing so facilitates accountability for nonstate opponents while simultaneously reinforcing claims of compliance with international human rights obligations. A third is that the design of torture legislation may be conditioned by the degree of fit between international obligations and existing domestic legal and constitutional frameworks.

Conclusion

Criminalising torture is a central element of the domestic implementation of the United Nations Convention against Torture. Yet the domestication of international legal obligations is not simply a question of whether states legislate, but also of how they define the offence in national law. Despite a growing literature on treaty ratification and implementation, comparatively little attention has been paid to variation in the design of domestic torture criminalisation, particularly regarding the scope of potential perpetrators. This article has sought to address that

gap through a global mapping of domestic torture legislation and illustrative case studies of Uganda and Kenya.

We arrive at three main findings. First, we find that there is important variation among State Parties to UNCAT when it comes to the criminalisation of torture. Nearly two-thirds of State Parties have criminalised torture as a separate offence, and only around a fourth of these in turn have included acts by all nonstate actors (with no comparable governmental functions) in such criminalisation. Although not the primary focus of this article, our findings further suggest that variation exists in how states understand and operationalise the concept of “nonstate actors”, with implications for who may ultimately be prosecuted for torture.

Second, the illustrative examples of Uganda and Kenya suggest that variation in domestic torture legislation is best understood through a combination of international and domestic factors. Both countries faced similar international obligations under UNCAT and experienced sustained pressure from international and regional human rights bodies to adopt dedicated anti-torture legislation. Yet they arrived at markedly different legislative solutions. Drawing on broader theories of the domestication of international human rights obligations, the case studies suggest that international commitments interacted with domestic political dynamics, institutional and legal frameworks, and historical experiences of violence to shape different approaches to defining torture perpetrators. In Uganda, strategic adaptation and policy learning appear to have contributed to a broader definition encompassing private actors, while Kenya’s legislation remained closely aligned with a state-centred understanding of torture, reflecting both constitutional developments and longstanding domestic understandings of torture as principally a form of state violence. These findings should be understood as plausible, theory-informed interpretations rather than definitive causal explanations, and point to promising avenues for future comparative research on variation in legislative design.

Third, our findings show the value of examining torture legislation through the broader literature on the domestication of international human rights law. Previous scholarship has primarily focused on why states ratify treaties or adopt implementing legislation. By shifting attention to the design of domestic torture offences, this article shows that theories of strategic adaptation, normative commitment, policy learning, and institutional and legal fit also help illuminate how international legal obligations are interpreted and translated into national legislation. The findings therefore contribute to a growing literature that views implementation not as a uniform process

of legal incorporation, but as one of interpretation, adaptation, and domestication.

Our findings may also have implications for the extent to which perpetrators of torture are ultimately held accountable for violations. The experiences of both Uganda and Kenya illustrate that adopting dedicated anti-torture legislation does not by itself ensure effective accountability. In both countries, prosecutions of public officials under the anti-torture legislation remain limited despite persistent allegations of torture by state security forces. In Uganda, the broader statutory definition creates a legal framework through which torture committed by nonstate actors can be prosecuted, while civil society organisations continue to report limited use of the legislation against state officials. These implementation patterns are consistent with, although they do not demonstrate, the possibility that broader legislative definitions may facilitate accountability for nonstate violence without necessarily strengthening accountability for torture committed by state actors. Kenya, meanwhile, illustrates that even legislation specifically directed at state torture may encounter substantial implementation obstacles. Together, the two cases suggest that legislative design represents only one component of effective accountability. Whether different statutory models systematically influence subsequent prosecution patterns remains an important question for future research.

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Acknowledgements

For helpful comments, the authors wish to thank staff of ICJ-Kenya and the African Centre for Treatment and Rehabilitation of Torture Victims in Uganda; Mark Klamberg, Pål Wrangé, Jonas Tallberg, Faradj Koliev, Carl Vikberg, William Underwood, Sally Longworth, and Fredrik Svensson; participants in the Global and Regional Governance seminar and the Stockholm Centre for International Law and Justice's seminar at Stockholm University; and two anonymous reviewers. We are also grateful to the staff and participants at the Danish Institute Against Torture (DIGNITY) for valuable insights provided during a presentation of an earlier draft.

Funding

Karin Sundström's work was supported by the Anna Ahlströms and Ellen Terserus foundation and co-funded by the European Union (ERC, DEMCOOP, 101097437). Views and opinions expressed are however those of the author only and do not necessarily reflect those of the European Union or the European Research Council. Neither the European Union nor the granting authority can be held responsible for them.

Submitted 9th of June 2026

Accepted 11th of September 2026