「禁止酷刑和其他殘忍、不人道或有辱人格的待遇或處罰公約」施行法制定之研究

研究報告書

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目錄

第一章　研究計畫總說明

第一節　主旨

為有效杜絕各種形式與手段之酷刑為當權者濫用，落實已具國內法律效力之公民與政治權利國際公約第七條明文規定之「禁止酷刑或不人道刑罰」，並具體回應 2013 年人權兩公約國際審查之意見，爰制定「禁止酷刑和其他殘忍、不人道或有辱人格的待遇或處罰公約」施行法。

第二節　主題與背景

酷刑以各種形式與手段，透過對人的肉體或精神造成痛苦，以達通常係當權者之施予酷刑者所欲之目的。刑事警察為取得嫌疑人之口供所施加之酷刑，即為其顯例。為達目的而不擇手段，則為酷刑之最佳寫照。禁止酷刑和其他殘忍、不人道或有辱人格的待遇或處罰公約（以下簡稱「禁止酷刑公約」）施行法之制定，即欲透過「禁止酷刑公約」之國內法化，作為日後禁止酷刑之法律依據，延伸公民與政治權利國際公約第七條明文規定之「禁止酷刑或不人道刑罰」，並具體回應 2013 年人權兩公約國際審查之意見。

僅論近年之重大事例，民國 76 年的新竹學童陸正綁架撕票案，監察委員王清峰即依尋獲之刑求錄音，彈劾該案相關檢警人員，並由法院判決有罪確定。民國 85 年於空軍作戰司令部服役的江國慶，因軍檢謀求迅速破案而使用不法手段逼供，致被軍事法庭判決死刑。民國 100 年本案獲得平反，然卻未對相關違法失職

人員進行究責，舉國譁然。

民國 89 年發生於台南縣歸仁鄉之男女雙屍案，嫌疑人謝志宏於無律師陪同之第一次警方訊問時，自白性侵並殺害被害人。然爾後之第二次訊問及有辯護人陪同之第三次訊問，謝志宏均表示清白，且檢警迄未掌握指紋或血跡反應等科學證據。然法院不採第一次自白為刑求結果之抗辯，於 2011 年判決謝志宏死刑定讞。民國 91 年，鄭性澤於台中豐原 KTV 槍擊案被控殺警等罪名。依醫院病歷紀錄，鄭性澤受逮捕後僅於左小腿有槍傷，然經警方訊問後卻出現眼部瘀傷等其他傷勢。鄭性澤表示該些傷勢係因警方刑求所致，並因此等刑求作出自證己罪之不實自白。去年七月發生之陸軍義務役下士洪仲丘於禁閉室悔過卻遭操練致死乙案，更是凸顯出酷刑及其他不人道處罰問題的嚴重性。

民國 80 年蘇建和、劉秉郎、莊林勳三人遭誤控與已決被告王文孝、王文忠兄弟共同強劫殺害新北市汐止區吳姓夫婦，法院以警方刑求所得的不實自白判處死刑，歷經再審程序，纏訟 21 年，於民國 101 年 8 月 31 日經台灣高等法院再更三審判決認定自白出於刑求而予排除，認無罪證，宣告無罪定讞，三人終獲平反。

此些事例顯示，前聯合國反酷刑特別報告員 Manfred Nowak 對我國國家人權報告內文所自稱之「酷刑已在台灣絕跡，我們沒有刑求的問題」之所以不以為然，實係其來有自。自威權時代以降，酷刑從未於台灣絕跡。近十餘年來，於司法改革與人權團體所奔走與援助的案例中可發現，酷刑作為一種手段，除了本身錯誤之外，其更是爾後冤案產生之濫觴。自酷刑的施加與刑求逼供開始，至科學證據的付之闕如與法院對不實自白的採信，這整個冤案的生產線，不但令無辜者受罰甚至失去生命，對於被害者而言，也永無了解真相的一日。我們可以說，酷刑不但剝奪了無辜者的性命，也剝奪了受害者及其家屬唯一的救贖，也就是真相。

兩公約審查於結論意見中建議，台灣應批准「禁止酷刑公約」，並依照該公約任擇議定書，建立國家級的獨立預防機制。該機制將對台灣所有機關—包括軍方機關—均有管轄權，復加以去年八月立法院所通過之一系列軍事審判法修正案，可預期此將對酷刑於台灣的真正絕跡，有相當正面與實質之助益。

第三節　研究方法

依本計畫之主旨，採行之研究方法可分為兩部分。第一，在靜態的規範面上，透過公約約文及相關一般性意見等第一手資料，以及期刊論文等第二手資料，彙整與耙梳「禁止酷刑公約」經由施行法而國內法化之後，所可能面臨之後續議題。第二，在動態的實踐上，邀集專家學者與實務界人士進行焦點訪談，探討相關問題與困境，並歸納出現行問題與可能因應之方式與方法。最後，以上開成果為基礎，對應有的施行法內容進行迴歸分析（regression analysis）與法規架構之建立。具體的過程則可概分如下：

一、揭櫫制定施行法之立法目的；

二、賦予「禁止酷刑公約」國內法律之效力；

三、適用「禁止酷刑公約」時應參照之對象；

四、各級政府機關就禁止酷刑之積極與消極義務；

五、各級政府機關相互間以及與其他政府或組織機構間合作之義務；

六、國家級獨立預防機制之設立；

七、財政預算編列的優先性；

八、主管法令之修正期間；

九、明定施行法之施行日期。

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第二章　禁止酷刑和其他殘忍、不人道或有辱人格的待遇或處罰公約施行法草案暨總說明

第一節　施行法草案總說明

「禁止酷刑和其他殘忍、不人道或侮辱之處遇或懲罰公約」(Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment)(以下簡稱公約) 係聯合國於一九八四年十二月十日經由第四十六屆大會第三十九號決議通過，並於一九八七年六月二十六日正式生效。其目的為進一步落實「世界人權宣言」第 5 條和「公民及政治權利國際公約」第 7 條之規定，有效杜絕各種形式與手段之酷刑、防止在世界各地有酷刑和其他殘忍、不人道或侮辱之處遇或懲罰之情事發生，要求各締約國在其管轄領域內，必須採取各種有效方法防止酷刑的存在與發生。更期盼各國合作，有效開展禁止酷刑之各項行動。公約迄今有一百六十七個國家簽署，其中已有一百五十八國已批准。此外，聯合國另於二○○二年十二月十八日經由第五十七屆大會第一九九號決議通過「禁止酷刑和其他殘忍、不人道或有辱人格的待遇或處罰公約任擇議定書」(Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment)(以下簡稱議定書)，並於二○○六年六月二十二日正式生效。任擇議定書迄今有九十七個國家簽署，七十九個國家完成批准或加入。

個人在任何情況與任何地方均有免受酷刑和殘忍、不人道或侮辱之處遇或懲罰之權利乃源於「人的尊嚴以及人的完整性不受侵害與貶損」原則。確保生命之神聖不可侵犯與維護個人身心健全與基本自由，乃中華民國憲法與國際人權法制的目標，更是世界和平與人類福祉的基礎。據此，禁止酷刑不只為公約及其議定書所明確承認，且已被視為具有強行法 (Jus Cogens) 性質之規範。即使處於戰爭或危及國家安全之緊急情況，國家也不得延宕、擱置或減損履行禁止酷刑之條約義務。違反禁止酷刑規定者被認定為國際罪行，在任何情況下均不得豁免刑責。

鑒於公約相較於其他人權公約不同之處在於其規定多為保障人民免受酷刑與虐待之程序規定與預防機制，為確實達成公約之目標，中華民國政府批准公約時，應一併批准議定書。施行法並視公約與議定書規定為禁止酷刑之國家義務的最低標準。適用公約之任何法令及行政措施，應符合聯合國禁止酷刑委員會及所屬委員會所為之決議、國家報告之審查意見、認定個人申訴案件之決定及一般性意見。未來任何涉及禁止酷刑之國際文書或國家法律如有適用較寬廣或標準更嚴格之規定者，依其規定。

民國 104 年 7 月 1 日立法院通過「條約締結法」，依其第十

一條第一項第一款但書，若條約有無法交存之情況，應由主辦機關報請行政院轉呈總統逕行公布，又同條第二項規定，前述之條約自總統公布之生效日期起具國內法效力。「條約締結法」使公約及議定書在我國法律體系上之定位及效力更加明確，但仍有必要以法律定之，以明文確定公約及議定書具有國內法之效力；另為促進公約及其議定書規範之落實，有關推動公約及其議定書相關工作之政府專責單位、適用公約規定時應遵循之解釋原則、現行法令及行政措施如何遵照公約規定，於一定時間內完成制（訂）定、修正、廢止或改進，經費之優先編列、禁止酷刑國家報告制度與國家酷刑防制機制之建立等，亦有必要以法律明定，以利遵循，爰制定「禁止酷刑和其他殘忍、不人道或有辱人格的待遇或處罰公約施行法」，共計十三條，其要點如下：：

一、揭櫫本法立法目的及明定公約及時其議定書之禁止酷刑和其他殘忍、不人道或有辱人格的待遇或處罰之規定，具有國內法之效力。（第一條及第二條）

二、適用公約及其議定書規定，應依公約規定及聯合國禁止酷刑委員會所作之標準認定之。任何國際文書或國家法律有適用較廣之規定者，依其規定。參照其立法意旨及聯合國兒童權

利委員會之解釋。（第三條）

三、適用公約之任何法令及行政措施，應符合公約及其議定書之目的及宗旨、聯合國禁止酷刑委員會及所屬委員會所為之決議、國家報告之審查意見、認定個人申訴案件之決定及一般性意見。(第四條)

四、各級政府機關及受政府委託執行公務之人行使職權，應符合公約及其議定書之相關規定。（第五條）

五、政府為落實公約及其議定書規定並推動禁止酷刑相關工作，應於監察院設酷刑防制委員會，以確保公約之落實。（第六條）

六、任何人於本公約及其議定書下所應受保障之權利遭受侵害或有受侵害之虞時，有權向酷刑防制委員會提出申訴。任何人或法人團體知悉有前項情事時，亦得代為提出申訴。酷刑防制委員會於接獲申訴後應立即進行調查，並公布調查結果。（第七條）

七、為實施公約第三條之規定，爰明文規定當任何人於另一國家將有遭受酷刑之危險時，我國不得將該人驅逐、遣返或引渡至該國。（第八條）

八、政府應依照公約之報告機制，建立禁止酷刑國家報告制度，初次報告於本法施行後一年內提出，其後每四年提出定期報告。（第九條）

九、各級政府機關行使職權，應符公約規定，並應確實籌劃、推動及執行公約規定事項；政府應與國際間共同合作，以保護與促進公約所保障各項人權之實現。（第十條）

十、執行公約所需經費，政府應依財政狀況，優先編列。（第十一條）

十一、法令與行政措施有不符公約規定者，各級政府機關應於本法施行後兩年內完成法令之制（訂）定、修正或廢止，以及行政措施之改進。各級政府機關應於本法施行後一年內提出檢視清單。（第十二條）

十二、明定本法之施行日期。（第十三條）

第二節　禁止酷刑和其他殘忍、不人道或有辱人格的待遇或處罰公約施行法草案條文及其立法理由

條　　文	說　　明
第一條 為實施聯合國一九八四年禁止酷刑和其他殘忍、不人道或有辱人格的待遇或處罰公約（The United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment，以下簡稱公約）及其議定書，以落實禁止酷刑和其他殘忍、不人道或有辱人格的待遇或處罰之國際強行規範，並充實憲法保障人權意旨，特制定本法。	為有效杜絕各種形式與手段之酷刑為當權者濫用，落實已具國內法律效力之公民與政治權利國際公約第七條所明文之「禁止酷刑或不人道刑罰」，並具體回應 2013 年人權兩公約國際審查之意見（結論性意見與建議第 11 點），爰制定「禁止酷刑和其他殘忍、不人道或有辱人格的待遇或處罰公約」施行法。
第二條 公約所揭示之禁止酷刑和其他殘忍、不人道或有辱人格的待遇或處罰之規定，具有國內法律之效力。	民國 104 年 7 月 1 日立法院通過「條約締結法」，依其第十一條第一項第一款但書，若條約有無法交存之情況，應由主辦機關報請行政院轉呈總統逕行公布，又同條第二項規定，前述之條約自總統公布之生

	效日期起具國內法效力。本條確認公約具有國內法律地位之效力。
第三條 為本法之目的，酷刑和其他殘忍、不人道或有辱人格的待遇或處罰應依公約規定及聯合國禁止酷刑委員會所作之標準認定之。 任何國際文書或國內法律有適用較廣之規定者，依其規定。	一、明定酷刑和其他殘忍、不人道或有辱人格的待遇或處罰應依公約及聯合國禁止酷刑委員會訂定之國際標準認定。 二、任何載有或可能載有適用範圍較廣之規定的任何國際文書或國內法律，不受本條第一項之限制，以落實人權保障之意旨。
第四條 任何法令之制頒、司法判決之作成及行政措施之採行，均應符合公約及其議定書之目的及宗旨、聯合國禁止酷刑委員會及所屬委員會所為之決議、國家報告之審查意見、認定個人申訴案件之決定及一般性意見。	為落實公約規定，適用公約之任何法令之制頒、司法判決之作成及行政措施之採行，應符合公約及其議定書之目的及宗旨、聯合國禁止酷刑委員會及所屬委員會所為之決議、國家報告之審查意見、認定個人申訴案件之決定及一般性意

	見。
第五條 各級政府機關及受政府委託執行公務之人行使職權，應符合公約及其議定書之相關規定。	公約第一條明定，公約所規範之行為係由公職人員或以官方身分行使職權之人所為之行為，故於本條明定各級政府機關及受政府委託執行公務之人於行使職權時，應符合公約及其議定書之相關規定，俾保障人民免受不法侵害。
第六條 政府為落實公約及其議定書規定並推動禁止酷刑相關工作，應於監察院設酷刑防制委員會，辦理下列事項： 一、定期檢查各級政府管轄和控制下任何確實或可能有人因公權力機關之命令或唆使而被剝奪自由，或在其同意或默許下被剝奪自由的地點； 二、依據聯合國相關準則，向有相關機關提出建議，以期改善被剝奪自由者的待遇和條件，防範酷刑和其他殘忍、不人道或有辱人	依公約及其議定書之規定，每一締約國最遲於本議定書生效或其批准或加入一年後，應維持、指定或設立一個或多個獨立的國家防範機制，於國家層級負責酷刑之防範。我國目前雖未設有符合聯合國巴黎原則（**Principles relating to the Status of National Institutions**）（**The Paris Principles)**之國家人權委員會，考量監察院行使之職權，除調查、糾正、彈劾、糾舉外，尚得定期巡察中央與地方機關及其工作、設施。依據「監察院巡迴監察辦法」第 2 條規

格的待遇或處罰； 三、就現行立法或立法草案提出建議或意見。 四、接受申訴與調查各級政府涉及違反公約或有違反公約之虞諸情事。 五、推動各級政府與各國政府、國內外非政府組織及人權機構共同合作。 六、推動相關之人權教育。 七、督導各級政府履行公約所載之各項國家義務。	定，巡察之目的包括調查行政院及其所屬機關之工作及設施有無違法或失職，以及調查中央或地方公務人員有無違法或失職。依同辦法第3條規定，巡察之任務包括關於公務人員有無違法失職情形，以及關於糾正案件之執行情形。監察院內部設有「人權保障委員會」及「司法及獄政委員會」，本得就警察、國安系統、軍隊、監獄及其他收容中心等最容易發生迫害人權的場域進行定期巡察，以為預防性的監督；一旦發動有關調查，監察委員亦得就上開地點進行現場履勘，以發掘事實真相。《禁止酷刑和其它殘忍、不人道或侮辱之處遇或懲罰公約》經國內法化後，監察院透過既有法定職掌，自得檢視與監測各政府機關之作為及措施是否符合公約規定。透過施行法之授權，監察院得強化巡察拘留或監禁處所等功能，承擔外控、獨立及具公信力之國家防範機制，以預防被剝奪自由者遭受酷刑和其它殘忍、不人道或侮辱之處遇。爰建議酷刑防制

	委員會設於監察院內。 監察院執行議定書第四章所載之國家防範機制相關工作。負責定期查訪、提出相關行政措施與立法之建議、接受申訴與進行調查、推動人權教育以及國內外合作事項、督導政府各級機關履行公約所載之各項義務等。
第七條 任何人於本公約及其議定書下所應受保障之權利遭受侵害或有受侵害之虞時，有權向酷刑防制委員會提出申訴。 任何人或法人團體知悉有前項情事時，亦得代為提出申訴。 酷刑防制委員會於接獲申訴後應立即進行調查，公布調查結果，並依法做必要處置。	一、任何人於本公約及其議定書下所應受保障之權利倘遭受侵害或有侵害之虞時，應有權向酷刑防制委員會尋求救濟，以落實本公約及其議定書下相關權利之保障。 二、任何受害人皆有請求權，當事人有不明確或懼於提出申訴之可能，故應納入公民訴訟（*actio popularis*）之概念，由任何人或法人團體代為提出申訴。 三、酷刑防制委員會於接獲申訴後應立即調查，並公布調查結果，依法做必要處

	置以確實履行其所被賦予之任務。
第八條 如有充分理由相信任何人於另一國家將有遭受酷刑之危險，我國不得將該人驅逐、遣返或引渡至該國。	為實施公約第三條之規定，爰明文規定當任何人於另一國家將有遭受酷刑之危險時，我國不得將該人驅逐、遣返或引渡至該國。
第九條 政府應建立禁止酷刑報告制度，於本法施行後一年內提出初次國家報告，並於其後每四年提出定期國家報告。 國家報告應依聯合國相關規定及報告準則撰寫。 國家報告應邀請曾任或現任聯合國禁止酷刑委員會委員或國際獨立專家審閱，政府並應依審閱意見檢討、研擬後續施政及立法。	一、本法依禁止酷刑和其他殘忍、不人道或有辱人格的待遇或處罰公約第十九條之規定，明定應於公約依本施行法對我國生效後一年內提出初次國家報告，其後應每四年提出定期國家報告。 二、明定本條所稱之國家報告應依聯合國相關規定及報告準則撰寫。 三、為落實國家報告，明定應邀請曾任或現任聯合國禁止酷刑委員會委員或國際獨立專家審閱，且政

	府應依審閱意見檢討暨研擬後續施政及立法。
第十條 政府應與各國政府、國內外非政府組織及人權機構共同合作，以保護及促進公約所保障人權之實現。 政府應建立評估公約明定落實與影響之人權指標及政策、法案之影響評估。	一、公約規定之落實，除應就公規定事項協調聯繫辦理外，更有必要與外國政府及國際間之非政府組織及人權機構合作，以保護及促進其所保障各項人　　權之實現，爰明定第一項。 二、明定為落實公約應建構人權指標及執行相關政策與法案之影響評估。
第十一條 各級政府機關執行公約及其議定書之各項規定所需之經費，應優先編列。	為執行公約及其議定書之各項規定所需之經費，具有編列之相當優先性，爰明訂本條規定，以確保公約及其議定書之有效執行。
第十二條	

各級政府機關應依公約及其議定書規定之內容，就其所主管之法令及行政措施，於本法施行後一年內提出檢視清單，有不符公約及其議定書規定者，應於本法施行後二年內，完成法令之制（訂）定、修正或廢止及行政措施之改進。	公約所揭示之規定，係國際上最重要之禁止酷刑和其他殘忍、不人道或有辱人格的待遇或處罰之規範。為有效杜絕各種形式與手段之酷刑為當權者濫用，落實已具國內法律效力之公民與政治權利國際公約第七條所明文之「禁止酷刑或不人道刑罰」，並具體回應2013 年人權兩公約國際審查之意見，爰明定各級政府機關應依公約規定之內容，檢討所主管之法令與行政措施，並於本法施行後一年內提出檢視清單，有不符公約規定者，應於本法施行後二年內，完成法令之制（訂）定、修正或廢止及行政措施之改進。
第十三條 本法自公布日施行。	 明定本法之施行日期。

第三章　結論與建議

「禁止酷刑公約」施行法之制定，係「禁止酷刑公約」國內法化之重要步驟，並為日後禁止酷刑之基礎法律依據。「禁止酷刑公約」之國內法化，並為公民與政治權利國際公約第七條所明文規定之「禁止酷刑或不人道刑罰」之具體延伸，以及 2013 年人權兩公約國際審查意見之回應與落實。酷刑除了本身之反人道性與非道德性外，也必然令相關警檢調人員養成不積極求助科學證據、但求透過酷刑以速審速決之苟且心態。此除造成實際加害人逍遙法外與無辜人士被牽連入獄，被害人以真相之獲知為其唯一救贖之機會亦被剝奪殆盡。吾人不致有不合理期待，認為「禁止酷刑公約」施行法之制定將立即禁絕此一惡性循環與冤案生產線，但「禁止酷刑公約」之批准與國內法化，以及依照該公約任擇議定書所建立之國家級獨立預防機制，復加以 2014 年八月立法院所通過之一系列軍事審判法修正案，此在在均係臺灣於禁止酷刑或不人道刑罰上所邁出之重要法制步驟，唯有如此，我國國家人權報告所稱之「酷刑已在台灣絕跡，我們沒有刑求的問題」始有從妄言誑語成為島國驕傲的一天。

為確保公約之實施及執行，禁止酷刑和其他殘忍、不人道或有辱人格的待遇或處罰公約（Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment）及禁止酷刑和其他殘忍、不人道或有辱人格的待遇或處罰公約任擇議定書（Optional Protocol to the Convention against Torture and other Cruel Inhuman or Degrading Treatment or Punishment ），應同時與本研究報告提供之施行法草案送至立法院審議，並建議內政部

或相關部會應依本施行法第三條之規定，應針對酷刑之概念與國際標準進行研究，另依本施行法第十二條規定提出檢視清單並做成修法之建議。

附件一： 禁止酷刑和其他殘忍不人道或侮辱之處遇或懲罰公約中文版

《禁止酷刑和其它殘忍、不人道或侮辱之處遇或懲罰公約》[1]

本公約締約各國，

考慮到根據《聯合國憲章》宣布的原則，承認人類大家庭一切成員具有平等與不可剝奪的權利是世界自由、公正與和平的基礎，

認識到上述權利起源於人的固有尊嚴，

考慮到根據《憲章》尤其是第五十五條的規定，各國有義務促進對人權和基本自由的普遍尊重和遵守，

注意到《世界人權宣言》第 5 條和《公民及政治權利國際公約》第 7 條都規定不允許對任何人施行酷刑或殘忍、不人道或侮辱之處遇或懲罰，

並注意到大會於 1975 年 12 月 9 日通過的《保護人人不受酷刑和其它殘忍、不人道或侮辱之處遇或懲罰宣言》

希望在全世界更有效地開展反對酷刑和其它殘忍、不人道或侮辱之處遇或懲罰之鬥爭，

茲協議如下:

第一部分

第 1 條

1、為本公約的目的，「酷刑」是指為了向某人或第三者取得情資或供詞(confession)，為了他或第三者所作或涉嫌的行為對他加以懲罰，或為了恐

[1] 參考 http://www.un.org/chinese/hr/issue/catoc.htm。本公約名稱系依照《公政公約》第七條規定翻譯。

嚇或威脅他或第三者，或為了基於任何一種歧視的任何理由，蓄意使某人在肉體或精神上遭受劇烈疼痛或痛苦的任何行為。而這種疼痛或痛苦是由公職人員或以官方身分行使職權的其他人所造成，或在其唆使、同意或默許下造成的。純粹因法律制裁而引起或法律制裁所固有或附帶之疼痛或痛苦不包括在內。

2. 本條規定並不妨礙載有或可能載有適用範圍較廣的規定之任何國際文書或國家法律。

第 2 條

1. 每一締約國應採取有效的立法、行政、司法或其它措施，防止在其管轄之任何領土內出現酷刑的行為。

2. 任何特殊情況，不論為戰爭狀態、戰爭威脅、國內政局動盪或任何其它社會緊急狀態，均不得援引為施行酷刑的理由。

3. 上級官員或公務機關的命令不得援引為施行酷刑的理由。

第 3 條

1. 如有充分理由相信任何人在另一國家將有遭受酷刑的危險，任何締約國不得將該人驅逐、遣返或引渡至該國。

2. 為了確定這種理由是否存在，有關機關應考慮所有相關因素，包括在適當情況下，考慮到相關國家境內是否存在一貫嚴重、公然、大規模侵犯人權的情況。

第 4 條

1. 每一締約國應保證將一切酷刑行為定為刑事罪行。該項規定也應適用於施行酷刑的企圖以及任何人共謀或參與酷刑的行為。

2.每一締約國應根據上述罪行的嚴重程度，規定適當懲罰。

第 5 條

1、每一締約國應採取各種必要措施，確定在下列情況下該國對第 4 條所述之罪行有管轄權:

(a) 罪行發生在其管轄之任何領土內，或在該國註冊之船舶或飛機上。

(b) 被控罪犯為該國國民。

(c) 受害人為該國國民，而該國認為應予管轄。

2、每一締約國也應採取必要措施，確定在下列情況下。該國對此種罪行有管轄權: 被控罪犯在該國管轄的任何領土內，而該國並未依據第 8 條規定將其引渡至本條第 1 項所述之任何國家。

3、本公約不排除締約國依照該國國內法行使之任何刑事管轄權。

第 6 條

1、任何締約國管轄的領土內如有被控違反第 4 條所述罪行之人，該國應於審查所獲情資後確認根據情況有其必要時，將此人拘留，或採取其它法律措施確保此人留在當地。拘留和其它法律措施應合乎該國法律的規定，但留置期間只限於進行任何刑事訴訟或引渡程式所需的時間。

2、該締約國應立即對事實進行初步調查。

3、按照本條第 1 項被拘留者，應得到協助，立即與距離最近之本國適當代表聯繫。如為無國籍人，則與其通常居住國的代表聯繫。

4、任何國家依據本條將某人拘留時，應立即將此人已被拘留及構成扣押理由的情況通知第 5 條第 1 項所指的國家。進行本條第 2 項之初步調查的國家，應迅速將調查結果告知上述國家，並說明其是否有意行使管轄權。

第 7 條

1、締約國如在其管轄領土內發現有被控違犯第 4 條所述任何罪行的人，在第 5 條所指情況下，如不進行引渡，則應將該案提交主管機關以便起訴。

2、主管機關應根據該國法律，以審理情節嚴重之刑事案件的相同方式作出判決。對第 5 條第 2 項所指的情況，起訴和定罪所需證據的標準絕不應寬於第 5 條第 1 項所指情況之適用標準。

3、任何人因第 4 條規定之任何罪行而被起訴時，應確保他在訴訟的所有階段皆可得到公平的待遇。

第 8 條

1、第 4 條所述各種罪行應視為締約各國間現有的任何引渡條約所列之可引渡罪行。締約各國保證將此種罪行作為可引渡罪行並列入將來相互之間締結的每項引渡條約。

2、以訂有條約為引渡條件之締約國，如收到未與其簽訂引渡條約的另一締約國之的引渡請求，可將本公約視為對此種罪行要求引渡的法律依據。引渡必須符合被請求國法律規定的其它條件。

3、不以訂有條約為引渡條件之締約國，應在相互之間承認此種罪行為可引渡罪行，但引渡須符合被請求國法律規定的各種條件。

4、基於締約國間進行引渡之目的，應將此種罪行視為不僅發生在行為地，而且發生在依據第 5 條第 1 款必須確定管轄權的國家領土內。

第 9 條

1、締約各國就第 4 條所規定之任何罪行提出刑事追訴時，應儘量相互協助，包括提供她們為追訴而掌握之所有必要證據。

2、締約各國應依照她們之間關於提供司法互助之條約，履行本條第 1

項規定之義務。

第 10 條

1、每一締約國應確保(ensure)在可能參與拘留、審訊或處理遭到任何形式的逮捕、扣押或監禁者之一般或軍事執法人員、醫務人員、公職人員及其他人員的訓練中，充分納入關於禁止酷刑的教育課程與資料。

2、每一締約國應將禁止酷刑規定涵括關於發給此類人員之職務規則或相關指示之中。

第 11 條

每一締約國應經常地、有系統地審查在其管轄領土內對遭受任何形式的逮捕、扣押或監禁之人進行審訊的規則、指示、方法和慣例以及對他們拘留和待遇的安排，以避免發生任何酷刑事件。

第 12 條

每一締約國應確保在有合理理由確信在其管轄的任何領土內已發生酷刑行為時，其主管機關立即進行公正的調查。

第 13 條

每一締約國應確保凡聲稱在其管轄之任何領土內遭到酷刑的個人有權向該國主管機關申訴，並由該國主管機關對其案件進行迅速而公正的調查。主管機關應採取步驟確保申訴人與證人不因提出申訴或提供證據而遭受任何虐待或恐嚇。

第 14 條

1、每一締約國應在其法律體制內確保酷刑受害者得到賠償，並享有獲得公平和充分賠償的強制執行權利，其中包括儘量使其完全復原。如果受害者因受酷刑而死亡，其受撫養人應有獲得賠償之權利。

2、本條任何規定不應影響受害者或其他人依據國家法律可能獲得賠償的任何權利。

第 15 條

每一締約國應確保在任何訴訟程序中，不得援引任何業經確定系以酷刑取得的供詞為證據，但這類供詞可用作指控施用酷刑者刑求逼供的證據。

第 16 條

1、每一締約國應承擔防止公職人員或以官方身分行使職權的其他人在該國管轄的任何領土內施加、唆使、同意或默許進行未達第 1 條所述酷刑程度之的其它殘忍、不人道或侮辱之處遇或懲罰的行為。特別是第 10、第 11、第 12 和第 13 條所規定之義務應適用，惟其中酷刑一詞則以其它形式的殘忍、不人道或侮辱之處遇或懲罰等字代替。

2、本公約各項規定不妨礙其它國際文書或國家法律中任何關於禁止殘忍、不人道或侮辱之處遇或懲罰、或有關引渡或驅逐的規定。

第二部分

第 17 條

1、應設立「禁止酷刑委員會」(以下簡稱委員會)，履行下文所規定之職責。委員會應由具有崇高道德地位與在人權領域公認具有專長之十名專家組成，他們應以個人身分任職。專家應由締約國選舉產生，且應考慮地區間

公平分配及延聘具有法律經驗者參加之效用。

2、委員會成員應從締約國提名的名單中以無記名投票方式選舉產生。每一締約國可從本國國民中提名一人。締約國應謹記從依據《公民及政治權利國際公約》成立的「人權事務委員會」委員中提名願意擔任「禁止酷刑委員會」成員者的效用。

3、委員會成員的選舉應在由聯合國秘書長召開的兩年一期之締約國會議上進行。會議以締約國數三分之二出席為法定人數，得票最多且獲得出席並參加表決的締約國代表所投票數之絕對多數者，即當選為委員會成員。

4、委員會的第一次選舉應在本公約生效之日起六個月以內進行。聯合國秘書長至遲在每屆委員會選舉之日的四個月前，應以書面邀請本公約締約國於三個月內提出委員會成員候選人名單。秘書長應將所有被提名者按字母順序開列名單，注明提名的締約國，並將名單送交本公約締約國。

5、委員會成員任期四年。如經再度提名，連選得連任。但首次當選的成員中有五名成員的任期為兩年，首次選舉後，本條第 3 項所指會議的主席應立即以抽籤方式選定這五名成員。

6、如委員會成員死亡，辭職，或因任何其它原因不能履行其在委員會的職責，提名他的締約國應從其國民中任命另一名專家，其任期至被繼任者原任期屆滿之日為止。其任命須獲得過半數締約國的同意。在聯合國秘書長通知該任命的六個星期內，如無半數或半數以上締約國表示反對，這一任命應視為已獲同意。

7、締約各國應負擔委員會成員履行委員會職責時之費用。

第 18 條

1、委員會應選舉其主席團，任期兩年。連選得連任之。

2、委員會應自行制定其議事規則，該規則應特別規定事項:

（a）六名成員構成法定人數；

（b）委員會之決議應以出席成員之多數決為之。

3、聯合國秘書長應提供必要的人員和設施，供委員會有效履行本公約規定的職責。

4、聯合國秘書長應召開委員會的首次會議。首次會議以後，委員會應依其議事規則規定的時間開會。

5、締約國應負責支付締約國以及委員會舉行會議的費用，包括償付聯合國依據本條第 3 項承付之提供工作人員和設施等任何費用。

第 19 條

1、締約國應於本公約對其生效後一年內，通過聯合國秘書長向委員會提交關於其為履行公約義務所採措施的報告。之後，締約國應每四年提交關於其所采任何履行公約之新措施的補充報告以及委員會要求的其它報告。

2、聯合國秘書長應將這些報告送交所有締約國。

3、每份報告應由委員會加以審議，委員會可以對報告提出它認為適當的一般性評論，並將其轉交有關締約國。該締約國可以向委員會提出任何說明，作為答覆。

4、委員會可依其裁量將它按照本條第 3 項所作的任何評論，連同有關締約國收到後的說明，載入其依照第 24 條所編寫之年度報告。應有關締約國的請求，委員會還可在其中附載根據本條第 1 項提交的報告。

第 20 條

1、如果委員會收到可靠的情資，認為其中有確實跡象顯示在某一締約國境內經常施行酷刑，委員會應請該締約國合作檢視該情資，並為此目的就有關情資提出說明。

2、委員會考慮到有關締約國可能提出的任何說明以及可能得到的其它

有關情資，如果認為有正當理由，可以指派一名或幾名成員進行秘密調查並立即向委員會提出報告。

3、如果是依據本條第 2 項進行調查，委員會應尋求有關締約國的合作。在該締約國的同意下，這種調查可以包括到該國境內訪查。

4、委員會審查其成員依照本條第 2 項所提交的調查結果後，應將這些結果連同根據情況似乎適當的任何意見或建議一併轉交該有關締約國。

5、本條第 1 至第 4 項所指委員會的一切程序均應保密，在程序的各個階段，均應尋求締約國的合作。這種依照第 2 項所進行地調查程序完成後，委員會與有關締約國協商後，可將關於這種程序之處理結果摘要載入其依第 24 條所編寫的年度報告。

第 21 條

1、本公約締約國可在任何時候依據本條，聲明承認委員會有權接受和審議某一締約國聲稱另一締約國未履行本公約所規定義務的來文。提出此種來文的締約國須已聲明本身承認委員會有受理來文的權限。委員會方可按照本條規定的程序接受和審議此種來文。如來文涉及未曾作出此種聲明的締約國，則委員會不得依據本條規定加以處理。依據本條規定所接受的來文應按下列程序處理:

(a)某一締約國如認為另一締約國未實行本公約的規定，可用書面通知提請後者注意這一問題。收文國在收到通知後三個月內應以書面向發文國提出解釋或以任何其它聲明澄清問題，其中應儘量適當地提到對此事已經採取、將要採取或可以採取之國內措施和補救辦法;

(b)如在收文國收到最初來文後六個月內，未能以有關締約國雙方均感滿意的方式處理這一問題，任何一方均有權以通知方式將此事提交委員會，並通知另一方;

(c)委員會對依據本條提交給它的事項，只有在已查明對該事項已依公認之國際法原則援引和用盡一切國內補救辦法時，方可予以處理。但補救辦法的施行如造成不當稽延，或致使違反本公約行為的受害者不可能得到有效救濟，則此一規則不適用；

(d)委員會依據本條審查來文時，應舉行非公開會議；

(e)在不違反(c)款規定的情況下，委員會應對有關締約國提供斡旋，以便在尊重本公約所規定義務的基礎上，友好地解決問題。為此，委員會可於適當時設立一個特設調解委員會；

(f)委員會對依據本條提交的任何事項，均可依照(b)款要求有關締約國提供任何相關資料;

(g)委員會審議事項時，(b)款所指有關締約國應有權指派代表出席並提出口頭與(或)書面意見；

(h)委員會應在收到(b) 款規定的通知之日起十二個月內提出報告：

(ｉ)如果按(e) 款規定解決，委員會的報告應限於簡單敍述事實和所達成的解決辦法;

(ii)如不能按(e) 款規定解決，委員會的報告應限於簡單敍述事實；有關締約國的書面意見和口頭意見記錄應附於報告之後。

關於上述每種事項之報告均應送交有關締約國。

2、在本公約五個締約國根據本條第 1 項作出聲明後，本條規定即行生效。締約國應將這種聲明交存於聯合國秘書長，秘書長應將聲明副本分送其他締約國。此類聲明可隨時通知秘書長予以撤銷。這種撤銷不得妨礙對依據本條已發文書中所在任何事項的審議。秘書長在收到任何締約國通知撤銷的聲明後，不應再接受其依據本條所發的其它來文，除非有關締約國已作出新的聲明。

第 22 條

1、本公約締約國可在任何時候依據本條，聲明承認委員會有權接受和審議在該國管轄下聲稱因該締約國違反本公約條款而受害之個人或其代表所送交來文。如來文涉及未曾作出這種聲明的締約國，則委員會不應受理。

2、依據本條提出的任何來文如採用匿名方式或經委員會認為濫用提出

此類文書的權利或與本公約規定不符，委員會應視為不受理。

3、在不違反第 2 項規定的前提下，對於依據本條提交委員會的任何來文，委員會應依據第 1 項作出聲明並提請被指稱違反本公約任何規定之締約國予以注意。收文國應在六個月內向委員會提出書面解釋或聲明以澄清問題，如該國已採取任何補救辦法，也應加以說明。

4、委員會應參照個人或其代表以及有關締約國所提供的一切資料，審議依據本條所收到的來文。

5、委員會除非已查明下述情況，否則不應審議個人根據本條提交的來文；

（a）同一事項於過去和現在均未受到另一國際調查程序或解決辦法的審查;

（b）個人已用盡一切國內補救辦法；但補救辦法的施行如造成不當稽延，或致使違反本公約行為的受害者不可能得到有效救濟，則此一規則不適用；

6、委員會根據本條審查來文時，應舉行非公開會議。

7、委員會應將其意見告知有關締約國和個人。

8、在本公約五個締約國依據本條第 1 項作出聲明後，本條規定即行生效，締約國應將這種聲明交存於聯合國秘書長，秘書長應將聲明副本分送其他締約國。此類聲明可隨時通知秘書長予以撤銷。這種撤銷不得妨礙對根據本條已發文書中所載任何事項的審議。秘書長在收到任何締約國通知撤銷的聲明後，不應再接受個人或其代表根據本條所發的其他來文，除非有關締約國已作出新的聲明。

第 23 條

委員會成員和依據第 21 條第 1 項(e)款任命的特設調解委員會成員，依據《聯合國特權和豁免公約》有關章節的規定，應享有為聯合國服勤之專家的便利、特權和豁免。

第 24 條

委員會應依據本公約向締約國和聯合國大會提交一份關於其活動的年度報告。

第三部分

第 25 條

1、本公約對所有國家開放簽字。

2、本公約需經批准。批准書應交存於聯合國秘書長。

第 26 條

本公約對所有國家開放加入。一旦加入書交存於聯合國秘書長，加入即行生效。

第 27 條

1、本公約在第二十份批准書或加入書交存於聯合國秘書長之日起第三十天開始生效。

2、在第二十份批准書或加入書交存後批准或加入本公約的國家，本公約在其批准書或加入書交存之日起第三十天對該國開始生效。

第 28 條

1、各國在簽署或批准本公約或在加入本公約時，可聲明不承認第 20 條所規定之委員會的職權。

2、按照本條第 1 項作出保留的任何締約國，可隨時通知聯合國秘書長撤銷其保留。

第 29 條

1、本公約任何締約國均可提出修正案，並送交聯合國秘書長。然後由秘書長將這一提議的修正案轉交締約各國，並要求她們通知秘書長是否同意舉行一次締約國會議以審理和議決這一提案。如在來文發出之日起四個月內有至少三分之一的締約國同意召開這樣一次會議，秘書長應以聯合國協助名義召開這次會議。由出席會議並參加表決的締約國過半數通過的任何修正案應由秘書長提請所有締約國同意。

2、當本公約三分之二的締約國通知聯合國秘書長，她們已依照本國的憲法程序同意這一修正案時，按照本條第 1 項通過的修正案即行生效。

3、修正案一經生效，即應對同意修正案的國家具有拘束力，其他國家則仍受本公約條款或以前經其同意之修正案拘束。

第 30 條

1、兩個或兩個以上締約國之間有關本公約的解釋或適用的任何爭端，如不能通過談判解決，在其中一方的要求下，應提交仲裁。如果自要求仲裁之日起六個月內各方不能就仲裁之組織達成一致意見，任何一方均可依照國際法院規約要求將此爭端提交國際法院。

2、每一國家均可在簽署或批准本公約或加入本公約時，宣布認為本條第 1 項對其無拘束力。其他締約國在涉及作出這類保留的任何國家時，亦不受本條第 1 項的拘束。

3、依照本條第 1 項作出保留的任何締約國，可隨時通知聯合國秘書長撤銷其保留。

第 31 條

1、締約國可以書面通知聯合國秘書長退出公約。秘書長收到通知之日起一年後，退約即行生效。

2、這種退約不具有解除締約國有關退約生效之日前發生的任何行為或不行為在本公約下所承擔之義務的效果。退約也不得以任何方式妨礙委員會繼續審理在退約生效前已經審議的任何問題。

3、自一個締約國退約生效之日起，委員會不得開始審議有關該國的任何新問題。

第 32 條

聯合國秘書長應將下列事項通知聯合國所有會員國和本公約所有簽署國或加入國:

（a）根據第 25 條和第 26 條進行的簽署、批准和加入情況；

（b）本公約根據第 27 條生效日期；任何修正案根據第 29 條生效日期；

（c）根據第 31 條退約情況。

第 33 條

1、本公約的阿拉伯文、中文、英文、法文、俄文和西班牙文文本同等作準，應交存聯合國秘書長。

2、聯合國秘書長應將本公約之認證副本轉送給所有國家。

附件二：禁止酷刑和其他殘忍不人道或侮辱之處遇或懲罰公約英文版

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

Adopted and opened for signature, ratification and accession by General Assembly resolution 39/46 of 10 December 1984

entry into force 26 June 1987, in accordance with article 27 (1)

The States Parties to this Convention,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that those rights derive from the inherent dignity of the human person,

Considering the obligation of States under the Charter, in particular Article 55, to promote universal respect for, and observance of, human rights and fundamental freedoms,

Having regard to article 5 of the Universal Declaration of Human Rights and article 7 of the International Covenant on Civil and Political Rights, both of which provide that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment,

Having regard also to the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly on 9 December 1975,

Desiring to make more effective the struggle against torture and other cruel, inhuman or degrading treatment or punishment throughout the world,

Have agreed as follows:

PART I

Article 1

1. For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

2. This article is without prejudice to any international instrument or national legislation which does or may contain provisions of wider application.

Article 2

1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.

2. 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.

3. An order from a superior officer or a public authority may not be invoked as a justification of torture.

Article 3

1. 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.

2. For the purpose of determining whether there are such grounds, the competent authorities shall 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.

Article 4

1. Each State Party shall ensure that all acts of torture are offences under its criminal

law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture.

2. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature.

Article 5

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 4 in the following cases:

(a) When the offences are committed in any territory under its jurisdiction or on board a ship or aircraft registered in that State;

(b) When the alleged offender is a national of that State;

(c) When the victim is a national of that State if that State considers it appropriate.

2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over such offences in cases where the alleged offender is present in any territory under its jurisdiction and it does not extradite him pursuant to article 8 to any of the States mentioned in paragraph I of this article.

3. This Convention does not exclude any criminal jurisdiction exercised in accordance with internal law.

Article 6

1. Upon being satisfied, after an examination of information available to it, that the circumstances so warrant, any State Party in whose territory a person alleged to have committed any offence referred to in article 4 is present shall take him into custody or take other legal measures to ensure his presence. The custody and other legal measures shall be as provided in the law of that State but may be continued only for such time as is necessary to enable any criminal or extradition proceedings to be instituted.

2. Such State shall immediately make a preliminary inquiry into the facts.

3. Any person in custody pursuant to paragraph I of this article shall be assisted in communicating immediately with the nearest appropriate representative of the State of which he is a national, or, if he is a stateless person, with the representative of the State where he usually resides.

4. When a State, pursuant to this article, has taken a person into custody, it shall immediately notify the States referred to in article 5, paragraph 1, of the fact that such person is in custody and of the circumstances which warrant his detention. The State which makes the preliminary inquiry contemplated in paragraph 2 of this article shall promptly report its findings to the said States and shall indicate whether it intends to exercise jurisdiction.

Article 7

1. The State Party in the territory under whose jurisdiction a person alleged to have committed any offence referred to in article 4 is found shall in the cases contemplated in article 5, if it does not extradite him, submit the case to its competent authorities for the purpose of prosecution.

2. These authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State. In the cases referred to in article 5, paragraph 2, the standards of evidence required for prosecution and conviction shall in no way be less stringent than those which apply in the cases referred to in article 5, paragraph 1.

3. Any person regarding whom proceedings are brought in connection with any of the offences referred to in article 4 shall be guaranteed fair treatment at all stages of the proceedings.

Article 8

1. The offences referred to in article 4 shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.

2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention as the legal basis for extradition in respect of such offences. Extradition shall be subject to the other conditions provided by the law of the requested State.

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize such offences as extraditable offences between themselves subject to the conditions provided by the law of the requested State.

4. Such offences shall be treated, for the purpose of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territories of the States required to establish their jurisdiction in accordance with article 5, paragraph 1.

Article 9

1. States Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of any of the offences referred to in article 4, including the supply of all evidence at their disposal necessary for the proceedings.

2. States Parties shall carry out their obligations under paragraph I of this article in conformity with any treaties on mutual judicial assistance that may exist between them.

Article 10

1. Each State Party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.

2. Each State Party shall include this prohibition in the rules or instructions issued in regard to the duties and functions of any such person.

Article 11

Each State Party shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture.

Article 12

Each State Party shall 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.

Article 13

Each State Party shall ensure that any individual who alleges he has been subjected to

torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.

Article 14

1. Each State Party shall 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. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation.

2. Nothing in this article shall affect any right of the victim or other persons to compensation which may exist under national law.

Article 15

Each State Party shall ensure 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 torture as evidence that the statement was made.

Article 16

1. Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article I, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in articles 10, 11, 12 and 13 shall apply with the substitution for references to torture of references to other forms of cruel, inhuman or degrading treatment or punishment.

2. The provisions of this Convention are without prejudice to the provisions of any other international instrument or national law which prohibits cruel, inhuman or degrading treatment or punishment or which relates to extradition or expulsion.

PART II

Article 17

1. There shall be established a Committee against Torture (hereinafter referred to as the Committee) which shall carry out the functions hereinafter provided. The Committee shall consist of ten experts of high moral standing and recognized competence in the

field of human rights, who shall serve in their personal capacity. The experts shall be elected by the States Parties, consideration being given to equitable geographical distribution and to the usefulness of the participation of some persons having legal experience.

2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals. States Parties shall bear in mind the usefulness of nominating persons who are also members of the Human Rights Committee established under the International Covenant on Civil and Political Rights and who are willing to serve on the Committee against Torture.

3. Elections of the members of the Committee shall be held at biennial meetings of States Parties convened by the Secretary-General of the United Nations. At those meetings, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

4. The initial election shall be held no later than six months after the date of the entry into force of this Convention. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within three months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties.

5. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. However, the term of five of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these five members shall be chosen by lot by the chairman of the meeting referred to in paragraph 3 of this article.

6. If a member of the Committee dies or resigns or for any other cause can no longer perform his Committee duties, the State Party which nominated him shall appoint another expert from among its nationals to serve for the remainder of his term, subject to the approval of the majority of the States Parties. The approval shall be considered given unless half or more of the States Parties respond negatively within six weeks after having been informed by the Secretary-General of the United Nations of the proposed

appointment.

7. States Parties shall be responsible for the expenses of the members of the Committee while they are in performance of Committee duties.

Article 18

1. The Committee shall elect its officers for a term of two years. They may be re-elected.

2. The Committee shall establish its own rules of procedure, but these rules shall provide, inter alia, that:

(a) Six members shall constitute a quorum;

(b) Decisions of the Committee shall be made by a majority vote of the members present.

3. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under this Convention.

4. The Secretary-General of the United Nations shall convene the initial meeting of the Committee. After its initial meeting, the Committee shall meet at such times as shall be provided in its rules of procedure.

5. The States Parties shall be responsible for expenses incurred in connection with the holding of meetings of the States Parties and of the Committee, including reimbursement to the United Nations for any expenses, such as the cost of staff and facilities, incurred by the United Nations pursuant to paragraph 3 of this article.

Article 19

1. The States Parties shall submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have taken to give effect to their undertakings under this Convention, within one year after the entry into force of the Convention for the State Party concerned. Thereafter the States Parties shall submit supplementary reports every four years on any new measures taken and such other reports as the Committee may request.

2. The Secretary-General of the United Nations shall transmit the reports to all States Parties.

3. Each report shall be considered by the Committee which may make such general comments on the report as it may consider appropriate and shall forward these to the State Party concerned. That State Party may respond with any observations it chooses to the Committee.

4. The Committee may, at its discretion, decide to include any comments made by it in accordance with paragraph 3 of this article, together with the observations thereon received from the State Party concerned, in its annual report made in accordance with article 24. If so requested by the State Party concerned, the Committee may also include a copy of the report submitted under paragraph I of this article.

Article 20

1. If the Committee receives reliable information which appears to it to contain well-founded indications that torture is being systematically practised in the territory of a State Party, the Committee shall invite that State Party to co-operate in the examination of the information and to this end to submit observations with regard to the information concerned.

2. Taking into account any observations which may have been submitted by the State Party concerned, as well as any other relevant information available to it, the Committee may, if it decides that this is warranted, designate one or more of its members to make a confidential inquiry and to report to the Committee urgently.

3. If an inquiry is made in accordance with paragraph 2 of this article, the Committee shall seek the co-operation of the State Party concerned. In agreement with that State Party, such an inquiry may include a visit to its territory.

4. After examining the findings of its member or members submitted in accordance with paragraph 2 of this article, the Commission shall transmit these findings to the State Party concerned together with any comments or suggestions which seem appropriate in view of the situation.

5. All the proceedings of the Committee referred to in paragraphs I to 4 of th is article s hall be confidential, and at all stages of the proceedings the co-operation of the State Party shall be sought. After such proceedings have been completed with regard to an inquiry made in accordance with paragraph 2, the Committee may, after consultations with the State Party concerned, decide to include a summary account of the results of

the proceedings in its annual report made in accordance with article 24.

Article 21

1. A State Party to this Convention may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under this Convention. Such communications may be received and considered according to the procedures laid down in this article only if submitted by a State Party which has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be dealt with by the Committee under this article if it concerns a State Party which has not made such a declaration. Communications received under this article shall be dealt with in accordance with the following procedure;

(a) If a State Party considers that another State Party is not giving effect to the provisions of this Convention, it may, by written communication, bring the matter to the attention of that State Party. Within three months after the receipt of the communication the receiving State shall afford the State which sent the communication an explanation or any other statement in writing clarifying the matter, which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending or available in the matter;

(b) If the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State;

(c) The Committee shall deal with a matter referred to it under this article only after it has ascertained that all domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to the person who is the victim of the violation of this Convention;

(d) The Committee shall hold closed meetings when examining communications under this article; (e) Subject to the provisions of subparagraph

(e), the Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of respect for the obligations

provided for in this Convention. For this purpose, the Committee may, when appropriate, set up an ad hoc conciliation commission;

(f) In any matter referred to it under this article, the Committee may call upon the States Parties concerned, referred to in subparagraph (b), to supply any relevant information;

(g) The States Parties concerned, referred to in subparagraph (b), shall have the right to be represented when the matter is being considered by the Committee and to make submissions orally and/or in writing;

(h) The Committee shall, within twelve months after the date of receipt of notice under subparagraph (b), submit a report:

(i) If a solution within the terms of subparagraph (e) is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached;

(ii) If a solution within the terms of subparagraph (e) is not reached, the Committee shall confine its report to a brief statement of the facts; the written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report.

In every matter, the report shall be communicated to the States Parties concerned.

2. The provisions of this article shall come into force when five States Parties to this Convention have made declarations under paragraph 1 of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by any State Party shall be received under this article after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

Article 22

1. A State Party to this Convention may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of a violation by a State Party of the provisions of the Convention. No communication shall

be received by the Committee if it concerns a State Party which has not made such a declaration.

2. The Committee shall consider inadmissible any communication under this article which is anonymous or which it considers to be an abuse of the right of submission of such communications or to be incompatible with the provisions of this Convention.

3. Subject to the provisions of paragraph 2, the Committee shall bring any communications submitted to it under this article to the attention of the State Party to this Convention which has made a declaration under paragraph I and is alleged to be violating any provisions of the Convention. Within six months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.

4. The Committee shall consider communications received under this article in the light of all information made available to it by or on behalf of the individual and by the State Party concerned. 5. The Committee shall not consider any communications from an individual under this article unless it has ascertained that:

(a) The same matter has not been, and is not being, examined under another procedure of international investigation or settlement;

(b) The individual has exhausted all available domestic remedies; this shall not be the rule where the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to the person who is the victim of the violation of this Convention.

6. The Committee shall hold closed meetings when examining communications under this article.

7. The Committee shall forward its views to the State Party concerned and to the individual.

8. The provisions of this article shall come into force when five States Parties to this Convention have made declarations under paragraph 1 of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication

already transmitted under this article; no further communication by or on behalf of an individual shall be received under this article after the notification of withdrawal of the declaration has been received by the Secretary General, unless the State Party has made a new declaration.

Article 23

The members of the Committee and of the ad hoc conciliation commissions which may be appointed under article 21, paragraph I (e), shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

Article 24

The Committee shall submit an annual report on its activities under this Convention to the States Parties and to the General Assembly of the United Nations.

PART III

Article 25

1. This Convention is open for signature by all States.
2. This Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 26

This Convention is open to accession by all States. Accession shall be effected by the deposit of an instrument of accession with the Secretary General of the United Nations.

Article 27

1. This Convention shall enter into force on the thirtieth day after the date of the deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.
2. For each State ratifying this Convention or acceding to it after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or accession.

Article 28

1. Each State may, at the time of signature or ratification of this Convention or accession

thereto, declare that it does not recognize the competence of the Committee provided for in article 20.

2. Any State Party having made a reservation in accordance with paragraph I of this article may, at any time, withdraw this reservation by notification to the Secretary-General of the United Nations.

Article 29

1 . Any State Party to this Convention may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary General shall thereupon communicate the proposed amendment to the States Parties with a request that they notify him whether they favour a conference of States Parties for the purpose of considering an d voting upon the proposal. In the event that within four months from the date of such communication at least one third of the States Parties favours such a conference, the Secretary General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted by the Secretary-General to all the States Parties for acceptance.

2. An amendment adopted in accordance with paragraph I of this article shall enter into force when two thirds of the States Parties to this Convention have notified the Secretary-General of the United Nations that they have accepted it in accordance with their respective constitutional processes.

3. When amendments enter into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of this Convention and any earlier amendments which they have accepted.

Article 30

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. Each State may, at the time of signature or ratification of this Convention or accession thereto, declare that it does not consider itself bound by paragraph I of this article. The

other States Parties shall not be bound by paragraph I of this article with respect to any State Party having made such a reservation.

3. Any State Party having made a reservation in accordance with paragraph 2 of this article may at any time withdraw this reservation by notification to the Secretary-General of the United Nations.

Article 31

1. A State Party may denounce this Convention by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of- the notification by the Secretary-General .

2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under this Convention in regard to any act or omission which occurs prior to the date at which the denunciation becomes effective, nor shall denunciation prejudice in any way the continued consideration of any matter which is already under consideration by the Committee prior to the date at which the denunciation becomes effective.

3. Following the date at which the denunciation of a State Party becomes effective, the Committee shall not commence consideration of any new matter regarding that State.

Article 32

The Secretary-General of the United Nations shall inform all States Members of the United Nations and all States which have signed this Convention or acceded to it of the following:

(a) Signatures, ratifications and accessions under articles 25 and 26;

(b) The date of entry into force of this Convention under article 27 and the date of the entry into force of any amendments under article 29;

(c) Denunciations under article 31.

Article 33

1. This Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

3. The Secretary-General of the United Nations shall transmit certified copies of this

Convention to all States.

附件三：禁止酷刑和其它殘忍、不人道或侮辱之處遇或懲罰公約任擇議定書中文版

《禁止酷刑和其它殘忍、不人道或侮辱之處遇或懲罰公約》任擇議定書[2]

序言

本議定書締約國，

重申酷刑和其它殘忍、不人道或侮辱之處遇或懲罰為被禁止的行為，構成對人權的嚴重侵犯，

確信必須採取進一步措施實現《禁止酷刑和其它殘忍、不人道或侮辱之處遇或懲罰公約》(以下稱《公約》)的目的，必須加強保護被剝奪自由者使其免受酷刑和其它殘忍、不人道或侮辱之處遇或懲罰，

憶及《禁止酷刑和其它殘忍、不人道或侮辱之處遇或懲罰公約》第2條和第16條要求每一締約國採取有效措施，防止在其管轄的任何領土內出現酷刑和其它殘忍、不人道或侮辱之處遇或懲罰行為，

確認各國負有執行這些條款的首要責任，確認加強保護被剝奪自由者和全面尊重其人權是各方的共同責任，並確認國際執行機構發揮補充和加強國內措施的作用，

憶及為有效防範酷刑和其它殘忍、不人道或侮辱之處遇或懲罰，應進行教育，綜合採取立法、行政、司法和其它措施，

又憶及世界人權會議明確宣告，杜絕酷刑的努力首先應注重防範，並要求通過一項《公約》任擇議定書，以建立定期查訪拘留地點的防範制度，

確信以定期查訪拘留地點為基礎之預防性非司法手段可加強保護被剝奪自由者使其免受酷刑和其它殘忍、不人道或侮辱之處遇或懲罰，

達成協定如下，

[2] 參照 http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N02/551/47/PDF/N0255147.pdf?OpenElement。本議定書名稱系依照《公政公約》第七條規定翻譯。

第一部分：一般原則

第1條

本議定書的目的是建立一個由獨立國際機構和國家機構對存在被剝奪自由者的地點進行定期查訪的制度，以防範酷刑和其它殘忍、不人道或侮辱之處遇或懲罰。

第2條

1. 應於禁止酷刑委員會內設立防範酷刑和其它殘忍、不人道或有辱人格處遇或處罰小組委員會(以下稱防範小組委員會)，履行本議定書所規定之職能。

2. 防範小組委員會應在《聯合國憲章》的範圍內工作，並遵循其宗旨和原則以及聯合國關於被剝奪自由者待遇的準則。

3. 防範小組委員會應遵守保密、公正、非選擇性、普遍性和客觀性原則。

4. 防範小組委員會和締約國應合作執行本議定書。

第3條

每一締約國應在國家層級設立、指定或保持一個或多個防範酷刑和其它殘忍、不人道或侮辱之處遇或懲罰的查訪機構(以下稱國家防範機制)。

第4條

1. 每一締約國應允許第2條和第3條所指機制依照本議定書規定，對其管轄和控制下任何確實或可能有人因公務機關的命令或唆使而被剝奪自由，或在其同意或默許下被剝奪自由的地點(以下稱拘留地點)進行查訪。進行查訪的目的在於必要時加強保護這類人使其免受酷刑和其它殘忍、不人道或侮辱之處遇或懲罰。

2. 根據本議定書之目的，剝奪自由是指任何形式的拘留或監禁，或將某人置於公共或私人拘禁環境之中，根據司法、行政或其它公權力機關的命令，該人不得隨意離開該地。

第二部分：防範小組委員會

第5條

1. 防範小組委員會應由10名成員組成。在第五十個國家批准或加入本議定書後，防範小組委員會成員人數應增加到25名。

2. 防範小組委員會成員人選應品格高尚，確實具有司法行政領域的專業經驗，特別是在刑法、監獄或警務人員管理或與被剝奪自由者處遇有關領域的專業經驗。

3. 防範小組委員會的組成應適當考慮地區公平分配原則以及締約國間各種不同文化和法制的代表性。

4. 防範小組委員會的組成還應根據平等和不歧視原則考慮性別人數均衡問題。

5. 防範小組委員會中不得有任何二名成員為同一國家的國民。

6. 防範小組委員會成員應以個人身份任職，應保持獨立和公正，並應能高效率地為小組委員會服務。

第6條

1. 每一締約國可依照本條第2項提名具備第5條所規定資格並符合其要求的候選人最多二名，同時應提供關於被提名人資格的詳細資料。

2. (a) 被提名人應具有本議定書締約國之國籍；

(b) 二名候選人中至少應有一名具有提名締約國的國籍；

(c) 任何締約國獲得提名的國民不得超過二名；

(d) 任何締約國在提名另一個締約國的國民之前，應徵求並獲得該締約國的同意。

3. 聯合國秘書長應至少在進行選舉的締約國會議舉行之日的五個月前致函締約國，請其在三個月內提交提名人選。秘書長應提交依姓氏英文字母次序編製被之提名人名單，同時標明提名的締約國。

第7條

1. 防範小組委員會成員應以下列方式選出：

(a) 首要考慮應符合本議定書第5條之要求和標準；

(b) 初次選舉最遲應在本議定書生效後六個月內進行；

(c) 締約國應以無記名投票方式選舉防範小組委員會成員；

(d) 防範小組委員會成員的選舉應由聯合國秘書長在每兩年召開一次的締約國會議中進行。締約國會議的法定開會人數是三分之二的締約國，得票最多而且獲得出席並參加表決的締約國代表絕對多數票者人當選為防範小組委員會成員。

2. 如果在選舉過程中有一個締約國的二名國民取得擔任委員會成員的資格，得票較多的候選人應成為防範小組委員會成員。在二名國民所得票數相等的情況下，適用以下程序：

(a) 二名候選人中只有一名是由締約國本國提名情況下，該名國民應成為防範小組委員會成員；

(b) 二名候選人均為締約國本國提名時，應進行另一次無記名投票決定何人成為小組委員會成員；

(c) 在這二名候選人均不是由締約國本國提名時，應進行另一次無記名投票以決定哪位候選人成為小組委員會成員。

第8條

如果防範小組委員會的一名成員死亡或辭職，或由於其它原因不能履行職責，提名該成員之締約國應適當考慮須兼顧之各相關領域下，提名另一名具有第5條所規定資格並符合其要求的合格人選擔任成員，其任期至下一次締約國會議為止，但須得到締約國過半數之同意。除非半數或更多締約國與收到聯合國秘書長提名通知後六周內表示反對，否則視為同意。

第9條

防範小組委員會成員任期四年，再次被提名者，可連選一次。第一次選出的半數成員任期為二年；第7條第1項(d)款所指會議的主席在第一次選舉之後應立即抽籤確定這部分成員的名單。

第10條

1. 防範小組委員會應選出主席團成員，任期二年，連選得連任之。

2. 防範小組委員會應自行制定議事規則。該規則中應特別規定事項:

(a) 半數加一名成員為法定人數；

(b) 防範小組委員會決議由出席成員以多數決方式作成；

(c) 防範小組委員會會議不公開。

3. 防範小組委員會首次會議由聯合國秘書長召開。首次會議之後，防範小組委員會須於議事規則所定時間召開會議。防範小組委員會和禁止酷刑委員會每年至少應有一屆會議同時舉行。

第三部分：防範小組委員會的職權

第11條

防範小組委員會應：

(a) 查訪第4條所指地點，並就保護被剝奪自由者免受酷刑和其它殘忍、不人道或侮辱之處遇或懲罰向締約國提出建議；

(b) 對於國家防範機制：

㈠ 必要時就這些機制的設立向締約國提供諮詢意見和協助；

㈡ 與國家防範機制保持直接聯繫，必要時維持秘密聯繫，並為其提供訓練和技術援助，以加強其能力；

㈢ 在評估需求和必要措施方面向這些機制提供諮詢和援助，以加強對被剝奪自由者之保護，使其免受酷刑和其它殘忍、不人道或侮辱之處遇或懲罰；

㈣ 向締約國提出建議和意見，以加強國家防範機制防範酷刑和其它殘忍、不人道或侮辱之處遇或懲罰的能力和職權；

(c) 為了在一般範圍內防範酷刑，與相關聯合國機關和機制合作，並與致力於加強保護所有人免受酷刑和其它殘忍、不人道或侮辱之處遇或懲罰的國際、區域和國家機構或組織合作。

第12條

為使防範小組委員會能夠行使第11條所列職權，締約國承諾：

（a） 在其境內接待防範小組委員會並准予查訪本議定書第4條所界定之拘留地點；

（b）提供防範小組委員會可能要求的一切相關資料，供其評估需求和應採取之措施，以加強保護被剝奪自由者使其免遭酷刑和其它殘忍、不人道或侮辱之處遇或懲罰；

（c）鼓勵和提供防範小組委員會與國家防範機制聯繫的便利；

（d）研究防範小組委員會的建議並就可能的執行措施與防範小組委員會進行對話。

第13條

1. 防範小組委員會應為執行第11條所定任務制定對各締約國進行定期查訪的計畫，並以抽籤方式決定首批受訪的締約國。

2. 在進行磋商後，防範小組委員會應將查訪計畫通知締約國，使締約國能夠立即為查訪進行必要的實際安排。

3. 查訪應由防範小組委員會至少二名成員負責進行。必要時，可由經證明具備本議定書所涉領域專業經驗和知識的專家陪同成員進行查訪，這些專家應從依據締約國、聯合國人權事務高級專員辦事處以及聯合國國際預防犯罪中心提出的建議專家名冊中選出。在編制專家名冊時，相關締約國最多可提出五名本國專家。有關締約國可反對某一專家參加查訪，在這種情況下，防範小組委員會應提議另派專家。

4. 若防範小組委員會認為適當，可提議在定期查訪之後進行一次較短的後續查訪。

第14條

1. 為使防範小組委員會能夠履行職權，本議定書締約國承諾准許小組委員會：

（a）不受限制地取得關於第4條所界定之拘留地點內被剝奪自由者人數，以及關於拘留地點數目和所在位置的一切資料；

（b）不受限制地取得關於這些人的處遇和拘留條件的一切資料；

（c）在下列第2項的限制下，不受限制地查看所有拘留地點及其裝置和設施；

（d）有機會個別或在認為必要時由譯員協助，於無旁人在場情況下單獨詢問被剝奪自由者以及防範小組委員會認為可提供相關資料之任何其他人；

（e）自由選擇所欲查訪地點和會見對象。

2. 反對防範小組委員會查訪特定拘留地點，必須是基於國防、公共安全、待查訪地點發生自然災害或嚴重動亂以致暫時不能進行查訪的緊急和迫切理由。締約國不得以已經宣佈緊急狀態此一事實作為反對查訪的理由。

第15條

對於向防範小組委員會或其成員提供任何資料的人或組織，不論其資料的真偽，任何機關或官員均不得因此行為而下令、准許或容忍對該人或該組織執行任何制裁或實施制裁，也不得以任何其他方式損害該人或該組織。

第16條

1. 防範小組委員會應以不公開的方式將其建議和意見送交締約國，並在相關情況下，以相同方式送交國家防範機制。

2. 防範小組委員會應在有關締約國提出請求時公布報告以及與該締約國相關之任何評論。如果該締約國僅公布報告的一部分，防範小組委員會可公布報告的全部或其中的一部分。但個人資料非經有關個人明示同意不得公布。

3. 防範小組委員會應向禁止酷刑委員會提交公開的年度活動報告。

4. 如果締約國拒絕依照第12條和第14條與防範小組委員會合作或拒絕依照防範小組委員會的建議採取步驟改善情況，禁止酷刑委員會的回應防範小組委員會要求，於該締約國提供陳述意見機會後，以委員多數同意下就該事項發表公開聲明或公布防範小組委員會之報告。

第四部分：國家防範機制

第17條

每一締約國最遲於本議定書生效或其批准或加入一年後，應維持、指定或設立一個或多個獨立的國家防範機制，負責在國家層級防範酷刑。為本議定書的目的，在符合議定書規定的前提下，可將地方層級單位所設機制指定為國家防範機制。

第18條

1. 締約國應保證國家防範機制職能的獨立性及其工作人員的獨立性。

2. 締約國應採取必要措施確保國家防範機制的專家具備必要的能力和專業知識。締約國應致力於實現性別均衡並使國內族裔群體及少數人群體得到適當代表。

3. 締約國承諾為國家防範機制的運作提供必要資源。

4. 締約國在設立國家防範機制時應適當考慮到《有關促進和保護人權的國家機構的地位的原則》(巴黎原則)。

第19條

國家防範機制應具備以下基本權力：

(a) 定期檢查第4條所界定地點內被剝奪自由者的待遇，以期必要時加強保護，使其免受酷刑和其它殘忍、不人道或侮辱之處遇或懲罰；

(b) 考慮到聯合國的相關準則，向有關機關提出建議，以期改善被剝奪自由者的待遇和條件，防範酷刑和其它殘忍、不人道或侮辱之處遇或懲罰；

(c) 就現行立法或立法草案提出建議或意見。

第20條

為了使國家防範機制能夠履行任務，本議定書締約國承諾准予這些機制：

(a) 取得關於第4條所界定的拘留地點內被剝奪自由者人數及拘留地點數目和所在位置的一切資料；

(b) 取得關於被拘禁者之待遇與拘留條件的一切資料；

(c) 查看所有拘留地點及其裝置和設施；

(d) 有機會個別或在認為必要時由譯員協助下，於無旁人在場時單獨詢問被剝奪自由者以及國家防範機制認為可提供相關資料之任何其他人；

(e) 自由選擇所欲查訪的地點與會見的人；

(f) 有權與防範小組委員會接觸、通報情況和會晤。

第21條

1. 對於向國家防範機制提供任何資料的人或組織，不論其資料的真偽，任何機關或官員均不得因此行為而下令、准許或容忍對該人或該組織執行任何制裁或實施制裁，也不得以任何其他方式損害該人或該組織。

2. 國家防範機制蒐集的機密資料應予保密。個人資料非經有關個人明示同意不得公布。

第22條

締約國主管機關應研究國家防範機制提供之建議，並就可能採取之執行措施與該機關進行對話。

第23條

本議定書締約國承諾公布並散發國家防範機制的年度報告。

第五部分：聲明

第24條

1. 締約國在批准本議定書時，可聲明推遲履行第三部分或第四部分規定的義務。

2. 推遲期不得超過三年。在締約國作出適當陳述並與防範小組委員會磋商之後，禁止酷刑委員會可將推遲期再延長二年。

第六部分：財務條款

第25條

1. 防範小組委員會在執行本議定書之開支由聯合國承擔。

2. 聯合國秘書長應為防範小組委員會依照本議定書有效行使職能之故提供必要的工作人員和便利。

第26條

1. 應根據大會有關程序設立一個特別基金，依照聯合國財務條例和細則加以管理，以提供資助，落實防範小組委員會在查訪後向締約國提供的建議，及開展國家防範機制的教育方案。

2. 特別基金的經費可來自各國政府、政府間組織和非政府組織及其它公私法律實體的自願捐款。

第七部分：最後條款

第27條

1. 本議定書開放供所有已簽署《公約》之國家簽字。

2. 本議定書須經已批准或加入《公約》之所有國家批准。批准書應交存聯合國秘書長。

3. 本議定書開放供已批准或加入《公約》之所有國家加入。

4. 加入於加入書交存聯合國秘書長時生效。

5. 聯合國秘書長應將每一交存之批准書或加入書，通知所有已簽署或加入本議定書的國家。

第28條

1. 本議定書於第二十份批准書或加入書交存聯合國秘書長之日後第三十天生效。

2. 對於在第二十份批准書或加入書交存聯合國秘書長後批准或加入的國家，本議定書在該國交存批准書或加入書之日後第三十天生效。

第29條

本議定書各項規定適用於聯邦國家之全部領土，無任何限制或例外。

第30條

締約國不得對本議定書作出保留。

第31條

本議定書的規定不影響締約國依據建立查訪拘留地點制度的區域公約所承擔的義務。鼓勵防範小組委員會與依據這些區域公約設立的機構進行磋商和合作，以避免工作重複，並有效促進實現本議定書的目的。

第32條

本議定書的規定不影響1949年8月12日《日內瓦四公約》及其1977年6月8日《附加議定書》之締約國義務，也不影響任何締約國准許紅十字國際委員會在國際人道主義法未涵蓋的情形中查訪拘留地點的可能性。

第33條

1. 任何締約國得隨時以書面通知聯合國秘書長退出本議定書；秘書長隨後應通知本議定書和《公約》的其他締約國。退約在秘書長收到通知書之日起一年後生效。

2. 退約並不免除締約國依據本議定書在以下方面所承擔之義務：在退約生效之日前可能發生的任何行為或情況;防範小組委員會已經決定或可能決定對有關締約國採取的行動;退約絕不影響防範小組委員會繼續審理退約生效之日前已審議的任何問題。

3. 在締約國退約生效之日後，防範小組委員會不應進行審議有關該國家的任何新事項。

第34條

1. 本議定書的任何締約國均可提出修正案並將其提交聯合國秘書長。秘書長應立即將修正案通知本議定書各締約國，請締約國通知秘書長，表明是否贊成召開締約國會議以審議此項提案並對之進行表決。發出通告之日起四個月內若有三分之一以上締約國贊成召開這一會議，秘書長應在聯合國主持下召開會議。修正案在取得出席並參加表決的三分之二多數之與會締約國通過之後，應由秘書長提交所有締約國供其接受。

2. 根據本條第1項通過的修正案經本議定書三分之二多數締約國依據本國憲法程序予以接受後即行生效。

3. 修正案一旦生效，即對接受修正案的締約國具有約束力，其他締約國則仍受本議定書各項規定和本國以前接受之任何修正案的約束。

第35條

防範小組委員會委員及國家防範機制成員應享有獨立行使其職務所必要的特權和豁免。防範小組委員會委員應享有1946年2月13日《聯合國特權和豁免公約》第二十二節所規定之特權和豁免，但須遵守該公約第二十三節的規定。

第36條

防範小組委員會成員在締約國進行查訪時，在不妨害本議定書的規定和目的及他們應享有之特權和豁免的情況下：

(a) 應遵守被查訪國家的法律、規章；

(b) 應避免任何不符合其任務之公正和國際性質的行為或活動。

第37條

1. 本議定書的阿拉伯文、中文、英文、法文、俄文和西班牙文本同等作準，應交存聯合國秘書長。

2. 聯合國秘書長應將本議定書的核證副本轉發給所有國家。

附件四：禁止酷刑和其它殘忍、不人道或侮辱之處遇或懲罰公約任擇議定書英文版

Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment

Adopted on 18 December 2002 at the fifty-seventh session of the General Assembly of the United Nations by resolution A/RES/57/199
entered into force on 22 June 2006

PREAMBLE

The States Parties to the present Protocol,

Reaffirming that torture and other cruel, inhuman or degrading treatment or punishment are prohibited and constitute serious violations of human rights,

Convinced that further measures are necessary to achieve the purposes of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as the Convention) and to strengthen the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment,

Recalling that articles 2 and 16 of the Convention oblige each State Party to take effective measures to prevent acts of torture and other cruel, inhuman or degrading treatment or punishment in any territory under its jurisdiction,

Recognizing that States have the primary responsibility for implementing those articles, that strengthening the protection of people deprived of their liberty and the full respect for their human rights is a common responsibility shared by all and that international implementing bodies complement and strengthen national measures,

Recalling that the effective prevention of torture and other cruel, inhuman or degrading treatment or punishment requires education and a combination of various legislative, administrative, judicial and other measures,

Recalling also that the World Conference on Human Rights firmly declared that efforts to eradicate torture should first and foremost be concentrated on prevention and called for the adoption of an optional protocol to the Convention, intended to establish a preventive system of regular visits to places of detention,

Convinced that the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment can be strengthened by non-judicial means of a preventive nature, based on regular visits to places of detention, Have agreed as follows:

PART I: General principles

Article 1

The objective of the present Protocol is to establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.

Article 2

1. A Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the Committee against Torture (hereinafter referred to as the Subcommittee on Prevention) shall be established and shall carry out the functions laid down in the present Protocol.

2. The Subcommittee on Prevention shall carry out its work within the framework of the Charter of the United Nations and shall be guided by the purposes and principles thereof, as well as the norms of the United Nations concerning the treatment of people deprived of their liberty.

3. Equally, the Subcommittee on Prevention shall be guided by the principles of confidentiality, impartiality, non-selectivity, universality and objectivity.

4. The Subcommittee on Prevention and the States Parties shall cooperate in the implementation of the present Protocol.

Article 3

Each State Party shall set up, designate or maintain at the domestic level one or several visiting bodies for the prevention of torture and other cruel, inhuman or degrading treatment or punishment (hereinafter referred to as the national preventive mechanism).

Article 4

1. Each State Party shall allow visits, in accordance with the present Protocol, by the mechanisms referred to in articles 2 and 3 to any place under its jurisdiction and control where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence (hereinafter referred to as places of detention). These visits shall be undertaken with a view to strengthening, if necessary, the protection of these persons against torture and other cruel, inhuman or degrading treatment or punishment.

2. For the purposes of the present Protocol, deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority.

PART II: Subcommittee on Prevention

Article 5

1. The Subcommittee on Prevention shall consist of ten members. After the fiftieth ratification of or accession to the present Protocol, the number of the members of the Subcommittee on Prevention shall increase to twenty-five.

2. The members of the Subcommittee on Prevention shall be chosen from among persons of high moral character, having proven professional experience in the field of the administration of justice, in particular criminal law, prison or police administration, or in the various fields relevant to the treatment of persons deprived of their liberty.

3. In the composition of the Subcommittee on Prevention due consideration shall be given to equitable geographic distribution and to the representation of different forms of civilization and legal systems of the States Parties.

4. In this composition consideration shall also be given to balanced gender representation on the basis of the principles of equality and non-discrimination.

5. No two members of the Subcommittee on Prevention may be nationals of the same State.

6. The members of the Subcommittee on Prevention shall serve in their individual capacity, shall be independent and impartial and shall be available to serve the

Subcommittee on Prevention efficiently.

Article 6

1. Each State Party may nominate, in accordance with paragraph 2 of the present article, up to two candidates possessing the qualifications and meeting the requirements set out in article 5, and in doing so shall provide detailed information on the qualifications of the nominees.

2.

(a) The nominees shall have the nationality of a State Party to the present Protocol;

(b) At least one of the two candidates shall have the nationality of the nominating State Party;

(c) No more than two nationals of a State Party shall be nominated;

(d) Before a State Party nominates a national of another State Party, it shall seek and obtain the consent of that State Party.

3. At least five months before the date of the meeting of the States Parties during which the elections will be held, the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within three months. The Secretary-General shall submit a list, in alphabetical order, of all persons thus nominated, indicating the States Parties that have nominated them.

Article 7

1. The members of the Subcommittee on Prevention shall be elected in the following manner:

(a) Primary consideration shall be given to the fulfilment of the requirements and criteria of article 5 of the present Protocol;

(b) The initial election shall be held no later than six months after the entry into force of the present Protocol;

(c) The States Parties shall elect the members of the Subcommittee on Prevention by secret ballot;

(d) Elections of the members of the Subcommittee on Prevention shall be held at biennial meetings of the States Parties convened by the Secretary-General of the United Nations. At those meetings, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Subcommittee on Prevention shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of the States Parties present and voting.

2. If during the election process two nationals of a State Party have become eligible to serve as members of the Subcommittee on Prevention, the candidate receiving the higher number of votes shall serve as the member of the Subcommittee on Prevention. Where nationals have received the same number of votes, the following procedure applies:

(a) Where only one has been nominated by the State Party of which he or she is a national, that national shall serve as the member of the Subcommittee on Prevention;
(b) Where both candidates have been nominated by the State Party of which they are nationals, a separate vote by secret ballot shall be held to determine which national shall become the member;
(c) Where neither candidate has been nominated by the State Party of which he or she is a national, a separate vote by secret ballot shall be held to determine which candidate shall be the member.

Article 8

If a member of the Subcommittee on Prevention dies or resigns, or for any cause can no longer perform his or her duties, the State Party that nominated the member shall nominate another eligible person possessing the qualifications and meeting the requirements set out in article 5, taking into account the need for a proper balance among the various fields of competence, to serve until the next meeting of the States Parties, subject to the approval of the majority of the States Parties. The approval shall be considered given unless half or more of the States Parties respond negatively within six weeks after having been informed by the Secretary-General of the United Nations of the proposed appointment.

Article 9

The members of the Subcommittee on Prevention shall be elected for a term of four years. They shall be eligible for re-election once if renominated. The term of half the members elected at the first election shall expire at the end of two years; immediately after the first election the names of those members shall be chosen by lot by the Chairman of the meeting referred to in article 7, paragraph 1 (d).

Article 10

1. The Subcommittee on Prevention shall elect its officers for a term of two years. They may be re-elected.

2. The Subcommittee on Prevention shall establish its own rules of procedure. These

rules shall provide, inter alia, that:
(a) Half the members plus one shall constitute a quorum;
(b) Decisions of the Subcommittee on Prevention shall be made by a majority vote of the members present;
(c) The Subcommittee on Prevention shall meet in camera.

3. The Secretary-General of the United Nations shall convene the initial meeting of the Subcommittee on Prevention. After its initial meeting, the Subcommittee on Prevention shall meet at such times as shall be provided by its rules of procedure. The Subcommittee on Prevention and the Committee against Torture shall hold their sessions simultaneously at least once a year.

PART III: Mandate of the Subcommittee on Prevention

Article 11

1. The Subcommittee on Prevention shall:
(a) Visit the places referred to in article 4 and make recommendations to States Parties concerning the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment;
(b) In regard to the national preventive mechanisms:
(i) Advise and assist States Parties, when necessary, in their establishment;
(ii) Maintain direct, and if necessary confidential, contact with the national preventive mechanisms and offer them training and technical assistance with a view to strengthening their capacities;
(iii) Advise and assist them in the evaluation of the needs and the means necessary to strengthen the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment;
(iv) Make recommendations and observations to the States Parties with a view to strengthening the capacity and the mandate of the national preventive mechanisms for the prevention of torture and other cruel, inhuman or degrading treatment or punishment;

(c) Cooperate, for the prevention of torture in general, with the relevant United Nations organs and mechanisms as well as with the international, regional and national institutions or organizations working towards the strengthening of the protection of all persons against torture and other cruel, inhuman or degrading treatment or punishment.

Article 12

In order to enable the Subcommittee on Prevention to comply with its mandate as laid down in article 11, the States Parties undertake:

(a) To receive the Subcommittee on Prevention in their territory and grant it access to the places of detention as defined in article 4 of the present Protocol;

(b) To provide all relevant information the Subcommittee on Prevention may request to evaluate the needs and measures that should be adopted to strengthen the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment;
(c) To encourage and facilitate contacts between the Subcommittee on Prevention and the national preventive mechanisms;
(d) To examine the recommendations of the Subcommittee on Prevention and enter into dialogue with it on possible implementation measures.

Article 13
1. The Subcommittee on Prevention shall establish, at first by lot, a programme of regular visits to the States Parties in order to fulfil its mandate as established in article 11.

2. After consultations, the Subcommittee on Prevention shall notify the States Parties of its programme in order that they may, without delay, make the necessary practical arrangements for the visits to be conducted.

3. The visits shall be conducted by at least two members of the Subcommittee on Prevention. These members may be accompanied, if needed, by experts of demonstrated professional experience and knowledge in the fields covered by the present Protocol who shall be selected from a roster of experts prepared on the basis of proposals made by the States Parties, the Office of the United Nations High Commissioner for Human Rights and the United Nations Centre for International Crime Prevention. In preparing the roster, the States Parties concerned shall propose no more than five national experts. The State Party concerned may oppose the inclusion of a specific expert in the visit, whereupon the Subcommittee on Prevention shall propose another expert.

4. If the Subcommittee on Prevention considers it appropriate, it may propose a short follow-up visit after a regular visit.

Article 14
1. In order to enable the Subcommittee on Prevention to fulfil its mandate, the States Parties to the present Protocol undertake to grant it:

(a) Unrestricted access to all information concerning the number of persons deprived of their liberty in places of detention as defined in article 4, as well as the number of places and their location;
(b) Unrestricted access to all information referring to the treatment of those persons as well as their conditions of detention;
(c) Subject to paragraph 2 below, unrestricted access to all places of detention and their installations and facilities;
(d) The opportunity to have private interviews with the persons deprived of their liberty without witnesses, either personally or with a translator if deemed necessary, as well as with any other person who the Subcommittee on Prevention believes may supply relevant information;
(e) The liberty to choose the places it wants to visit and the persons it wants to interview.

2. Objection to a visit to a particular place of detention may be made only on urgent and compelling grounds of national defence, public safety, natural disaster or serious disorder in the place to be visited that temporarily prevent the carrying out of such a visit. The existence of a declared state of emergency as such shall not be invoked by a State Party as a reason to object to a visit.

Article 15
No authority or official shall order, apply, permit or tolerate any sanction against any person or organization for having communicated to the Subcommittee on Prevention or to its delegates any information, whether true or false, and no such person or organization shall be otherwise prejudiced in any way.

Article 16
1. The Subcommittee on Prevention shall communicate its recommendations and observations confidentially to the State Party and, if relevant, to the national preventive mechanism.

2. The Subcommittee on Prevention shall publish its report, together with any comments of the State Party concerned, whenever requested to do so by that State Party. If the State Party makes part of the report public, the Subcommittee on Prevention may publish the report in whole or in part. However, no personal data shall be published without the express consent of the person concerned.

3. The Subcommittee on Prevention shall present a public annual report on its activities to the Committee against Torture.

4. If the State Party refuses to cooperate with the Subcommittee on Prevention according to articles 12 and 14, or to take steps to improve the situation in the light of the recommendations of the Subcommittee on Prevention, the Committee against Torture may, at the request of the Subcommittee on Prevention, decide, by a majority of its members, after the State Party has had an opportunity to make its views known, to make a public statement on the matter or to publish the report of the Subcommittee on Prevention.

PART IV: National preventive mechanisms

Article 17

Each State Party shall maintain, designate or establish, at the latest one year after the entry into force of the present Protocol or of its ratification or accession, one or several independent national preventive mechanisms for the prevention of torture at the domestic level. Mechanisms established by decentralized units may be designated as national preventive mechanisms for the purposes of the present Protocol if they are in conformity with its provisions.

Article 18

1. The States Parties shall guarantee the functional independence of the national preventive mechanisms as well as the independence of their personnel.

2. The States Parties shall take the necessary measures to ensure that the experts of the national preventive mechanism have the required capabilities and professional knowledge. They shall strive for a gender balance and the adequate representation of ethnic and minority groups in the country.

3. The States Parties undertake to make available the necessary resources for the functioning of the national preventive mechanisms.

4. When establishing national preventive mechanisms, States Parties shall give due consideration to the Principles relating to the status of national institutions for the promotion and protection of human rights.

Article 19

The national preventive mechanisms shall be granted at a minimum the power:

(a) To regularly examine the treatment of the persons deprived of their liberty in places

of detention as defined in article 4, with a view to strengthening, if necessary, their protection against torture and other cruel, inhuman or degrading treatment or punishment;
(b) To make recommendations to the relevant authorities with the aim of improving the treatment and the conditions of the persons deprived of their liberty and to prevent torture and other cruel, inhuman or degrading treatment or punishment, taking into consideration the relevant norms of the United Nations;
(c) To submit proposals and observations concerning existing or draft legislation.

Article 20

In order to enable the national preventive mechanisms to fulfil their mandate, the States Parties to the present Protocol undertake to grant them:
(a) Access to all information concerning the number of persons deprived of their liberty in places of detention as defined in article 4, as well as the number of places and their location;
(b) Access to all information referring to the treatment of those persons as well as their conditions of detention;
(c) Access to all places of detention and their installations and facilities;
(d) The opportunity to have private interviews with the persons deprived of their liberty without witnesses, either personally or with a translator if deemed necessary, as well as with any other person who the national preventive mechanism believes may supply relevant information;
(e) The liberty to choose the places they want to visit and the persons they want to interview;
(f) The right to have contacts with the Subcommittee on Prevention, to send it information and to meet with it.

Article 21

1. No authority or official shall order, apply, permit or tolerate any sanction against any person or organization for having communicated to the national preventive mechanism any information, whether true or false, and no such person or organization shall be otherwise prejudiced in any way.

2. Confidential information collected by the national preventive mechanism shall be privileged. No personal data shall be published without the express consent of the person concerned.

Article 22

The competent authorities of the State Party concerned shall examine the recommendations of the national preventive mechanism and enter into a dialogue with it on possible implementation measures.

Article 23
The States Parties to the present Protocol undertake to publish and disseminate the annual reports of the national preventive mechanisms.

PART V: Declaration
Article 24
1. Upon ratification, States Parties may make a declaration postponing the implementation of their obligations under either part III or part IV of the present Protocol.

2. This postponement shall be valid for a maximum of three years. After due representations made by the State Party and after consultation with the Subcommittee on Prevention, the Committee against Torture may extend that period for an additional two years.

PART VI: Financial provisions
Article 25
1. The expenditure incurred by the Subcommittee on Prevention in the implementation of the present Protocol shall be borne by the United Nations.

2. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Subcommittee on Prevention under the present Protocol.

Article 26
1. A Special Fund shall be set up in accordance with the relevant procedures of the General Assembly, to be administered in accordance with the financial regulations and rules of the United Nations, to help finance the implementation of the recommendations made by the Subcommittee on Prevention after a visit to a State Party, as well as education programmes of the national preventive mechanisms.

2. The Special Fund may be financed through voluntary contributions made by Governments, intergovernmental and non-governmental organizations and other private or public entities.

PART VII: Final provisions

Article 27

1. The present Protocol is open for signature by any State that has signed the Convention.

2. The present Protocol is subject to ratification by any State that has ratified or acceded to the Convention. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. The present Protocol shall be open to accession by any State that has ratified or acceded to the Convention.

4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

5. The Secretary-General of the United Nations shall inform all States that have signed the present Protocol or acceded to it of the deposit of each instrument of ratification or accession.

Article 28

1. The present Protocol shall enter into force on the thirtieth day after the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

2. For each State ratifying the present Protocol or acceding to it after the deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession, the present Protocol shall enter into force on the thirtieth day after the date of deposit of its own instrument of ratification or accession.

Article 29

The provisions of the present Protocol shall extend to all parts of federal States without any limitations or exceptions.

Article 30

No reservations shall be made to the present Protocol.

Article 31

The provisions of the present Protocol shall not affect the obligations of States Parties under any regional convention instituting a system of visits to places of detention. The Subcommittee on Prevention and the bodies established under such regional conventions are encouraged to consult and cooperate with a view to avoiding duplication and promoting effectively the objectives of the present Protocol.

Article 32

The provisions of the present Protocol shall not affect the obligations of States Parties to the four Geneva Conventions of 12 August 1949 and the Additional Protocols thereto of 8 June 1977, nor the opportunity available to any State Party to authorize the International Committee of the Red Cross to visit places of detention in situations not covered by international humanitarian law.

Article 33

1. Any State Party may denounce the present Protocol at any time by written notification addressed to the Secretary-General of the United Nations, who shall thereafter inform the other States Parties to the present Protocol and the Convention. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.

2. Such a denunciation shall not have the effect of releasing the St ate Party from its obligations under the present Protocol in regard to any act or situation that may occur prior to the date on which the denunciation becomes effective, or to the actions that the Subcommittee on Prevention has decided or may decide to take with respect to the State Party concerned, nor shall denunciation prejudice in any way the continued consideration of any matter already under consideration by the Subcommittee on Prevention prior to the date on which the denunciation becomes effective.

3. Following the date on which the denunciation of the State Party becomes effective, the Subcommittee on Prevention shall not commence consideration of any new matter regarding that State.

Article 34

1. Any State Party to the present Protocol may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to the States Parties to the present Protocol with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposal. In the event that within four

months from the date of such communication at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of two thirds of the States Parties present and voting at the conference shall be submitted by the Secretary-General of the United Nations to all States Parties for acceptance.

2. An amendment adopted in accordance with paragraph 1 of the present article shall come into force when it has been accepted by a two -thirds majority of the States Parties to the present Protocol in accordance with their respective constitutional processes.

3. When amendments come into force, they shall be binding on those States Parties that have accepted them, other States Parties still being bound by the provisions of the present Protocol and any earlier amendment that they have accepted.

Article 35

Members of the Subcommittee on Prevention and of the national preventive mechanisms shall be accorded such privileges and immunities as are necessary for the independent exercise of their functions. Members of the Subcommittee on Prevention shall be accorded the privileges and immunities specified in section 22 of the Convention on the Privileges and Immunities of the United Nations of 13 February 1946, subject to the provisions of section 23 of that Convention.

Article 36

When visiting a State Party, the members of the Subcommittee on Prevention shall, without prejudice to the provisions and purposes of the present Protocol and such privileges and immunities as they may enjoy:

(a) Respect the laws and regulations of the visited State;

(b) Refrain from any action or activity incompatible with the impartial and international nature of their duties.

Article 37

1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States.

附件六：第 1 號一般性意見中文版

禁止酷刑委員會之第 1 號一般性意見:

根據《公約》第 22 條提出之關於第 3 條執行情況(1998)

鑒於《禁止酷刑和其他殘忍、不人道或侮辱之處遇或懲罰公約》第 22 條第 4 項要求禁止酷刑委員會「參照個人或其代表以及有關締約國所提供的一切資料，審議根據第 22 條所收到的來文。」

鑒於因適用委員會《議事規則》規則 111 第 3 段所引起的需要，並鑒於有必要根據《公約》第 22 條預訂之程序為實施第 3 條擬訂準則，禁止酷刑委員會第十九屆會議 1997 年 11 月 21 日第 317 次會議通過下列一般性意見,作為各締約國和撰文人之指導:

1. 第 3 條僅適用於有確實理由認為撰文人可能遭受《公約》第 1 條定義之酷刑案件。

2. 委員會認為，第 3 條中的「另一國家」指所涉個人正被驅逐、遣返或引渡的國家以及撰文人今後可能被驅逐、遣返或引渡的國家。

3. 根據第 1 條，在第 3 條第 2 項中提及之「一貫嚴重、公然、大規模侵犯人權情況」的標準，僅指由公職人員或以官方身分行事之其他人施行、煽動、認可或默許的侵犯人權情況。

能否受理

4. 委員會認為，撰文人有責任遵守委員會《議事規則》規則 107 所列各項要求，提出明顯可見之案情，以便委員會根據《公約》第 22 條受理其來文。

事實依據

5. 關於適用《公約》第 3 條以確認之案件事實,撰文人有提出可據以論證之事實之責。也就是說，撰文人的立場必須具有充分事實依據方可要求締約國作出答覆。

6. 銘記締約國和委員會有義務評估是否已有理由足認為撰文人若被驅逐、遣返或引渡即可能遭受酷刑。在評估遭致酷刑危險時，不能僅僅依據理論或懷疑。然而無需證明此種危險已達極可能發生之程度。

7. 撰文人必須證明自己可能遭受酷刑，其理由須充分且其危險乃是針對個人且確實存在。雙方均可以就此事實提出一切有關資料。

8. 下列資料雖非詳盡，但與案情相關且適當:

(a) 是否有證據表明所涉國家是一個一貫嚴重、公然或大規模侵犯人權的國家(見第 3 條第 2 項)?

(b) 撰文人是否曾遭受公職人員或以官方身份行事者施行、煽動、認可或默許的酷刑或虐待？是否在最近發生？

(c) 是否有醫療證據或其他獨立證據證明撰文人所指涉遭致酷刑或虐待之指控？酷刑是否對撰文人有後遺症？

(d) 上文(a)段提及之情況是否已發生變化？該國境內人權情況是否已發生變化？

(e)撰文人是否在所涉國家境內外從事政治活動或其他活動，致使他(她)如被驅逐、遣返或引渡到該國後，特別容易遭受酷刑？

(f) 是否有任何證據證明撰文人是可被信任的？

(g) 撰文人之指控是否存在與事實不符之情況？如果存在，是否具有重大關係？

9. 銘記禁止酷刑委員會並非上訴機關、准司法機關或行政機關，而是由締約國設立之僅享有宣示效力之監測機構，因此:

(a) 委員會行使《公約》第 3 條規定之管轄權時，極其重視所涉締約國機關之調查結論;但

(b) 委員會不受締約國之調查結論拘束。根據《公約》第 22 條第 4 項，委員會有權依據個案之全部案情自行評估事實真相。

附件七：第 1 號一般性意見英文版

General Comment 1 of Committee Against Torture

Communications concerning the return of a person to a State where there may be grounds he would be subjected to torture (article 3 in the context of article 22), U.N. Doc. A/53/44, annex IX at 52 (1998), reprinted in Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.6 at 279 (2003).

In view of the requirements of article 22, paragraph 4, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment that the Committee against Torture "shall consider communications received under article 22 in the light of all information made available to it by or on behalf of the individual and by the State Party concerned",

In view of the need arising as a consequence of the application of rule 111, paragraph 3, of the rules of procedure of the Committee (CAT/C/3/Rev.2), and

In view of the need for guidelines for the implementation of article 3 under the procedure foreseen in article 22 of the Convention,

The Committee against Torture, at its nineteenth session, 317th meeting held on 21 November 1997, adopted the following General Comment for the guidance of States parties and authors of communications:

1. Article 3 is confined in its application to cases where there are substantial grounds for believing that the author would be in danger of being subjected to torture as defined in article 1 of the Convention.

2. The Committee is of the view that the phrase "another State" in article 3 refers to the State to which the individual concerned is being expelled, returned or extradited, as well as to any State to which the author may subsequently be expelled, returned or extradited.

3. Pursuant to article 1, the criterion, mentioned in article 3, paragraph 2, "a consistent pattern of gross, flagrant or mass violations of human rights" refers only to violations

by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

Admissibility

4. The Committee is of the opinion that it is the responsibility of the author to establish a prima facie case for the purpose of admissibility of his or her communication under article 22 of the Convention by fulfilling each of the requirements of rule 107 of the rules of procedure of the Committee.

Merits

5. With respect to the application of article 3 of the Convention to the merits of a case, the burden is upon the author to present an arguable case. This means that there must be a factual basis for the author's position sufficient to require a response from the State party.

6. Bearing in mind that the State party and the Committee are obliged to assess whether there are substantial grounds for believing that the author would be in danger of being subjected to torture were he/she to be expelled, returned or extradited, the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. However, the risk does not have to meet the test of being highly probable.

7. The author must establish that he/she would be in danger of being tortured and that the grounds for so believing are substantial in the way described, and that such danger is personal and present. All pertinent information may be introduced by either party to bear on this matter.

8. The following information, while not exhaustive, would be pertinent:

(a) Is the State concerned one in which there is evidence of a consistent pattern of gross, flagrant or mass violations of human rights (see article 3, pare. 2)?;

(b) Has the author been tortured or maltreated by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity in the past? If so, was this the recent past?

(c) Is there medical or other independent evidence to support a claim by the author that he/she has been tortured or maltreated in the past? Has the torture had aftereffects?;

(d) Has the situation referred to in (a) above changed? Has the internal situation in respect of human rights altered?;

(e) Has the author engaged in political or other activity within or outside the State concerned which would appear to make him/her particularly vulnerable to the risk of being placed in danger of torture were he/she to be expelled, returned or extradited to the State in question?;

(f) Is there any evidence as to the credibility of the author?;

(g) Are there factual inconsistencies in the claim of the author? If so, are they relevant?;

9. Bearing in mind that the Committee against Torture is not an appellate, a quasi-judicial or an administrative body, but rather a monitoring body created by the States parties themselves with declaratory powers only, it follows that:

(a) Considerable weight will be given, in exercising the Committee's jurisdiction pursuant to article 3 of the Convention, to findings of fact that are made by organs of the State party concerned; but

(b) The Committee is not bound by such findings and instead has the power, provided by article 22, paragraph 4, of the Convention, of free assessment of the facts based upon the full set of circumstances in every case.

附件八：第 2 號一般性意見中文版

第二號：一般性意見（2008）

一、 締約國執行第 2 條

1. 本一般性意見論及《公約》第 2 條條文三部分，每部分確認相異卻關聯的根本原則，這些原則正是《公約》絕對禁止酷刑之立足點。《禁止酷刑公約》自通過以來，此一禁止規定之絕對性和不可減損性已成為習慣國際法的一部分。第 2 條規定強化禁止酷刑原則之絕對強制規範性，構成了委員會權力基礎，使委員會有權採取切實有效之預防手段，包括但不限於採取其後第 3 條至第 16 條所載之各項措施，以應對各種逐漸形成之威脅、問題和做法。

2. 根據第 2 條第 1 項，每一締約國都有義務採取行動，包括立法、行政、司法或其它措施，最終能切實有效防止酷刑。為了保證締約國確實採取公認足可防止或懲罰任何酷刑行為之措施，《公約》在其後各條中載明締約國須採取具體規定中各項措施之義務。

3. 第 2 條規定之防止酷刑的義務範圍十分廣泛。防止酷刑的義務與第 16 條第 1 項所規定之防止其它殘忍、不人道或侮辱之處遇或懲罰(以下簡稱「虐待」)的義務是不可分割、互為依存與相互關聯。防止虐待義務與防止酷刑義務實際上相互重疊，而且基本上相一致。第 16 條規定防止虐待的手段，「特別」強調了第 10 至第 13 條所列之措施，但未將有效防止虐待措施僅僅限於這幾條規定，正如委員會曾解釋，還包括諸如第 14 條所規定之補償。實際上，虐待與酷刑之間往往沒有明確界限。經驗顯示，發生虐待的情況往往也會助長酷刑的發生。因此，締約國必須採取防止酷刑所必須之相同措施以禁止虐待情事。所以，委員會認為，《公約》中禁止虐待也是不可減損的規定，必須採取不可減損之有效措施以防止虐待的發生。

4. 締約國有義務消除有礙於杜絕酷刑和虐待之任何法律性或其它障礙；採取積極有效措施義確實防止此種行為和再度發生。締約國有義務依照委員會就具體來文通過之意見和結論性意見不斷檢視並修正其本國法律和執行《公約》的情況。若締約國採取之措施未能達到杜絕酷刑行為之目的，依照《公約》的要求，締約國須作出改進和/或採取更新、更有效之措施。同樣地，由於酷刑和虐待方式持續更新變化，委員會對有效措施之理解和建議也須持續地與時俱進。

二、絕對禁止

5. 第 2 條第 2 項規定，酷刑之禁止是絕對的，不可減損的。該項強調，締約國不得援引「任何特殊情況」作為在其管轄的任何領土內施行酷刑之理由。《公約》指出之特殊情況包括戰爭狀態、戰爭威脅、國內政局動盪或任何其它社會緊急狀態。其中包括任何恐怖主義行為或暴力犯罪威脅以及國際性或非國際性武裝衝突。任何國家若以此種情況或其它維護公共安全或避免出現緊急狀態之一切情況為由而施行酷刑或虐待，委員會一概深感關切並斷然反對。委員會也反對任何以宗教或傳統為由違反絕對禁止酷刑之規定。委員會認為，締約國若以特赦或採取其它阻撓辦法事先排除或表明不願意對施行酷刑或虐待者進行立即與公正的追訴和處罰，皆違反第 2 條第 2 項之不可減損原則。

6. 委員會提請《公約》所有締約國注意其批准《公約》後承擔之義務的不可減損性。自 2001 年 9 月 11 日襲擊事件發生後，委員會表明，第 2 條(任何特殊情況，不論為……均不得援引為施行酷刑的理由)、第 15 條(不得援引任何業經確定系以酷刑取得之口供為證據，然而這類口供可作為證明酷刑行為人刑求逼供的證據)和第 16 條(禁止殘忍、不人道或侮辱之處遇或懲罰)所載之義務是第三條之「在一切情況下都必須遵守」的規定。委員會認為，第 3 條至第 15 條之規定均不可減損，既適用於禁止酷刑，也適用於禁止虐待之情事。委員會確認，締約國可選擇採取若干措施以履行上述義務，但這些措施必須有效，並且符合《公約》的宗旨和目標。

7. 委員會還認為，與不可減損原則相聯繫之「其管轄的任何領土」概念包括任何領土或設施，必須用來保護在締約國法律上或事實上控制之下的任何人，無論是對公民還是非公民，不得有任何歧視。委員會強調，防止酷刑之國家義務也適用於法律上或事實上以締約國名義、與締約國配合或因應締約國之要求而行事的所有人。締約國須密切監督其官員或代表其行事者，並向委員會報告因採取反恐措施或其它措施而發生之任何酷刑或虐待事件；以及為調查、懲罰和防止未來再發生酷刑或虐待行為而採取之措施，其中應特別關注直接造成酷刑行為者之法律責任以及指揮系統中各級官員於教唆、同意或默許此種行為之法律責任。

三、採取有效措施防止酷刑的義務的內容

8. 締約國至少須依照《公約》第 1 條所界定之酷刑行為要素和第 4 條之要求，將酷刑行為列為可依照其刑法予以懲罰之罪行。

9. 《公約》中的酷刑定義與國內法中納入之定義間嚴重出入及有罪不罰之現象會造成實際或可能的漏洞。在某些情況下，儘管用語相近，但國內法或司法解釋可能限定其含義。因此，委員會要求每一締約國確保政府所有部門皆會根據《公約》的定義來界定其國家義務。同時，委員會確認，國內的定義如有擴大，只要包含《公約》標準並且至少依照《公約》標準予以適用，也有增進《公約》宗旨和目的之作用。委員會特別強調，第 1 條之用意和目的並不對作案者之動機進行主觀探究，而是必須根據有關情況進行客

觀裁斷、必要調查與確認各級指揮人員與直接涉案者之責任。

10. 委員會確認，大多數締約國在其刑法典中將某種行為確認或界定為虐待。與酷刑相比，虐待可能在疼痛或痛苦的程度上有所差別，且無須證明施行虐待是基於不被容許之目的。委員會強調，若虐待過程中包含酷刑要素，僅以虐待罪名起訴有關行為亦違反《公約》。

11. 委員會認為，締約國若將酷刑行為界定為有別於普通攻擊行為或其它犯罪行為的罪行，可直接促進《公約》防止酷刑和虐待的總目標。為這種犯罪行為確立罪名和定義，有助於實現《公約》的目標，特別促使每一個人－包括作案人、受害人和廣大公眾—都認識到酷刑罪之特別嚴重的性質。將這種罪行列入刑典，還可：(a) 強調依照罪行的嚴重程度加以適當懲罰之必要性；(b) 加強禁止規定的威懾作用；(c) 強化負責官員追查具體酷刑行為之能力；並且(d) 使公眾有能力和權力進行監督並於必要時質疑國家違反《公約》的行為與不行為。

12. 通過審查各締約國歷次提交的報告、個別來文與監督事態發展，委員會在其結論性意見中闡述它對所謂有效措施的理解，本文件擇要概述此一理解。在第 2 條的一般適用原則與《公約》特定條款之基礎的進一步發展，委員會建議採取各種具體行動，旨於加強每一締約國能力，使其能夠迅速切實地採取必要且適當措施以防止酷刑和虐待行為，從而有助於令締約國的法律和實踐與《公約》完全相符。

13. 某些基本保障措施對所有自由被剝奪者都應適用。若干保障措施已載入《公約》，委員會也持續要求各締約國採取這些保障措施。委員會就有效措施提出了建議，其目的是闡明現今基本保障措施，此建議並非詳盡無遺。保障措施主要包括：保存被拘禁者正式名冊;被拘禁者有權獲知其權利;被拘禁者有權迅速獲得獨立之法律扶助與醫療援助，並可與親人取得聯繫；締約國須建立公正機制以視察和訪問拘禁和監禁地點；以及為被拘禁者和遭受酷刑和虐待危險者提供司法和其它救濟辦法，使他們的申訴能夠得到迅速和公正之審理，並使他們能夠維護其權利並對其拘禁或待遇之合法性提出質疑。

14. 《公約》生效以來取得之經驗強化委員會對下列各方面議題的認識：禁止酷刑的規定範圍和性質、酷刑的方法、酷刑發生的背景和後果、發展中可適用於不同情況之有效防止措施。例如，委員會強調，涉及單獨拘禁審訊的情況下，警衛須與受審訊或拘禁者為同一性別。隨著新預防措施的發現、試用和證明有效(諸如對所有審訊過程進行錄影、實施 1999 年《伊斯坦布爾議定書》一類的調查程序或採用新式教育公眾或保護未成年人的辦法)，可依照第 2 條之授權，在其餘條款基礎上擴大為防止酷刑所需要採取之措施範圍。

四、國家義務和責任的範圍

15. 《公約》為締約國而非為個人規定義務。國家為其官員和其他人員之行為和不行為承擔國際責任，其中包括以官方身份或代表國家行事、與國家配合行事、在其公務人員指揮或控制下行事或表面上依法行事之代理人、私營承包商和其他人員。因此在各種監管或控制情況下，例如在監獄、醫院、學校、負責照顧兒童、老年人、精神病人或身心障礙者的機構、兵役單位以及若國家不加干預就會縱容和擴大私下傷害危險之其它機構和環境內發生之酷刑和虐待行為，締約國均應禁止、防止和糾正。然而，對於習慣國際法和其它條約加諸國家或個人施行酷刑和虐待後之國際責任，《公約》未作任何限制。

16. 第 2 條第 1 項要求每一締約國在其主權領土內與「其管轄的任何領土內」採取有效措施防止出現酷刑行為。委員會確認，「任何領土」包括締約國依照國際法直接或間接、全部或部分、法律上或事實上實行有效控制的所有地區。第 2 條、第 5 條、第 11 條、第 12 條、第 13 條與第 16 條提到「任何領土」，不但指在締約國註冊的船舶或飛機上的違法行為，也指在軍事佔領、維和行動以及在諸如使館、軍事基地、拘禁設施或一國實際或有效控制下之其它地區犯下此種行為。委員會指出，此一解釋強化第 5 條第 1 項(b)款的效力，其中規定締約國必須採取措施，在「被控罪犯為該國國民」的情況下行使管轄權。委員會認為，第 2 條所指的「領土」範圍還必須包括締約國直接或間接、事實上或法律上對被拘禁者實行控制的情況。

17. 委員會認為，締約國有義務採取有效措施，防止政府當局與以官方身份行事之其他人直接犯下、教唆、煽動、鼓勵、默許或以其它方式參與或共同犯下《公約》所界定之酷刑行為。因此，締約國應採取有效措施，防止政府當局或以官方身份行事或表面上依法行事之其他人同意或默許任何酷刑行為。委員會斷定，締約國若未履行這些義務，即違反《公約》。例如，對私人擁有或管理拘禁中心之情況，委員會認為，鑒於有關人員負責執行國家職能，因而他們是以官方身份行事，所以不得減損國家官員對其進行監督並採取一切有效措施防止酷刑和虐待之義務。

18. 委員會已表明，如果國家當局或以官方身份行事或表面上依法行事的其他人知悉或有合理理由相信非國家官員或私人行為者正在施行酷刑或虐待，卻未依照《公約》阻止、調查、起訴和懲罰這些非國家官員或私人行為者，國家應承擔責任，其官員應視為違反禁止酷刑規定之行為者、共犯或根據《公約》為同意或默許此種行為而負責者。國家若未予以適當注意並進行干預以制止和制裁酷刑行為，並為受害者提供救濟，就會縱容非國家行為者，使他們違犯《公約》不許之行為且不受懲罰。因此，國家的漠不關心或無所作為構成鼓勵和/或事實上准許。當締約國未能防止諸如強姦、家庭暴力、切割女性生殖器和販賣婦女等基於性別之暴力行為和保護婦女不受此種行為之危害，委員會即適用此項原則。

19. 此外，若將某人移交或送交已知曾施行過酷刑或虐待或者未實行適當保障措施的個人或機構，由其加以監管或控制，國家須為此移交或送交行為負責，其官員須為其下令、准許或參與此一移交行動而受處罰。委員會已對締約國未經第 2 條和第 3 條所要求之法律程序將人移送至此處表示關注。

五、保護因遭受歧視或被邊緣化而處於弱勢地位之個人和群體

20. 不歧視原則為保護人權的一項基本和普遍原則，對《公約》的解釋和適用至為重要。「不歧視」已納入了《公約》第 1 條第 1 項所載之酷刑定義本身，該項明文禁止為「基於任何一種歧視的任何理由」所作出之特定行為。委員會強調，是否歧視性地使用精神或肉體暴力或虐待，是決定某一行為構成酷刑與否之重要因素。

21. 對於特別有可能遭受酷刑的某些少數或邊緣化個人或人群加以保護，是防止酷刑或虐待義務的構成部分。就《公約》規定之義務而言，締約國必須確保其法律可以實際地適用於所有人，無論其種族、膚色、族裔、年齡、宗教信仰或教派、政治見解或其它見解、原籍或社會出身、性別、性傾向、變性身份、心智障礙或其它身體障礙、健康狀況、經濟狀況或土著身份、拘禁理由等，包括被控犯下政治罪行或恐怖主義行為者、尋求避難者、難民或其他受到國際保護者或其他任何地位或具不利特性者。因此，締約國應確保特別可能遭受酷刑的群體成員受到保護，全力起訴和處罰一切對這些人施行暴力和虐待行為者，並確保實行其它正面預防和保護措施，包括但不限於上述各項措施。

22. 國家提交的報告往往缺乏具體充分資料說明對婦女落實《公約》的情況。委員會強調，性別是一項關鍵因素。女性身份加上諸如種族、國籍、宗教、性傾向、年齡、移民身份等其它特性或身份，會決定婦女和女孩遭受或可能遭受酷刑或虐待方式及其後果。婦女遭此危險的情況包括被剝奪自由、強制醫療(特別涉及生育決定)以及遭受社區和家庭中的私人施行暴力。男人也有可能遭受某些基於性別之違反《公約》行為之害，諸如強姦、性暴力和虐待。成年和少年男女都有可能因為實際上或被認為不符合社會所認定之男女性別角色而遭受違反《公約》行為之害。委員會要求締約國在其報告中說明這些情況並說明已採取何種措施來處罰和防止此種行為。

23. 因此，不斷進行審查是防止酷刑與虐待的關鍵措施。委員會一貫建議締約國在其報告中按年齡、性別和其它主要因素分列資料，以便委員會能夠適當評估《公約》之執行情況。分類資料使締約國和委員會能夠查明、比較和採取步驟糾正有可能未受注意和未受處理之歧視性待遇。委員會要求締約國儘量說明各種影響酷刑或虐待行為的發生和預防因素；防止針對少數群體、酷刑受害者、兒童和婦女等特定相關人群施行的酷刑或虐待方面所遇到的困難；其中應考慮這種酷刑和虐待行為的一般形式和特殊形式。

24. 在可能發生酷刑或虐待行為的環境中消除就業歧視和不斷進行宣傳教育，對防止發生這種違反《公約》的行為及養成尊重婦女和少數群體的風氣至為重要。委員會鼓勵各國提倡雇用少數群體成員和婦女，尤其是在醫療衛生、教育、監獄/拘禁所、執法、司法和法律等領域以及國家機關和私營部門。締約國應在其報告中說明此方面之進展情況，並依照性別、種族、原籍和其它相關身份分列資料。

六、《公約》要求採取的其它預防措施

25. 《公約》第 3 條至第 15 條規定締約國為防止酷刑和虐待行為、特別是在監管或拘禁情況下防止此種行為所必須採取之具體預防措施。委員會強調，採取有效預防措施的義務超越《公約》具體列舉之各項措施或本一般性意見要求採取之各項措施的範圍。例如，有必要使一般大眾認識國家禁止酷刑和虐待此一不可減損之義務的歷史、範圍和必要性，也必須教育執法人員及其他人員如何察覺與防止酷刑和虐待的發生。同樣，委員會根據審議和評價國家關於公務機關施行或認可之酷刑或虐待行為之報告的多年經驗。確認將監督酷刑和虐待行為之預防工作靈活適用於私人間施行暴力情況的重要性。締約國應在提交委員會的報告中特別詳述預防措施之落實情況，並依照相關因素予以分列。

七、上級命令

26. 禁止酷刑規定的不可減損性尚可見諸第 2 條第 3 項所載之原則，即上級官員或政府當局的命令永遠不得被行為人援引為施行酷刑之理由。因此，下級機關之行為不得為上級機關所庇護，個人應為其行為負責。同時，上級機關(包括公職人員)若知悉或應當知悉正在發生或有可能發生此種違禁行為，卻未採取合理與必要的預防措施，他們也不能逃避其因下級犯下酷刑或虐待行為所必須承擔之責任或刑事責任。委員會認為，獨立公正的檢察主管機關和司法機關必須充分調查任何涉及酷刑或虐待行為者之上級官員的責任，包括直接教唆或鼓勵酷刑或虐待行為與同意或默許此種行為的責任。抗拒被其認為非法的命令或在調查酷刑或虐待行為(包括上級官員所犯酷刑或虐待行為)過程中予以合作的個人，應保護其不致遭受任何形式的報復。

27. 委員會重申，本一般性意見不得被認為妨礙任何國際文書或國家法律中規定至少包含《公約》各項標準或提供更高程度保護之任何規定。

附件九：第 2 號一般性意見英文版

CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

GENERAL COMMENT No. 2

Implementation of article 2 by States parties

1. This general comment addresses the three parts of article 2, each of which identifies distinct interrelated and essential principles that undergird the Convention's absolute prohibition against torture. Since the adoption of the Convention against Torture, the absolute and non-derogable character of this prohibition has become accepted as a matter of customary international law. The provisions of article 2 reinforce this peremptory *jus cogens* norm against torture and constitute the foundation of the Committee's authority to implement effective means of prevention, including but not limited to those measures contained in the subsequent articles 3 to 16, in response to evolving threats, issues, and practices.

2. Article 2, paragraph 1, obliges each State party to take actions that will reinforce the prohibition against torture through legislative, administrative, judicial, or other actions that must, in the end, be effective in preventing it. To ensure that measures are in fact taken that are known to prevent or punish any acts of torture, the Convention outlines in subsequent articles obligations for the State party to take measures specified therein.

3. The obligation to prevent torture in article 2 is wide-ranging. The obligations to prevent torture and other cruel, inhuman or degrading treatment or punishment (hereinafter "ill-treatment") under article 16, paragraph 1, are indivisible, interdependent and interrelated. The obligation to prevent ill-treatment in practice overlaps with and is largely congruent with the obligation to prevent torture. Article 16, identifying the means of prevention of ill-treatment, emphasizes *"in particular"* the measures outlined in articles 10 to 13, but does not limit effective prevention to these articles, as the Committee has explained, for example, with respect to compensation in

ctice, the definitional threshold between ill-treatment and torture is often not clear. Experience demonstrates 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. Accordingly, the Committee has considered the prohibition of ill-treatment to be likewise non-derogable under the

Convention and its prevention to be an effective and non-derogable measure.

4. States parties are obligated to eliminate any legal or other obstacles that impede the eradication of torture and ill-treatment; and to take positive effective measures to ensure that such conduct and any recurrences thereof are effectively prevented. States parties also have the obligation continually to keep under review and improve their national laws and performance under the Convention in accordance with the Committee's concluding observations and views adopted on individual communications. If the measures adopted by the State party fail to accomplish the purpose of eradicating acts of torture, the Convention requires that they be revised and/or that new, more effective measures be adopted. Likewise, the Committee's understanding of and recommendations in respect of effective measures are in a process of continual evolution, as, unfortunately, are the methods of torture and ill-treatment.

II. Absolute prohibition

5. Article 2, paragraph 2, provides that the prohibition against torture is absolute and non-derogable. It emphasizes that *no exceptional circumstances whatsoever* may be invoked by a State Party to justify acts of torture in any territory under its jurisdiction. The Convention identifies as among such circumstances a state of war or threat thereof, internal political instability or any other public emergency. This includes any threat of terrorist acts or violent crime as well as armed conflict, international or non-international. The Committee is deeply concerned at and rejects absolutely any efforts by States to justify torture and ill-treatment as a means to protect public safety or avert emergencies in these and all other situations. Similarly, it rejects any religious or traditional justification that would violate this absolute prohibition. The Committee considers that amnesties or other impediments which preclude or indicate unwillingness to provide prompt and fair prosecution and punishment of perpetrators of torture or ill-treatment violate the principle of non-derogability.

6. The Committee reminds all States parties to the Convention of the non-derogable nature of the obligations undertaken by them in ratifying the Convention. In the aftermath of the attacks of 11 September 2001, the Committee specified that the obligations in articles 2 (whereby "no exceptional circumstances whatsoever…may be invoked as a justification of torture"), 15 (prohibiting confessions extorted by torture being admitted in evidence, except against the torturer), and 16 (prohibiting cruel, inhuman or degrading treatment or punishment) are three such provisions that "must be observed in all circumstances"[3]. The Committee considers that articles 3 to 15 are

[3] On 22 November 2001, the Committee adopted a statement in connection with the events of 11 September which was sent to each State party to the Convention (A/57/44, paras. 17-18).

likewise obligatory as applied to both torture and ill-treatment. The Committee recognizes that States parties may choose the measures through which they fulfill these obligations, so long as they are effective and consistent with the object and purpose of the Convention.

7. The Committee also understands that the concept of "any territory under its jurisdiction," linked as it is with the principle of non-derogability, includes any territory or facilities and must be applied to protect any person, citizen or non-citizen without discrimination subject to the de jure or de facto control of a State party. The Committee emphasizes that the State's obligation to prevent torture also applies to all persons who act, de jure or de facto, in the name of, in conjunction with, or at the behest of the State party. It is a matter of urgency that each State party should closely monitor its officials and those acting on its behalf and should identify and report to the Committee any incidents of torture or ill-treatment as a consequence of anti-terrorism measures, among others, and the measures taken to investigate, punish, and prevent further torture or ill-treatment in the future, with particular attention to the legal responsibility of both the direct perpetrators and officials in the chain of command, whether by acts of instigation, consent or acquiescence.

III. Content of the obligation to take effective measures to prevent torture

8. States parties must make the offence of torture punishable as an offence under its criminal law, in accordance, at a minimum, with the elements of torture as defined in article 1 of the Convention, and the requirements of article 4.

9. Serious discrepancies between the Convention's definition and that incorporated into domestic law create actual or potential loopholes for impunity. In some cases, although similar language may be used, its meaning may be qualified by domestic law or by judicial interpretation and thus the Committee calls upon each State party 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. At the same time, the Committee recognizes that broader domestic definitions also advance the object and purpose of this Convention so long as they contain and are applied in accordance with the standards of the Convention, at a minimum. In particular, the Committee emphasizes that elements of intent and purpose in article 1 do not involve a subjective inquiry into the motivations of the perpetrators, but rather must be objective determinations under the circumstances. It is essential to investigate and establish the responsibility of persons in the chain of command as well as that of the direct perpetrator(s).

10. The Committee recognizes that most States parties identify or define certain conduct as ill-treatment in their criminal codes. In comparison to torture, ill-treatment may differ in the severity of pain and suffering and does not require proof of impermissible purposes. The Committee emphasizes that it would be a violation of the Convention to prosecute conduct solely as ill-treatment where the elements of torture are also present.

11. By defining the offence of torture as distinct from common assault or other crimes, the Committee considers that States parties will directly advance the Convention's overarching aim of preventing torture and ill-treatment. Naming and defining this crime will promote the Convention's aim, inter alia, by alerting everyone, including perpetrators, victims, and the public, to the special gravity of the crime of torture. Codifying this crime will also (a) emphasize the need for appropriate punishment that takes into account the gravity of the offence, (b) strengthen the deterrent effect of the prohibition itself, (c) enhance the ability of responsible officials to track the specific crime of torture and (d) enable and empower the public to monitor and, when required, to challenge State action as well as State inaction that violates the Convention.

12. Through review of successive reports from States parties, the examination of individual communications, and monitoring of developments, the Committee has, in its concluding observations, articulated its understanding of what constitute effective measures, highlights of which we set forth here. In terms of both the principles of general application of article 2 and developments that build upon specific articles of the Convention, the Committee has recommended specific actions designed to enhance each State party's ability swiftly and effectively to implement measures necessary and appropriate to prevent acts of torture and ill-treatment and thereby assist States parties in bringing their law and practice into full compliance with the Convention.

13. Certain basic guarantees apply to all persons deprived of their liberty. Some of these are specified in the Convention, and the Committee consistently calls upon States parties to use them. The Committee's recommendations concerning effective measures aim to clarify the current baseline and are not exhaustive. Such guarantees include, inter alia, maintaining an official register of detainees, the right of detainees to be informed of their rights, the right promptly to receive independent legal assistance, independent medical assistance, and to contact relatives, the need to establish impartial mechanisms for inspecting and visiting places of detention and confinement, and the availability to detainees and persons at risk of torture and ill-treatment of judicial and other remedies that will allow them to have their complaints promptly and impartially examined, to defend their rights, and to challenge the

legality of their detention or treatment.

14. Experience since the Convention came into force has enhanced the Committee's understanding of the scope and nature of the prohibition against torture, of the methodologies of torture, of the contexts and consequences in which it occurs, as well as of evolving effective measures to prevent it in different contexts. For example, the Committee has emphasized the importance of having same sex guards when privacy is involved. As new methods of prevention (e.g. videotaping all interrogations, utilizing investigative procedures such as the Istanbul Protocol of 1999[4], or new approaches to public education or the protection of minors) are discovered, tested and found effective, article 2 provides authority to build upon the remaining articles and to expand the scope of measures required to prevent torture.

IV. Scope of State obligations and responsibility

15. The Convention imposes obligations on States parties and not on individuals. States bear international responsibility for the acts and omissions of their officials and others, including agents, private contractors, and others acting in official capacity or acting on behalf of the State, in conjunction with the State, under its direction or control, or otherwise under colour of law. Accordingly, each State party should prohibit, prevent and redress torture and ill-treatment in all contexts of custody or control, for example, in prisons, hospitals, schools, institutions that engage in the care of children, the aged, the mentally ill or disabled, in military service, and other institutions as well as contexts where the failure of the State to intervene encourages and enhances the danger of privately inflicted harm. The Convention does not, however, limit the international responsibility that States or individuals can incur for perpetrating torture and ill-treatment under international customary law and other treaties.

16. Article 2, paragraph 1, requires that each State party shall take effective measures to prevent acts of torture not only in its sovereign territory but also "in any territory under its jurisdiction." The Committee has recognized that "any territory" includes 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. The reference to "any territory" in article 2, like that in articles 5, 11, 12, 13 and 16, refers to prohibited acts committed not only on board a ship or aircraft registered by a State party, but also during military occupation or peacekeeping operations and in such places as embassies, military bases, detention facilities, or other areas over which a State

[4] *Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.*

exercises factual or effective control. The Committee notes that this interpretation reinforces article 5, paragraph 1 (b), which requires that a State party must take measures to exercise jurisdiction "when the alleged offender is a national of the State." The Committee considers that the scope of "territory" under article 2 must also include situations where a State party exercises, directly or indirectly, de facto or de jure control over persons in detention.

17. The Committee observes that States parties are obligated to adopt effective measures to prevent public authorities and other persons acting in an official capacity from directly committing, instigating, inciting, encouraging, acquiescing in or otherwise participating or being complicit in acts of torture as defined in the Convention. Thus, States parties should adopt effective measures to prevent such authorities or others acting in an official capacity or under colour of law, from consenting to or acquiescing in any acts of torture. The Committee has concluded that States parties are in violation of the Convention when they fail to fulfil these obligations. For example, where detention centres are privately owned or run, the Committee considers that personnel are acting in an official capacity on account of their responsibility for carrying out the State function without derogation of the obligation of State officials to monitor and take all effective measures to prevent torture and ill-treatment.

18. The Committee has made clear that where State authorities or others acting in official capacity or under colour of law, know or have reasonable grounds to believe that acts of torture or ill-treatment are being committed by non-State officials or private actors and they fail to exercise due diligence to prevent, investigate, prosecute and punish such non-State officials or private actors consistently with the Convention, the State bears responsibility and its officials should be considered as authors, complicit or otherwise responsible under the Convention for consenting to or acquiescing in such impermissible acts. Since the failure of the State to exercise due diligence to intervene to stop, sanction and provide remedies to victims of torture facilitates and enables non-State actors to commit acts impermissible under the Convention with impunity, the State's indifference or inaction provides a form of encouragement and/or de facto permission. The Committee has applied this principle to States parties' failure to prevent and protect victims from gender-based violence, such as rape, domestic violence, female genital mutilation, and trafficking.

19. Additionally, if a person is to be transferred or sent to the custody or control of an individual or institution known to have engaged in torture or ill-treatment, or has not implemented adequate safeguards, the State is responsible, and its officials subject to punishment for ordering, permitting or participating in this transfer contrary to the

State's obligation to take effective measures to prevent torture in accordance with article 2, paragraph 1. The Committee has expressed its concern when States parties send persons to such places without due process of law as required by articles 2 and 3.

V. Protection for individuals and groups made vulnerable by discrimination or marginalization

20. The principle of non-discrimination is a basic and general principle in the protection of human rights and fundamental to the interpretation and application of the Convention. Non-discrimination is included within the definition of torture itself in article 1, paragraph 1, of the Convention, which explicitly prohibits specified acts when carried out for "*any reason based on discrimination of any kind*…". The Committee emphasizes that the discriminatory use of mental or physical violence or abuse is an important factor in determining whether an act constitutes torture.

21. The protection of certain minority or marginalized individuals or populations especially at risk of torture is a part of the obligation to prevent torture or ill-treatment. States parties must ensure that, insofar as the obligations arising under the Convention are concerned, their laws are in practice applied to all persons, regardless of race, colour, ethnicity, age, religious belief or affiliation, political or other opinion, national or social origin, gender, sexual orientation, transgender identity, mental or other disability, health status, economic or indigenous status, reason for which the person is detained, including persons accused of political offences or terrorist acts, asylum-seekers, refugees or others under international protection, or any other status or adverse distinction. States parties should, therefore, ensure the protection of members of groups especially at risk of being tortured, by fully prosecuting and punishing all acts of violence and abuse against these individuals and ensuring implementation of other positive measures of prevention and protection, including but not limited to those outlined above.

22. State reports frequently lack specific and sufficient information on the implementation of the Convention with respect to women. The Committee emphasizes that gender is a key factor. Being female intersects with other identifying characteristics or status of the person such as race, nationality, religion, sexual orientation, age, immigrant status etc. to determine the ways that women and girls are subject to or at risk of torture or ill-treatment and the consequences thereof. The contexts in which females are at risk include deprivation of liberty, medical treatment, particularly involving reproductive decisions, and violence by private actors in communities and homes. Men are also subject to certain gendered violations of the Convention such as rape or sexual violence and abuse. Both men and women and boys and girls may be

subject to violations of the Convention on the basis of their actual or perceived non-conformity with socially determined gender roles. States parties are requested to identify these situations and the measures taken to punish and prevent them in their reports.

23. Continual evaluation is therefore a crucial component of effective measures. The Committee has consistently recommended that States parties provide data disaggregated by age, gender and other key factors in their reports to enable the Committee to adequately evaluate the implementation of the Convention. Disaggregated data permits the States parties and the Committee to identify, compare and take steps to remedy discriminatory treatment that may otherwise go unnoticed and unaddressed. States parties are requested to describe, as far as possible, factors affecting the incidence and prevention of torture or ill-treatment, as well as the difficulties experienced in preventing torture or ill-treatment against specific relevant sectors of the population, such as minorities, victims of torture, children and women, taking into account the general and particular forms that such torture and ill-treatment may take.

24. Eliminating employment discrimination and conducting ongoing sensitization training in contexts where torture or ill-treatment is likely to be committed is also key to preventing such violations and building a culture of respect for women and minorities. States are encouraged to promote the hiring of persons belonging to minority groups and women, particularly in the medical, educational, prison/detention, law enforcement, judicial and legal fields, within State institutions as well as the private sector. States parties should include in their reports information on their progress in these matters, disaggregated by gender, race, national origin, and other relevant status.

VI. Other preventive measures required by the Convention

25. Articles 3 to 15 of the Convention constitute specific preventive measures that the States parties deemed essential to prevent torture and ill-treatment, particularly in custody or detention. The Committee emphasizes that the obligation to take effective preventive measures transcends the items enumerated specifically in the Convention or the demands of this general comment. For example, it is important that the general population be educated on the history, scope, and necessity of the non-derogable prohibition of torture and ill-treatment, as well as that law enforcement and other personnel receive education on recognizing and preventing torture and ill-treatment. Similarly, in light of its long experience in reviewing and assessing State reports on officially inflicted or sanctioned torture or ill-treatment, the Committee acknowledges the importance of adapting the concept of monitoring conditions to prevent torture and

ill-treatment to situations where violence is inflicted privately. States parties should specifically include in their reports to the Committee detailed information on their implementation of preventive measures, disaggregated by relevant status.

VII. Superior orders

26. The non-derogability of the prohibition of torture is underscored by the long-standing principle embodied in article 2, paragraph 3, that an order of a superior or public authority can never be invoked as a justification of torture Thus, subordinates may not seek refuge in superior authority and should be held to account individually. At the same time, those exercising superior authority - including public officials - 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 occurring, or was likely to occur, and they failed to take reasonable and necessary preventive measures. The Committee considers it essential that the responsibility of any superior officials, whether for direct instigation or encouragement of torture or ill-treatment or for consent or acquiescence therein, be fully investigated through competent, independent and impartial prosecutorial and judicial authorities. Persons who resist what they view as unlawful orders or who cooperate in the investigation of torture or ill-treatment, including by superior officials, should be protected against retaliation of any kind.

27. The Committee reiterates that this general comment has to be considered without prejudice to any higher degree of protection contained in any international instrument or national law, as long as they contain, as a minimum, the standards of the Convention.

附件十：第 3 號一般性意見中文版

第 3 號一般性意見: 締約國對第 14 條的執行（2012 年）

1. 本一般性意見向締約國解釋與澄清《禁止酷刑和其他殘忍、不人道或侮辱之處遇或懲罰公約》第 14 條規定之義務內容和範圍。每一締約國須「在其法律體制內確保酷刑受害者得到救濟，並享有獲得公平和充分賠償之強制執行權利，其中包括儘量使其完全康復還原」。委員會認為，第 14 條適用於酷刑和殘忍、不人道或侮辱之處遇或懲罰(以下簡稱「虐待」)行為下所有受害人，與委員會第 2 號一般性意見相一致，且不得帶有任何形式的歧視。

2. 委員會認為，第 14 條中的「救濟」一詞包含「有效補救措施」和「賠償」的概念。因此，全面性賠償概念意味著恢復、補償、復原、清償和保證不再發生，它指為糾正違反《公約》行為所必需之全範圍的措施。

3. 受害者系指由於構成違反《公約》的作為或不作為而遭受單獨或集體傷害的人，這種傷害包括身體或精神傷害、感情痛苦、經濟損失或對其基本權利的重大損害。無論侵權加害人是否被確定身份、逮捕、起訴或定罪，也無關加害人和受害者之間是否存有任何家庭或其他關係。「受害者」除本人外，還包括受害者之直系親屬、受扶養人以及因為出面干預、援助受害者或防止受害情況而蒙受損害的人。在某些情況下，受到傷害者可能更願意使用「倖存者」一詞。委員會對「受害者」此一法律術語的使用並不妨礙在特定情況下可能更適合之其他詞語。

4. 委員會強調，受害者參與救濟過程十分重要。而且，恢復受害者的尊嚴是提供救濟的最終目標。

5. 第 14 條規定締約國提供救濟之義務有兩個方面：程序性救濟和實體性救濟。為履行程序性義務，締約國應頒布法律並設立申訴機制、調查機關或機構，包括獨立司法機關，這些機構能夠判決確定酷刑和虐待受害者是否有救濟權並對根據其判決取得救濟；締約國還應確保此機制之有效運作而且令所有受害者皆接近使用。在實體性方面，締約國應確保酷刑或虐待受害者獲得充分、有效救濟和賠償，包括補償和儘量使其得到完全地恢復康復還原。

實體性義務：救濟權的範圍

6. 上文第 2 段已指出，賠償包括以下五種形式：恢復、補償、復原、清償和保證不再犯。委員會承認《關於嚴重侵犯國際人權法和國際人道主義法行為的受害者獲得補救與賠償權之基本原則和準則》(《基本原則和準則》)所列舉之國際法和國際慣例下充分救濟的各項要素。 賠償必須適足、有效和全面化。委員會提醒締約國，於確定向酷刑或虐待受害者提供救濟和賠償措施時，必須考慮每一個別案件的特殊性和具體情節，救濟應根據受害者的特殊需要予以設計，並與加害人犯下之侵權行為的嚴重性相稱。委員會強調，對於未來侵權行為而言，提供賠償具有內在預防和威懾效果。

7. 公權力機關、受委託執行公務之私人違反酷刑或虐待行為，或公務機關知曉或有合理理由相信非國家官員或私人已犯有酷刑或虐待行為，卻未按照《公約》履行預防、調查、起訴和懲罰這些非國家官員或私人之責時，國家負有向受害者提供救濟的責任(第 2 號一般性意見)。

恢復

8. 「恢復」系指考慮每一個案件的具體情況，旨在恢復狀態至違反《公約》行為發生之前受害者狀況的一種救濟形式。《公約》規定之預防義務，要求締約國確保不會造成受害者再度遭遇酷刑或虐待的危險境況。固然受害者或許認為回復已不可能，國家仍應向受害者提供獲得救濟的充分途徑。為使恢復切實有效，締約國應致力著手處理造成侵權行為之結構性原因，包括性別、性取向、身心障礙、政治或其他見解、種族、年齡、宗教等任何形式的歧視和所有其他理由的歧視。

賠償

9. 委員會強調，單靠金錢賠償未必足以對酷刑和虐待的受害者提供充分救濟。委員會確認，就第 14 條規定之國家義務履行而言，締約國僅提供受害者金錢賠償是不夠的。

10. 第 14 條規定之及時、公正和適足之酷刑或虐待賠償權利是多層次的，不論是金錢的或非金錢的賠償，應足以填補酷刑或虐待所造成具經濟可評估之損害。包括：償付已支付的醫療費用，提供資金，支付受害者所需創後醫療或復原服務，確保盡可能地全面康復還原；提供彌補身體或精神傷害之金錢和非金錢傷害賠償；補償酷刑或虐待所造成殘疾所導致之收入和潛在收入損失；補償就業和教育等機會的喪失。此外，締約國向酷刑或虐待受害者提供適足賠償，應包括法律或專家援助與提出救濟索賠所需之相關費用。

康復還原

11. 委員會確認，向任何由於違反《公約》行為而受到傷害的人提供盡可能完全復原的途徑。包括醫療和心理、護理、法律和社會服務等整體之措施。就本一般性意見的理解，「康復還原」系指恢復功能或令受害者獲得因個人處境發生變化後所需要之新技能。復原力求使有關人員能獲得最大可能的自理能力和功能，並能對其物質環境和社會環境

進行調整。使受害者康復還原之目標應盡可能恢復其獨立性、身體、心理、社會和職業能力；並使其能充分融入和參與社會。

12. 委員會強調，締約國提供「盡可能地完全康復還原」之義務，系指需恢復原狀並彌補受害者——其人生境況包括尊嚴、健康和自理能力可能由於酷刑的延續性影響而無法完全恢復——所遭受的傷害。此義務履行與締約國的可用資源無關，且不得推遲。

13. 為履行向酷刑或虐待受害者提供盡可能完全復原之義務，各締約國應採取長期綜合方針，確保向酷刑和虐待受害者提供現存適當且容易取得的專業服務。這些服務應包括：藉以評估和評價個人治療需求和其他需求的程序，該程序尤應基於《酷刑和其他殘忍、不人道或侮辱之處遇或懲罰的有效調查和文件記錄手冊》(《伊斯坦布爾議定書》)；這些服務可包括廣泛地跨學科措施，例如，醫療和身心復原服務、融入和社會服務、面向社區和家庭的扶助和服務、職業培訓與教育等。將受害者之體能和承受力納入考量的整體性復原方針至關重要。此外，受害者可能面臨再度受創的風險，他們對可令其回想起曾經遭受之酷刑或虐待的行為有切實恐懼。因此，需建立一個可提供協助之充滿信心和信任的氛圍，此項工作應優先安排。如有需要，提供之服務應當保密。

14. 《公約》規定提供康復還原服務的要求，並不排除在酷刑後立即向受害者提供醫療和心理服務之需要。提供初期護理並不意味已履行提供盡可能完全復原之義務。

15. 締約國應確保在國內設立有效的康復還原服務和方案，考慮受害者的文化、個性、歷史和背景，且不加歧視地提供予所有受害人，無論受害者在邊緣化或弱勢群體中的身份或地位如何，包括尋求庇護者和難民。締約國應立法設立具體機制和方案，向酷刑或虐待受害者提供康復還原服務。經具合格的獨立醫療專業人員進行評估之後，應儘快向酷刑受害者提供使用康復還原方案的途徑。進入康復還原計劃之條件，不應取決於受害者是否已尋求司法救濟措施。第 14 條規定之盡可能提供完全康復還原的義務，可通過以下辦法實現：由國家直接提供復原服務、、通過資助取得私人醫療、法律和其他設施，包括由非政府組織管理的設施。如屬後者情況，國家應確保這些私人團體不受報復或恐嚇。受害者擁有選擇服務提供者的機會至關重要。所提供之服務，應使用相關語言。鼓勵締約國建立評估系統，評估康復還原方案和服務之有效實施情況，包括通過使用適當指標和基準。

賠償補贖與取得真相之權利

16. 賠償補贖應包括履行《公約》第 12 和 13 條之調查和刑事起訴義務，以及以下補救辦法：旨在停止繼續侵權之有效措施；認證事實並充分和公開揭露事實真相，但真相揭露限於不對受害者、受害者親屬、證人或以及出面干預以協助受害者或防止發生進一步侵權行為者造成進一步傷害或威脅其安全和利益；追查失蹤者的下落、尋查被綁架兒童的身份、尋找遇害者屍體、並按照受害者或受影響家庭已表達或可推想的願望協助發掘、辨認和重新安葬受害者的屍體；作出官方聲明或司法裁判；恢復受害者和與受害者

有密切關係的人的尊嚴、名譽和權利；對侵權責任人的司法和行政制裁；公開道歉，包括承認事實和接受責任；紀念和悼念受害者。

17. 一國若不及時對酷刑行為指控進行調查、提起刑事追訴或進行與指控相關的民事訴訟，可構成事實上的拒絕救濟，從而違反該國在第 14 條下的義務。

保證酷刑與虐待情事不再發生

18. 《公約》第 1 條至第 16 條規定具體的預防措施，締約國認為這些是防止酷刑和虐待的必要措施。為保證酷刑或虐待不再發生，締約國應採取措施，打擊對違反《公約》之侵權行為者有罪不罰的現象。這種措施包括：向公職人員印發關於《公約》條款，尤其是絕對禁止長官對下屬進行酷刑之有效明確指示。其他措施應包括下列一部或全部：對軍隊和保安部隊進行公民監督；確保所有司法程序符合正當程序、公平和公正之國際標準；加強司法機構的獨立性；保護人權維護者和法律、衛生以及幫助酷刑受害者的其他專業人員；建立制度，對所有羈押場所進行定期和獨立監測；向執法官員以及軍隊和安全部隊優先和持續地提供人權法律培訓，包括涉及邊緣和弱勢群體之具體需要；向衛生和法律專業人員和執法人員提供關於《伊斯坦布爾議定書》的專項培訓；促進公職人員包括執法、懲教、醫療、心理、社會服務和軍事人員對國際標準和行為準則的遵守；審查並改革會助長或允許酷刑和虐待的法律；確保國家遵守《公約》第 3 條之禁止驅回的義務；確保個人或團體可獲得暫行性服務，例如向性別相關或其他酷刑或虐待受害者提供庇護場所。委員會指出，締約國採取此處所列措施，亦即履行《公約》第 2 條防止酷刑行為的義務。此外，保證不再發生的作為可為根治暴力的社會關係提供幫助。這種保證包括但不局限於:修改相關法律、打擊有罪不罰現象並採取有效的預防和威懾措施。

程序性義務：實施救濟的權利

立法

19. 根據《公約》第 2 條規定，締約國應制定「有效的立法、行政、司法或其他措施，防止在其管轄下的任何領土內出現酷刑行為。」委員會在第 2 號一般性意見中明確表示，「締約國至少必須按照《公約》第 1 條所界定之酷刑行為要素和第 4 條要求，將酷刑行為定為刑法須加以懲罰的罪行。」若締約國未能明確制定法律將《公約》義務納入，並因此導致酷刑和虐待未列入刑事犯罪，這種情況阻礙受害者行使和享有第 14 條所保障之權利。

20. 為落實第 14 條，締約國應制定法律，向酷刑和虐待受害者明確提供有效補救和獲得充足與適當救濟的權利，包括賠償和盡可能完全康復還原。這種法律必須允許個人行使這項權利並確保其獲得司法救濟。集體賠償和行政賠償方案可視為救濟形式，這種方

案不得使個人獲得補救和救濟的權利失效。

21. 締約國應確保，本國國內法作出規定，遭受暴力或創傷的受害者應得到適當護理和保護，避免他們在為伸張正義和提供救濟的司法程序和行政程序中再度受創。

22. 《公約》要求締約國，一旦在其管轄下的任何領土內發現被指控的酷刑犯罪人，應對其起訴或引渡。為此須進行必要立法，使之成為可能。委員會認為，第 14 條並不僅限適用於在締約國境內遭受傷害的受害者或由締約國國民所為或針對締約國國民施加之傷害。委員會讚揚締約國為向在其領土之外遭受酷刑或虐待的受害者提供民事救濟所做的努力。當受害者無法在侵權行為發生國境內行使第 14 條所保障之權利時，這一點特別重要。事實上，第 14 條要求締約國確保所有酷刑和虐待受害者都能使用補救措施並獲得救濟。

有效申訴與調查機制

23. 在結論性意見中，委員會闡明為確保第 14 條規定之受害人有權得到國家充分。在這方面，委員會強調，締約國履行第 12 條、第 13 條與第 14 條之義務有重要關係。根據第 12 條，凡有合理理由確信，因締約國之作為或不作為致使在其管轄下任何領土內發生酷刑行為，締約國應立即進行有效和公正的調查；第 13 條規定，委員會在第 2 號一般性意見中確認，締約國應確保建立公正和有效的申訴機制。若第 12 條和第 13 條之義務未得保障，受害者就無法獲得充分救濟。申訴機制應為公眾所知曉並能加以利用，被剝奪自由者無論是被拘留、或安置在精神病機構中，還是在其他地方，皆可以經由相關機制進行申訴，例如熱線電話或拘留設施中的保密申訴箱；也包括弱勢或邊緣群體的人，包括表達或傳訊能力受限制的人。

24. 在程序方面，締約國應設立主管機構，通過法定程序執行最終判決，使酷刑或虐待受害者能夠獲得救濟，包括適當賠償和康復還原。

25. 為保障受害者之救濟權，締約國主管機關必須及時、有效和公正地調查和審查任何指控遭受了酷刑或虐待的案件。作為一項標準措施，這種調查應包括《伊斯坦布爾議定書》所規定之具獨立性的法醫對受害者之身體和心理進行檢查。對於啟動或完成對酷刑或虐待申訴的法律調查方面有不當拖延，會損害受害者享有之第 14 條保障之救濟權利，包括公平和充分賠償以及盡可能地完全康復還原。

26. 儘管刑事調查可使受害者掌握有利的證據，但民事訴訟和受害者的索賠要求不應取決於刑事訴訟結束。委員會認為，在確定刑事責任之前，不應不正當地拖延民事賠償。民事責任應獨立於刑事訴訟而存在，應為此目的制定必要之法規和制度。若國內法律要求民事賠償應以刑事訴訟先行，不進行或不當拖延刑事訴訟構成締約國疏於履行《公約》

義務。紀律處分不應被視為第 14 條所稱之有效補救辦法。

27. 根據第 14 條，締約國應確保在其管轄下之任何酷刑或虐待行為受害者獲得有效救濟。締約國有責任採取一切必要和有效措施，確保所有受害者都能得到救濟。這種責任包括，若有合理理由相信已發生酷刑或虐待的情況下，即使沒有申訴訴，締約國也有義務立即啟動程序，確保受害人獲得救濟。

28. 委員會積極鼓勵締約國承認委員會有權審理個人根據第 22 條提出申訴，以使受害人能夠提交來文並尋求委員會的意見。此外，委員會鼓勵締約國批准或加入《禁止酷刑公約任擇議定書》，以加強防止酷刑和虐待的預防措施。

近用與取得救濟之機制

29. 委員會強調，締約國必須積極確保受害者及其家人充分瞭解可以要求救濟之權利。在這方面，索賠程序應當透明。而且，締約國應提供扶助和支持，儘量減少申訴人及其代表的困難。民事訴訟或其他訴訟，不應加諸受害者難以承受的經濟負擔，令其無法或難以要求救濟。當現有民事訴訟無法提供受害者充分救濟時，委員會建議實施酷刑和虐待受害者便於近用的機制，包括設立國家基金，向酷刑受害者提供救濟。應採取特別措施，確保邊緣或弱勢群體人員的索賠權利。

30. 不論是否存在其他補救辦法，必須自始至終向受害者提供司法救濟，且應允許受害者參與其中。締約國應向缺乏必要資源無法提出申訴和索賠之酷刑或虐待受害者提供適當法律扶助。回應受害者、其律師或法官的請求，締約國還應隨時向受害者提供證明酷刑或虐待行為的所有證據。締約國不提供證據和相關資料，如醫學鑒定或治療記錄，會損害受害者提出申訴和要求救濟、賠償和復原的權利。

31. 締約國還應採取措施，防止侵犯受害人的隱私，保護受害人、其家人和證人，以及在涉及受害人權益之司法、行政或其他訴訟之前、期間或其後各階段代表受害人針對恐嚇和報復出面干預的其他人。未提供保護會阻礙受害者提出申訴，因而侵犯受害者尋求和獲得賠償和補救的權利。

32. 在保護人權方面，不歧視原則是一項基本而普遍的原則，對於解釋和適用《公約》而言具有根本意義。締約國應確保司法途徑和尋求與獲得救濟之可用機制；採取積極措施，確保所有人都能平等地獲得救濟，不論種族、膚色、民族、年齡、宗教信仰或歸屬、政治或其他見解、原國籍或社會出身、性別、性傾向、性別認同、心理或其他身心障礙、健康狀況、經濟或土著地位、被拘留的原因，包括被指控犯有政治犯罪或恐怖行為者、尋求庇護者、難民或其他受國際保護的人，也不論任何其它地位，包括基於上述因素被邊緣化或弱勢化的人。應向具有同樣身份認同的群體例如少數群體、土著群體和其他群

體提供具有文化敏感性的集體賠償措施。委員會指出，集體索賠措施並不排除個人救濟權。

33. 司法和非司法程序應適用對於性別敏感的程序，避免對酷刑或虐待的受害者造成二度傷害與使其蒙受恥辱。關於性暴力或基於性別的暴力，以及被害人享有正當程序和公正司法保障，委員會強調，在任何訴訟中，無論是民事訴訟還是刑事訴訟，在確定受害者的救濟(包括賠償)權方面，與基於性別的暴力相關的證據和程序規則必須對婦女和女童的證詞給予同等權重，正如對於所有其他受害者，亦應如此；而且，必須防止採用歧視性證據與對受害人和證人進行騷擾。委員會認為，申訴機制和調查程序必須採取具體考慮性別層面之積極措施，確保性暴力和性虐待、強姦、婚內強姦、家庭暴力、女性外陰殘割與人口販運的受害者均能訴諸司法訴訟，尋求並獲得有效救濟。

34. 為避免對酷刑或虐待受害人造成二度傷害與使其蒙受恥辱，上段所述各項保護同樣適用於基於身份認同和群體(例如第 32 段在不歧視原則下列出的群體)而被邊緣化或弱勢化的任何人。在司法和非司法程序中，對任何此類人員必須使用敏感性做法。委員會指出，司法人員必須接受關於酷刑和虐待之各種影響，包括對邊緣群體和弱勢群體的受害者影響之專項培訓，和關於如何對酷刑和虐待(包括表現為性暴力和基於性別的歧視)受害者使用敏感性做法的培訓，以防止再次傷害受害者與使其蒙受恥辱。

35. 委員會認為，對有關員警、監獄工作人員、醫務人員、司法人員和移民事務人員進行培訓，包括關於《伊斯坦布爾議定書》的培訓，是確保有效調查的根本措施。此外，救濟工作所涉官員和工作人員應接受方法與策略的培訓，以防止酷刑或虐待受害者再次遭受創傷。這種培訓應包括，對於衛生和醫療人員而言，需要對基於性別的暴力和性暴力的受害者以及所有其他形式的歧視受害者說明實際可用的緊急醫療程序，包括身體和心理治療。委員會還敦促締約國在員警機關內設立人權辦公室，設立專責小組，配備接受過專門培訓的警員，處理基於性別和性暴力案件，包括對男人和男童的性暴力，以及針對兒童和種族、宗教、民族或其他少數群體和針對其他邊緣化或弱勢群體的暴力。

36. 此外，委員會強調，提供適當程序解決兒童的需要，同時考慮到兒童的最大利益和兒童在所有涉及自身之事務中，包括在司法和行政訴訟中自由表達意見的權利；根據兒童年齡和成熟度，對其意見給予應有重視。締約國應確保制定有利於兒童健康和尊嚴的、具有兒童敏感性的賠償措施。上述保障非常重要。

取得救濟之權利的障礙

37. 取得救濟之權利的關鍵要素，有關締約國明確承認提供或判給受害人賠償措施，是對作為或不作為所造成違反《公約》之侵權行為的賠償。因此，委員會認為，締約國不得將實施發展措施或提供人道主義扶助作為對酷刑或虐待受害者提供救濟的替代品。

締約國不得援引國家發展水準作為未向酷刑受害者個人提供救濟的理由。委員會提請締約國注意，後續各屆政府和繼承國仍有義務保障救濟權的享有。

38. 《公約》締約國有義務確保救濟權確實有效。妨礙享有救濟權和有效執行第 14 條的具體障礙情形包括但不限於：國家立法不夠完善，在使用申訴和調查機制以及補救和救濟程序方面存在歧視；沒有採取適當措施，將指控的犯罪人逮捕歸案；國家保密法、舉證責任負擔和程序要求妨礙確定救濟權；訴訟時效、特赦和豁免權之法律規定；未向受害者和證人提供充足法律扶助和保護措施；連帶的恥辱，以及酷刑和虐待的生理、心理和其他相關影響。此外，締約國不執行由國內、國際或區域法院作出之關於向酷刑受害者提供賠償措施的判決，構成對救濟權的重大障礙。締約國應協調一致之機制，使受害者可執行跨國界判決，包括承認其他締約國法院判決的效力，並協助查封犯罪人的財產。

39. 關於第 14 條義務，締約國應確保邊緣化和/或弱勢化群體成員在法律上和事實上可及時地、有效地使用救濟機制，避免有礙這些群體成員尋求和獲得救濟的措施，解決他們獲得救濟方面可能面臨之各種正式或非正式障礙。這類障礙例如，不適當的司法或其他程序，要求將損害量化，從而對有關個人在得到或使用金錢補償上造成不相干之負面影響。正如委員會在第 2 號一般性意見中所強調，「性別是一個關鍵因素。女性身份與其他……辨識特徵或地位相交織，決定著婦女和女童遭受或有風險面臨酷刑或虐待的方式及其後果。」締約國應確保，在保證所有人，尤其是弱勢群體的人，包括男女同性戀、雙性戀和變性人(LGBT)，必須得到公正和平等對待並獲得公正和充分賠償、康復還原以及具體需要相對應之其他賠償措施。在提供上述措施方面必須重視性別要素。

40. 由於酷刑影響具有持續性，所以不應適用法定時效致使受害者應得的救濟、賠償和復原會因此被剝奪。對許多受害者而言，時間流逝並不會減輕傷害，在某些情況下，傷害會因創傷後心理壓力緊張症候群而增加，須給予醫療、心理和社會支持。未獲救濟者往往難以得到這些支持。無論侵權行為何時發生，也無論侵權行為是由前政權實施或在其默許下實施，締約國應確保所有酷刑或虐待受害者都能獲得救濟。

41. 委員會一向認為，赦免酷刑罪與締約國在《公約》下的義務，包括第 14 條規定之義務不相容。正如第 2 號一般性意見所指出：「赦免或採取其他阻撓辦法，事先排除或表明不願意對施行酷刑或虐待的人進行及時和公正的起訴和處罰，是違反不可減損原則。」委員會認為，赦免酷刑和虐待行為人對受害者獲得救濟的努力造成不可承受的障礙，並助長有罪不罰風氣。因此，委員會要求締約國取消對酷刑或虐待行為者的任何赦免。

42. 同樣，對任何國家或其代理人，或對非國家行為方之酷刑或虐待行為給予豁免，亦屬違反國際法。與對受害者提供救濟之義務直接衝突。在法律允許或事實上存在有罪不罰現象的情況下，受害者無法尋求充分救濟。令侵權者得以逍遙法外，系屬剝奪受害

人充分享有第 14 條規定之權利。委員會確認，在任何情況下，都不得以國家安全為由拒絕向受害者提供救濟。

43. 委員會認為，締約國對限制第 14 條適用之保留與《公約》的目標和宗旨不相容。因此，委員會鼓勵締約國考慮撤回限制適用第 14 條的任何保留，以確保所有酷刑或虐待受害者皆可取得救濟和補償。

聯合國援助酷刑受害者自願基金

44. 對於援助酷刑受害者之國際基金的自願捐款，於扶助酷刑受害人方面發揮重要作用。委員會強調聯合國援助酷刑受害者自願基金的重要工作，該基金向酷刑受害者提供人道主義扶助。委員會強調，無論採取何種國內措施或之前是否已經捐款，締約國均可向該基金作自願捐款。

監測和報告

45. 締約國應建立一套制度，監督、監測、評估與報告已向酷刑或虐待受害者提供救濟措施和必要之康復還原服務的情況。因此，締約國應向委員會提交的報告中列入關於向酷刑或虐待受害者提供救濟措施的資料，按年齡、性別、國籍和其他關鍵因素細分，以履行第 2 號一般性意見所重申之對受害者提供救濟的努力進行持續評估之義務。

46. 關於第 14 條的執行情況，委員會已指出，締約國報告需要提供關於第 14 條執行情況的充分資訊。因此，委員會欲強調締約國應提供下列具體資訊：

(a) 已通過司法、行政和其他途徑提出賠償請求之酷刑或虐待受害者人數，以及所指控之侵權行為的性質；已獲判取得賠償的受害者人數與金額；

(b) 針對酷刑造成的直接後果，對受害者進行扶助的情況；

(c) 酷刑或虐待行為受害者提供的康復還原措施及使用情況，為相關方案撥付的預算，已接受適合本人需要之康復還原服務的人數；

(d) 評估康復還原方案和服務效果所採用的方法，包括使用適當之指標和基準，以及評估結果；

(e) 為確保賠償和保證不再發生所採取之措施；

(f)　國內法律有關酷刑或虐待受害人有權獲得補償和救濟的規定，以及締約國採取的實際措施。若欠缺這方面法律的情況下，報告應列入締約國為制定和實施此種法律所採取的措施。

(g)　為確保所有酷刑或虐待行為受害人都能行使並享有第 14 條規定之權利所採取的措施。

(h)　酷刑或虐待行為受害人可以利用的申訴機制，包括使所有受害人都能瞭解這些機制並加以利用。締約國應列入經由此機制收到的申訴案資料，按年齡、性別、國籍、地點和指控之侵犯行為分列。

(i)　締約國為確保所有酷刑和虐待指控都得到有效調查所採行之措施。

(j)　為積極確定酷刑受害人所採取的立法和政策措施，以向其提供救濟。

(k)　酷刑或虐待行為之受害人為獲得救濟可加以利用之管道，包括所有刑事、民事、行政和非司法程序，例如行政賠償方案，以及使用此種機制的受害者人數、獲得救濟和賠償措施的人數、賠償形式和/或金額等資訊。

(l)　向酷刑或虐待行為受害人和證人，以及向代表受害人出面干預的其他人提供的法律扶助和保護，包括如何使他們瞭解這種保護以及這種保護的實際提供情況；獲得法律扶助的受害者人數；得到國家證人保護方案保護的人數；締約國對這種保護之有效性的評估。

(m)　為執行國內、區域或國際法庭判決所採取的步驟，包括從判決日到實際提供賠償或其他形式救濟之間所需時間。締約國還應列入法庭判決書中認定應獲得賠償的受害人人數和實際獲得救濟的人數，以及所涉侵權行為之各項資料。

(n)　採取哪些保障措施，向邊緣群體或弱勢群體的人提供特別保護，包括尋求行使《公約》第 14 條所保障權利的婦女和兒童。

(o)　委員會可能要求之任何其他此類事項。

附件十一：第 3 號一般性意見英文版

General comment No. 3 (2012)

Implementation of article 14 by States parties

1. This general comment explains and clarifies to States parties the content and scope of the obligations under article 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Each State party is required 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." The Committee considers that article 14 is applicable to all victims of torture and acts of cruel, inhuman or degrading treatment or punishment (hereafter "ill-treatment") without discrimination of any kind, in line with the Committee's general comment No. 2.

2. The Committee considers that the term "redress" in article 14 encompasses the concepts of "effective remedy" and "reparation". The comprehensive reparative concept therefore entails restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition and refers to the full scope of measures required to redress violations under the Convention.

3. Victims are persons who have individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute violations of the Convention. A person should be considered a victim regardless of whether the perpetrator of the violation is identified, apprehended, prosecuted or convicted, and regardless of any familial or other relationship between the perpetrator and the victim. The term "victim" also includes affected immediate family or dependants of the victim as well as persons who have suffered harm in intervening to assist victims or to prevent victimization. The term "survivors" may, in some cases, be preferred by persons who have suffered harm. The Committee uses the legal term "victims" without prejudice to other terms which may be preferable in specific contexts.

4. The Committee emphasizes the importance of victim participation in the redress process, and that the restoration of the dignity of the victim is the ultimate objective in the provision of redress.

5. The obligations of States parties to provide redress under article 14 are two-fold: procedural and substantive. To satisfy their procedural obligations, States parties shall

enact legislation and establish complaints mechanisms, investigation bodies and institutions, including independent judicial bodies, capable of determining the right to and awarding redress for a victim of torture and ill-treatment, and ensure that such mechanisms and bodies are effective and accessible to all victims. At the substantive level, States parties shall ensure that victims of torture or ill-treatment obtain full and effective redress and reparation, including compensation and the means for as full rehabilitation as possible.

Substantive obligations: the scope of the right to redress

6. As stated in paragraph 2 above, redress includes the following five forms of reparation: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. The Committee recognizes the elements of full redress under international law and practice as outlined in the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (Basic Principles and Guidelines).[5] Reparation must be adequate, effective and comprehensive. States parties are reminded that in the determination of redress and reparative measures provided or awarded to a victim of torture or ill-treatment, the specificities and circumstances of each case must be taken into consideration and redress should be tailored to the particular needs of the victim and be proportionate to the gravity of the violations committed against them. The Committee emphasizes that the provision of reparation has an inherent preventive and deterrent effect in relation to future violations.

7. Where State authorities or others acting in their official capacity have committed, know or have reasonable grounds to believe that acts of torture or ill-treatment have been committed by non-State officials or private actors and failed to exercise due diligence to prevent, investigate, prosecute and punish such non-State officials or private actors in accordance with the Convention, the State bears responsibility for providing redress for the victims (general comment No. 2).

Restitution

8. Restitution is a form of redress designed to re-establish the victim's situation before the violation of the Convention was committed, taking into consideration the specificities of each case. The preventive obligations under the Convention require States parties to ensure that a victim receiving such restitution is not placed in a position where he or she is at risk of repetition of torture or ill-treatment. In certain cases, the victim may consider that restitution is not possible due to the nature of the violation;

[5] United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, General Assembly resolution 60/147.

however the State shall provide the victim with full access to redress. For restitution to be effective, efforts should be made to address any structural causes of the violation, including any kind of discrimination related to, for example, gender, sexual orientation, disability, political or other opinion, ethnicity, age and religion, and all other grounds of discrimination.

Compensation

9. The Committee emphasizes that monetary compensation alone may not be sufficient redress for a victim of torture and ill-treatment. The Committee affirms that the provision of monetary compensation only is inadequate for a State party to comply with its obligations under article 14.

10. The right to prompt, fair and adequate compensation for torture or ill-treatment under article 14 is multi-layered and compensation awarded to a victim should be sufficient to compensate for any economically assessable damage resulting from torture or ill-treatment, whether pecuniary or non-pecuniary. This may include: reimbursement of medical expenses paid and provision of funds to cover future medical or rehabilitative services needed by the victim to ensure as full rehabilitation as possible; pecuniary and non-pecuniary damage resulting from the physical and mental harm caused; loss of earnings and earning potential due to disabilities caused by the torture or ill-treatment; and lost opportunities such as employment and education. In addition, adequate compensation awarded by States parties to a victim of torture or ill-treatment should provide for legal or specialist assistance, and other costs associated with bringing a claim for redress.

Rehabilitation

11. The Committee affirms that the provision of means for as full rehabilitation as possible for anyone who has suffered harm as a result of a violation of the Convention should be holistic and include medical and psychological care as well as legal and social services. Rehabilitation, for the purposes of this general comment, refers to the restoration of function or the acquisition of new skills required as a result of the changed circumstances of a victim in the aftermath of torture or ill-treatment. It seeks to enable the maximum possible self-sufficiency and function for the individual concerned, and may involve adjustments to the person's physical and social environment. Rehabilitation for victims should aim to restore, as far as possible, their independence, physical, mental, social and vocational ability; and full inclusion and participation in society.

12. The Committee emphasizes that the obligation of States parties to provide the means for "as full rehabilitation as possible" refers to the need to restore and repair the

harm suffered by a victim whose life situation, including dignity, health and self-sufficiency may never be fully recovered as a result of the pervasive effect of torture. The obligation does not relate to the available resources of States parties and may not be postponed.

13. In order to fulfil its obligations to provide a victim of torture or ill-treatment with the means for as full rehabilitation as possible, each State party should adopt a long-term, integrated approach and ensure that specialist services for victims of torture or ill-treatment are available, appropriate and readily accessible. These should include: a procedure for the assessment and evaluation of individuals' therapeutic and other needs, based on, inter alia, the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (The Istanbul Protocol); and may include a wide range of inter-disciplinary measures, such as medical, physical and psychological rehabilitative services; re-integrative and social services; community and family-oriented assistance and services; vocational training; education etc. A holistic approach to rehabilitation which also takes into consideration the strength and resilience of the victim is of utmost importance. Furthermore, victims may be at risk of re-traumatization and have a valid fear of acts which remind them of the torture or ill-treatment they have endured. Consequently, a high priority should be placed on the need to create a context of confidence and trust in which assistance can be provided. Confidential services should be provided as required.

14. The requirement in the Convention to provide these forms of rehabilitative services does not extinguish the need to provide medical and psychosocial services for victims in the direct aftermath of torture, nor does such initial care represent the fulfilment of the obligation to provide the means for as full rehabilitation as possible.

15. States parties shall ensure that effective rehabilitation services and programmes are established in the State, taking into account a victim's culture, personality, history and background and are accessible to all victims without discrimination and regardless of a victim's identity or status within a marginalized or vulnerable group, as illustrated in paragraph 32, including asylum seekers and refugees. States parties' legislation should establish concrete mechanisms and programmes for providing rehabilitation to victims of torture or ill-treatment. Torture victims should be provided access to rehabilitation programmes as soon as possible following an assessment by qualified independent medical professionals. Access to rehabilitation programmes should not depend on the victim pursuing judicial remedies. The obligation in article 14 to provide for the means for as full rehabilitation as possible can be fulfilled through the direct provision of rehabilitative services by the State, or through the funding of private medical, legal and other facilities, including those administered by non-governmental

organizations (NGOs), in which case the State shall ensure that no reprisals or intimidation are directed at them. The victim's participation in the selection of the service provider is essential. Services should be available in relevant languages. States parties are encouraged to establish systems for assessing the effective implementation of rehabilitation programmes and services, including by using appropriate indicators and benchmarks.

Satisfaction and the right to truth

16. Satisfaction should include, by way of and in addition to the obligations of investigation and criminal prosecution under articles 12 and 13 of the Convention, any or all of the following remedies: effective measures aimed at the cessation of continuing violations; verification of the facts and full and public disclosure of the truth to the extent that such disclosure does not cause further harm or threaten the safety and interests of the victim, the victim's relatives, witnesses, or persons who have intervened to assist the victim or prevent the occurrence of further violations; the search for the whereabouts of the disappeared, for the identities of the children abducted, and for the bodies of those killed, and assistance in the recovery, identification, and reburial of victims' bodies in accordance with the expressed or presumed wish of the victims or affected families; an official declaration or judicial decision restoring the dignity, the reputation and the rights of the victim and of persons closely connected with the victim; judicial and administrative sanctions against persons liable for the violations; public apologies, including acknowledgement of the facts and acceptance of responsibility; commemorations and tributes to the victims.

17. A State's failure to investigate, criminally prosecute, or to allow civil proceedings related to allegations of acts of torture in a prompt manner, may constitute a de facto denial of redress and thus constitute a violation of the State's obligations under article 14.

Guarantees of non-repetition

18. Articles 1 to 16 of the Convention constitute specific preventive measures that the States parties deemed essential to prevent torture and ill-treatment. To guarantee non-repetition of torture or ill-treatment, States parties should undertake measures to combat impunity for violations of the Convention. Such measures include issuing effective, clear instructions to public officials on the provisions of the Convention, especially the absolute prohibition of torture. Other measures should include any or all of the following: civilian oversight of military and security forces; ensuring that all judicial proceedings abide by international standards of due process, fairness and impartiality; strengthening the independence of the judiciary; protecting human rights defenders and legal, health and other professionals who assist torture victims; establishing systems for

regular and independent monitoring of all places of detention; providing, on a priority and continued basis, training for law enforcement officials as well as military and security forces on human rights law that includes the specific needs of marginalized and vulnerable populations and specific training on the Istanbul Protocol for health and legal professionals and law enforcement officials; promoting the observance of international standards and codes of conduct by public servants, including law enforcement, correctional, medical, psychological, social service and military personnel; reviewing and reforming laws contributing to or allowing torture and ill-treatment; ensuring compliance with article 3 of the Convention prohibiting refoulement; ensuring the availability of temporary services for individuals or groups of individuals, such as shelters for victims of gender-related or other torture or ill-treatment. The Committee notes that by taking measures such as those listed herein, States parties may also be fulfilling their obligations to prevent acts of torture under article 2 of the Convention. Additionally, guarantees of non-repetition offer important potential for the transformation of social relations that may be the underlying causes of violence and may include, but are not limited to, amending relevant laws, fighting impunity, and taking effective preventative and deterrent measures.

Procedural obligations: implementation of the right to redress

Legislation

19. Under article 2 of the Convention, States parties shall enact "effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction." As clarified by the Committee in its general comment No. 2, "States parties must make the offence of torture punishable as an offence under its criminal law, in accordance, at a minimum, with the elements of torture as defined in article 1 of the Convention, and the requirements of article 4." The failure of States parties to enact legislation that clearly incorporates their obligations under the Convention and criminalizes torture and ill-treatment, and the resulting absences of torture and ill-treatment as criminal offences, obstructs the victim's capacity to access and enjoy his or her rights guaranteed under article 14.

20. To give effect to article 14, States parties shall enact legislation specifically providing a victim of torture and ill-treatment with an effective remedy and the right to obtain adequate and appropriate redress, including compensation and as full rehabilitation as possible. Such legislation must allow for individuals to exercise this right and ensure their access to a judicial remedy. While collective reparation and administrative reparation programmes may be acceptable as a form of redress, such programmes may not render ineffective the individual right to a remedy and to obtain redress.

21. States parties should ensure that their domestic laws provide that a victim who has suffered violence or trauma should benefit from adequate care and protection to avoid his or her re-traumatization in the course of legal and administrative procedures designed to provide justice and reparation.

22. Under the Convention, States parties are required to prosecute or extradite alleged perpetrators of torture when they are found in any territory under its jurisdiction, and to adopt the necessary legislation to make this possible. The Committee considers that the application of article 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. The Committee has commended the efforts of States parties for providing civil remedies for victims who were subjected to torture or ill-treatment outside their territory. This is particularly important when a victim is unable to exercise the rights guaranteed under article 14 in the territory where the violation took place. Indeed, article 14 requires States parties to ensure that all victims of torture and ill-treatment are able to access remedy and obtain redress.

Effective mechanisms for complaints and investigations

23. The Committee has, in its concluding observations, identified other State obligations that shall be met in order to ensure that the article 14 rights of a victim are fully respected. In this regard, the Committee underscores the important relationship between States parties' fulfilment of their obligations under article 12 and 13, and their obligation under article 14. According to article 12, States parties shall undertake prompt, effective and impartial investigations, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction as the result of its actions or omissions and, as set out in article 13 and affirmed by the Committee in its general comment No. 2, ensure that impartial and effective complaints mechanisms are established. Full redress cannot be obtained if the obligations under articles 12 and 13 are not guaranteed. Complaints mechanisms shall be made known and accessible to the public, including to persons deprived of their liberty, whether in detention, psychiatric facilities, or elsewhere, via, for example, telephone hotlines or confidential complaints boxes in detention facilities, and to persons belonging to vulnerable or marginalized groups, including those who may have limited communication abilities.

24. At the procedural level, States parties shall ensure the existence of institutions competent to render enforceable final decisions through a procedure established by law to enable victims of torture or ill-treatment to secure redress, including adequate compensation and rehabilitation.

25. Securing the victim's right to redress requires that a State party's competent authorities promptly, effectively and impartially investigate and examine the case of any individual who alleges that she or he has been subjected to torture or ill-treatment. Such an investigation should include as a standard measure an independent physical and psychological forensic examination as provided for in the Istanbul Protocol. Undue delays in initiating or concluding legal investigations into complaints of torture or ill-treatment compromise victims' rights under article 14 to obtain redress, including fair and adequate compensation and the means for as full rehabilitation as possible.

26. Notwithstanding the evidentiary benefits to victims afforded by a criminal investigation, a civil proceeding and the victim's claim for reparation should not be dependent on the conclusion of a criminal proceeding. The Committee considers that compensation should not be unduly delayed until criminal liability has been established. Civil liability should be available independently of criminal proceedings and the necessary legislation and institutions for such purpose should be in place. If criminal proceedings are required by domestic legislation to take place before civil compensation can be sought, then the absence of or undue delay in those criminal proceedings constitutes a failure on the part of the State party to fulfil its obligations under the Convention. Disciplinary action alone shall not be regarded as an effective remedy within the meaning of article 14.

27. Under article 14, a State party shall ensure that victims of any act of torture or ill-treatment under its jurisdiction obtain redress. States parties have an obligation to take all necessary and effective measures to ensure that all victims of such acts obtain redress. This obligation includes an obligation for State parties to promptly initiate a process to ensure that victims obtain redress, even in the absence of a complaint, when there are reasonable grounds to believe that torture or ill-treatment has taken place.

28. The Committee strongly encourages States parties to recognize the Committee's competence to consider individual complaints under article 22 to allow victims to submit communications and seek the views of the Committee. The Committee furthermore encourages States parties to ratify or accede to the Optional Protocol to the Convention against Torture in order to strengthen preventive measures against torture and ill-treatment.

Access to mechanisms for obtaining redress

29. The Committee highlights the importance of the State party affirmatively ensuring that victims and their families are adequately informed of their right to pursue redress. In this regard, the procedures for seeking reparation should be transparent. The State party should moreover provide assistance and support to minimize the hardship to complainants and their representatives. Civil proceedings, or other proceedings, should

not impose a financial burden upon victims that would prevent or discourage them from seeking redress. Where existing civil proceedings are unable to provide adequate redress to victims, the Committee recommends implementing mechanisms that are readily accessible to victims of torture and ill-treatment, including the establishment of a national fund to provide redress for victims of torture. Special measures should be adopted to ensure access by persons belonging to groups which have been marginalized or made vulnerable.

30. Judicial remedies must always be available to victims, irrespective of what other remedies may be available, and should enable victim participation. States parties should provide adequate legal aid to those victims of torture or ill-treatment lacking the necessary resources to bring complaints and to make claims for redress. States parties shall also make readily available to the victims all evidence concerning acts of torture or ill-treatment upon the request of victims, their legal counsel, or a judge. A State party's failure to provide evidence and information, such as records of medical evaluations or treatment, can unduly impair victims' ability to lodge complaints and to seek redress, compensation and rehabilitation.

31. The State party should also take measures to prevent interference with victims' privacy and to protect victims, their families and witnesses and others who have intervened on their behalf against intimidation and retaliation at all times before, during and after judicial, administrative or other proceedings that affect the interests of victims. Failure to provide protection stands in the way of victims filing complaints and thereby violates the right to seek and obtain redress and remedy.

32. The principle of non-discrimination is a basic and general principle in the protection of human rights and fundamental to the interpretation and application of the Convention. States parties shall ensure that access to justice and to mechanisms for seeking and obtaining redress are readily available and that positive measures ensure that redress is equally accessible to all persons regardless of race, colour, ethnicity, age, religious belief or affiliation, political or other opinion, national or social origin, gender, sexual orientation, gender identity, mental or other disability, health status, economic or indigenous status, reason for which the person is detained, including persons accused of political offences or terrorist acts, asylum-seekers, refugees or others under international protection, or any other status or adverse distinction, and including those marginalized or made vulnerable on bases such as those above. Culturally sensitive collective reparation measures shall be available for groups with shared identity, such as minority groups, indigenous groups, and others. The Committee notes that collective measures do not exclude the individual right to redress.

33. Judicial and non-judicial proceedings shall apply gender-sensitive procedures which avoid re-victimization and stigmatization of victims of torture or ill-treatment. With respect to sexual or gender-based violence and access to due process and an impartial judiciary, the Committee emphasizes that in any proceedings, civil or criminal, to determine the victim's right to redress, including compensation, rules of evidence and procedure in relation to gender-based violence must afford equal weight to the testimony of women and girls, as should be the case for all other victims, and prevent the introduction of discriminatory evidence and harassment of victims and witnesses. The Committee considers that complaints mechanisms and investigations require specific positive measures which take into account gender aspects in order to ensure that victims of abuses such as sexual violence and abuse, rape, marital rape, domestic violence, female genital mutilation and trafficking are able to come forward and seek and obtain redress.

34. To avoid re-victimization and stigmatization of victims of torture or ill-treatment, the protections outlined in the preceding paragraph equally apply to any person marginalized or made vulnerable on the basis of identities and groups such as those examples listed under the principle of non-discrimination in paragraph 32. In judicial and non-judicial proceedings sensitivity must be exercised toward any such person. Accordingly, the Committee notes that judicial personnel must receive specific training on the various impacts of torture and ill-treatment, including those on victims from marginalized and vulnerable groups, and on how to exercise sensitivity towards victims of torture and ill-treatment, including in the form of sexual or gender-based discrimination, in order to prevent re-victimization and stigmatization.

35. The Committee considers the training of relevant police, prison staff, medical personnel, judicial personnel and immigration personnel, including training on the Istanbul Protocol, to be fundamental to ensuring effective investigations. Furthermore, officials and personnel involved in efforts to obtain redress should receive methodological training in order to prevent re-traumatization of victims of torture or ill-treatment. This training should include, for health and medical personnel, the need to inform victims of gender-based and sexual violence and all other forms of discrimination of the availability of emergency medical procedures, both physical and psychological. The Committee also urges States parties to establish human rights offices within police forces, and units of officers specifically trained to handle cases of gender-based and sexual violence, including sexual violence perpetrated against men and boys, and violence against children and ethnic, religious, national or other minorities and other marginalized or vulnerable groups.

36. The Committee furthermore underlines the importance of appropriate procedures being made available to address the needs of children, taking into account the best interests of the child and the child's right to express his or her views freely in all matters affecting him or her, including judicial and administrative proceedings, and of the views of the child being given due weight in accordance with the age and maturity of the child. States parties should ensure the availability of child-sensitive measures for reparation which foster the health and dignity of the child.

Obstacles to the right to redress

37. A crucial component of the right to redress is the clear acknowledgement by the State party concerned that the reparative measures provided or awarded to a victim are for violations of the Convention, by action or omission. The Committee is therefore of the view that a State party may not implement development measures or provide humanitarian assistance as a substitute for redress for victims of torture or ill-treatment. The failure of a State party to provide the individual victim of torture with redress may not be justified by invoking a State's level of development. The Committee recalls that subsequent governments as well as successor States still have the obligation to guarantee access to the right of redress.

38. States parties to the Convention have an obligation to ensure that the right to redress is effective. Specific obstacles that impede the enjoyment of the right to redress and prevent effective implementation of article 14 include, but are not limited to: inadequate national legislation, discrimination with regard to accessing complaints and investigation mechanisms and procedures for remedy and redress; inadequate measures for securing the custody of alleged perpetrators, State secrecy laws, evidential burdens and procedural requirements that interfere with the determination of the right to redress; statutes of limitations, amnesties and immunities; the failure to provide sufficient legal aid and protection measures for victims and witnesses; as well as the associated stigma, and the physical, psychological and other related effects of torture and ill-treatment. In addition, the failure of a State party to execute judgements providing reparative measures for a victim of torture, handed down by national, international or regional courts, constitutes a significant impediment to the right to redress. States parties should develop coordinated mechanisms to enable victims to execute judgements across State lines, including recognizing the validity of court orders from other States parties and assisting in locating the assets of perpetrators.

39. With regard to the obligations in article 14, States parties shall ensure both de jure and de facto access to timely and effective redress mechanisms for members of groups marginalized and/or made vulnerable, avoid measures that impede the ability of members of such groups to seek and obtain redress, and address formal or informal

obstacles that they may face in obtaining redress. These may include, for example, inadequate judicial or other procedures for quantifying damages which may have a negative disparate impact on such individuals in accessing or keeping money. As the Committee has emphasized in its general comment No. 2, "gender is a key factor. Being female intersects with other identifying characteristics or status of the person…to determine the ways that women and girls are subject to or at risk of torture or ill-treatment". States parties shall ensure due attention to gender in providing all the elements cited above in the process of ensuring that everybody, in particular members of groups made vulnerable, including lesbian, gay, bisexual and transgender (LGBT) people, must be treated fairly and equally and obtain fair and adequate compensation, rehabilitation and other reparative measures which respond to their specific needs.

40. On account of the continuous nature of the effects of torture, statutes of limitations should not be applicable as these deprive victims of the redress, compensation, and rehabilitation due to them. For many victims, passage of time does not attenuate the harm and in some cases the harm may increase as a result of post-traumatic stress that requires medical, psychological and social support, which is often inaccessible to those who have not received redress. States parties shall ensure that all victims of torture or ill-treatment, regardless of when the violation occurred or whether it was carried out by or with the acquiescence of a former regime, are able to access their rights to remedy and to obtain redress.

41. The Committee has consistently held that amnesties for the crime of torture are incompatible with the obligations of States parties under the Convention, including under article 14. As was pointed out in general comment No. 2, "amnesties or other impediments which preclude or indicate unwillingness to provide prompt and fair prosecution and punishment of perpetrators of torture or ill-treatment violate the principle of non-derogability." The Committee considers that amnesties for torture and ill-treatment pose impermissible obstacles to a victim in his or her efforts to obtain redress and contribute to a climate of impunity. The Committee therefore calls on States parties to remove any amnesties for torture or ill-treatment.

42. Similarly, granting immunity, in violation of international law, to any State or its agents or to non-State actors for torture or ill-treatment, is in direct conflict with the obligation of providing redress to victims. When impunity is allowed by law or exists de facto, it bars victims from seeking full redress as it allows the violators to go unpunished and denies victims full assurance of their rights under article 14. The Committee affirms that under no circumstances may arguments of national security be used to deny redress for victims.

43. The Committee considers reservations which seek to limit the application of article 14 to be incompatible with the object and purpose of the Convention. States parties are therefore encouraged to consider withdrawing any reservations to article 14 that limit its application so as to ensure that all victims of torture or ill-treatment have access to redress and remedy.

United Nations Voluntary Fund for Victims of Torture

44. Voluntary contributions to international funds for victims of torture play an important role in providing assistance to them. The Committee highlights the important work done by the United Nations Voluntary Fund for Victims of Torture, which provides humanitarian assistance to victims of torture. The Committee highlights also the possibility for States parties to make voluntary contributions to this fund, irrespective of the national measures taken or contributions made.

Monitoring and reporting

45. States parties shall establish a system to oversee, monitor, evaluate, and report on their provision of redress measures and necessary rehabilitation services to victims of torture or ill-treatment. Accordingly, States parties should include in their reports to the Committee data disaggregated by age, gender, nationality, and other key factors regarding redress measures afforded to victims of torture or ill-treatment, in order to meet their obligation as recalled in general comment No. 2 to provide continual evaluation of their efforts to provide redress to victims.

46. On the implementation of article 14, the Committee has observed the need to provide adequate information on the implementation of article 14 in States parties' reports. Therefore, the Committee wishes to underscore that specific information should be provided on the following:

(a) The number of victims of torture or ill-treatment who have sought compensation through legal, administrative and other means and the nature of the violations alleged; the number of victims who have been awarded compensation; and in what amounts;

(b) The measures taken to assist victims in the direct aftermath of torture;

(c) The rehabilitation facilities available to victims of torture or ill-treatment and the accessibility thereof, as well as the budget allocation for rehabilitation programmes and the number of victims who have received rehabilitative services appropriate to their needs;

(d) The methods available for assessing the effectiveness of rehabilitation programmes and services, including the application of appropriate indicators and benchmarks,

and the result of such assessment;

(e) The measures taken to ensure satisfaction and guarantees of non-repetition;

(f) The domestic legislation which provides victims of torture or ill-treatment with the right to remedy and redress, and relevant implementation measures taken by the State party. Where such legislation is lacking, reports should include information on the measures taken by the State party to adopt and implement such legislation.

(g) The measures taken to ensure that all victims of torture or ill-treatment are able to exercise and enjoy their rights under article 14.

(h) The complaints mechanisms available for victims of torture or ill-treatment, including how such mechanisms are made known and accessible to all victims. States parties should also include data disaggregated by age, gender, nationality, location and alleged violation, on the number of complaints received through such mechanisms.

(i) The measures taken by States parties to ensure that all allegations of torture and ill-treatment are effectively investigated.

(j) The legislation and policy measures designed to positively identify victims of torture in order to provide them with redress.

(k) The available avenues for a victim of torture or ill-treatment to obtain redress, including all criminal, civil, administrative and non-judicial procedures, such as administrative reparation programmes, as well as information on the number of victims who have accessed such mechanisms, how many obtained redress and reparative measures, and in what forms and/or amounts.

(l) The legal aid and witness protection available to victims of torture or ill-treatment as well as witnesses and others who have intervened on behalf of victims, including how such protection is made known and how it is made available in practice; the number of victims who have been granted legal aid; the number of persons who have been protected by State witness protection; and the State party's evaluation of the effectiveness of such protection.

(m) The steps taken to implement judgements by national, regional or international courts, including the amount of time lapsed from the date of the judgement and the actual provision of compensation or other forms of redress. States parties should also include disaggregated data on the number of victims designated to receive reparative measures in court judgements and the number who actually received redress, and for what violations.

(n) The safeguards available for the special protection of members of marginalized or

vulnerable groups, including women and children seeking to exercise their rights guaranteed under article 14 of the Convention.

(o) Any such other matters that the Committee may require.

附件十二：焦點訪談紀錄摘要（一）

「禁止酷刑和其他殘忍、不人道或有辱人格的待遇或處罰公約」施行法制定之研究－焦點訪談（一）	
日期	104 年 3 月 19 日（四） 13:00-16:00
地點	東吳大學城中校區崇基樓 6 樓 航太法中心
出席人員	鄧衍森教授、廖福特教授、姚孟昌助理教授、 江佳芸助理
訪談對象	國際特赦組織秘書長 唐博偉(Bo Tedards) 財團法人民間司法改革會執行長 高榮志
訪談紀錄	

壹、於反酷刑公約施行法中，是否要將「酷刑」之定義寫入？

唐博偉(Bo Tedards)：

擔心會有所缺漏，因為若改寫了原本的內容，法律上將會發生同時存在兩種版本的情形。一般來說，應要高於國際標準。若要將定義寫入施行法當中，應確保該定義無縮減公約上「酷刑」的效果，甚至是加強，即法院在解釋適用時，應無限縮及排除之可能。若可以加強效果的話是值得寫的，相反地，若會產生縮減或排除的效果，即不應寫入。除此之外，施行法中的定義與公約中的定義亦不能相違背。在此我想代表國際特

赦組織表達我們的立場，我們認為，酷刑及其他殘忍、不人道或有辱人格的待遇或處罰不應該被視為不同的類別，它們在國際法下是平等地被禁止的，只要符合要件中的其中一項，這樣的待遇或處罰就應該要被禁止。再者，酷刑的禁止已是國際習慣法(Customary Law)，是否在施行法中亦能闡明，明確表示中華民國有此義務？若中華民國的憲法中有相關規定，亦應在施行法

中援引。

高榮志：

無論是立法或是立施行法，內容當然是越詳細越好，我認為將定義清楚地寫入施行法中是必須的。如此一來，在適用上的爭議會較少，法官藉由施行法亦能更清楚了解反酷刑公約的意旨。

貳、國家防範機制(National Preventive Mechanism, NPM)該如何建置？又其職權該如何行使？

唐博偉(Bo Tedards)：

依公約之規定，每一締約國應在國家層級設立、指定或保持一個或多個防範酷刑和其它殘忍、不人道或侮辱之處遇或懲罰的查訪機構(以下稱國家防範機制)。國家防範機制設立的目的主要為預防，故其必須要有職權並能不定期地監督與查訪。另外，我認為國家防範機制的職權不宜被分割，否則將會有職務難以完成的危險。若分割後各部分職務的差異過大，「監督」將難以反映事實，故我傾向職權應集中。

高榮志：

以目前的狀況來看，因國家防範機制的業務範圍廣泛，可能需要設立多個委員會才能夠完成所有的業務，惟現實上可能難以達成。一個強而有力的獨立機構是難有的，內政部的層級或許太小，設在監察院下亦可能淪為形式化。目前多個人權公約在國內法化的程序中都面臨相同的問題，即因國家人權委員會遲遲沒有設立，相關國內防範機制的主管機關難以歸屬於現有體制中的單位。若國家人權委員會仍無設立，往後的人權相關公約進行國內法化程序時都會面臨相同的問題。

參、相關意見

唐博偉(Bo Tedards)：

依照公約檢視法規的期限應設定為兩年，反酷刑已屬國際法上的習慣法，此本應為國家不得違反之規範，故檢視法規的時間應該要較短。

高榮志：

一、因反酷刑公約的規範主體為國家級公務員，其實行的難度在於如何進入機關做調查。我建議可以將確定違反公約的調查結果作為可聲請再審或相關救濟的事由。

二、引渡的條文規範應特別獨立出來，並要遵照反酷刑公約第三條的意旨。

三、反酷刑公約最終會與囚犯、軍隊的待遇結合在一起，但要適用在精神病院上仍相當困難，這方面或許是未來可以

繼續努力的方向。

附件十二：焦點訪談紀錄摘要（二）

「禁止酷刑和其他殘忍、不人道或有辱人格的待遇或處罰公約」施行法制定之研究－焦點訪談（二）	
日期	104 年 5 月 7 日（四） 13:30-15:00
地點	東吳大學城中校區崇基樓 1704 教室
出席人員	鄧衍森教授、姚孟昌助理教授、江佳芸助理
訪談對象	台北地檢署 陳宗豪檢察官
訪談紀錄	

壹、在「禁止酷刑和其他殘忍、不人道或有辱人格的待遇或處罰公約」（後簡稱為反酷刑公約）中，其對酷刑的追訴期為無期限。在本公約國內法化後，檢察機關將如何應對相關問題？

檢察官在辦理案件時，僅能依據既有的法條審視不法行為，若有構成要件該當之情況時始能定罪。然而，目前國內的現有法律中並沒有關於酷刑的條文，故關於酷刑的追訴時效國內法化後是否需要修正的問題，似乎仍有待相關法律修訂完成。不過，我贊同姚老師的看法，國家對個人的施暴將會牽涉到其背後的機制，這是一個類似於集團犯罪的概念，其追訴權的期限似乎的確應與一般類型的犯罪而有所不同。然而，「酷刑」所包含的犯罪類型有很多種，若每個類型的追訴期皆相同，是否會產生不公平的情形？無期限的追訴期是否符合刑法原理是一個待研究的課題。另外，國家暴力之認定及其證據的

取得都有相當的難度。

貳、假設政府非常強勢，在政權岌岌可危的情況下對抗議的群眾進行強行鎮壓，在反酷刑公約尚未國內法化以前，依現行的法律，檢察官是否能夠依照反酷刑公約的精神調查此類案件？

仍有一定的難度。自檢察官現有的系統來看，檢察官有行政官的身分，尤其在美國，檢察官的行政官身分是無庸置疑的。在台灣，檢察官上面有主任檢察官，即是他們的上司，主任檢察官之上又有一位檢察長，其上司則是高檢署的檢察長及檢察總長，此即台灣的檢察一體。就分案的權力來說，地檢署之檢察長的分案權力相當大，例如，檢察長可以就報紙上的內容進行剪報分案。對檢察官而言，其不太可能主動要求辦理哪個案子，這個現象的好與壞，基本上是見仁見智。另外，檢察長亦有很大的權力，若其不想某位檢察官辦理某件案子，他可以立刻收回來，這是他的指揮權。就檢察長或主任檢察官而言，他們都是經由法務部勾選而出任該職務，法務部之上則是行政院。因此，就此問題來說，這樣的檢察制度會有相當的侷限性。如果你今天不是一個具有非常獨立性的檢察長，其當然會受上司的影響。當然我們也可以看到說，先前在韓國有位檢察總長因抗拒法務部的命令而自行辭職，又例如說先前的水門案，都會引發輿論的壓力以及群眾的力量。

參、若將範圍縮小，以近期彰化少輔院的「曬豬肉案」為例，犯人在監獄被不當管教的情形該如何被事後救濟？

以本案觀之，若有人檢舉，檢察單位必會立案，不可能會

有吃案的問題。假設是由我處理的話，採取的作法大概是先傳訊並調資料，再做訊問，若調查後發現案情屬實，並依法起訴。但不知道會有會有其他檢察官會採取較偏袒的做法，或者是對犯人會有刻板印象，不過，監察院會主動調查，監督我們這個行政機關。在監獄這類具有特別權力關係的地方，證據的保守將會顯得十分重要，避免物證、人證難以取得。有些時候，外界對檢察機關的期待很高，但是有時也會失望很大。檢察官是跑在前線的，但很多時候都是因為證據問題而罪狀無法成立，以我的經驗為例，過去我辦過許多毒品的案件，隨著法官對於證據的認定日趨嚴格，例如錄音帶的聲音不夠清楚、證人的意見前後有出入等皆無法使用，這也是我們需要改善的部分。

肆、設立國家防範機制（National Preventive Mechanism, NPM）的目的主要在於預防，並需要仰賴公權力的行使，請問您認為其應建置於哪個單位之下比較恰當？檢察體系設立內部監督機構是否適合呢？

先用刪除法來看，檢察官可能本身就是被規範的對象，我認為監察院是非常適合的單位。首先，我先講一下目前檢察體系中所存有的機制，若有人認為檢察官處理案件有問題，他可以到法務部陳情，主任檢察官隨即會調卷、調查

。當然，不可諱言的，相信每個單位都會有官官相護以及包庇的問題。然而，這也只是一個事後機制。檢察官有其獨立性，主任檢察官及檢察總長亦未必會干涉檢察官的辦案狀況。目前檢察官都很注重反酷刑的問題，亦有提審法等制度協助當事人。我認為在防止酷刑這方面，複訊是一個很重要的程序，再複訊的過程中，若發現被告的言詞閃爍或遲疑等情形，此時就

必須合理懷疑其是否有被刑求等狀況。警察問案的方式大多是誘導，或是給予被告答案，並使被告相信該答案。我印象很深刻，先前在美國讀書時，看到一個有趣的例子：有一個憲兵某天晚上去參加了一個舞會，隨後其與朋友一群人到了一個人的家裡。隔天，其中有一個女生向警方報案，稱其昨日被猥褻，甚至加害人將精液射在其衣服上，該女子指證憲兵就是加害人。警方在尚未有 DNA 檢驗結果時，即將憲兵逮捕，向其訊問。起初，警方以玩笑的口吻詢問該憲兵是否有參加舞會等等，然該憲兵矢口否認其有對女子做猥褻的行為。在經過長時間的訊問後，憲兵竟改口其的確有做出猥褻的舉動，甚至將情景描繪得相當逼真。結果，在 DNA 檢驗報告出來後，發現精液根本並不是該憲兵的。這個例子主要在說，在一直不斷被暗示的情況下，人心中會漸漸相信是真的，警察這樣長時間訊問的暗示行為，已經屬於某種程度的酷刑了。憲兵比一般人受過更多的訓練，其有較高的意志力，但仍有這樣的後果。因此，檢察官的複訊的確是相當重要。

伍、若政府各單位內有酷刑之情事，外界要如何得知以達到監督的效果？

依現行的機制，仍必須由該單位的政風科開始調查，再由政風科連結至廉政署。尤其外籍人士的保護問題亦相當重要，通譯是讓他們能夠申訴的關鍵人物。然而，有些政風科並不是很認真在辦案子。檢察單位絕對有權利干涉，但是切入點是關鍵，與政風科連結是可行的，例如政風科告知移民署其申訴案件量很多，認其的確可能有酷刑之情事，要求移民署在期限內提交報告及改善方案，如此一來，所有的工作程序都會啟動。內部有酷刑之情事的確是相當可怕的問題，先前有個案子，是

警察在追捕逃逸外勞，後來逃逸外勞開始從事性交易的工作，警察竟向其提出要求，以該外勞定期提供性服務為條件，不將其逮捕遣送。像這樣的案子辦案難度很高，如證人的部分該如何鞏固？或者今天被告要求要測謊又面臨語言的問題。至於監獄內的問題亦是存有盲點，台灣目前的監獄環境不是很好，甚至已經構成酷刑了。

附件十二：焦點訪談紀錄摘要（三）

「禁止酷刑和其他殘忍、不人道或有辱人格的待遇或處罰公約」施行法制定之研究－焦點訪談（三）	
日期	104 年 5 月 18 日（一） 09:00-11:00
地點	東吳大學城中校區崇基樓 1704 教室
出席人員	鄧衍森教授、廖福特教授、姚孟昌助理教授 江佳芸助理
訪談對象	監察院人權委員會 林明輝執行秘書
訪談紀錄	

國家防範機制(National Preventive Mechanism, NPM)該如何建置？又其職權該如何行使？

監察院承擔禁止酷刑之「國家防範機制」之可行性分析

一、依據《禁止酷刑和其它殘忍、不人道或侮辱之處遇或懲罰公約》任擇議定書序言、第 1 條、第 3 條、第 4 條規定，每一締約國應在國家層級設立、指定或保持一個或多個防範酷刑和其它殘忍、不人道或侮辱之處遇或懲罰的查訪機

構(簡稱「國家防範機制」)。因此，一旦上開公約內國法化，我國即應設立或指定獨立性的查訪機構，並課以該機構定期查訪拘留地點的職責，以履行國際人權義務。

二、依據聯合國 1993 年通過「巴黎原則（Paris Principles）」，國家人權機關（National Human Rights Institution）可承擔定期查訪拘留地點之責任，並發揮「國家防範機制」。目前國際間認定國家人權機關包括人權委員會（human rights commission）、監察機關（ombudsman）、混合型人權監察機關（hybrid human rights ombudsman）。各國因歷史、政治、法律制度及人權保障的優先性等互有差異，對於國家人權機關的設置約有 3 種不同模式：第一，採行單一機關制（single-organ system），即成立單一監察機關或人權委員會或混合型人權監察機關；第二，採行雙機關制（dual-organ system），一國之內既有監察機關，又有國家人權委員會；第三，採行多機關制（multi-organ system），設立多個機關保護各類弱勢族群。長久以來，部分國人主張我國可比照多數的亞太地區國家採行雙機關制，即在監察院之外另設國家人權委員會，但迄今各界仍無法達成共識。

三、在現行五權憲法架構下，監察院擁有高度獨立性及充分調查權，而且具備大部分巴黎原則揭示條件，性質上係我國國家人權機關。與各國監察機關相似，監察院主要功能在促進善治（good governance）及保護人權。依據統計，監察院在第 4 屆（97 年 8 月至 103 年 7 月）總共完成 3,006 件調查案，其中與人權議題有關者有 1,672 件，佔 55.6%。第 5 屆（自 103 年 8 月至 104 年 4 月）共完成 79 件調查案，其中有 47 件涉及人權保障，達半數以上（59.5%）。監察院調查人權案件範圍廣泛，包括自由權、平等權、生存權及健康權、工作權、財產權、參政權、司法正義、文化權、

教育權、環境權、社會保障，其中以涉及財產權及司法正義兩者所占比例最高。

四、目前監察院行使之職權，除調查、糾正、彈劾、糾舉外，尚得定期巡察中央與地方機關及其工作、設施。依據「監察院巡迴監察辦法」第 2 條規定，巡察之目的包括調查行政院及其所屬機關之工作及設施有無違法或失職，以及調查中央或地方公務人員有無違法或失職。依同辦法第 3 條規定，巡察之任務包括關於公務人員有無違法失職情形，以及關於糾正案件之執行情形。監察院內部設有「人權保障委員會」及「司法及獄政委員會」，本得就警察、國安系統、軍隊、監獄及其他收容中心等最容易發生迫害人權的場域進行定期巡察，以為預防性的監督；一旦發動有關調查，監察委員亦得就上開地點進行現場履堪，以發掘事實真相。未來，《禁止酷刑和其它殘忍、不人道或侮辱之處遇或懲罰公約》一旦內國法化，成為我國法律制度之一環，監察院透過既有法定職掌，自得檢視與監測各政府機關之作為及措施是否符合公約規定。如果能透過施行法之授權，監察院亦得強化巡察拘留或監禁處所等功能，承擔**外控、獨立及具公信力**之國家防範機制，以預防被剝奪自由者遭受酷刑和其它殘忍、不人道或侮辱之處遇。