「禁止酷刑公約之國際標準與實踐」

研究案附件

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附件一

《禁止酷刑及其他殘忍不人道或有辱人格之待遇或處罰公約》
(正體中文版)

本公約締約各國，

鑒於根據聯合國憲章宣布之原則，承認人類大家庭一切成員具有平等與不可剝奪之權利是世界自由、公正與和平之基礎，

確認上述權利起源於人之固有尊嚴，

鑒於根據憲章尤其是第 55 條之規定，各國有義務促進對人權及基本自由之普遍尊重與遵守，

顧及世界人權宣言第 5 條及公民與政治權利國際公約第 7 條均規定不允許對任何人施行酷刑或殘忍、不人道或有辱人格之待遇或處罰，

並顧及大會於一九七五年十二月九日通過之保護人人不受酷刑及其他殘忍、不人道或有辱人格之待遇或處罰宣言，

冀以在全世界能更有效地反擊酷刑及其他殘忍、不人道或有辱人格之待遇或處罰，

爰議定如下:

第一部分

第一條

1.為本公約目的，「酷刑」指為自特定人或第三人取得情資或供詞，為處罰特定人或第三人所作之行為或涉嫌之行為，或為恐嚇、威脅特定人或第三人，或基於任何方式為歧視之任何理由，故意對其肉體或精神施以劇烈疼痛或痛苦之任何行為。此種疼痛或痛苦是由公職人員或其他行使公權力人所施予，或基於其教唆，或取得其同意或默許。但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，不在此限。

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

第二條

1.締約國應採取有效之立法、行政、司法或其他措施，防止在其管轄之任何領域內出現酷刑之行為。

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他社會緊急狀態，均不得援引為施行酷刑之理由。

3.上級長官或政府機關之命令不得援引為施行酷刑之理由。

第三條

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

2.為確定此等理由是否存在，有關機關應考慮所有相關因素，包括在通常情況下，該國家境內是否存在一貫重大、明顯或大規模侵犯人權之情況。

第四條

1.締約國應確保將一切酷刑行為定為刑事犯罪。該項規定也應適用於意圖施行酷刑以及任何人共謀或參與酷刑之行為。

2.締約國應考量前項犯罪之嚴重程度，處以適當刑罰。

第五條

1.締約國應採取必要措施，確保在下列情況下對第 4 條所述之犯罪有管轄權：

(a） 犯罪發生在其管轄之任何領域內，或在該國註冊之船舶或航空器上。

(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.締約國也應採取必要措施，確定該國對被控罪犯在其領域內，且該國並未依據第 8 條規定引渡至本條第 1 項所述之任何國家時，行使管轄權。

3.本公約不排除依照國內法行使任何刑事管轄權。

第六條

1.任何締約國管轄之領域內如有被控違反第 4 條所述犯罪之人，該國應於檢視所獲情資根據情況確認有其必要時，將此人拘束，或採取其他法律措施確保此人留在當地。拘禁及其他法律措施應合乎該國法律之規定，但留置期間只限於進行任何刑事訴訟或引渡程序所需。

2.該締約國應立即對事實進行初步調查。

3.按照本條第 1 項被拘束者，應予協助，立即與最近之所屬國家代表聯繫。如為無國籍人，則與其通常居住國之代表聯繫。

4.任何國家依據本條將某人拘束時，應立即將此人已被拘束及構成拘禁理由通知第 5 條第 1 項所指之國家。進行本條第 2 項之初步調查之國家，應迅速將調查結果告知上述國家，並徵詢其是否有意行使管轄權。

第七條

1.締約國如在其管轄領域內發現有被控違犯第 4 條所述任何犯罪之人，在

第 5 條所指情況下，如不引渡，則應將該案移送各主管機關進行追訴。

2.各主管機關應根據該國法律，比照情節嚴重之犯罪案件處理。對第 5 條第 2 項所指之情況，起訴及定罪所需證據之標準絕不應寬於第 5 條第 1 項所指情況之適用標準。

3.任何人因第 4 條規定之犯罪而被起訴時，應確保其在訴訟所有階段皆可享有公平之待遇。

第八條

1.第 4 條所述各種犯罪應視為締約各國間現有之任何引渡條約所列可引渡犯罪。締約各國承諾將此種犯罪作為可引渡犯罪並列入將來相互間締結之引渡條約。

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之另一締約國之引渡請求，可將本公約視為引渡此犯罪之法律依據。引渡必須符合被請求國法律規定之其他條件。

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犯罪為可引渡犯罪，但引渡須符合被請求國法律規定之條件。

4.基於締約國間進行引渡之目的，應將此種犯罪視為不僅發生在行為地，而且發生在依據第 5 條第 1 項必須確定管轄權之國家領域內。

第九條

1.締約各國就第 4 條所規定之任何犯罪提出刑事追訴時，應儘量相互協助，包括提供為追訴而掌握之所有必要證據。

2.締約各國應依照相互間司法互助之條約，履行本條第 1 項規定之義務。

第十條

1.締約國應確保將禁止酷刑之教育課程與資料納入所有可能參與拘束、偵訊或處理任何形式之逮捕、拘禁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之訓練中。

2.締約國在發給前項人員之職務規則或相關指示中，應納入禁止酷刑規定。

第十一條

締約國應經常有系統的審查在其管轄領域內對遭受任何形式之逮捕、拘禁或監禁之人進行審訊之規則、指示、方法及慣例以及對他們拘束及待遇之安排，以避免發生任何酷刑事件。

第十二條

締約國應確保有合理理由確信在其管轄之任何領域內已發生酷刑行為時，其主管機關立即進行公正之調查。

第十三條

締約國應確保聲稱在其管轄之任何領域內遭到酷刑之個人有權向該國主管機關申訴，該國主管機關對其案件應進行迅速而公正之調查，並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不當處遇或恐嚇。

第十四條

1.締約國應在其法律體制內確保酷刑受害者獲得救濟，並享有獲得公平及充分賠償之強制執行權利，包括儘量使其完全復原之方式。如果受害者因受酷刑致死，其受撫養人應有權獲得賠償。

2.本條規定不影響受害者或其他人依據國家法律可獲得賠償之任何權利。

第十五條

締約國應確保在任何訴訟程序中，不得援引任何業經確定以酷刑取得之供詞為證據，但其供詞作為指控施用酷刑者刑求逼供之證據者，不在此限。

第十六條

1.締約國應承諾在該國管轄之領域內防止公職人員或任何行使公權力人員施加、教唆、同意或默許進行未達第 1 條所定義酷刑程度之其他殘忍、不人道或有辱人格之待遇或處罰之行為。特別是包含於第 10 條、第 11 條、第 12 條及第 13 條涉及酷刑之義務，亦適用於其他形式之殘忍、不人道或有辱人格之待遇或處罰。

2.本公約各項規定不妨礙其他國際文書或國家法律有關禁止殘忍、不人道或有辱人格之待遇或處罰、或有關引渡或驅逐之規定。

第二部分

第十七條

1.應設立「禁止酷刑委員會」(以下簡稱委員會)，履行下列所規定之職責。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，且應考慮區域公平分配及延聘具有法律經驗者參加之效益。

2.委員會成員應從締約國提名之名單中以無記名投票方式選舉產生。每一締約國可從該國國民中提名一人。締約國應謹記從公民與政治權利國際公約成立之「人權事務委員會」委員中提名願意擔任「禁止酷刑委員會」成員者之效益。

3.委員會成員選舉應於聯合國秘書長召開兩年一期之締約國會議中進行。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之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.委員會之第一次選舉應在本公約生效之日起六個月內進行。聯合國秘書長至遲在每屆委員會選舉日四個月前，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列出名單，註明提名之締約國，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。首次當選之成員中有五名成員之任期為兩年，首次選舉後，本條第 3 項所指會議之主席應即以抽籤方式選定此五名成員。

6.委員會成員如因死亡、辭職或其他原因不能履行委員會之職責，提名之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之同意。在聯合國秘書長通知該任命之六個星期內，如無半數或半數以上締約國表示反對，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。

第十八條

1.委員會應選舉其主席團，任期兩年。連選得連任。

2.委員會應制定議事規則，該規則應特別規定事項：

（a）法定人數為六人；

（b）委員會之決議應以出席成員多數決。

3.聯合國秘書長應提供必要之人員及設施，供委員會有效履行本公約規定之職責。

4.聯合國秘書長應召開委員會之首次會議。首次會議以後，委員會應依其議事規則規定之時間開會。

5.締約國應負責支付締約國以及委員會舉行會議之費用，包括支付聯合國依據本條第 3 項提供人員及設施等任何費用。

第十九條

1.締約國應於本公約對其生效後一年內，經由聯合國秘書長向委員會提交關於履行公約義務所採措施之報告。其後，締約國應每四年提交關於其所採任

何履行公約之新措施之補充報告及委員會要求之其他報告。

2.聯合國秘書長應將此等報告送交所有締約國。

3.每份報告應由委員會加以審議，委員會得對報告提出適當之一般性評論，並將其轉交有關締約國。該締約國得向委員會提出說明。

4.委員會得依其裁量將依據本條第 3 項所作之評論，及有關締約國之說明，載入其依照第 24 條所編寫之年度報告。為應有關締約國之請求，亦得附載依據本條第 1 項提交之報告。

第二十條

1.如果委員會收到可靠之情資，認為其中有確實跡象顯示在某一締約國境內經常實施酷刑，委員會應請該締約國合作檢視，並就有關情資提出說明。

2.鑒於有關締約國可能提出之任何說明及為獲得其他有關情資，如有正當理由，委員會得指派一名或數名成員進行秘密調查並立即向委員會提出報告。

3.依據本條第 2 項進行之調查，委員會應尋求有關締約國之合作。在該締約國同意下，得到該國境內訪查。

4.委員會審查依本條第 2 項之調查結果後，應將結果連同適當之任何意見或建議一併轉交該有關締約國。

5.本條第 1 項至第 4 項之一切程序均應保密，各階段均應尋求締約國之合作。依照第 2 項所進行之調查程序完成後，經委員會與有關締約國協商，得將處理結果摘要載入依第 24 條所編寫之年度報告。

第二十一條

1.本公約締約國得隨時依據本條，聲明承認委員會有權接受及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之文件。提出此種文件之締約國須已聲明承認委員會有受理之權限，委員會方得按照本條規定程序接受並審議。如該文件涉及未曾作出上開聲明之締約國，則委員會不得依據本條規定處理。依據本條規定所接受之文件應按下列程序處理：

(a)某一締約國如認為另一締約國未實行本公約之規定，得以書面通知提請後者注意。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他聲明予以澄清，並應儘量適當提出已經採取、將要採取或可以採取之國內措施及救濟方式；

(b)收文國自最初收到來文之時起六個月內，未能以雙方均感滿意之方式處理此一問題，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之事項，僅在已查明該事項已依公認之國際法原則援引及用盡一切國內救濟方式時，方得予以處理。但救濟方式之施行如有不

當稽延，或使違反本公約行為之受害者無法得到有效救濟，則此一規則不適用；

(d)委員會依據本條審查文件時，應舉行非公開會議；

(e)在不違反(c)款之情況下，委員會應對相關締約國提供調解，以本公約所規定之義務為基礎，妥善解決。為此，委員會得適時設立特別調解委員會；

(f)委員會對依據本條提交之事項，均得依照(b)款要求有關締約國提供資料；

(g)委員會進行審議時，(b)款所指相關締約國應有權指派代表出席並提出口頭及(或)書面意見；

(h)委員會應在收到(b)款通知之日起十二個月內提出報告：

(i)如按(e)款規定解決，委員會之報告應限於簡要敍述事實及解決辦法；

(ii)如不能按(e)款規定解決，委員會之報告應限於簡要敍述事實；並將相關締約國之書面意見及口頭意見紀錄，附於報告之後。

上述各項報告均應送交相關締約國。

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。締約國應將此聲明存放於聯合國秘書長，秘書長應將聲明副本分送其他締約國。此類聲明得隨時通知秘書長予以撤銷。撤銷時不得妨礙依據本條已在審議中之任何事項。秘書長在收到締約國通知撤銷之聲明後，不應再接受其依據本條所發之其他文件，除非相關締約國已再重新聲明。

第二十二條

1.本公約締約國得隨時依據本條，聲明承認委員會有權接受及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者或其代表所送交文件。如為未曾聲明之締約國，則委員會應不予受理。

2.依據本條提出之任何文件如採取匿名方式或經委員會認為濫用此項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 項規定之前提下，對於依據本條提交委員會之任何文件，委員會應依據第 1 項作出聲明並提請遭指違反本公約規定之締約國注意。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，如已採取任何救濟方式，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之一切資料，審議依據本條所收到之文件。

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之文件；

（a）同一事項於過去及現在均未受到另一國際調查程序或解決辦法之審查；

（b）個人已用盡一切國內救濟方式；但救濟方式之施行如造成不當稽延，或致使違反本公約行為之受害者不能得到有效救濟，則不適用；

6.委員會根據本條審查文件時，應舉行非公開會議。

7.委員會應將審查意見告知有關締約國及個人。

8.在本公約五個締約國根據本條第 1 項作出聲明後，本條規定立即生效。締約國應將此聲明存放於聯合國秘書長，秘書長應將聲明副本分送其他締約國。此類聲明得隨時通知秘書長予以撤銷。撤銷時不得妨礙依據本條已在審議中之任何事項。秘書長在收到締約國通知撤銷之聲明後，不應再接受個人或其代表依據本條所發之其他文件，除非相關締約國已再重新聲明。

第二十三條

委員會成員及依據第 21 條第 1 項(e)款任命之特設調解委員會成員，依據聯合國特權及豁免公約有關章節之規定，應享有為聯合國執行任務之專家之便利、特權及豁免。

第二十四條

委員會應依據本公約向締約國及聯合國大會提交關於其活動之年度報告。

第三部分

第二十五條

1.本公約對所有國家開放簽署。

2.本公約需經批准。批准書應存放於聯合國秘書長。

第二十六條

本公約對所有國家開放加入。加入書一旦存放於聯合國秘書長，加入立即生效。

第二十七條

1.本公約在第二十份批准書或加入書存放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存放後，其後批准或加入本公約之國家，本公約在其批准書或加入書存放之日起第三十天對該國開始生效。

第二十八條

1.各國在簽署或批准本公約或在加入本公約時，得聲明不承認第 20 條所規

定之委員會之職權。

2.按照本條第 1 項作出保留之任何締約國，得隨時通知聯合國秘書長撤銷其保留。

第二十九條

1.本公約任何締約國均得提出修正案，並送交聯合國秘書長。由秘書長將此提案轉交締約各國，並要求通知秘書長是否同意舉行締約國會議以審理及決議此提案。如在發文日起四個月內有三分之一以上之締約國同意召開會議，秘書長應在聯合國協助下召開此會議。經出席會議並參加表決之締約國過半數通過之修正案，應由秘書長提請所有締約國同意。

2.當本公約三分之二之締約國通知聯合國秘書長，已依照該國之憲法程序同意此修正案時，按照本條第 1 項通過之修正案生效。

3.修正案一經生效，即應對同意修正案之締約國具有拘束力，其他締約國則仍受本公約條款或以前經其同意之修正案拘束。

第三十條

1.二以上締約國之間有關本公約之解釋或適用之任何爭議，如不能透過談判解決，在其中一方要求下，應提交仲裁。自要求仲裁之日起六個月內各方不能就仲裁之組成達成一致意見，任何一方均得依照國際法院規約要求將此爭議提交國際法院。

2.各國均得在簽署或批准本公約或加入本公約時，聲明本條第 1 項對其無拘束力。其他締約國與上開國家有任何爭議時，亦不受本條第 1 項之拘束。

3.依照本條第 2 項作出保留之任何締約國，得隨時通知聯合國秘書長撤銷其保留。

第三十一條

1.締約國得以書面通知聯合國秘書長退出公約。秘書長於收到通知之日起一年後，退約即行生效。

2.退約不具有解除締約國關於退約生效日前發生之任何行為或不行為在本公約下所承擔義務之效果。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進行審議之任何問題。

3.自締約國退約生效之日起，委員會不得開始審議有關該國之任何新案。

第三十二條

聯合國秘書長應將下列事項通知聯合國所有會員國及本公約所有簽署國或

加入國：

（a）依據第 25 條及第 26 條進行之簽署、批准及加入情況；

（b）依據第 27 條本公約之生效日期；依據第 29 條任何修正案之生效日期；

（c) 依據第 31 條退約情況。

第三十三條

1.本公約之阿拉伯文、中文、英文、法文、俄文及西班牙文文本均同一作準，應存放於聯合國秘書長。

2.聯合國秘書長應將本公約之認證副本轉交給所有國家。

附件二

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. Ieast 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 con fidential , 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 ofthis 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 reliefto 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 SecretaryGeneral, 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 SecretaryGeneral 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 onthe 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 SecretaryGeneral 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 SecretaryGeneral 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 thc 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 Con vention 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.

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

附件三

《禁止酷刑及其他殘忍不人道或有辱人格之待遇或處罰公約》任擇議定書

(正體中文版)

序言

本議定書締約國，

重申酷刑及其他殘忍、不人道或有辱人格之待遇或處罰為被禁止之行為，構成對人權之嚴重侵犯，

確信必須採取進一步措施實現禁止酷刑及其他殘忍、不人道或有辱人格之待遇或處罰公約(以下稱公約) 之目的，必須加強保護被剝奪自由者使其免受酷刑及其他殘忍、不人道或有辱人格之待遇或處罰，

顧及公約第 2 條及第 16 條要求締約國採取有效措施，防止在其管轄之任何領域內出現酷刑及其他殘忍、不人道或有辱人格之待遇或處罰行為，

確認各國負有執行此等條款之首要責任，加強保護被剝奪自由者和全面尊重其人權是各方之共同責任，國際執行機構發揮補充及加強國內措施之作用，

顧及為有效防止酷刑及其他殘忍、不人道或有辱人格之待遇或處罰，應進行教育，並綜合採取立法、行政、司法及其他措施，

又顧及世界人權會議明確宣告，杜絕酷刑之工作首應注重防止，並要求通過一項公約任擇議定書，以建立定期訪查拘禁處所之防制制度，

確信以定期訪查拘禁處所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及其他殘忍、不人道或有辱人格之待遇或處罰，

爰議定如下：

第一部分：一般原則

第一條

本議定書之目的為建立獨立國際機構及國家機構對被剝奪自由者之處所進行定期訪查制度，以防止酷刑及其他殘忍、不人道或有辱人格之待遇或處罰。

第二條

1.應於禁止酷刑委員會內設立防範酷刑及其他殘忍、不人道或有辱人格之待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權。

2.防範小組委員會應在聯合國憲章之架構下工作，並遵循其宗旨、原則以及聯合國關於被剝奪自由者待遇之規範。

3.防範小組委員會應遵守保密、公正、非針對性、普遍性及客觀性原則。

4.防範小組委員會及締約國應合作執行本議定書。

第三條

締約國應在國家層級設立、指定或維持一個或多個防止酷刑及其他殘忍、不人道或有辱人格之待遇或處罰之訪查機構(以下稱國家防制機制)。

第四條

1.締約國應依據本議定書，允許第2條及第3條所指機制，對其管轄及控制下任何因公務機關之命令、教唆、在其同意或默許下，致個人被剝奪自由或有被剝奪自由之虞之處所(以下稱拘禁處所)進行訪查。進行訪查之目的在於必要時加強保護使其免受酷刑及其他殘忍、不人道或有辱人格之待遇或處罰。

2.根據本議定書之目的，剝奪自由是指任何形式之拘禁或監禁，或因司法、行政或其他公權力機關之命令，將特定人置於公共或私人拘束環境下，不得隨意離開。

第二部分：防範小組委員會

第五條

1.防範小組委員會應由十名成員組成。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二十五名。

2.防範小組委員會成員人選應具備高尚品格，並確實具有司法行政領域之專業經驗，特別在刑法、監獄或警務人員管理或與被剝奪自由者處遇有關領域。

3.防範小組委員會之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及法系。

4.防範小組委員會之組成，應根據平等及不歧視原則考慮性別代表之平衡。

5.防範小組委員會中不得有二名成員為同一國家之國民。

6.防範小組委員會成員應以個人身分任職，維持獨立及公正，有效率地為防範小組委員會服務。

第六條

1.締約國依照本條第2項得提名具備第5條所規定資格並符合其要求之候選人，最多二名；同時應提供關於被提名人資格之詳細資料。

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之國籍；

(c) 任何締約國獲得提名之國民不得超過二名；

(d) 任何締約國在提名另一個締約國之國民前，應徵求並獲得該締約國同意。

3.聯合國秘書長應於進行選舉之締約國會議舉行日至少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之被提名人名單，同時標明提名之締約國。

第七條

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條之要求及標準；

(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之選舉應由聯合國秘書長在每兩年召開一次之締約國會議中進行。締約國會議以締約國三分之二出席為法定開會人數，得票最多且獲得出席並參加表決之締約國代表所投票數之絕對多數者，即當選為防範小組委員會成員。

2.若在選舉過程中有一締約國之二名國民取得擔任委員會成員之資格，得票較多之候選人應成為防範小組委員會成員。二名國民所得票數相等時，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者成為防範小組委員會成員；

(c) 二名候選人均非由締約國本國提名時，應進行另一次無記名投票以決定何者成為防範小組委員會成員。

第八條

若防範小組委員會之成員死亡或辭職，或有其他原因不能履行職責時，提名該成員之締約國應考慮到在各相關領域之適當均衡能力，提名另一名具有第五條所規定資格並符合其要求之合格人選擔任成員，其任期至召開下一次締約國會議為止，但須得到締約國過半數之同意。除非半數以上締約國於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。

第九條

防範小組委員會成員任期四年，再次被提名者，得連選一次。第一次選出之半數成員任期為二年；第7條第1項(d)款所指會議之主席在第一次選舉後應立即抽籤確定成員名單。

第十條

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為之；

(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，須於議事規則所定時間召開會議。防範小組委員會及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：防範小組委員會之職權

第十一條

防範小組委員會應：

(a) 訪查第4條所指處所，並就保護被剝奪自由者免受酷刑及其他殘忍、不人道或有辱人格之待遇或處罰向締約國提出建議；

(b) 對於國家防制機制：

(i)必要時就此等機制之設立向締約國提供諮詢意見及協助；

(ii)與國家防制機制維持直接聯繫，必要時秘密聯繫，並為其提供訓練及技術援助，加強其能力；

(iii)在評估需求及必要措施方面向此等機制提供諮詢及援助，加強對被剝奪自由者之保護，使其免受酷刑及其他殘忍、不人道或有辱人格之待遇或處罰；

(iv)向締約國提出建議及意見，以加強國家防制機制防止酷刑及其他殘忍、不人道或有辱人格之待遇或處罰之能力及職權；

(c) 為全面防止酷刑，與相關聯合國機關及機制合作，並與致力於加強保護所有人免受酷刑及其他殘忍、不人道或有辱人格之待遇或處罰之國際、區域及國家機構或組織合作。

第十二條

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訪查本議定書第4條所指之拘禁處所；

(b) 提供防範小組委員會可能要求之一切相關資料，供其評估需求及應採取之措施，以加強保護被剝奪自由者使其免遭酷刑及其他殘忍、不人道或有辱人格之待遇或處罰；

(c) 促進及協助防範小組委員會與國家防制機制聯繫；

(d) 審視防範小組委員會之建議並就可能之執行措施與防範小組委員會進行對話。

第十三條

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訪查之計畫，並以抽籤方式決定首批受訪之締約國。

2.在進行磋商後，防範小組委員會應將訪查計畫通知締約國，使締約國能立即為訪查進行必要之實際安排。

3.訪查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相關領域專業經驗及知識之專家陪同進行訪查，此等專家應從締約國、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之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訪查，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，可提議在定期訪查之後進行一次較短之後續訪查。

第十四條

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) 不受限制取得關於第4條所指之拘禁處所內被剝奪自由者人數，以及關於拘禁處所數目及所在位置之一切資料；

(b) 不受限制取得關於此等人之處遇及拘禁條件之一切資料；

(c) 在下列第2項之限制下，不受限制查看所有拘禁處所及其裝置與設施；

(d) 有機會單獨或在認為必要時由翻譯人員協助，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) 自由選擇所欲訪查處所及詢問對象。

2.反對防範小組委員會訪查特定拘禁處所，必須基於國防、公共安全、待訪查處所發生自然災害或嚴重動亂以致暫時不能進行訪查之緊急及迫切理由。締約國不得以已宣佈緊急狀態之事實，作為反對訪查之理由。

第十五條

對於向防範小組委員會或其成員提供任何資料之人或組織，不論其資料之真偽，任何機關或官員均不得因此命令、施加、許可或容忍對該人或該組織為任何處罰，而該人或該組織亦不得因此受到任何形式之不利。

第十六條

1.防範小組委員會應以不公開之方式將其建議及意見送交締約國，並在相關情況下，以相同方式送交國家防制機制。

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之一部分，防範小組委員會可公布報告之全部或其中之一部分。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之年度活動報告。

4.如果締約國拒絕依照第12條及第14條與防範小組委員會合作或拒絕依照防範小組委員會之建議採取步驟改善情況，禁止酷刑委員會得應防範小組委員會之要求，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

第十七條

締約國最遲於本議定書生效或其批准或加入後一年內，應維持、指定或設立一個或多個獨立之國家防制機制，負責在國家層級防止酷刑。為本議定書之目的，在符合議定書規定之前提下，分散於各單位所建立之機制亦均得指定為國家防制機制。

第十八條

1.締約國應確保國家防制機制職權之獨立性及其人員之獨立性。

2.締約國應採取必要措施確保國家防制機制之專家具備必要之能力及專業知識。締約國應致力於性別平衡以及國內民族及少數群體之適當代表。

3.締約國應承諾為國家防制機制之運作提供必要資源。

4.締約國在設立國家防制機制時應適當考慮到有關促進及保護人權國家機構地位之原則(巴黎原則)。

第十九條

國家防制機制最低限度應具有如下權力：

(a) 定期檢查於第4條所指拘禁處所被剝奪自由者之待遇，以期必要時加強保護，使其免受酷刑及其他殘忍、不人道或有辱人格之待遇或處罰；

(b) 參照聯合國之相關規範，向有關機關提出建議，以期改善被剝奪自由者之待遇及條件，防止酷刑及其他殘忍、不人道或有辱人格之待遇或處罰；

(c) 就現行立法或立法草案提出建議或意見。

第二十條

為使國家防制機制能夠履行任務，本議定書締約國承諾賦予此等機制：

(a) 取得關於第4條所指拘禁處所內被剝奪自由者之人數、拘禁處所之數量及其位置之一切資料；

(b) 取得關於被拘禁者之待遇與拘禁條件之一切資料；

(c) 查看所有拘禁處所與其裝置及設施；

(d) 得以在無他人在場下，單獨或於必要時由翻譯人員協助，詢問被剝奪自由者以及國家防制機制認為可提供相關資料之其他人；

(e) 自由選擇所欲訪查之處所與詢問之人；

(f) 有權接觸防範小組委員會、傳送資料及與其會晤。

第二十一條

1.對於向國家防制機制提供任何資料之人或組織，不論其資料之真偽，任何機關或官員均不得因此命令、施加、許可或容忍對該人或該組織為任何處罰，而該人或該組織亦不得因此受到任何形式之不利。

2.國家防制機制蒐集之機密資料應予保密。個人資料非經當事人明示同意不得公布。

第二十二條

國家各主管機關應檢視國家防制機制提供之建議，並就可能採取之執行措施與國家防制機制進行對話。

第二十三條

本議定書締約國承諾公布並發送國家防制機制之年度報告。

第五部分：聲明

第二十四條

1.締約國在批准本議定書時，可聲明延遲履行第三部分或第四部分規定之義務。

2.延遲期不得超過三年。在締約國作出適當陳述並與防範小組委員會磋商後，禁止酷刑委員會得將延遲期再延長二年。

第六部分: 財務條款

第二十五條

1.防範小組委員會執行本議定書之經費由聯合國負擔。

2.聯合國秘書長應提供必要之人員及設施，以使防範小組委員會依照本議定書有效行使職權。

第二十六條

1.應依據大會有關程序設立特別基金，依照聯合國財務條例及其細則加以管理，以資助落實防範小組委員會在訪查後提出之建議，及開展國家防制機制之教育方案。

2.特別基金之經費可來自各國政府、政府間組織及非政府組織及其他公私立機構之自願捐款。

第七部分: 最後條款

第二十七條

1.本議定書對所有已簽署公約之國家開放簽署。

2.本議定書須經已批准或加入公約之所有國家批准。批准書應存放於聯合國秘書長。

3.本議定書對已批准或加入公約之所有國家開放加入。

4.加入於加入書存放於聯合國秘書長時生效。

5.聯合國秘書長應將每一存放之批准書或加入書，通知所有已簽署或加入本議定書之國家。

第二十八條

1.本議定書於第二十份批准書或加入書存放於聯合國秘書長之日後第三十天開始生效。

2.對於在第二十份批准書或加入書存放聯合國秘書長後批准或加入之國家，本議定書在該國存放批准書或加入書之日後第三十天開始生效。

第二十九條

本議定書各項規定適用於聯邦國家之全部領域，無任何限制或例外。

第三十條

締約國不得對本議定書作出保留。

第三十一條

本議定書之規定不影響締約國依據建立訪查拘禁處所制度之區域公約所承擔之義務。鼓勵防範小組委員會與依據此等區域公約設立之機構進行磋商及合作，以避免工作重複，並有效促進實現本議定書之目的。

第三十二條

本議定書之規定不影響一九四九年八月十二日日內瓦四公約及其一九七七年六月八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之情形中訪查拘禁處所之可能性。

第三十三條

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及公約之其他締約國。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下列義務：在退約生效日前可能發生之任何行為或情況；防範小組委員會已經決定或可能決定對有關締約國採取之行動；不影響防範小組委員會繼續審理退約生效日前已審議之任何問題。

3.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之任何新事項。

第三十四條

1.本議定書之任何締約國均可提出修正案並提交聯合國秘書長。秘書長應立即將修正案通知本議定書各締約國，請締約國向秘書長表明是否贊成召開締約國會議以審議此項提案及進行表決。於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之三分之二多數之與會締約國通過後，應由秘書長提交所有締約國接受。

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

3.修正案一旦生效，即對接受修正案之締約國具有約束力，其他締約國則仍受本議定書各項規定及該國以前接受之任何修正案之約束。

第三十五條

防範小組委員會委員及國家防制機制成員應享有獨立行使職務所必要之特權及豁免。防範小組委員會委員應享有一九四六年二月十三日聯合國特權及豁免公約第二十二節所規定之特權及豁免，但須遵守該公約第二十三節之規定。

第三十六條

防範小組委員會成員在締約國進行訪查時，在不妨害本議定書之規定、目的、應享有之特權及豁免之情況下：

(a) 應遵守被訪查國家之法律及規章；

(b) 應避免任何不符合其任務之公正及國際性質之行為或活動。

第三十七條

1.本議定書之阿拉伯文、中文、英文、法文、俄文及西班牙文本均同一作準，應存放於聯合國秘書長。

2.聯合國秘書長應將本議定書之認證副本轉交給所有國家。

附件四

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 ens ure 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 Pre vention, 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.

附件五

Standard Minimum Rules for the Treatment of Prisoners

Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolution 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977

Preliminary Observations

1. The following rules are not intended to describe in detail a model system of penal institutions. They seek only, on the basis of the general consensus of contemporary thought and the essential elements of the most adequate systems of today, to set out what is generally accepted as being good principle and practice in the treatment of prisoners and the management of institutions.

2. In view of the great variety of legal, social, economic and geographical conditions of the world, it is evident that not all of the rules are capable of application in all places and at all times. They should, however, serve to stimulate a constant endeavour to overcome practical difficulties in the way of their application, in the knowledge that they represent, as a whole, the minimum conditions which are accepted as suitable by the United Nations.

3. On the other hand, the rules cover a field in which thought is constantly developing. They are not intended to preclude experiment and practices, provided these are in harmony with the principles and seek to further the purposes which derive from the text of the rules as a whole. It will always be justifiable for the central prison administration to authorize departures from the rules in this spirit.

4. (1) Part I of the rules covers the general management of institutions, and is applicable to all categories of prisoners, criminal or civil, untried or convicted, including prisoners subject to "security measures" or corrective measures ordered by the judge.
(2) Part II contains rules applicable only to the special categories dealt with in each section. Nevertheless, the rules under section A, applicable to prisoners under

sentence, shall be equally applicable to categories of prisoners dealt with in sections B, C and D, provided they do not conflict with the rules governing those categories and are for their benefit.

5. (1) The rules do not seek to regulate the management of institutions set aside for young persons such as Borstal institutions or correctional schools, but in general part I would be equally applicable in such institutions.
(2) The category of young prisoners should include at least all young persons who come within the jurisdiction of juvenile courts. As a rule, such young persons should not be sentenced to imprisonment.

PART I
RULES OF GENERAL APPLICATION

Basic principle

6. (1) The following rules shall be applied impartially. There shall be no discrimination on grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
(2) On the other hand, it is necessary to respect the religious beliefs and moral precepts of the group to which a prisoner belongs.

Register

7. (1) In every place where persons are imprisoned there shall be kept a bound registration book with numbered pages in which shall be entered in respect of each prisoner received:
(a) Information concerning his identity;
(b) The reasons for his commitment and the authority therefor;
(c) The day and hour of his admission and release.
(2) No person shall be received in an institution without a valid commitment order of which the details shall have been previously entered in the register. Separation of categories

8. The different categories of prisoners shall be kept in separate institutions or parts of

institutions taking account of their sex, age, criminal record, the legal reason for their detention and the necessities of their treatment. Thus,
(a) Men and women shall so far as possible be detained in separate institutions; in an institution which receives both men and women the whole of the premises allocated to women shall be entirely separate;
(b) Untried prisoners shall be kept separate from convicted prisoners;
(c) Persons imprisoned for debt and other civil prisoners shall be kept separate from persons imprisoned by reason of a criminal offence;
(d) Young prisoners shall be kept separate from adults. Accommodation

9. (1) Where sleeping accommodation is in individual cells or rooms, each prisoner shall occupy by night a cell or room by himself. If for special reasons, such as temporary overcrowding, it becomes necessary for the central prison administration to make an exception to this rule, it is not desirable to have two prisoners in a cell or room.
(2) Where dormitories are used, they shall be occupied by prisoners carefully selected as being suitable to associate with one another in those conditions. There shall be regular supervision by night, in keeping with the nature of the institution.

10. All accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation.

11. In all places where prisoners are required to live or work,
(a) The windows shall be large enough to enable the prisoners to read or work by natural light, and shall be so constructed that they can allow the entrance of fresh air whether or not there is artificial ventilation;
(b) Artificial light shall be provided sufficient for the prisoners to read or work without injury to eyesight.

12. The sanitary installations shall be adequate to enable every prisoner to comply with the needs of nature when necessary and in a clean and decent manner.

13. Adequate bathing and shower installations shall be provided so that every prisoner

may be enabled and required to have a bath or shower, at a temperature suitable to the climate, as frequently as necessary for general hygiene according to season and geographical region, but at least once a week in a temperate climate.

14. All pans of an institution regularly used by prisoners shall be properly maintained and kept scrupulously clean at all times.

Personal hygiene

15. Prisoners shall be required to keep their persons clean, and to this end they shall be provided with water and with such toilet articles as are necessary for health and cleanliness.

16. In order that prisoners may maintain a good appearance compatible with their self-respect, facilities shall be provided for the proper care of the hair and beard, and men shall be enabled to shave regularly.

Clothing and bedding

17. (I) Every prisoner who is not allowed to wear his own clothing shall be provided with an outfit of clothing suitable for the climate and adequate to keep him in good health. Such clothing shall in no manner be degrading or humiliating.
(2) All clothing shall be clean and kept in proper condition. Underclothing shall be changed and washed as often as necessary for the maintenance of hygiene.
(3) In exceptional circumstances, whenever a prisoner is removed outside the institution for an authorized purpose, he shall be allowed to wear his own clothing or other inconspicuous clothing.

18. If prisoners are allowed to wear their own clothing, arrangements shall be made on their admission to the institution to ensure that it shall be clean and fit for use.

19. Every prisoner shall, in accordance with local or national standards, be provided with a separate bed, and with separate and sufficient bedding which shall be clean when issued, kept in good order and changed often enough to ensure its cleanliness.
Food

20. (1) Every prisoner shall be provided by the administration at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served.
(2) Drinking water shall be available to every prisoner whenever he needs it.
Exercise and sport

21. (1) Every prisoner who is not employed in outdoor work shall have at least one hour of suitable exercise in the open air daily if the weather permits.
(2) Young prisoners, and others of suitable age and physique, shall receive physical and recreational training during the period of exercise. To this end space, installations and equipment should be provided.

Medical services

22. (1) At every institution there shall be available the services of at least one qualified medical officer who should have some knowledge of psychiatry. The medical services should be organized in close relationship to the general health administration of the community or nation. They shall include a psychiatric service for the diagnosis and, in proper cases, the treatment of states of mental abnormality.
(2) Sick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals. Where hospital facilities are provided in an institution, their equipment, furnishings and pharmaceutical supplies shall be proper for the medical care and treatment of sick prisoners, and there shall be a staff of suitable trained officers.
(3) The services of a qualified dental officer shall be available to every prisoner.

23. (1) In women's institutions there shall be special accommodation for all necessary pre-natal and post-natal care and treatment. Arrangements shall be made wherever practicable for children to be torn in a hospital outside the institution. If a child is born in prison, this fact shall not be mentioned in the birth certificate.
(2) Where nursing infants are allowed to remain in the institution with their mothers, provision shall be made for a nursery staffed by qualified persons, where the infants shall be placed when they are not in the care of their mothers.

24. The medical officer shall see and examine every prisoner as soon as possible after his admission and thereafter as necessary, with a view particularly to the discovery of physical or mental illness and the taking of all necessary measures; the segregation of prisoners suspected of infectious or contagious conditions; the noting of physical or mental defects which might hamper rehabilitation, and the determination of the physical capacity of every prisoner for work.

25. (1) The medical officer shall have the care of the physical and mental health of the prisoners and should daily see all sick prisoners, all who complain of illness, and any prisoner to whom his attention is specially directed.
(2) The medical officer shall report to the director whenever he considers that a prisoner's physical or mental health has been or will be injuriously affected by continued imprisonment or by any condition of imprisonment.

26. (I) The medical officer shall regularly inspect and advise the director upon: (a) The quantity, quality, preparation and service of food;
(b) The hygiene and cleanliness of the institution and the prisoners;
(c) The sanitation, heating, lighting and ventilation of the institution;
(d) The suitability and cleanliness of the prisoners' clothing and bedding;
(e) The observance of the rules concerning physical education and sports, in cases where there is no technical personnel in charge of these activities.
(2) The director shall take into consideration the reports and advice that the medical officer submits according to rules 25 (2) and 26 and, in case he concurs with the recommendations made, shall take immediate steps to give effect to those recommendations; if they are not within his competence or if he does not concur with them, he shall immediately submit his own report and the advice of the medical officer to higher authority.

Discipline and punishment

27. Discipline and order shall be maintained with firmness, but with no more restriction than is necessary for safe custody and well-ordered community life.

28. (1) No prisoner shall be employed, in the service of the institution, in any disciplinary capacity.

(2) This rule shall not, however, impede the proper functioning of systems based on self- government, under which specified social, educational or sports activities or responsibilities are entrusted, under supervision, to prisoners who are formed into groups for the purposes of treatment.

29. The following shall always be determined by the law or by the regulation of the competent administrative authority:
(a) Conduct constituting a disciplinary offence;
(b) The types and duration of punishment which may be inflicted;
(c) The authority competent to impose such punishment.

30. (1) No prisoner shall be punished except in accordance with the terms of such law or regulation, and never twice for the same offence.
(2) No prisoner shall be punished unless he has been informed of the offence alleged against him and given a proper opportunity of presenting his defence. The competent authority shall conduct a thorough examination of the case.
(3) Where necessary and practicable the prisoner shall be allowed to make his defence through an interpreter.

31. Corporal punishment, punishment by placing in a dark cell, and all cruel, inhuman or degrading punishments shall be completely prohibited as punishments for disciplinary offences.

32. (1) Punishment by close confinement or reduction of diet shall never be inflicted unless the medical officer has examined the prisoner and certified in writing that he is fit to sustain it.
(2) The same shall apply to any other punishment that may be prejudicial to the physical or mental health of a prisoner. In no case may such punishment be contrary to or depart from the principle stated in rule 31.
(3) The medical officer shall visit daily prisoners undergoing such punishments and shall advise the director if he considers the termination or alteration of the punishment necessary on grounds of physical or mental health.

Instruments of restraint

33. Instruments of restraint, such as handcuffs, chains, irons and strait-jacket, shall never be applied as a punishment. Furthermore, chains or irons shall not be used as restraints. Other instruments of restraint shall not be used except in the following circumstances:
(a) As a precaution against escape during a transfer, provided that they shall be removed when the prisoner appears before a judicial or administrative authority;
(b) On medical grounds by direction of the medical officer; (c) By order of the director, if other methods of control fail, in order to prevent a prisoner from injuring himself or others or from damaging property; in such instances the director shall at once consult the medical officer and report to the higher administrative authority.

34. The patterns and manner of use of instruments of restraint shall be decided by the central prison administration. Such instruments must not be applied for any longer time than is strictly necessary.

Information to and complaints by prisoners

35. (1) Every prisoner on admission shall be provided with written information about the regulations governing the treatment of prisoners of his category, the disciplinary requirements of the institution, the authorized methods of seeking information and making complaints, and all such other matters as are necessary to enable him to understand both his rights and his obligations and to adapt himself to the life of the institution.
(2) If a prisoner is illiterate, the aforesaid information shall be conveyed to him orally.

36. (1) Every prisoner shall have the opportunity each week day of making requests or complaints to the director of the institution or the officer authorized to represent him.
(2) It shall be possible to make requests or complaints to the inspector of prisons during his inspection. The prisoner shall have the opportunity to talk to the inspector or to any other inspecting officer without the director or other members of the staff being present.
(3) Every prisoner shall be allowed to make a request or complaint, without censorship as to substance but in proper form, to the central prison administration, the judicial authority or other proper authorities through approved channels.
(4) Unless it is evidently frivolous or groundless, every request or complaint shall be

promptly dealt with and replied to without undue delay.

Contact with the outside world

37. Prisoners shall be allowed under necessary supervision to communicate with their family and reputable friends at regular intervals, both by correspondence and by receiving visits.

38. (1) Prisoners who are foreign nationals shall be allowed reasonable facilities to communicate with the diplomatic and consular representatives of the State to which they belong. (2) Prisoners who are nationals of States without diplomatic or consular representation in the country and refugees or stateless persons shall be allowed similar facilities to communicate with the diplomatic representative of the State which takes charge of their interests or any national or international authority whose task it is to protect such persons.

39. Prisoners shall be kept informed regularly of the more important items of news by the reading of newspapers, periodicals or special institutional publications, by hearing wireless transmissions, by lectures or by any similar means as authorized or controlled by the administration.

Books

40. Every institution shall have a library for the use of all categories of prisoners, adequately stocked with both recreational and instructional books, and prisoners shall be encouraged to make full use of it.

Religion

41. (1) If the institution contains a sufficient number of prisoners of the same religion, a qualified representative of that religion shall be appointed or approved. If the number of prisoners justifies it and conditions permit, the arrangement should be on a full-time basis.

(2) A qualified representative appointed or approved under paragraph (1) shall be allowed to hold regular services and to pay pastoral visits in private to prisoners of his religion at proper times.

(3) Access to a qualified representative of any religion shall not be refused to any

prisoner. On the other hand, if any prisoner should object to a visit of any religious representative, his attitude shall be fully respected.

42. So far as practicable, every prisoner shall be allowed to satisfy the needs of his religious life by attending the services provided in the institution and having in his possession the books of religious observance and instruction of his denomination.

Retention of prisoners' property

43. (1) All money, valuables, clothing and other effects belonging to a prisoner which under the regulations of the institution he is not allowed to retain shall on his admission to the institution be placed in safe custody. An inventory thereof shall be signed by the prisoner. Steps shall be taken to keep them in good condition. (2) On the release of the prisoner all such articles and money shall be returned to him except in so far as he has been authorized to spend money or send any such property out of the institution, or it has been found necessary on hygienic grounds to destroy any article of clothing. The prisoner shall sign a receipt for the articles and money returned to him.
(3) Any money or effects received for a prisoner from outside shall be treated in the same way.
(4) If a prisoner brings in any drugs or medicine, the medical officer shall decide what use shall be made of them.

Notification of death, illness, transfer, etc.

44. (1) Upon the death or serious illness of, or serious injury to a prisoner, or his removal to an institution for the treatment of mental affections, the director shall at once inform the spouse, if the prisoner is married, or the nearest relative and shall in any event inform any other person previously designated by the prisoner.
(2) A prisoner shall be informed at once of the death or serious illness of any near relative. In case of the critical illness of a near relative, the prisoner should be authorized, whenever circumstances allow, to go to his bedside either under escort or alone.
(3) Every prisoner shall have the right to inform at once his family of his imprisonment or his transfer to another institution.

Removal of prisoners

45. (1) When the prisoners are being removed to or from an institution, they shall be exposed to public view as little as possible, and proper safeguards shall be adopted to protect them from insult, curiosity and publicity in any form.
(2) The transport of prisoners in conveyances with inadequate ventilation or light, or in any way which would subject them to unnecessary physical hardship, shall be prohibited.
(3) The transport of prisoners shall be carried out at the expense of the administration and equal conditions shall obtain for all of them.
Institutional personnel

46. (1) The prison administration, shall provide for the careful selection of every grade of the personnel, since it is on their integrity, humanity, professional capacity and personal suitability for the work that the proper administration of the institutions depends.
(2) The prison administration shall constantly seek to awaken and maintain in the minds both of the personnel and of the public the conviction that this work is a social service of great importance, and to this end all appropriate means of informing the public should be used.
(3) To secure the foregoing ends, personnel shall be appointed on a full-time basis as professional prison officers and have civil service status with security of tenure subject only to good conduct, efficiency and physical fitness. Salaries shall be adequate to attract and retain suitable men and women; employment benefits and conditions of service shall be favourable in view of the exacting nature of the work.

47. (1) The personnel shall possess an adequate standard of education and intelligence.
(2) Before entering on duty, the personnel shall be given a course of training in their general and specific duties and be required to pass theoretical and practical tests.
(3) After entering on duty and during their career, the personnel shall maintain and improve their knowledge and professional capacity by attending courses of in-service training to be organized at suitable intervals.

48. All members of the personnel shall at all times so conduct themselves and perform their duties as to influence the prisoners for good by their example and to command their respect.

49. (1) So far as possible, the personnel shall include a sufficient number of specialists such as psychiatrists, psychologists, social workers, teachers and trade instructors.
(2) The services of social workers, teachers and trade instructors shall be secured on a permanent basis, without thereby excluding part-time or voluntary workers.

50. (1) The director of an institution should be adequately qualified for his task by character, administrative ability, suitable training and experience.
(2) He shall devote his entire time to his official duties and shall not be appointed on a part-time basis.
(3) He shall reside on the premises of the institution or in its immediate vicinity. (4) When two or more institutions are under the authority of one director, he shall visit each of them at frequent intervals. A responsible resident official shall be in charge of each of these institutions.

51. (1) The director, his deputy, and the majority of the other personnel of the institution shall be able to speak the language of the greatest number of prisoners, or a language understood by the greatest number of them.
(2) Whenever necessary, the services of an interpreter shall be used.

52. (1) In institutions which are large enough to require the services of one or more full-time medical officers, at least one of them shall reside on the premises of the institution or in its immediate vicinity.
(2) In other institutions the medical officer shall visit daily and shall reside near enough to be able to attend without delay in cases of urgency.

53. (1) In an institution for both men and women, the part of the institution set aside for women shall be under the authority of a responsible woman officer who shall have the custody of the keys of all that part of the institution.
(2) No male member of the staff shall enter the part of the institution set aside for women unless accompanied by a woman officer.

(3) Women prisoners shall be attended and supervised only by women officers. This does not, however, preclude male members of the staff, particularly doctors and teachers, from carrying out their professional duties in institutions or parts of institutions set aside for women.

54. (1) Officers of the institutions shall not, in their relations with the prisoners, use force except in self-defence or in cases of attempted escape, or active or passive physical resistance to an order based on law or regulations. Officers who have recourse to force must use no more than is strictly necessary and must report the incident immediately to the director of the institution.
(2) Prison officers shall be given special physical training to enable them to restrain aggressive prisoners.
(3) Except in special circumstances, staff performing duties which bring them into direct contact with prisoners should not be armed. Furthermore, staff should in no circumstances be provided with arms unless they have been trained in their use.
Inspection

55. There shall be a regular inspection of penal institutions and services by qualified and experienced inspectors appointed by a competent authority. Their task shall be in particular to ensure that these institutions are administered in accordance with existing laws and regulations and with a view to bringing about the objectives of penal and correctional services.

PART II
RULES APPLICABLE TO SPECIAL CATEGORIES A. PRISONERS UNDER SENTENCE
Guiding principles

56. The guiding principles hereafter are intended to show the spirit in which penal institutions should be administered and the purposes at which they should aim, in accordance with the declaration made under Preliminary Observation I of the present text.

57. Imprisonment and other measures which result in cutting off an offender from the outside world are afflictive by the very fact of taking from the person the right of self-

determination by depriving him of his liberty. Therefore the prison system shall not, except as incidental to justifiable segregation or the maintenance of discipline, aggravate the suffering inherent in such a situation.

58. The purpose and justification of a sentence of imprisonment or a similar measure deprivative of liberty is ultimately to protect society against crime. This end can only be achieved if the period of imprisonment is used to ensure, so far as possible, that upon his return to society the offender is not only willing but able to lead a law-abiding and self-supporting life.

59. To this end, the institution should utilize all the remedial, educational, moral, spiritual and other forces and forms of assistance which are appropriate and available, and should seek to apply them according to the individual treatment needs of the prisoners.

60. (1) The regime of the institution should seek to minimize any differences between prison life and life at liberty which tend to lessen the responsibility of the prisoners or the respect due to their dignity as human beings.
(2) Before the completion of the sentence, it is desirable that the necessary steps be taken to ensure for the prisoner a gradual return to life in society. This aim may be achieved, depending on the case, by a pre-release regime organized in the same institution or in another appropriate institution, or by release on trial under some kind of supervision which must not be entrusted to the police but should be combined with effective social aid.

61. The treatment of prisoners should emphasize not their exclusion from the community, but their continuing part in it. Community agencies should, therefore, be enlisted wherever possible to assist the staff of the institution in the task of social rehabilitation of the prisoners. There should be in connection with every institution social workers charged with the duty of maintaining and improving all desirable relations of a prisoner with his family and with valuable social agencies. Steps should be taken to safeguard, to the maximum extent compatible with the law and the sentence, the rights relating to civil interests, social security rights and other social benefits of prisoners.

62. The medical services of the institution shall seek to detect and shall treat any physical or mental illnesses or defects which may hamper a prisoner's rehabilitation. All necessary medical, surgical and psychiatric services shall be provided to that end.

63. (1) The fulfilment of these principles requires individualization of treatment and for this purpose a flexible system of classifying prisoners in groups; it is therefore desirable that such groups should be distributed in separate institutions suitable for the treatment of each group.
(2) These institutions need not provide the same degree of security for every group. It is desirable to provide varying degrees of security according to the needs of different groups. Open institutions, by the very fact that they provide no physical security against escape but rely on the self-discipline of the inmates, provide the conditions most favourable to rehabilitation for carefully selected prisoners.
(3) It is desirable that the number of prisoners in closed institutions should not be so large that the individualization of treatment is hindered. In some countries it is considered that the population of such institutions should not exceed five hundred. In open institutions the population should be as small as possible.
(4) On the other hand, it is undesirable to maintain prisons which are so small that proper facilities cannot be provided.

64. The duty of society does not end with a prisoner's release. There should, therefore, be governmental or private agencies capable of lending the released prisoner efficient after-care directed towards the lessening of prejudice against him and towards his social rehabilitation.
Treatment

65. The treatment of persons sentenced to imprisonment or a similar measure shall have as its purpose, so far as the length of the sentence permits, to establish in them the will to lead law- abiding and self-supporting lives after their release and to fit them to do so. The treatment shall be such as will encourage their self-respect and develop their sense of responsibility.

66. (1) To these ends, all appropriate means shall be used, including religious care in the countries where this is possible, education, vocational guidance and training, social casework, employment counselling, physical development and strengthening of

moral character, in accordance with the individual needs of each prisoner, taking account of his social and criminal history, his physical and mental capacities and aptitudes, his personal temperament, the length of his sentence and his prospects after release.

(2) For every prisoner with a sentence of suitable length, the director shall receive, as soon as possible after his admission, full reports on all the matters referred to in the foregoing paragraph. Such reports shall always include a report by a medical officer, wherever possible qualified in psychiatry, on the physical and mental condition of the prisoner.

(3) The reports and other relevant documents shall be placed in an individual file. This file shall be kept up to date and classified in such a way that it can be consulted by the responsible personnel whenever the need arises.

Classification and individualization

67. The purposes of classification shall be:

(a) To separate from others those prisoners who, by reason of their criminal records or bad characters, are likely to exercise a bad influence;

(b) To divide the prisoners into classes in order to facilitate their treatment with a view to their social rehabilitation.

68. So far as possible separate institutions or separate sections of an institution shall be used for the treatment of the different classes of prisoners.

69. As soon as possible after admission and after a study of the personality of each prisoner with a sentence of suitable length, a programme of treatment shall be prepared for him in the light of the knowledge obtained about his individual needs, his capacities and dispositions.

Privileges

70. Systems of privileges appropriate for the different classes of prisoners and the different methods of treatment shall be established at every institution, in order to encourage good conduct, develop a sense of responsibility and secure the interest and co-operation of the prisoners in their treatment.

Work

71. (1) Prison labour must not be of an afflictive nature.
(2) All prisoners under sentence shall be required to work, subject to their physical and mental fitness as determined by the medical officer.
(3) Sufficient work of a useful nature shall be provided to keep prisoners actively employed for a normal working day.
(4) So far as possible the work provided shall be such as will maintain or increase the prisoners, ability to earn an honest living after release.
(5) Vocational training in useful trades shall be provided for prisoners able to profit thereby and especially for young prisoners.
(6) Within the limits compatible with proper vocational selection and with the requirements of institutional administration and discipline, the prisoners shall be able to choose the type of work they wish to perform.

72. (1) The organization and methods of work in the institutions shall resemble as closely as possible those of similar work outside institutions, so as to prepare prisoners for the conditions of normal occupational life.
(2) The interests of the prisoners and of their vocational training, however, must not be subordinated to the purpose of making a financial profit from an industry in the institution.

73. (1) Preferably institutional industries and farms should be operated directly by the administration and not by private contractors.
(2) Where prisoners are employed in work not controlled by the administration, they shall always be under the supervision of the institution's personnel. Unless the work is for other departments of the government the full normal wages for such work shall be paid to the administration by the persons to whom the labour is supplied, account being taken of the output of the prisoners.

74. (1) The precautions laid down to protect the safety and health of free workmen shall be equally observed in institutions.
(2) Provision shall be made to indemnify prisoners against industrial injury, including occupational disease, on terms not less favourable than those extended by law to free workmen.

75. (1) The maximum daily and weekly working hours of the prisoners shall be fixed by law or by administrative regulation, taking into account local rules or custom in regard to the employment of free workmen.
(2) The hours so fixed shall leave one rest day a week and sufficient time for education and other activities required as part of the treatment and rehabilitation of the prisoners.

76. (1) There shall be a system of equitable remuneration of the work of prisoners.
(2) Under the system prisoners shall be allowed to spend at least a part of their earnings on approved articles for their own use and to send a part of their earnings to their family.
(3) The system should also provide that a part of the earnings should be set aside by the administration so as to constitute a savings fund to be handed over to the prisoner on his release.

Education and recreation

77. (1) Provision shall be made for the further education of all prisoners capable of profiting thereby, including religious instruction in the countries where this is possible. The education of illiterates and young prisoners shall be compulsory and special attention shall be paid to it by the administration.
(2) So far as practicable, the education of prisoners shall be integrated with the educational system of the country so that after their release they may continue their education without difficulty. 78. Recreational and cultural activities shall be provided in all institutions for the benefit of the mental and physical health of prisoners.

Social relations and after-care

79. Special attention shall be paid to the maintenance and improvement of such relations between a prisoner and his family as are desirable in the best interests of both.

80. From the beginning of a prisoner's sentence consideration shall be given to his future after release and he shall be encouraged and assisted to maintain or establish such relations with persons or agencies outside the institution as may promote the best

interests of his family and his own social rehabilitation.

81. (1) Services and agencies, governmental or otherwise, which assist released prisoners to re- establish themselves in society shall ensure, so far as is possible and necessary, that released prisoners be provided with appropriate documents and identification papers, have suitable homes and work to go to, are suitably and adequately clothed having regard to the climate and season, and have sufficient means to reach their destination and maintain themselves in the period immediately following their release.
(2) The approved representatives of such agencies shall have all necessary access to the institution and to prisoners and shall be taken into consultation as to the future of a prisoner from the beginning of his sentence.
(3) It is desirable that the activities of such agencies shall be centralized or co-ordinated as far as possible in order to secure the best use of their efforts.

B. INSANE AND MENTALLY ABNORMAL PRISONERS

82. (1) Persons who are found to be insane shall not be detained in prisons and arrangements shall be made to remove them to mental institutions as soon as possible.
(2) Prisoners who suffer from other mental diseases or abnormalities shall be observed and treated in specialized institutions under medical management.
(3) During their stay in a prison, such prisoners shall be placed under the special supervision of a medical officer.
(4) The medical or psychiatric service of the penal institutions shall provide for the psychiatric treatment of all other prisoners who are in need of such treatment.

83. It is desirable that steps should be taken, by arrangement with the appropriate agencies, to ensure if necessary the continuation of psychiatric treatment after release and the provision of social-psychiatric after-care.

C. PRISONERS UNDER ARREST OR AWAITING TRIAL

84. (1) Persons arrested or imprisoned by reason of a criminal charge against them, who are detained either in police custody or in prison custody (jail) but have not yet been tried and sentenced, will be referred to as "untried prisoners,' hereinafter in these rules.

(2) Unconvicted prisoners are presumed to be innocent and shall be treated as such.
(3) Without prejudice to legal rules for the protection of individual liberty or prescribing the procedure to be observed in respect of untried prisoners, these prisoners shall benefit by a special regime which is described in the following rules in its essential requirements only.

85. (1) Untried prisoners shall be kept separate from convicted prisoners.
(2) Young untried prisoners shall be kept separate from adults and shall in principle be detained in separate institutions.

86. Untried prisoners shall sleep singly in separate rooms, with the reservation of different local custom in respect of the climate.

87. Within the limits compatible with the good order of the institution, untried prisoners may, if they so desire, have their food procured at their own expense from the outside, either through the administration or through their family or friends. Otherwise, the administration shall provide their food.

88. (I) An untried prisoner shall be allowed to wear his own clothing if it is clean and suitable. (2) If he wears prison dress, it shall be different from that supplied to convicted prisoners.

89. An untried prisoner shall always be offered opportunity to work, but shall not be required to work. If he chooses to work, he shall be paid for it.

90. An untried prisoner shall be allowed to procure at his own expense or at the expense of a third party such books, newspapers, writing materials and other means of occupation as are compatible with the interests of the administration of justice and the security and good order of the institution.

91. An untried prisoner shall be allowed to be visited and treated by his own doctor or dentist if there is reasonable ground for his application and he is able to pay any expenses incurred.

92. An untried prisoner shall be allowed to inform immediately his family of his

detention and shall be given all reasonable facilities for communicating with his family and friends, and for

receiving visits from them, subject only to restrictions and supervision as are necessary in the interests of the administration of justice and of the security and good order of the institution.

93. For the purposes of his defence, an untried prisoner shall be allowed to apply for free legal aid where such aid is available, and to receive visits from his legal adviser with a view to his defence and to prepare and hand to him confidential instructions. For these purposes, he shall if he so desires be supplied with writing material. Interviews between the prisoner and his legal adviser may be within sight but not within the hearing of a police or institution official.

D. CIVIL PRISONERS

94. In countries where the law perm its imprisonment for debt, or by order of a court under any other non-criminal process, persons so imprisoned shall not be subjected to any greater restriction or severity than is necessary to ensure safe custody and good order. Their treatment shall be not less favourable than that of untried prisoners, with the reservation, however, that they may possibly be required to work.

E. PERSONS ARRESTED OR DETAINED WITHOUT CHARGE

95. Without prejudice to the provisions of article 9 of the International Covenant on Civil and Political Rights, persons arrested or imprisoned without charge shall be accorded the same protection as that accorded under part I and part II, section C. Relevant provisions of part II, section A, shall likewise be applicable where their application may be conducive to the benefit of this special group of persons in custody, provided that no measures shall be taken implying that re-education or rehabilitation is in any way appropriate to persons not convicted of any criminal offence.

附件六

Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment

Adopted by General Assembly resolution 43/173 of 9 December 1988

Scope of the Body of Principles

These principles apply for the protection of all persons under any form of detention or imprisonment.

Use of Terms

For the purposes of the Body of Principles:

(a) "Arrest" means the act of apprehending a person for the alleged commission of an offence or by the action of an authority;

(b) "Detained person" means any person deprived of personal liberty except as a result of conviction for an offence;

(c) "Imprisoned person" means any person deprived of personal liberty as a result of conviction for an offence;

(d) "Detention" means the condition of detained persons as defined above;

(e) "Imprisonment" means the condition of imprisoned persons as defined above;

(f) The words "a judicial or other authority" means a judicial or other authority under the law whose status and tenure should afford the strongest possible guarantees of competence, impartiality and independence.

Principle 1

All persons under any form of detention or imprisonment shall be treated in a humane manner and with respect for the inherent dignity of the human person.

Principle 2

Arrest, detention or imprisonment shall only be carried out strictly in accordance with the provisions of the law and by competent officials or persons authorized for that purpose.

Principle 3

There shall be no restriction upon or derogation from any of the human rights of persons under any form of detention or imprisonment recognized or existing in any State pursuant to law, conventions, regulations or custom on the pretext that this Body of Principles does not recognize such rights or that it recognizes them to a lesser extent.

Principle 4

Any form of detention or imprisonment and all measures affecting the human rights of a person under any form of detention or imprisonment shall be ordered by, or be subject to the effective control of, a judicial or other authority.

Principle 5

1. These principles shall be applied to all persons within the territory of any given State, without distinction of any kind, such as race, colour, sex, language, religion or religious belief, political or other opinion, national, ethnic or social origin, property, birth or other status.
2. Measures applied under the law and designed solely to protect the rights and special status of women, especially pregnant women and nursing mothers, children and juveniles, aged, sick or handicapped persons shall not be deemed to be discriminatory. The need for, and the application of, such measures shall always be subject to review by a judicial or other authority.

Principle 6

No person under any form of detention or imprisonment shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. 1 No circumstance whatever may be invoked as a justification for torture or other cruel, inhuman or degrading treatment or punishment.

Principle 7

1. States should prohibit by law any act contrary to the rights and duties contained in these principles, make any such act subject to appropriate sanctions and conduct impartial investigations upon complaints.
2. Officials who have reason to believe that a violation of this Body of Principles has occurred or is about to occur shall report the matter to their superior authorities and, where necessary, to other appropriate authorities or organs vested with reviewing or

remedial powers.
3. Any other person who has ground to believe that a violation of this Body of Principles has occurred or is about to occur shall have the right to report the matter to the superiors of the officials involved as well as to other appropriate authorities or organs vested with reviewing or remedial powers.

Principle 8
Persons in detention shall be subject to treatment appropriate to their unconvicted status. Accordingly, they shall, whenever possible, be kept separate from imprisoned persons.

Principle 9
The authorities which arrest a person, keep him under detention or investigate the case shall exercise only the powers granted to them under the law and the exercise of these powers shall be subject to recourse to a judicial or other authority.

Principle 10
Anyone who is arrested shall be informed at the time of his arrest of the reason for his arrest and shall be promptly informed of any charges against him.

Principle 11
1. A person shall not be kept in detention without being given an effective opportunity to be heard promptly by a judicial or other authority. A detained person shall have the right to defend himself or to be assisted by counsel as prescribed by law.
2. A detained person and his counsel, if any, shall receive prompt and full communication of any order of detention, together with the reasons therefor.
3. A judicial or other authority shall be empowered to review as appropriate the continuance of detention.

Principle 12
1. There shall be duly recorded:
(a) The reasons for the arrest;
(b) The time of the arrest and the taking of the arrested person to a place of custody as well as that of his first appearance before a judicial or other authority;
(c) The identity of the law enforcement officials concerned;

(d) Precise information concerning the place of custody.
2. Such records shall be communicated to the detained person, or his counsel, if any, in the form prescribed by law.

Principle 13
Any person shall, at the moment of arrest and at the commencement of detention or imprisonment, or promptly thereafter, be provided by the authority responsible for his arrest, detention or imprisonment, respectively with information on and an explanation of his rights and how to avail himself of such rights.

Principle 14
A person who does not adequately understand or speak the language used by the authorities responsible for his arrest, detention or imprisonment is entitled to receive promptly in a language which he understands the information referred to in principle 10, principle 11, paragraph 2, principle 12, paragraph 1, and principle 13 and to have the assistance, free of charge, if necessary, of an interpreter in connection with legal proceedings subsequent to his arrest.

Principle 15
Notwithstanding the exceptions contained in principle 16, paragraph 4, and principle 18, paragraph 3, communication of the detained or imprisoned person with the outside world, and in particular his family or counsel, shall not be denied for more than a matter of days.

Principle 16
1. Promptly after arrest and after each transfer from one place of detention or imprisonment to another, a detained or imprisoned person shall be entitled to notify or to require the competent authority to notify members of his family or other appropriate persons of his choice of his arrest, detention or imprisonment or of the transfer and of the place where he is kept in custody.
2. If a detained or imprisoned person is a foreigner, he shall also be promptly informed of his right to communicate by appropriate means with a consular post or the diplomatic mission of the State of which he is a national or which is otherwise entitled to receive such communication in accordance with international law or with the representative of the competent international organization, if he is a refugee or is

otherwise under the protection of an intergovernmental organization.
3. If a detained or imprisoned person is a juvenile or is incapable of understanding his entitlement, the competent authority shall on its own initiative undertake the notification referred to in the present principle. Special attention shall be given to notifying parents or guardians.
4. Any notification referred to in the present principle shall be made or permitted to be made without delay. The competent authority may however delay a notification for a reasonable period where exceptional needs of the investigation so require.

Principle 17
1. A detained person shall be entitled to have the assistance of a legal counsel. He shall be informed of his right by the competent authority promptly after arrest and shall be provided with reasonable facilities for exercising it.
2. If a detained person does not have a legal counsel of his own choice, he shall be entitled to have a legal counsel assigned to him by a judicial or other authority in all cases where the interests of justice so require and without payment by him if he does not have sufficient means to pay.

Principle 18
1. A detained or imprisoned person shall be entitled to communicate and consult with his legal counsel.
2. A detained or imprisoned person shall be allowed adequate time and facilities for consultation with his legal counsel.
3. The right of a detained or imprisoned person to be visited by and to consult and communicate, without delay or censorship and in full confidentiality, with his legal counsel may not be suspended or restricted save in exceptional circumstances, to be specified by law or lawful regulations, when it is considered indispensable by a judicial or other authority in order to maintain security and good order.
4. Interviews between a detained or imprisoned person and his legal counsel may be within sight, but not within the hearing, of a law enforcement official.
5. Communications between a detained or imprisoned person and his legal counsel mentioned in the present principle shall be inadmissible as evidence against the detained or imprisoned person unless they are connected with a continuing or contemplated crime.

Principle 19

A detained or imprisoned person shall have the right to be visited by and to correspond with, in particular, members of his family and shall be given adequate opportunity to communicate with the outside world, subject to reasonable conditions and restrictions as specified by law or lawful regulations.

Principle 20

If a detained or imprisoned person so requests, he shall if possible be kept in a place of detention or imprisonment reasonably near his usual place of residence.

Principle 21

1. It shall be prohibited to take undue advantage of the situation of a detained or imprisoned person for the purpose of compelling him to confess, to incriminate himself otherwise or to testify against any other person.
2. No detained person while being interrogated shall be subject to violence, threats or methods of interrogation which impair his capacity of decision or his judgement.

Principle 22

No detained or imprisoned person shall, even with his consent, be subjected to any medical or scientific experimentation which may be detrimental to his health.

Principle 23

1. The duration of any interrogation of a detained or imprisoned person and of the intervals between interrogations as well as the identity of the officials who conducted the interrogations and other persons present shall be recorded and certified in such form as may be prescribed by law.
2. A detained or imprisoned person, or his counsel when provided by law, shall have access to the information described in paragraph 1 of the present principle.

Principle 24

A proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission to the place of detention or imprisonment, and thereafter medical care and treatment shall be provided whenever necessary. This care and treatment shall be provided free of charge.

Principle 25

A detained or imprisoned person or his counsel shall, subject only to reasonable conditions to ensure security and good order in the place of detention or imprisonment, have the right to request or petition a judicial or other authority for a second medical examination or opinion.

Principle 26

The fact that a detained or imprisoned person underwent a medical examination, the name of the physician and the results of such an examination shall be duly recorded. Access to such records shall be ensured. Modalities therefore shall be in accordance with relevant rules of domestic law.

Principle 27

Non-compliance with these principles in obtaining evidence shall be taken into account in determining the admissibility of such evidence against a detained or imprisoned person.

Principle 28

A detained or imprisoned person shall have the right to obtain within the limits of available resources, if from public sources, reasonable quantities of educational, cultural and informational material, subject to reasonable conditions to ensure security and good order in the place of detention or imprisonment.

Principle 29

1. In order to supervise the strict observance of relevant laws and regulations, places of detention shall be visited regularly by qualified and experienced persons appointed by, and responsible to, a competent authority distinct from the authority directly in charge of the administration of the place of detention or imprisonment.
2. A detained or imprisoned person shall have the right to communicate freely and in full confidentiality with the persons who visit the places of detention or imprisonment in accordance with paragraph 1 of the present principle, subject to reasonable conditions to ensure security and good order in such places.

Principle 30

1. The types of conduct of the detained or imprisoned person that constitute

disciplinary offences during detention or imprisonment, the description and duration of disciplinary punishment that may be inflicted and the authorities competent to impose such punishment shall be specified by law or lawful regulations and duly published.
2. A detained or imprisoned person shall have the right to be heard before disciplinary action is taken. He shall have the right to bring such action to higher authorities for review.

Principle 31
The appropriate authorities shall endeavour to ensure, according to domestic law, assistance when needed to dependent and, in particular, minor members of the families of detained or imprisoned persons and shall devote a particular measure of care to the appropriate custody of children left with out supervision.

Principle 32
1. A detained person or his counsel shall be entitled at any time to take proceedings according to domestic law before a judicial or other authority to challenge the lawfulness of his detention in order to obtain his release without delay, if it is unlawful.
2. The proceedings referred to in paragraph 1 of the present principle shall be simple and expeditious and at no cost for detained persons without adequate means. The detaining authority shall produce without unreasonable delay the detained person before the reviewing authority.

Principle 33
1. A detained or imprisoned person or his counsel shall have the right to make a request or complaint regarding his treatment, in particular in case of torture or other cruel, inhuman or degrading treatment, to the authorities responsible for the administration of the place of detention and to higher authorities and, when necessary, to appropriate authorities vested with reviewing or remedial powers.
2. In those cases where neither the detained or imprisoned person nor his counsel has the possibility to exercise his rights under paragraph 1 of the present principle, a member of the family of the detained or imprisoned person or any other person who has knowledge of the case may exercise such rights.
3. Confidentiality concerning the request or complaint shall be maintained if so

requested by the complainant.
4. Every request or complaint shall be promptly dealt with and replied to without undue delay. If the request or complaint is rejected or, in case of inordinate delay, the complainant shall be entitled to bring it before a judicial or other authority. Neither the detained or imprisoned person nor any complainant under paragraph 1 of the present principle shall suffer prejudice for making a request or complaint.

Principle 34
Whenever the death or disappearance of a detained or imprisoned person occurs during his detention or imprisonment, an inquiry into the cause of death or disappearance shall be held by a judicial or other authority, either on its own motion or at the instance of a member of the family of such a person or any person who has knowledge of the case. When circumstances so warrant, such an inquiry shall be held on the same procedural basis whenever the death or disappearance occurs shortly after the termination of the detention or imprisonment. The findings of such inquiry or a report thereon shall be made available upon request, unless doing so would jeopardize an ongoing criminal investigation.

Principle 35
1. Damage incurred because of acts or omissions by a public official contrary to the rights contained in these principles shall be compensated according to the applicable rules or liability provided by domestic law.
2. Information required to be recorded under these principles shall be available in accordance with procedures provided by domestic law for use in claiming compensation under the present principle.

Principle 36
1. A detained person suspected of or charged with a criminal offence shall be presumed innocent and shall be treated as such until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.
2. The arrest or detention of such a person pending investigation and trial shall be carried out only for the purposes of the administration of justice on grounds and under conditions and procedures specified by law. The imposition of restrictions upon such a person which are not strictly required for the purpose of the detention or to prevent hindrance to the process of investigation or the administration of justice, or for the

maintenance of security and good order in the place of detention shall be forbidden.

Principle 37

A person detained on a criminal charge shall be brought before a judicial or other authority provided by law promptly after his arrest. Such authority shall decide without delay upon the lawfulness and necessity of detention. No person may be kept under detention pending investigation or trial except upon the written order of such an authority. A detained person shall, when brought before such an authority, have the right to make a statement on the treatment received by him while in custody.

Principle 38

A person detained on a criminal charge shall be entitled to trial within a reasonable time or to release pending trial.

Principle 39

Except in special cases provided for by law, a person detained on a criminal charge shall be entitled, unless a judicial or other authority decides otherwise in the interest of the administration of justice, to release pending trial subject to the conditions that may be imposed in accordance with the law. Such authority shall keep the necessity of detention under review.

General clause

Nothing in this Body of Principles shall be construed as restricting or derogating from any right defined in the International Covenant on Civil and Political Rights.

附件七

Basic Principles for the Treatment of Prisoners

Adopted and proclaimed by General Assembly resolution 45/111 of 14 December 1990

1. All prisoners shall be treated with the respect due to their inherent dignity and value as human beings.

2. There shall be no discrimination on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

3. It is, however, desirable to respect the religious beliefs and cultural precepts of the group to which prisoners belong, whenever local conditions so require.

4. The responsibility of prisons for the custody of prisoners and for the protection of society against crime shall be discharged in keeping with a State's other social objectives and its fundamental responsibilities for promoting the well-being and development of all members of society.

5. Except for those limitations that are demonstrably necessitated by the fact of incarceration, all prisoners shall retain the human rights and fundamental freedoms set out in the Universal Declaration of Human Rights, and, where the State concerned is a party, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights and the Optional Protocol thereto, as well as such other rights as are set out in other United Nations covenants.

6. All prisoners shall have the right to take part in cultural activities and education aimed at the full development of the human personality.

7. Efforts addressed to the abolition of solitary confinement as a punishment, or to the restriction of its use, should be undertaken and encouraged.

8. Conditions shall be created enabling prisoners to undertake meaningful remunerated employment which will facilitate their reintegration into the country's

labour market and permit them to contribute to their own financial support and to that of their families.

9. Prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation.

10. With the participation and help of the community and social institutions, and with due regard to the interests of victims, favourable conditions shall be created for the reintegration of the ex-prisoner into society under the best possible conditions.

11. The above Principles shall be applied impartially.

附件八

Basic Principles on the Use of Force and Firearms by Law Enforcement Officials

Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba,
27 August to 7 September 1990

Whereas the work of law enforcement officials 1 is a social service of great importance and there is, therefore, a need to maintain and, whenever necessary, to improve the working conditions and status of these officials,

Whereas a threat to the life and safety of law enforcement officials must be seen as a threat to the stability of society as a whole,

Whereas law enforcement officials have a vital role in the protection of the right to life, liberty and security of the person, as guaranteed in the Universal Declaration of Human Rights and reaffirmed in the International Covenant on Civil and Political Rights,

Whereas the Standard Minimum Rules for the Treatment of Prisoners provide for the circumstances in which prison officials may use force in the course of their duties,

Whereas article 3 of the Code of Conduct for Law Enforcement Officials provides that law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty,

Whereas the preparatory meeting for the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Varenna, Italy, agreed on elements to be considered in the course of further work on restraints on the use of force and firearms by law enforcement officials,

Whereas the Seventh Congress, in its resolution 14, inter alia , emphasizes that the use of force and firearms by law enforcement officials should be commensurate with due respect for human rights,

Whereas the Economic and Social Council, in its resolution 1986/10, section IX, of 21 May 1986, invited Member States to pay particular attention in the implementation of the Code to the use of force and firearms by law enforcement officials, and the General Assembly, in its resolution 41/149 of 4 December 1986, inter alia , welcomed this recommendation made by the Council,

Whereas it is appropriate that, with due regard to their personal safety, consideration be given to the role of law enforcement officials in relation to the administration of justice, to the protection of the right to life, liberty and security of the person, to their responsibility to maintain public safety and social peace and to the importance of their qualifications, training and conduct,

The basic principles set forth below, which have been formulated to assist Member States in their task of ensuring and promoting the proper role of law enforcement officials, should be taken into account and respected by Governments within the framework of their national legislation and practice, and be brought to the attention of law enforcement officials as well as other persons, such as judges, prosecutors, lawyers, members of the executive branch and the legislature, and the public.

General provisions

1. Governments and law enforcement agencies shall adopt and implement rules and regulations on the use of force and firearms against persons by law enforcement officials. In developing such rules and regulations, Governments and law enforcement agencies shall keep the ethical issues associated with the use of force and firearms constantly under review.

2. Governments and law enforcement agencies should develop a range of means as broad as possible and equip law enforcement officials with various types of weapons and ammunition that would allow for a differentiated use of force and firearms. These should include the development of non-lethal incapacitating weapons for use in appropriate situations, with a view to increasingly restraining the application of means capable of causing death or injury to persons. For the same purpose, it should also be possible for law enforcement officials to be equipped with self-defensive equipment such as shields, helmets, bullet-proof vests and bullet-proof means of transportation,

in order to decrease the need to use weapons of any kind.

3. The development and deployment of non-lethal incapacitating weapons should be carefully evaluated in order to minimize the risk of endangering uninvolved persons, and the use of such weapons should be carefully controlled.

4. Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result.

5. Whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall:

(a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved;

(b) Minimize damage and injury, and respect and preserve human life;

(c) Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment;

(d) Ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment.

6. Where injury or death is caused by the use of force and firearms by law enforcement officials, they shall report the incident promptly to their superiors, in accordance with principle 22.

7. Governments shall ensure that arbitrary or abusive use of force and firearms by law enforcement officials is punished as a criminal offence under their law.

8. Exceptional circumstances such as internal political instability or any other public emergency may not be invoked to justify any departure from these basic principles.

Special provisions

9. Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.

10. In the circumstances provided for under principle 9, law enforcement officials shall identify themselves as such and give a clear warning of their intent to use firearms, with sufficient time for the warning to be observed, unless to do so would unduly place the law enforcement officials at risk or would create a risk of death or serious harm to other persons, or would be clearly inappropriate or pointless in the circumstances of the incident.

11. Rules and regulations on the use of firearms by law enforcement officials should include guidelines that:

(a) Specify the circumstances under which law enforcement officials are authorized to carry firearms and prescribe the types of firearms and ammunition permitted;

(b) Ensure that firearms are used only in appropriate circumstances and in a manner likely to decrease the risk of unnecessary harm;

(c) Prohibit the use of those firearms and ammunition that cause unwarranted injury or present an unwarranted risk;

(d) Regulate the control, storage and issuing of firearms, including procedures for ensuring that law enforcement officials are accountable for the firearms and ammunition issued to them;

(e) Provide for warnings to be given, if appropriate, when firearms are to be discharged;

(f) Provide for a system of reporting whenever law enforcement officials use firearms in the performance of their duty.

Policing unlawful assemblies

12. As everyone is allowed to participate in lawful and peaceful assemblies, in accordance with the principles embodied in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, Governments and law enforcement agencies and officials shall recognize that force and firearms may be used only in accordance with principles 13 and 14.

13. In the dispersal of assemblies that are unlawful but non-violent, law enforcement officials shall avoid the use of force or, where that is not practicable, shall restrict such force to the minimum extent necessary.

14. In the dispersal of violent assemblies, law enforcement officials may use firearms only when less dangerous means are not practicable and only to the minimum extent necessary. Law enforcement officials shall not use firearms in such cases, except under the conditions stipulated in principle 9.

Policing persons in custody or detention

15. Law enforcement officials, in their relations with persons in custody or detention, shall not use force, except when strictly necessary for the maintenance of security and order within the institution, or when personal safety is threatened.

16. Law enforcement officials, in their relations with persons in custody or detention, shall not use firearms, except in self-defence or in the defence of others against the immediate threat of death or serious injury, or when strictly necessary to prevent the escape of a person in custody or detention presenting the danger referred to in principle 9.

17. The preceding principles are without prejudice to the rights, duties and responsibilities of prison officials, as set out in the Standard Minimum Rules for the

Treatment of Prisoners, particularly rules 33, 34 and 54.

Qualifications, training and counselling

18. Governments and law enforcement agencies shall ensure that all law enforcement officials are selected by proper screening procedures, have appropriate moral, psychological and physical qualities for the effective exercise of their functions and receive continuous and thorough professional training. Their continued fitness to perform these functions should be subject to periodic review.

19. Governments and law enforcement agencies shall ensure that all law enforcement officials are provided with training and are tested in accordance with appropriate proficiency standards in the use of force. Those law enforcement officials who are required to carry firearms should be authorized to do so only upon completion of special training in their use.

20. In the training of law enforcement officials, Governments and law enforcement agencies shall give special attention to issues of police ethics and human rights, especially in the investigative process, to alternatives to the use of force and firearms, including the peaceful settlement of conflicts, the understanding of crowd behaviour, and the methods of persuasion, negotiation and mediation, as well as to technical means, with a view to limiting the use of force and firearms. Law enforcement agencies should review their training programmes and operational procedures in the light of particular incidents.

21. Governments and law enforcement agencies shall make stress counselling available to law enforcement officials who are involved in situations where force and firearms are used.

Reporting and review procedures

22. Governments and law enforcement agencies shall establish effective reporting and review procedures for all incidents referred to in principles 6 and 11 (f). For incidents reported pursuant to these principles, Governments and law enforcement agencies shall ensure that an effective review process is available and that independent

administrative or prosecutorial authorities are in a position to exercise jurisdiction in appropriate circumstances. In cases of death and serious injury or other grave consequences, a detailed report shall be sent promptly to the competent authorities responsible for administrative review and judicial control.

23. Persons affected by the use of force and firearms or their legal representatives shall have access to an independent process, including a judicial process. In the event of the death of such persons, this provision shall apply to their dependants accordingly.

24. Governments and law enforcement agencies shall ensure that superior officers are held responsible if they know, or should have known, that law enforcement officials under their command are resorting, or have resorted, to the unlawful use of force and firearms, and they did not take all measures in their power to prevent, suppress or report such use.

25. Governments and law enforcement agencies shall ensure that no criminal or disciplinary sanction is imposed on law enforcement officials who, in compliance with the Code of Conduct for Law Enforcement Officials and these basic principles, refuse to carry out an order to use force and firearms, or who report such use by other officials.

26. Obedience to superior orders shall be no defence if law enforcement officials knew that an order to use force and firearms resulting in the death or serious injury of a person was manifestly unlawful and had a reasonable opportunity to refuse to follow it. In any case, responsibility also rests on the superiors who gave the unlawful orders.

附件九

The Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions

Prevention

1. Governments shall prohibit by law all extra-legal, arbitrary and summary executions and shall ensure that any such executions are recognized as offences under their criminal laws, and are punishable by appropriate penalties which take into account the seriousness of such offences. Exceptional circumstances including a state of war or threat of war, internal political instability or any other public emergency may not be invoked as a justification of such executions. Such executions shall not be carried out under any circumstances including, but not limited to, situations of internal armed conflict, excessive or illegal use of force by a public official or other person acting in an official capacity or by a person acting at the instigation, or with the consent or acquiescence of such person, and situations in which deaths occur in custody. This prohibition shall prevail over decrees issued by governmental authority.

2. In order to prevent extra-legal, arbitrary and summary executions, Governments shall ensure strict control, including a clear chain of command over all officials responsible for apprehension, arrest, detention, custody and imprisonment, as well as those officials authorized by law to use force and firearms.

3. Governments shall prohibit orders from superior officers or public authorities authorizing or inciting other persons to carry out any such extra-legal, arbitrary or summary executions. All persons shall have the right and the duty to defy such orders. Training of law enforcement officials shall emphasize the above provisions.

4. Effective protection through judicial or other means shall be guaranteed to individuals and groups who are in danger of extra-legal, arbitrary or summary executions, including those who receive death threats.

5. No one shall be involuntarily returned or extradited to a country where there are substantial grounds for believing that he or she may become a victim of extra-legal, arbitrary or summary execution in that country.

6. Governments shall ensure that persons deprived of their liberty are held in officially recognized places of custody, and that accurate information on their custody and whereabouts, including transfers, is made promptly available to their relatives and lawyer or other persons of confidence.

7. Qualified inspectors, including medical personnel, or an equivalent independent authority, shall conduct inspections in places of custody on a regular basis, and be empowered to undertake unannounced inspections on their own initiative, with full guarantees of independence in the exercise of this function. The inspectors shall have unrestricted access to all persons in such places of custody, as well as to all their records.

8. Governments shall make every effort to prevent extra-legal, arbitrary and summary executions through measures such as diplomatic intercession, improved access of complainants to intergovernmental and judicial bodies, and public denunciation. Intergovernmental mechanisms shall be used to investigate reports of any such executions and to take effective action against such practices. Governments, including those of countries where extra-legal, arbitrary and summary executions are reasonably suspected to occur, shall cooperate fully in international investigations on the subject. Investigation

9. There shall be thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances. Governments shall maintain investigative offices and procedures to undertake such inquiries. The purpose of the investigation shall be to determine the cause, manner and time of death, the person responsible, and any pattern or practice which may have brought about that death. It shall include an adequate autopsy, collection and analysis of all physical and documentary evidence and statements from witnesses. The investigation shall distinguish between natural death, accidental death, suicide and homicide.

10. The investigative authority shall have the power to obtain all the information necessary to the inquiry. Those persons conducting the investigation shall have at

their disposal all the necessary budgetary and technical resources for effective investigation. They shall also have the authority to oblige officials allegedly involved in any such executions to appear and testify. The same shall apply to any witness. To this end, they shall be entitled to issue summonses to witnesses, including the officials allegedly involved and to demand the production of evidence.

11. In cases in which the established investigative procedures are inadequate because of lack of expertise or impartiality, because of the importance of the matter or because of the apparent existence of a pattern of abuse, and in cases where there are complaints from the family of the victim about these inadequacies or other substantial reasons, Governments shall pursue investigations through an independent commission of inquiry or similar procedure. Members of such a commission shall be chosen for their recognized impartiality, competence and independence as individuals. In particular, they shall be independent of any institution, agency or person that may be the subject of the inquiry. The commission shall have the authority to obtain all information necessary to the inquiry and shall conduct the inquiry as provided for under these Principles.

12. The body of the deceased person shall not be disposed of until an adequate autopsy is conducted by a physician, who shall, if possible, be an expert in forensic pathology. Those conducting the autopsy shall have the right of access to all investigative data, to the place where the body was discovered, and to the place where the death is thought to have occurred. If the body has been buried and it later appears that an investigation is required, the body shall be promptly and competently exhumed for an autopsy. If skeletal remains are discovered, they should be carefully exhumed and studied according to systematic anthropological techniques.

13. The body of the deceased shall be available to those conducting the autopsy for a sufficient amount of time to enable a thorough investigation to be carried out. The autopsy shall, at a minimum, attempt to establish the identity of the deceased and the cause and manner of death. The time and place of death shall also be determined to the extent possible. Detailed colour photographs of the deceased shall be included in the autopsy report in order to document and support the findings of the investigation. The autopsy report must describe any and all injuries to the deceased including any evidence of torture.

14. In order to ensure objective results, those conducting the autopsy must be able to function impartially and independently of any potentially implicated persons or organizations or entities.

15. Complainants, witnesses, those conducting the investigation and their families shall be protected from violence, threats of violence or any other form of intimidation. Those potentially implicated in extra-legal, arbitrary or summary executions shall be removed from any position of control or power, whether direct or indirect. over complainants, witnesses and their families, as well as over those conducting investigations.

16. Families of the deceased and their legal representatives shall be informed of, and have access to. any hearing as well as to all information relevant to the investigation, and shall be entitled to present other evidence. The family of the deceased shall have the right to insist that a medical or other qualified representative be present at the autopsy. When the identity of a deceased person has been determined, a notification of death shall be posted, and the family or relatives of the deceased shall be informed immediately. The body of the deceased shall be returned to them upon completion of the investigation.

17. A written report shall be made within a reasonable period of time on the methods and findings of such investigations. The report shall be made public immediately and shall include the scope of the inquiry, procedures and methods used to evaluate evidence as well as conclusions and recommendations based on findings of fact and on applicable law. The report shall also describe in detail specific events that were found to have occurred and the evidence upon which such findings were based, and list the names of witnesses who testified, with the exception of those whose identities have been withheld for their own protection. The Government shall, within a reasonable period of time, either reply to the report of the investigation, or indicate the steps to be taken in response to it.

Legal proceedings

18. Governments shall ensure that persons identified by the investigation as having

participated in extra-legal, arbitrary or summary executions in any territory under their jurisdiction are brought to justice. Governments shall either bring such persons to justice or cooperate to extradite any such persons to other countries wishing to exercise jurisdiction. This principle shall apply irrespective of who and where the perpetrators or the victims are, their nationalities or where the offence was committed.

19. Without prejudice to principle 3 above, an order from a superior officer or a public authority may not be invoked as a justification for extra-legal, arbitrary or summary executions. Superiors, officers or other public officials may be held responsible for acts committed by officials under their authority if they had a reasonable opportunity to prevent such acts. In no circumstances, including a state of war, siege or other public emergency, shall blanket immunity from prosecution be granted to any person allegedly involved in extra-legal, arbitrary or summary executions.

20. The families and dependents of victims of extra-legal, arbitrary or summary executions shall be entitled to fair and adequate compensation within a reasonable period of time.

附件十

The Code of Conduct for Law Enforcement Officials

Article 1

Law enforcement officials shall at all times fulfil the duty imposed upon them by law, by serving the community and by protecting all persons against illegal acts, consistent with the high degree of responsibility required by their profession.

Commentary :

(a) The term "law enforcement officials", includes all officers of the law, whether appointed or elected, who exercise police powers, especially the powers of arrest or detention.

(b) In countries where police powers are exercised by military authorities, whether uniformed or not, or by State security forces, the definition of law enforcement officials shall be regarded as including officers of such services.

(c) Service to the community is intended to include particularly the rendition of services of assistance to those members of the community who by reason of personal, economic, social or other emergencies are in need of immediate aid.

(d) This provision is intended to cover not only all violent, predatory and harmful acts, but extends to the full range of prohibitions under penal statutes. It extends to conduct by persons not capable of incurring criminal liability.

Article 2

In the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons.

Commentary :

(a) The human rights in question are identified and protected by national and international law. Among the relevant international instruments are the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Convention on the Suppression and Punishment of the Crime of

Apartheid , the Convention on the Prevention and Punishment of the Crime of Genocide, the Standard Minimum Rules for the Treatment of Prisoners and the Vienna Convention on Consular Relations.
(b) National commentaries to this provision should indicate regional or national provisions identifying and protecting these rights.

Article 3
Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty.

Commentary :
(a) This provision emphasizes that the use of force by law enforcement officials should be exceptional; while it implies that law enforcement officials may be authorized to use force as is reasonably necessary under the circumstances for the prevention of crime or in effecting or assisting in the lawful arrest of offenders or suspected offenders, no force going beyond that may be used.
(b) National law ordinarily restricts the use of force by law enforcement officials in accordance with a principle of proportionality. It is to be understood that such national principles of proportionality are to be respected in the interpretation of this provision. In no case should this provision be interpreted to authorize the use of force which is disproportionate to the legitimate objective to be achieved.
(c) The use of firearms is considered an extreme measure. Every effort should be made to exclude the use of firearms, especially against children. In general, firearms should not be used except when a suspected offender offers armed resistance or otherwise jeopardizes the lives of others and less extreme measures are not sufficient to restrain or apprehend the suspected offender. In every instance in which a firearm is discharged, a report should be made promptly to the competent authorities.

Article 4
Matters of a confidential nature in the possession of law enforcement officials shall be kept confidential, unless the performance of duty or the needs of justice strictly require otherwise.

Commentary :
By the nature of their duties, law enforcement officials obtain information which may

relate to private lives or be potentially harmful to the interests, and especially the reputation, of others. Great care should be exercised in safeguarding and using such information, which should be disclosed only in the performance of duty or to serve the needs of justice. Any disclosure of such information for other purposes is wholly improper.

Article 5

No law enforcement official may inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment, nor may any law enforcement official invoke superior orders or exceptional circumstances such as a state of war or a threat of war, a threat to national security, internal political instability or any other public emergency as a justification of torture or other cruel, inhuman or degrading treatment or punishment.

Commentary :

(a) This prohibition derives from 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, according to which:

"[Such an act is] an offence to human dignity and shall be condemned as a denial of the purposes of the Charter of the United Nations and as a violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights [and other international human rights instruments]."

(b) The Declaration defines torture as follows:

". . . torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted by or at the instigation of a public official on a person for such purposes as obtaining from him or a third person information or confession, punishing him for an act he has committed or is suspected of having committed, or intimidating him or other persons. It does not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions to the extent consistent with the Standard Minimum Rules for the Treatment of Prisoners."

(c) The term "cruel, inhuman or degrading treatment or punishment" has not been defined by the General Assembly but should be interpreted so as to extend the widest possible protection against abuses, whether physical or mental.

Article 6

Law enforcement officials shall ensure the full protection of the health of persons in their custody and, in particular, shall take immediate action to secure medical attention whenever required.

Commentary :

(a) "Medical attention", which refers to services rendered by any medical personnel, including certified medical practitioners and paramedics, shall be secured when needed or requested.

(b) While the medical personnel are likely to be attached to the law enforcement operation, law enforcement officials must take into account the judgement of such personnel when they recommend providing the person in custody with appropriate treatment through, or in consultation with, medical personnel from outside the law enforcement operation.

(c) It is understood that law enforcement officials shall also secure medical attention for victims of violations of law or of accidents occurring in the course of violations of law.

Article 7

Law enforcement officials shall not commit any act of corruption. They shall also rigorously oppose and combat all such acts.

Commentary :

(a) Any act of corruption, in the same way as any other abuse of authority, is incompatible with the profession of law enforcement officials. The law must be enforced fully with respect to any law enforcement official who commits an act of corruption, as Governments cannot expect to enforce the law among their citizens if they cannot, or will not, enforce the law against their own agents and within their agencies.

(b) While the definition of corruption must be subject to national law, it should be understood to encompass the commission or omission of an act in the performance of or in connection with one's duties, in response to gifts, promises or incentives demanded or accepted, or the wrongful receipt of these once the act has been committed or omitted.

(c) The expression "act of corruption" referred to above should be understood to

encompass attempted corruption.

Article 8

Law enforcement officials shall respect the law and the present Code. They shall also, to the best of their capability, prevent and rigorously oppose any violations of them.

Law enforcement officials who have reason to believe that a violation of the present Code has occurred or is about to occur shall report the matter to their superior authorities and, where necessary, to other appropriate authorities or organs vested with reviewing or remedial power.

Commentary :

(a) This Code shall be observed whenever it has been incorporated into national legislation or practice. If legislation or practice contains stricter provisions than those of the present Code, those stricter provisions shall be observed.

(b) The article seeks to preserve the balance between the need for internal discipline of the agency on which public safety is largely dependent, on the one hand, and the need for dealing with violations of basic human rights, on the other. Law enforcement officials shall report violations within the chain of command and take other lawful action outside the chain of command only when no other remedies are available or effective. It is understood that law enforcement officials shall not suffer administrative or other penalties because they have reported that a violation of this Code has occurred or is about to occur.

(c) The term "appropriate authorities or organs vested with reviewing or remedial power" refers to any authority or organ existing under national law, whether internal to the law enforcement agency or independent thereof, with statutory, customary or other power to review grievances and complaints arising out of violations within the purview of this Code.

(d) In some countries, the mass media may be regarded as performing complaint review functions similar to those described in subparagraph (c) above. Law enforcement officials may, therefore, be justified if, as a last resort and in accordance with the laws and customs of their own countries and with the provisions of article 4 of the present Code, they bring violations to the attention of public opinion through the mass media.

(e) Law enforcement officials who comply with the provisions of this Code deserve

the respect, the full support and the co-operation of the community and of the law enforcement agency in which they serve, as well as the law enforcement profession.

附件十一

Guidelines on the Role of Prosecutors

Whereas in the Charter of the United Nations the peoples of the world affirm, inter alia , their determination to establish conditions under which justice can be maintained, and proclaim as one of their purposes the achievement of international cooperation in promoting and encouraging respect for human rights and fundamental freedoms without distinction as to race, sex, language or religion,

Whereas the Universal Declaration of Human Rights enshrines the principles of equality before the law, the presumption of innocence and the right to a fair and public hearing by an independent and impartial tribunal,

Whereas frequently there still exists a gap between the vision underlying those principles and the actual situation,

Whereas the organization and administration of justice in every country should be inspired by those principles, and efforts undertaken to translate them fully into reality,

Whereas prosecutors play a crucial role in the administration of justice, and rules concerning the performance of their important responsibilities should promote their respect for and compliance with the above-mentioned principles, thus contributing to fair and equitable criminal justice and the effective protection of citizens against crime,

Whereas it is essential to ensure that prosecutors possess the professional qualifications required for the accomplishment of their functions, through improved methods of recruitment and legal and professional training, and through the provision of all necessary means for the proper performance of their role in combating criminality, particularly in its new forms and dimensions,

Whereas the General Assembly, by its resolution 34/169 of 17 December 1979, adopted the Code of Conduct for Law Enforcement Officials, on the recommendation of the Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders,

Whereas in resolution 16 of the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, the Committee on Crime Prevention and Control was called upon to include among its priorities the elaboration of guidelines relating to the independence of judges and the selection, professional training and status of judges and prosecutors,

Whereas the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders adopted the Basic Principles on the Independence of the Judiciary, subsequently endorsed by the General Assembly in its resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985,

Whereas the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power recommends measures to be taken at the international and national levels to improve access to justice and fair treatment, restitution, compensation and assistance for victims of crime,

Whereas , in resolution 7 of the Seventh Congress the Committee was called upon to consider the need for guidelines relating, inter alia , to the selection, professional training and status of prosecutors, their expected tasks and conduct, means to enhance their contribution to the smooth functioning of the criminal justice system and their cooperation with the police, the scope of their discretionary powers, and their role in criminal proceedings, and to report thereon to future United Nations congresses,

The Guidelines set forth below, which have been formulated to assist Member States in their tasks of securing and promoting the effectiveness, impartiality and fairness of prosecutors in criminal proceedings, should be respected and taken into account by Governments within the framework of their national legislation and practice, and should be brought to the attention of prosecutors, as well as other persons, such as judges, lawyers, members of the executive and the legislature and the public in general. The present Guidelines have been formulated principally with public prosecutors in mind, but they apply equally, as appropriate, to prosecutors appointed on an ad hoc basis.

Qualifications, selection and training

1. Persons selected as prosecutors shall be individuals of integrity and ability, with appropriate training and qualifications.

2. States shall ensure that:
(a) Selection criteria for prosecutors embody safeguards against appointments based on partiality or prejudice, excluding any discrimination against a person on the grounds of race, colour, sex, language, religion, political or other opinion, national, social or ethnic origin, property, birth, economic or other status, except that it shall not be considered discriminatory to require a candidate for prosecutorial office to be a national of the country concerned;
(b) Prosecutors have appropriate education and training and should be made aware of the ideals and ethical duties of their office, of the constitutional and statutory protections for the rights of the suspect and the victim, and of human rights and fundamental freedoms recognized by national and international law.

Status and conditions of service

3. Prosecutors, as essential agents of the administration of justice, shall at all times maintain the honour and dignity of their profession.

4. States shall ensure that prosecutors are able to perform their professional functions without intimidation, hindrance, harassment, improper interference or unjustified exposure to civil, penal or other liability.

5. Prosecutors and their families shall be physically protected by the authorities when their personal safety is threatened as a result of the discharge of prosecutorial functions.

6. Reasonable conditions of service of prosecutors, adequate remuneration and, where applicable, tenure, pension and age of retirement shall be set out by law or published rules or regulations.

7. Promotion of prosecutors, wherever such a system exists, shall be based on objective factors, in particular professional qualifications, ability, integrity and

experience, and decided upon in accordance with fair and impartial procedures.

Freedom of expression and association

8. Prosecutors like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights and to join or form local, national or international organizations and attend their meetings, without suffering professional disadvantage by reason of their lawful action or their membership in a lawful organization. In exercising these rights, prosecutors shall always conduct themselves in accordance with the law and the recognized standards and ethics of their profession.

9. Prosecutors shall be free to form and join professional associations or other organizations to represent their interests, to promote their professional training and to protect their status.

Role in criminal proceedings

10. The office of prosecutors shall be strictly separated from judicial functions.

11. Prosecutors shall perform an active role in criminal proceedings, including institution of prosecution and, where authorized by law or consistent with local practice, in the investigation of crime, supervision over the legality of these investigations, supervision of the execution of court decisions and the exercise of other functions as representatives of the public interest.

12. Prosecutors shall, in accordance with the law, perform their duties fairly, consistently and expeditiously, and respect and protect human dignity and uphold human rights, thus contributing to ensuring due process and the smooth functioning of the criminal justice system.

13. In the performance of their duties, prosecutors shall:

(a) Carry out their functions impartially and avoid all political, social, religious, racial, cultural, sexual or any other kind of discrimination;
(b) Protect the public interest, act with objectivity, take proper account of the position of the suspect and the victim, and pay attention to all relevant circumstances, irrespective of whether they are to the advantage or disadvantage of the suspect;
(c) Keep matters in their possession confidential, unless the performance of duty or the needs of justice require otherwise;
(d) Consider the views and concerns of victims when their personal interests are affected and ensure that victims are informed of their rights in accordance with the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.

14. Prosecutors shall not initiate or continue prosecution, or shall make every effort to stay proceedings, when an impartial investigation shows the charge to be unfounded.

15. Prosecutors shall give due attention to the prosecution of crimes committed by public officials, particularly corruption, abuse of power, grave violations of human rights and other crimes recognized by international law and, where authorized by law or consistent with local practice, the investigation of such offences.

16. When prosecutors come into possession of evidence against suspects that they know or believe on reasonable grounds was obtained through recourse to unlawful methods, which constitute a grave violation of the suspect's human rights, especially involving torture or cruel, inhuman or degrading treatment or punishment, or other abuses of human rights, they shall refuse to use such evidence against anyone other than those who used such methods, or inform the Court accordingly, and shall take all necessary steps to ensure that those responsible for using such methods are brought to justice.

Discretionary functions

17. In countries where prosecutors are vested with discretionary functions, the law or published rules or regulations shall provide guidelines to enhance fairness and consistency of approach in taking decisions in the prosecution process, including institution or waiver of prosecution.

Alternatives to prosecution

18. In accordance with national law, prosecutors shall give due consideration to waiving prosecution, discontinuing proceedings conditionally or unconditionally, or diverting criminal cases from the formal justice system, with full respect for the rights of suspect(s) and the victim(s). For this purpose, States should fully explore the possibility of adopting diversion schemes not only to alleviate excessive court loads, but also to avoid the stigmatization of pre-trial detention, indictment and conviction, as well as the possible adverse effects of imprisonment.

19. In countries where prosecutors are vested with discretionary functions as to the decision whether or not to prosecute a juvenile, special consideration shall be given to the nature and gravity of the offence, protection of society and the personality and background of the juvenile. In making that decision, prosecutors shall particularly consider available alternatives to prosecution under the relevant juvenile justice laws and procedures. Prosecutors shall use their best efforts to take prosecutory action against juveniles only to the extent strictly necessary.

Relations with other government agencies or institutions

20. In order to ensure the fairness and effectiveness of prosecution, prosecutors shall strive to cooperate with the police, the courts, the legal profession, public defenders and other government agencies or institutions.

Disciplinary proceedings

21. Disciplinary offences of prosecutors shall be based on law or lawful regulations. Complaints against prosecutors which allege that they acted in a manner clearly out of the range of professional standards shall be processed expeditiously and fairly under appropriate procedures. Prosecutors shall have the right to a fair hearing. The decision shall be subject to independent review.

22. Disciplinary proceedings against prosecutors shall guarantee an objective evaluation and decision. They shall be determined in accordance with the law, the code of professional conduct and other established standards and ethics and in the

light of the present Guidelines.

Observance of the Guidelines

23. Prosecutors shall respect the present Guidelines. They shall also, to the best of their capability, prevent and actively oppose any violations thereof.

24. Prosecutors who have reason to believe that a violation of the present Guidelines has occurred or is about to occur shall report the matter to their superior authorities and, where necessary, to other appropriate authorities or organs vested with reviewing or remedial power.

附件十二

Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Principle 1

Health personnel, particularly physicians, charged with the medical care of prisoners and detainees have a duty to provide them with protection of their physical and mental health and treatment of disease of the same quality and standard as is afforded to those who are not imprisoned or detained.

Principle 2

It is a gross contravention of medical ethics, as well as an offence under applicable international instruments, for health personnel, particularly physicians, to engage, actively or passively, in acts which constitute participation in, complicity in, incitement to or attempts to commit torture or other cruel, inhuman or degrading treatment or punishment.

Principle 3

It is a contravention of medical ethics for health personnel, particularly physicians, to be involved in any professional relationship with prisoners or detainees the purpose of which is not solely to evaluate, protect or improve their physical and mental health.

Principle 4

It is a contravention of medical ethics for health personnel, particularly physicians:
(a) To apply their knowledge and skills in order to assist in the interrogation of prisoners and detainees in a manner that may adversely affect the physical or mental health or condition of such prisoners or detainees and which is not in accordance with the relevant international instruments; 2
(b) To certify, or to participate in the certification of, the fitness of prisoners or detainees for any form of treatment or punishment that may adversely affect their physical or mental health and which is not in accordance with the relevant international instruments, or to participate in any way in the infliction of any such treatment or punishment which is not in accordance with the relevant international

instruments.

Principle 5

It is a contravention of medical ethics for health personnel, particularly physicians, to participate in any procedure for restraining a prisoner or detainee unless such a procedure is determined in accordance with purely medical criteria as being necessary for the protection of the physical or mental health or the safety of the prisoner or detainee himself, of his fellow prisoners or detainees, or of his guardians, and presents no hazard to his physical or mental health.

Principle 6

There may be no derogation from the foregoing principles on any ground whatsoever, including public emergency.

附件十三

Declaration on the Elimination of Violence against Women

The General Assembly,

Recognizing the urgent need for the universal application to women of the rights and principles with regard to equality, security, liberty, integrity and dignity of all human beings,

Noting that those rights and principles are enshrined in international instruments, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Recognizing that effective implementation of the Convention on the Elimination of All Forms of Discrimination against Women would contribute to the elimination of violence against women and that the Declaration on the Elimination of Violence against Women, set forth in the present resolution, will strengthen and complement that process,

Concerned that violence against women is an obstacle to the achievement of equality, development and peace, as recognized in the Nairobi Forward-looking Strategies for the Advancement of Women, in which a set of measures to combat violence against women was recommended, and to the full implementation of the Convention on the Elimination of All Forms of Discrimination against Women,

Affirming that violence against women constitutes a violation of the rights and fundamental freedoms of women and impairs or nullifies their enjoyment of those rights and freedoms, and concerned about the long-standing failure to protect and promote those rights and freedoms in the case of violence against women,

Recognizing that violence against women is a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of the full advancement of women, and that violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men,

Concerned that some groups of women, such as women belonging to minority groups, indigenous women, refugee women, migrant women, women living in rural or remote

communities, destitute women, women in institutions or in detention, female children, women with disabilities, elderly women and women in situations of armed conflict, are especially vulnerable to violence,

Recalling the conclusion in paragraph 23 of the annex to Economic and Social Council resolution 1990/15 of 24 May 1990 that the recognition that violence against women in the family and society was pervasive and cut across lines of income, class and culture had to be matched by urgent and effective steps to eliminate its incidence,

Recalling also Economic and Social Council resolution 1991/18 of 30 May 1991, in which the Council recommended the development of a framework for an international instrument that would address explicitly the issue of violence against women,

Welcoming the role that women's movements are playing in drawing increasing attention to the nature, severity and magnitude of the problem of violence against women,

Alarmed that opportunities for women to achieve legal, social, political and economic equality in society are limited, inter alia, by continuing and endemic violence,

Convinced that in the light of the above there is a need for a clear and comprehensive definition of violence against women, a clear statement of the rights to be applied to ensure the elimination of violence against women in all its forms, a commitment by States in respect of their responsibilities, and a commitment by the international community at large to the elimination of violence against women,

Solemnly proclaims the following Declaration on the Elimination of Violence against Women and urges that every effort be made so that it becomes generally known and respected:

Article 1

For the purposes of this Declaration, the term "violence against women" means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.

Article 2

Violence against women shall be understood to encompass, but not be limited to, the following:

(a) Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related

violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation;

(b) Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution;

(c) Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.

Article 3

Women are entitled to the equal enjoyment and protection of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. These rights include, inter alia:

(a) The right to life;

(b) The right to equality;

(c) The right to liberty and security of person;

(d) The right to equal protection under the law;

(e) The right to be free from all forms of discrimination;

(f) The right to the highest standard attainable of physical and mental health;

(g) The right to just and favourable conditions of work;

(h) The right not to be subjected to torture, or other cruel, inhuman or degrading treatment or punishment.

Article 4

States should condemn violence against women and should not invoke any custom, tradition or religious consideration to avoid their obligations with respect to its elimination. States should pursue by all appropriate means and without delay a policy of eliminating violence against women and, to this end, should:

(a) Consider, where they have not yet done so, ratifying or acceding to the Convention on the Elimination of All Forms of Discrimination against Women or withdrawing reservations to that Convention;

(b) Refrain from engaging in violence against women;

(c) Exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons;

(d) Develop penal, civil, labour and administrative sanctions in domestic legislation to punish and redress the wrongs caused to women who are subjected to violence; women who are subjected to violence should be provided with access to the mechanisms of justice and, as provided for by national legislation, to just and effective remedies for the harm that they have suffered; States should also inform women of their rights in seeking redress through such mechanisms;

(e) Consider the possibility of developing national plans of action to promote the protection of women against any form of violence, or to include provisions for that purpose in plans already existing, taking into account, as appropriate, such cooperation as can be provided by non-governmental organizations, particularly those concerned with the issue of violence against women;

(f) Develop, in a comprehensive way, preventive approaches and all those measures of a legal, political, administrative and cultural nature that promote the protection of women against any form of violence, and ensure that the re-victimization of women does not occur because of laws insensitive to gender considerations, enforcement practices or other interventions;

(g) Work to ensure, to the maximum extent feasible in the light of their available resources and, where needed, within the framework of international cooperation, that women subjected to violence and, where appropriate, their children have specialized assistance, such as rehabilitation, assistance in child care and maintenance, treatment, counselling, and health and social services, facilities and programmes, as well as support structures, and should take all other appropriate measures to promote their safety and physical and psychological rehabilitation;

(h) Include in government budgets adequate resources for their activities related to the elimination of violence against women;

(i) Take measures to ensure that law enforcement officers and public officials responsible for implementing policies to prevent, investigate and punish violence against women receive training to sensitize them to the needs of women;

(j) Adopt all appropriate measures, especially in the field of education, to modify the social and cultural patterns of conduct of men and women and to eliminate prejudices, customary practices and all other practices based on the idea of the inferiority or superiority of either of the sexes and on stereotyped roles for men

and women;

(k) Promote research, collect data and compile statistics, especially concerning domestic violence, relating to the prevalence of different forms of violence against women and encourage research on the causes, nature, seriousness and consequences of violence against women and on the effectiveness of measures implemented to prevent and redress violence against women; those statistics and findings of the research will be made public;

(l) Adopt measures directed towards the elimination of violence against women who are especially vulnerable to violence;

(m) Include, in submitting reports as required under relevant human rights instruments of the United Nations, information pertaining to violence against women and measures taken to implement the present Declaration;

(n) Encourage the development of appropriate guidelines to assist in the implementation of the principles set forth in the present Declaration;

(o) Recognize the important role of the women's movement and non-governmental organizations world wide in raising awareness and alleviating the problem of violence against women;

(p) Facilitate and enhance the work of the women's movement and non-governmental organizations and cooperate with them at local, national and regional levels;

(q) Encourage intergovernmental regional organizations of which they are members to include the elimination of violence against women in their programmes, as appropriate.

Article 5

The organs and specialized agencies of the United Nations system should, within their respective fields of competence, contribute to the recognition and realization of the rights and the principles set forth in the present Declaration and, to this end, should, inter alia:

(a) Foster international and regional cooperation with a view to defining regional strategies for combating violence, exchanging experiences and financing programmes relating to the elimination of violence against women;

(b) Promote meetings and seminars with the aim of creating and raising awareness among all persons of the issue of the elimination of violence against women;

(c) Foster coordination and exchange within the United Nations system between

human rights treaty bodies to address the issue of violence against women effectively;

(d) Include in analyses prepared by organizations and bodies of the United Nations system of social trends and problems, such as the periodic reports on the world social situation, examination of trends in violence against women;

(e) Encourage coordination between organizations and bodies of the United Nations system to incorporate the issue of violence against women into ongoing programmes, especially with reference to groups of women particularly vulnerable to violence;

(f) Promote the formulation of guidelines or manuals relating to violence against women, taking into account the measures referred to in the present Declaration;

(g) Consider the issue of the elimination of violence against women, as appropriate, in fulfilling their mandates with respect to the implementation of human rights instruments;

(h) Cooperate with non-governmental organizations in addressing the issue of violence against women.

Article 6

Nothing in the present Declaration shall affect any provision that is more conducive to the elimination of violence against women that may be contained in the legislation of a State or in any international convention, treaty or other instrument in force in a State.

附件十四

Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

1. The purposes of effective investigation and documentation of torture and other cruel, inhuman or degrading treatment or punishment (hereinafter "torture or other ill-treatment") include the following:

(a) Clarification of the facts and establishment and acknowledgement of individual and State responsibility for victims and their families;

(b) Identification of measures needed to prevent recurrence;

(c) Facilitation of prosecution and/or, as appropriate, disciplinary sanctions for those indicated by the investigation as being responsible and demonstration of the need for full reparation and redress from the State, including fair and adequate financial compensation and provision of the means for medical care and rehabilitation.

2. States shall ensure that complaints and reports of torture or ill-treatment are promptly and effectively investigated. Even in the absence of an express complaint, an investigation shall be undertaken if there are other indications that torture or ill-treatment might have occurred. The investigators, who shall be independent of the suspected perpetrators and the agency they serve, shall be competent and impartial. They shall have access to, or be empowered to commission investigations by, impartial medical or other experts. The methods used to carry out such investigations shall meet the highest professional standards and the findings shall be made public.

3. (a) The investigative authority shall have the power and obligation to obtain all the information necessary to the inquiry. 1 The persons conducting the investigation shall have at their disposal all the necessary budgetary and technical resources for effective investigation. They shall also have the authority to oblige all those acting in an official capacity allegedly involved in torture or ill-treatment to appear and testify. The same shall apply to any witness. To this end, the investigative authority shall be entitled to issue summonses to witnesses, including any officials allegedly involved,

and to demand the production of evidence.

(b) Alleged victims of torture or ill-treatment, witnesses, those conducting the investigation and their families shall be protected from violence, threats of violence or any other form of intimidation that may arise pursuant to the investigation. Those potentially implicated in torture or ill-treatment shall be removed from any position of control or power, whether direct or indirect, over complainants, witnesses and their families, as well as those conducting the investigation.

4. Alleged victims of torture or ill-treatment and their legal representatives shall be informed of, and have access to, any hearing, as well as to all information relevant to the investigation, and shall be entitled to present other evidence.

5. (a) In cases in which the established investigative procedures are inadequate because of insufficient expertise or suspected bias, or because of the apparent existence of a pattern of abuse or for other substantial reasons, States shall ensure that investigations are undertaken through an independent commission of inquiry or similar procedure. Members of such a commission shall be chosen for their recognized impartiality, competence and independence as individuals. In particular, they shall be independent of any suspected perpetrators and the institutions or agencies they may serve. The commission shall have the authority to obtain all information necessary to the inquiry and shall conduct the inquiry as provided for under these Principles. 2

(b) A written report, made within a reasonable time, shall include the scope of the inquiry, procedures and methods used to evaluate evidence as well as conclusions and recommendations based on findings of fact and on applicable law. Upon completion, the report shall be made public. It shall also describe in detail specific events that were found to have occurred and the evidence upon which such findings were based and list the names of witnesses who testified, with the exception of those whose identities have been withheld for their own protection. The State shall, within a reasonable period of time, reply to the report of the investigation and, as appropriate, indicate steps to be taken in response.

6. (a) Medical experts involved in the investigation of torture or ill-treatment shall

behave at all times in conformity with the highest ethical standards and, in particular, shall obtain informed consent before any examination is undertaken. The examination must conform to established standards of medical practice. In particular, examinations shall be conducted in private under the control of the medical expert and outside the presence of security agents and other government officials.

(b) The medical expert shall promptly prepare an accurate written report, which shall include at least the following:

(i) Circumstances of the interview: name of the subject and name and affiliation of those present at the examination; exact time and date; location, nature and address of the institution (including, where appropriate, the room) where the examination is being conducted (e.g., detention centre, clinic or house); circumstances of the subject at the time of the examination (e.g., nature of any restraints on arrival or during the examination, presence of security forces during the examination, demeanour of those accompanying the prisoner or threatening statements to the examiner); and any other relevant factors;

(ii) History: detailed record of the subject's story as given during the interview, including alleged methods of torture or ill-treatment, times when torture or ill-treatment is alleged to have occurred and all complaints of physical and psychological symptoms;

(iii) Physical and psychological examination: record of all physical and psychological findings on clinical examination, including appropriate diagnostic tests and, where possible, colour photographs of all injuries;

(iv) Opinion: interpretation as to the probable relationship of the physical and psychological findings to possible torture or ill-treatment. A recommendation for any necessary medical and psychological treatment and/or further examination shall be given;

(v) Authorship: the report shall clearly identify those carrying out the examination and shall be signed.

(c) The report shall be confidential and communicated to the subject or his or her nominated representative. The views of the subject and his or her representative about the examination process shall be solicited and recorded in the report. It shall also be provided in writing, where appropriate, to the authority responsible for investigating the allegation of torture or ill-treatment. It is the responsibility of the State to ensure that it is delivered securely to these persons. The report shall not be made available to any other person, except with the consent of the subject or on the authorization of a court empowered to enforce such a transfer.

附件十五

禁止酷刑公約初次報告的形式和內容準則
—對照美國初次報告

根據《禁止酷刑及其他殘忍不人道或有辱人格之待遇或處罰公約》第 19 條，締約國承諾提交關於其為履行公約義務所採取措施之報告。初次報告應在《公約》對有關締約國生效後一年內提交，隨後每四年提交一次報告，除非委員會要求提交其他報告。為了協助締約國履行第 19 條義務，委員會通過有關初次報告形式和內容之一般準則。

一、一般資訊

A. 導言

3. 在報告導言部分中，應提到有關一般資訊的擴大的核心文件，如一般政治結構、保護人權的一般法律架構等。在初次報告正文中，無需重複這些資訊。

4. 這一節中應列入有關編撰報告之程序的資訊。委員會認為，報告的草擬應可受益於廣泛協商。因此，委員會歡迎締約國提供關於政府內部、以及與促進和保護人權的國家機構、非政府組織和其他組織可能進行之任何相關協商的資訊。

2. This report has been prepared by the U.S. Department of State with extensive assistance from the Department of Justice and other relevant departments and agencies of the Federal Government. Substantial contributions were also solicited and received from interested non-governmental organizations, academics and private citizens. The report covers the situation in the United States and the measures taken to give effect to the Convention through September 1999.

B.禁止酷刑和其他殘忍、不人道或侮辱之處遇與處罰的一般法律架構

5. 在這一節中，委員會預期收到核心文件所無之關於公約實施情況的具體資訊，特別是：

- 簡要說明關於禁止酷刑和其他殘忍、不人道或侮辱之處遇與處罰的憲法、刑法和行政規定；

45. There is in the United States no single statute, authority or mechanism by which basic human rights and fundamental freedoms are guaranteed or enforced. Instead, the essential protection of human rights and fundamental freedoms is afforded by the

various guarantees set forth in the federal Constitution and statutes as well as in the constitutions, statutes and law of the several states and other constituent units. Responsible authorities thus include executive branch officials, those with administrative authority, legislators and judges, among others. This diffuse structure provides extensive legal protections and a wide variety of enforcement and remedial possibilities, ranging from criminal law enforcement, civil damage suits, and administrative measures.

46. In consequence, responsibility for the protection and promotion of fundamental freedoms, including freedom from torture, is shared by the various branches of government at all levels. In the Federal Government, the President is responsible for enforcing the law. His chief assistant in this task is the Attorney-General. Within the Department of Justice, the Civil Rights Division bears principal responsibility for the effective enforcement of federal civil rights laws, the Criminal Division and regional U.S. Attorneys Offices for prosecuting most federal crimes, and the Bureau of Prisons for the oversight and management of federal correctional institutions. At the state level, the elected Governor and/or Attorney-General may share responsibility with an independent human rights commission; many local jurisdictions, including most large cities, also have such bodies. At all levels, an independent judiciary exists to guarantee fundamental rights, including freedom from torture, cruel and unusual punishment, equal protection and due process, and a fair trial. Finally, the large and active community of non-governmental organizations in the United States works constantly to ensure that abuses that occur are brought to light and that government is responsive to the will of the people. A strong and independent press (including print and electronic media) serves an important role in this regard.

47. In 1994, Congress enacted a new federal law to implement the requirements of the Convention against Torture relating to acts of torture committed outside United States territory. This law, which is codified at 18 U.S.C. § 2340 et seq., extends United States criminal jurisdiction over any act of (or attempt to commit) torture outside the United States by a United States national or by an alleged offender present in the United States regardless of his or her nationality. The statute adopts the Convention's definition of torture, consistent with the terms of United States ratification. It permits the criminal prosecution of alleged torturers in federal courts in specified circumstances.

48. Any act falling within the Convention's definition is clearly illegal and prosecutable everywhere in the country. Because existing criminal law was determined to be adequate to fulfil the Convention's prohibitory obligations, and in deference to the federal-state relationship, it was decided at the time of ratification not to propose enactment of an omnibus implementing statute for the Convention or to adopt a single federal crime of torture.

49. Torture has always been proscribed by the Eighth Amendment to the United States Constitution, which prohibits "cruel and unusual punishments". This Amendment is directly applicable to actions of the Federal Government and, through the Fourteenth Amendment, to those of the constituent states. See Robinson v. California, 370 U.S. 660, reh'g den. 371 U.S. 905 (1962); Estelle v. Gamble, 429 U.S. 97 (1976). While the constitutional and statutory law of the individual states in some cases offers more extensive or more specific protections, the protections of the right to life and liberty, personal freedom and physical integrity found in the Fourth, Fifth and Eighth Amendments to the United States Constitution provide a nationwide standard of treatment beneath which no governmental entity may fall. The constitutional nature of this protection means that it applies to the actions of officials throughout the United States at all levels of government; all individuals enjoy protection under the Constitution, regardless of nationality or citizenship.

• 報告國批准加入之其它涉及酷刑和其他殘忍、不人道或侮辱之處遇與處罰問題的國際條約；

In 1992 the United States became a party to the International Covenant on Civil and Political Rights, some provisions of which may be considered to have wider application than those of the Convention against Torture. The initial United States report under the Covenant, which provides general information related to United States compliance with and implementation of obligations under the Covenant, was submitted to the Human Rights Committee in July 1994 (see HRI/CORE/1/Add.49 and CCPR/C/81/Add.4). The United States also ratified the International Convention on the Elimination of All Forms of Racial Discrimination at the same time as it ratified the Convention against Torture. In February 1995 the United States signed the Convention on the Rights of the Child.

• 公約在國內法律體系中的位階，例如相對於憲法和普通立法的地位；

For this reason it was considered necessary to condition United States ratification of the Convention against Torture upon an understanding reflecting the respective competencies of the various governmental units in regard to certain provisions of the Convention. The understanding (full text at annex I) states that United States obligations under the Convention shall be implemented by the Federal Government to the extent of its legislative and judicial jurisdiction, and otherwise by the state and local governments. With respect to those provisions which most significantly implicate state and local authority (arts. 10-14 and 16), the Federal Government expressly committed itself to taking measures "appropriate to the Federal system" so that, in turn, the competent authorities of the constituent units "may take appropriate measures for the fulfilment of the Convention". The intent was to make clear that steps by the Federal Government that are necessary to effect compliance at the state and local level will be consistent with the federal structure of the domestic governmental arrangements.

• 國內法如何確保關於禁止任何殘忍、不人道或侮辱之處遇與處罰之規定的不可減損性；

Torture does not occur in the United States except in aberrational situations and never as a matter of policy. When it does, it constitutes a serious criminal offence, subjecting the perpetrators to prosecution and entitling the victims to various remedies, including rehabilitation and compensation. Although there is no federal law criminalizing torture per se, any act falling within the Convention's definition of torture is clearly illegal and prosecutable everywhere in the country, for example as an assault or battery, murder or manslaughter, kidnapping or abduction, false arrest or imprisonment, sexual abuse, or violation of civil rights.

• 能否在法院援引並由法院或行政機關直接執行《公約》規定，這些規定是否必須納入國內法或行政規章後方能由相關主管機關執行。如果要求須納入國內法，報告應當提供關於將《公約》納入國內法律體系的立法法案的資訊；
• 管轄/有權機關涵蓋《公約》所涉事項的司法、行政或其他主管機關，如憲法法院、最高法院、普通法院和軍事法院、檢察官、紀律檢查機構、負責員警和

監獄管理的行政主管機關、促進和保護人權的國家機構等。提供《公約》在該國聯邦、中央、地區和地方各級實際執行的概況，並列出可能影響報告國履行《公約》義務的任何因素和困難。報告應列入關於此種情況下《公約》執行情況的具體資訊。歡迎主管機關或其他私人或公共機構收集的相關文件。

二、關於《公約》各實體性條款的資訊

6.作為一般規則，報告涉及每一條款內容時應包括下列資訊：

- 落實有關規定的立法、司法、行政等措施；
- 執行落實有關規定措施的具體案例和情況，包括任何相關統計資料；
- 違反《公約》之案例或情況，此種違反情事的原因與為補救有關情況所採取措施。重要的是，委員會不僅要清楚地瞭解法律情況，而且要清楚地瞭解實際情況。

第 1 條

7.該條規定《公約》關於酷刑的定義。在該條之下，報告應列入：

- 國內法中關於酷刑定義的資訊，包括說明此定義是否完全符合《公約》的定義；

94. United States understandings. In order to clarify the meaning of "torture" and to delineate the scope of application of the Convention with the greater precision required under United States domestic law, the United States conditioned its ratification upon several understandings related to article 1. The full text of these understandings is at annex I. In essence, they provide that:

95. The intentional infliction of "mental" pain and suffering is appropriately included in the definition of "torture" to reflect the increasing and deplorable use by States of various psychological forms of torture and ill treatment, such as mock executions, sensory deprivations, use of drugs, and confinement to mental hospitals. As all legal systems recognize, however, assessment of mental pain and suffering can be a very subjective undertaking. There was some concern within the United States criminal justice community that in this respect the Convention's definition regrettably fell short of the constitutionally required precision for defining criminal offences. To provide the requisite clarity for purposes of domestic law, the United States therefore conditioned its ratification upon an understanding that, in order to constitute torture, an act must be specifically intended to inflict severe physical or mental pain or suffering and that mental pain or suffering refers to prolonged mental harm caused

by or resulting from: (1) the intentional infliction or threatened infliction of severe physical pain or suffering; (2) the administration or application, or threatened administration or application, of mind-altering substances or other procedures calculated to disrupt profoundly the senses or the personality; (3) the threat of imminent death; or (4) the threat that another person will imminently be subjected to death, severe physical pain or suffering, or the administration or application of mind-altering substances or other procedures calculated to disrupt profoundly the senses or the personality.

96. For similar reasons of clarity and specificity, United States adherence was conditioned on the understanding that the definition of "torture" in article 1 is intended to apply "only to acts directed against persons in the offender's custody or physical control" in order to clarify the relationship of the Convention to normal military and law enforcement operations.

• 若國內法欠缺符合《公約》規定之酷刑定義，應說明涵蓋所有酷刑案件的刑事或立法規定的資訊；

• 關於載有或可能載有更寬廣適用範圍之任何國際文書或國家立法的資訊。

第 2 條第 1 項

8. 該項規定，締約國有義務採取有效措施防止酷刑行為。報告應規定下列資訊：

• 為防止所有酷刑行為而採取之有效措施的相關資訊，諸如關於：員警可裁處拘禁的期限、單獨拘留、關於被逮捕者聘請律師、得到醫療檢查和與家人聯繫等權利的規定、可能限制對被拘禁者的各種保障的緊急狀態或反恐立法。

100. Every act of torture within the meaning of the Convention is illegal under existing federal and state law, and any individual who commits such an act is subject to penal sanctions as specified in criminal statutes. Such prosecutions do in fact occur in appropriate circumstances. Torture cannot be justified by exceptional circumstances, nor can it be excused on the basis of an order from a superior officer.

101. United Stares law recognizes and protects the fundamental right of everyone to life, liberty and inviolability of his or her person. Every system of criminal law in the United States clearly and categorically prohibits acts of violence against the

person, whether physical or mental, which would constitute an act of torture within the meaning of the Convention. Such acts may be prosecuted, for example, as assault, battery or mayhem in cases of physical injury; as homicide, murder or manslaughter when a killing results; as kidnapping, false imprisonment or abduction where an unlawful detention is concerned; as rape, sodomy, or molestation; or as part of an attempt or a conspiracy, an act of racketeering, or a criminal violation of an individual's civil rights. While the specific legal nomenclature and definitions vary from jurisdiction to jurisdiction, it is clear that any act of torture falling within the Convention would in fact be criminally prosecutable in every jurisdiction within the United States.

103. Eighth Amendment. Perhaps the strongest and clearest protection against torture is afforded by the Eighth Amendment to the United States Constitution, which prohibits "cruel and unusual punishments".

106. The Eighth Amendment has also been interpreted to apply to (1) inadequate conditions of confinement resulting from an official's "deliberate indifference" to identifiable human needs (such as continuous deprivation of food, warmth, and exercise), Wilson v. Seiter, 501 U.S. 294 (1991), and possibly overcrowding of facilities, Rhodes v. Chapman, 452 U.S. 337 (1981); (2) excessive use of force by prison officials, as well as failure to protect inmates from physical attacks by other inmates, and inadequate training or screening of guards, Whitley v. Albers, 475 U.S. 312 (1986); and (3) inadequate provision of medical, dental and psychiatric care, including an official's deliberate indifference to an inmate's serious medical needs which exceeds simple medical malpractice, Estelle v. Gamble, 429 U.S. 97 (1976), and Farmer v. Brennan, 511 U.S. 825 (1993) (prison officials have a duty under the Eighth Amendment to provide humane conditions of confinement).

112. Other constitutional provisions. Because the Eighth Amendment by its terms applies to "punishments", courts have looked to other constitutional provisions, in particular the Fourth Amendment's protections against unreasonable searches and seizures and the due process requirements of the Fifth and Fourteenth Amendments, to preclude the abuse or ill-treatment of individuals in other custodial circumstances. These constitutional protections are applicable and enforced at all levels of government.

113. The Fourth Amendment provides that all persons shall be free from unreasonable searches and seizures and that “no Warrants shall issue, but upon probable cause, supported by Oath or Affirmation, and particularly describing the place to be searched, and the persons or things to be seized”.

114. The Fourteenth Amendment provides that “[n]o State [shall] deprive any person of life, liberty or property without due process of law”. The Fifth Amendment applies to the Federal Government and similarly provides that no person shall “be deprived of life, liberty, or property without due process of law”. The principle of due process provides a broad and flexible measure of protection against abuse of state power. The due process clauses of the Fifth and Fourteenth Amendments may reach actions that are technically outside Eighth Amendment purview, such as excessive use of force by law enforcement personnel during the investigative or pre trial stages. Denial of pre trial release by itself may implicate substantive and procedural due process concerns. United States v. Salerno, 481 U.S. 739 (1987).

115. Although the Eighth Amendment does not apply to “pre trial detainees”, i.e., persons lawfully arrested but not yet convicted and sentenced, the courts have ruled that such individuals enjoy equivalent protection under the Fourteenth Amendment with regard to conditions of detention. …..

121. Habeas corpus. Of principal significance is the constitutionally recognized right of habeas corpus, which affords individuals in custody the right to an immediate judicial hearing on the legality and the conditions of their confinement and an order directing the detaining official to release them, if appropriate. In particular, a person in custody who has not been formally arrested and provided a preliminary hearing as required by law may seek immediate release by filing an application for a writ of habeas corpus in state or federal court. The writ can also be used to seek review of a final conviction, to challenge execution of a sentence, or to contest the legality of an order of confinement not resulting from a criminal sentence, for example a commitment to custody for mental incompetence or for extradition reasons. This right ensures, for example, that suspects in the United States may not be held “incommunicado”.

122. Arrest and detention. United States law imposes strict rules regarding arrest and detention of suspects by agents of the state and effectively protects individuals against arbitrary arrest and detention.

127. Right to counsel. The right to counsel in criminal cases is guaranteed by the Sixth Amendment to the United States Constitution. This right is binding on the states via the Fourteenth Amendment. In addition, the right is also guaranteed by similar or analogous language in every state constitution (except that of Virginia). The Sixth Amendment provides that "[i]n all criminal prosecutions, the accused shall enjoy the right ... to have the Assistance of Counsel for his defense". While primarily reflecting the need for legal representation at trial, this right has been interpreted to apply whenever adversarial judicial proceedings have begun, whether or not the individual is in custody. See Massiah v. United States, 377 U.S. 201 (1964) (government attempts deliberately to elicit confession or incriminating statements after the initiation of formal charges may interfere with the right to counsel and therefore render such statements inadmissible as evidence).

128. The right to counsel applies at the preliminary hearing stage, at arraignment, and at the post-trial (sentencing) phase. See Coleman v. Alatan, 339 U.S. 1 (1990); Michigan v. Jackson, 475 U.S. 625 (1986); and Mempa v. Rhay, 389 U.S. 128 (1967). It can also apply to custodial interrogations. In Escobedo v. Illinois, 378 U.S. 478 (1964), the defendant's confession was excluded ("suppressed") because the police had violated his Sixth Amendment rights by telling him incorrectly at the time of interrogation that his attorney did not want to see him.

129. Inability to afford representation cannot deprive an accused of his or her right to counsel. In Gideon v. Wainwright, 372 U.S. 335 (1962), the U.S. Supreme Court found that the Sixth Amendment mandated state-paid counsel for the trial of indigent felony defendants. The right was extended to all cases including misdemeanors in which imprisonment is imposed. Scott v. Illinois, 440 U.S. 367 (1979); Argersinger v. Hamlin, 407 U.S. 25 (1972). Hence, no state can sentence an indigent convicted defendant to a term of imprisonment unless it has afforded him or her the right to assistance of appointed counsel. Constitutional notions of due process also require provision of counsel in appeals as of right. Evitts v. Lucey, 469 U.S. 387 (1985).

9. 委員會歡迎報告國對有關防止酷刑措施效力的評估，包括確保將責任人繩之以法的措施。

第 2 條第 2 項

10. 報告應列入關於確保任何特殊情況均不得被援引為由之各種有效措施的資訊，特別是：

• 是否存在法律和行政措施，保障任何人不受酷刑對待的國家義務即使在戰爭狀態、戰爭威脅、國內政局動盪或任何其他社會緊急狀態期間也不受減損；

第 2 條第 3 項

11. 報告應表明：

• 是否存在禁止援引上級命令--包括軍事當局命令--為施行酷刑之理由的立法和判例法；如果有，應提供關於其實際執行情況的資訊；

• 是否有任何允許下級可以合法違抗施行酷刑命令的情況，他或她可以求助的程序和關於可能發生的任何這種情況的資訊；

• 作為一個刑法上辯護理由，公共主管機關有關「正當服從」概念的立場是否對有效實施這項禁止造成任何影響。

第 3 條

12. 該條禁止將一個人驅逐、遣返或引渡至令其可能遭受酷刑的國家。報告應提供下列資訊：

• 關於此種禁止的國內立法；

(1)公約第 3 條國內法化:Foreign Affairs Reform and Restructuring Act of 1998 授權相關行政機關訂定行政命令執行，在此的相關權責機關為移民及歸化局(Immigration and Naturalization Service (INS))與國務院(Department of State)

168. Legislation. On 21 October 1998, President Clinton signed into law a bill which required “[n]ot later than 120 days after the date of enactment of this Act, the heads of appropriate agencies [to] prescribe regulations to implement the obligations of the United States under Article 3 of the United Nations Convention against Torture and other Forms of Cruel, Inhuman or Degrading Treatment or Punishment, subject to any reservations, understandings, declarations, and provisos contained in the United States Senate resolution of ratification of the Convention”. Section 2242, Foreign Affairs Reform and Restructuring Act of 1998, Public Law 105-277 (21 October 1998). Accordingly, the INS and the Department of State each promulgated regulations to

implement article 3, consistent with United States reservations, understanding and declarations, in their respective areas of responsibility

(2)根據前述母法訂定之相關性行政命令
移民歸化局之行政命令 ，有兩種保護，一種為新形式的暫緩遣返，二為推遲遣返(deferral of removal,)
169. INS Regulations. On 19 February 1999 the Department of Justice published an interim rule prescribing regulations that implement formally, as directed by the Congress, United States obligations under the Convention against Torture. The interim rule became effective on 22 March 1999. (A full text of the rule is at annex IV.)
170. Under the regulations, at 8 C.F.R. Parts 3, 103, 208, 235, 238, 240, 241 and 253, claims for article 3 protection generally are determined by Immigration Judges (IJs) of the Executive Office for Immigration Review (EOIR). The regulations permit aliens to raise article 3 claims during the course of regular immigration removal proceedings, providing the opportunity for prompt and fair consideration. IJ decisions are subject to review by the Board of Immigration Appeals, also a part of EOIR.
171. The regulations create two types of article 3 protection. The first is a new form of withholding of removal. The second protection is deferral of removal, a more temporary form of protection, which is to be granted to aliens who would more likely than not face torture, but who are ineligible for withholding of removal - for example, certain criminals, terrorists and persecutors. Deferral of removal is more easily and quickly terminated if the individual is no longer likely to be tortured in the country of removal. A deferral order would not alter INS authority to detain an individual subject to detention. Neither provision alters the Government's ability to remove the individual to a third country where he or she would not be tortured. Both, however, would ensure compliance with the cardinal obligation of article 3, not to return the person to the likelihood of torture.

國務院之行政命令：將過去之實踐法典化，確保美國不引渡個人回可能遭受酷刑之國家
176. Department of State regulations. On 26 February 1999 the Department of State published a final rule, as directed by the Congress, issuing regulations implementing the Convention against Torture in extradition cases. The rule became effective immediately. (A full text of the rule is in annex V.)

177. Under these regulations, at 22 C.F.R. Part 95, the Department of State has essentially codified its pre-existing practice, see above, for ensuring that the United States does not extradite a person to a country where it is more likely than not that he will be subjected to torture.

其他相關國內立法:政治庇護條款(asylum)(Immigration and Nationality Act §§ 208)與暫緩遣返條款(withholding of removal)(Immigration and Nationality Act §§241 (b) (3))(難民公約第 33 條的國內法化)，雖然這兩種救濟的程序與效果均不同，然而這兩個救濟均強調是否存有外國人基於種族、宗教、國籍特定社會群體的社員資格或政治意見而面臨遭受迫害的風險 。這兩種救濟與公約第 3 條有 3 點不同，其一，政治庇護條款與暫緩遣返條款會排除某些適用的主體，如因為恐怖主義或會對美國造成安全威脅…等而不適用，公約第 3 條卻無此等例外；其二，政治庇護與暫緩遣返條款僅適用於外國人基於條文所列舉的特定特徵(specific characteristics)所遭受迫害的風險，公約第 3 條無此限制；其三，公約酷刑的定義並未涵蓋所有可能構成政治庇護或暫緩遣返條款下的迫害的所有類型傷害。

• 國家可能通過或採用之有關恐怖主義、緊急情況、國家安全或其他理由的立法和做法是否對有效實施這項禁止造成任何影響

如前所述，政治庇護條款與暫緩遣返條款排除特定恐怖份子與對美國造成危險的個人之適用 。而在移民歸化局的行政命令則說明在推遲遣返的情況則依舊適用於那些恐怖份子等情況 ，另外恐怖份子或造成國家安全危險疑慮等個人依舊適用行政規則的特別遣返程序(special removal procedures) ，除此之外並未特別說明相關立法或作法影響之狀況。

• 由何主管機關根據哪些標準確定引渡、驅逐、遣送或送回個人；

• 關於這一問題的決定是否能夠得到覆審，如果能夠，由哪機關進行覆審，所適用程序為何，此種程序是否具有停職的效力；

• 有關第 3 條案件的決定及這些決定中所適用之標準，有關決定所依據之資訊與資訊來源；
• 為處理驅逐、遣返或引渡外國人的官員提供之培訓項目。

第 4 條

13. 該條規定的報告義務指國家應當頒布立法，以與第 1 條定義相符的用語將酷刑定為罪行。委員會一貫認為，酷刑罪性質不同於現有各種形式的殺人和攻擊，因此應當單獨界定為一項罪行。報告應提供下列資訊：

• 關於這些罪行和相關處罰的普通刑法和軍事刑法規定

美國並未在聯邦法將酷刑列為一項單獨的罪刑，其認為當時的現行法的規定如: 殺人、過失致死、重傷…等已足夠涵蓋酷刑(如下)。然而，爾後委員會的報告則指出: 「締約國未能以符合《公約》第 1 條的規定將酷刑定為一項聯邦罪」「儘管已採取許多措施確保遵守《公約》的條款，但還須按照《公約》第 1 條的規定將酷刑定為一項聯邦罪行，並撤銷與《公約》有關的保留、解釋和理解」

178.Throughout the United States, its territories and possessions, all acts constituting torture are criminal offences, punishable by appropriately severe penalties. Additionally, acts constituting attempts, “complicity”, “participation” and conspiracy to torture are likewise criminal offences. No single federal statute specifically defines or prohibits torture or directly implements the central provisions of the Convention. Nonetheless, at the time of ratification, it was determined that existing state and federal law was sufficient to implement article 4, except to reach torture occurring outside United States jurisdiction, as discussed below under article 5.

179. Where acts constituting torture under the Convention are subject to federal jurisdiction, they fall within the scope of such criminal offences as assault, maiming, murder, manslaughter, attempt to commit murder or manslaughter, or rape. See 18 U.S.C. §§ 113, 114, 1111, 1113, 2031. Conspiracy to commit these crimes, and being an accessory after the fact, are also crimes. See 18 U.S.C. §§ 3, 371 and 1117. Where such acts are committed within the “special maritime and territorial jurisdiction” located within a state, federal law incorporates criminal defences as defined by state law. See 18 U.S.C. §§ 7, 13.

180. Conduct falling within the scope of the Convention will often constitute criminal violations of the federal civil rights statutes. For example, violations of 18 U.S.C. §§ 241 and 242 carry a maximum of 10 years in jail or, if the victim dies, the death

penalty. Section 241 penalizes conspiracies to deprive an individual of “the free exercise or enjoyment of a right of privilege secured by the Constitution or laws of the United States”. Section 242 addresses wilful deprivation of such rights “under color of law”

州刑法規定

182.Even where a specific act constituting torture is not within the scope of these federal statutes, or is outside the protections afforded by the Fourth, Fifth, Eighth and Fourteenth Amendments, it will be found in violation of state criminal law. Every state criminalizes deliberate acts of bodily injury as well as abuses of authority on the part of state agents, whether as common assault and battery, homicide, rape, etc., as well as conspiracies, attempts, complicity, solicitation, etc. Twenty-two states have “official oppression” statutes, many of which are patterned after the American Law Institute’s Model Penal Code section 243.1, which provides that a person acting or purporting to act in an official capacity commits a crime if he or she knowingly subjects another to arrest, detention, search, seizure, ill-treatment, dispossession, assessment, lien or other infringement of personal or property rights or denies or impedes another in the exercise or enjoyment of any right, privilege, power or immunity. The Oregon CAT/C/28/Add.5 page 43 state penal code, for example, includes a specific crime of official misconduct. See also, Alaska Stat. 11.56.850 (1997) (“official misconduct”); Col. Crim. Code C.R.S. 18-8-403 (1996); Georgia OCGA 45-11-3 (1997); N. Dak. Cent. Code 12.1-14-01 (1997); Oreg. Stat. 163.205 (2) (1997); Tenn. Code Ann. 8-18-101 (1997).

- 各種限制法規是否適用於此種罪行

並未提及

- 適用這些法律規定的案件數和性質及有關案件的結果，特別是定罪判決的刑罰和開釋理由；

並未提及

- 與實施第 4 條相關的判決書樣本

181. It has long been recognized that these statutes apply to official misuse of

authority and force. In the notorious Rodney King case, two officers of the Los Angeles Police Department were convicted of violating § 242 by beating Mr. King repeatedly with batons during an arrest. Each was sentenced to 30 months' imprisonment for criminal violations of the civil rights statutes. This case began as a local prosecution of the four police officers involved in the incident - they were acquitted of the charges after the defence convinced the jury that their conduct was not unreasonable under all the surrounding circumstances. The subsequent federal criminal prosecution was successful in convincing a federal jury that the principal actor used unreasonable force, and his supervising sergeant had permitted him to do so. See United States v. Koon, 518 U.S. 81 (1996).

• 關於在調查指稱酷刑案期間所採取之針對酷刑行為負責的執法人員要求的紀律措施之立法(例如停職)
並未提及

• 關於現有刑罰如何考慮酷刑之嚴重性的資訊。
並未提及
第 5 條
14. 第 5 條涉及締約國對第 4 條所述罪行確立管轄權之法律責任。報告應提供下列資訊：
• 在第 1 項(a)、(b)和(c)款所涉案件中，為確定管轄權而採取之措施。還應(should)包括適用(b)和(c)款規定的案例；

公約第 5 條第一項(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」

183. As a general matter, criminal jurisdiction under federal and state law is territorial. It encompasses crimes committed by any person within the territory of the United States (or relevant subordinate jurisdiction) regardless of the nationality or citizenship of the offender or victim.

184. In relatively few instances, the definition of "territory" has been specifically crafted to apply to acts taking place outside United States geographical territory. For example, certain provisions of the federal criminal code apply within the "special maritime and territorial jurisdiction of the United States" (18 U.S.C. § 7), which

includes, inter alia, vessels registered in the United States, aircraft belonging to the United States, and “any place outside the jurisdiction of any nation with respect to an offence by or against a national of the United States”. Federal law also defines the “special aircraft jurisdiction of the United States” to include extraterritorial offences against aircraft in specified instances. See 49 U.S.C. § 46501 (2).

185. For instance, United States criminal jurisdiction extends beyond the territory of the United States to the following conduct:

− criminal acts which occur on a vessel belonging to a United States individual or corporation located on the high seas. 18 U.S.C. § 7 (1).

− criminal acts which occur on an aircraft belonging to a United States individual or corporation flying over the high seas. 18 U.S.C. § 7 (5).

− criminal acts performed by or against a United States national outside the jurisdiction of any country. 18 U.S.C. § 7 (7).

− criminal acts which occur on any foreign vessel with a scheduled departure or arrival in the United States and the criminal act is performed by or against a United States national. 18 U.S.C. § 7 (8).

− criminal acts performed on an aircraft with its next scheduled destination or last place of departure in the United States, if it next lands in the United States. 49 U.S.C. § 46501 (2) (D) (i).

− criminal acts performed on an aircraft leased (without a crew) to a United States lessee with its principal place of business in the United States. 49 U.S.C. § 46501 (2) (E).

公約第 5 條第一項(b) 「被控罪犯為該國國民」之相關管轄權措施(當時尚未有相關案例)

188…..This statute, which is codified at Chapter 113B of Title 18 of the United States Code (copy in annex II) provides federal criminal jurisdiction over an extraterritorial act or attempted act of torture if (1) the alleged offender is a national of the United States or (2) if the alleged offender is present in the United States, irrespective of the nationality of the victim or alleged offender. See 18 U.S.C. §§ 2340 and 2340A, Pub. L. 103-236, Title V, § 506 (a), as amended by Pub. L. 103-322, Title VI, § 60020, Pub. L. 103-415, § 1 (k), and Pub. L. 103-429, § 2 (2)…..

• 在指稱犯罪者於報告國境內而該國不將其引渡到對有關罪行具有管轄權之國家的案件，為確定管轄權而採取的措施。應當提供(a)款准予引渡和(b)款拒絕引渡之案例。

為了符合公約規定，美國採取新的立法 ，惟在國家報告撰寫當時尚未有根據這些立法起訴的案例

187. Extraterritoriality. At the time the United States signed the Convention against Torture, neither federal nor state law was sufficiently far-reaching to satisfy the additional requirements of article 5 concerning jurisdiction over acts of torture by United States nationals wherever committed or over such offences committed elsewhere by alleged offenders present in United States territory whom the United States does not extradite.

188. To correct this deficiency before ratification, the United States enacted a new provision of the federal criminal code in 1994. This statute, which is codified at Chapter 113B of Title 18 of the United States Code (copy in annex II) provides federal criminal jurisdiction over an extraterritorial act or attempted act of torture if (1) the alleged offender is a national of the United States or (2) if the alleged offender is present in the United States, irrespective of the nationality of the victim or alleged offender. See 18 U.S.C. §§ 2340 and 2340A, Pub. L. 103-236, Title V, § 506 (a), as amended by Pub. L. 103-322, Title VI, § 60020, Pub. L. 103-415, § 1 (k), and Pub. L. 103-429, § 2 (2). The statute defines “torture” in a manner compatible with the United States reservations to the Convention. Offences are punishable by fines or imprisonment up to 20 years (or, if death results from the prohibited conduct, by death or imprisonment for any term of years or life). This statute does not displace or preclude application of state or local law.

189. This statute took effect on 21 October 1994; no prosecutions have been initiated by the United States under this provision to date.

第 6 條

15. 第 6 條涉及締約國行使管轄權，特別是涉及調查身處其領土內被控有第 4

條所述罪行者的問題。報告應提供下列資訊：

• 國內有關法律規定，特別是有關拘押該人或確保在場之措施；該人獲得領事協助的權利；報告國通知可能也對被拘押者具有管轄權之其他國家的義務；有關拘留的情況和締約國是否打算行使管轄權；

190. Federal law and bilateral extradition treaties authorize officers to take an alleged or suspected offender into custody and hold him until extradition proceedings are under way as required by article 6.

191. Ordinarily, the apprehension and detention of a suspected torturer for purposes of extradition requires issuance of an arrest warrant by a federal district court judge or magistrate judge. In exigent circumstances (e.g., when a suspect is identified trying to enter or leave the country at a port of entry) an arrest may be made without a warrant and the suspect detained in accordance with normal procedure. The ordinary requirements for an initial appearance before a magistrate apply in such a situation; however, as a general matter, in United States practice bail is not granted to persons pending extradition. The detainee may of course seek judicial review of the detention by petitioning for a writ of habeas corpus.

此情況亦適用通知領事的一般規則

192. With reference to the provisions of article 6 (3), ordinary rules of consular notification apply.

• 負責實施第 6 條各個方面的主管機關；

並未提及

• 適用上述國內規定的任何案件。

並未提及

第 7 條

16. 本條規定關於締約國除非將指稱的犯罪人引渡否則應對其管轄範圍內的酷刑行為予以起訴的義務。報告應提供下列資訊：

• 確保指稱犯罪者在訴訟的所有階段都得到公平待遇的措施，包括得到法律諮詢的權利、在被證明有罪之前被推定無罪的權利、在法院面前平等的權利等；

• 確保起訴和定罪所要求之證據標準在指稱犯罪者為在國外犯下酷刑行為的外

國人案件中一體適用；
• 實際執行上述措施的案例。

僅說明此情況之起訴法源基礎並總結可符合公約義務一語帶過，除此之外並未特別說明相關法律保障與案例等。
第 8 條
17. 根據《公約》第 8 條，締約國須承認酷刑為可引渡的罪行，以便於引渡涉嫌犯有酷刑行為和/或相關酷刑未遂罪行及共謀和參與酷刑罪者。報告應提供下列資訊：
• 酷刑和相關罪行是否被報告國視為可引渡的罪行；
美國相關法律與引渡條約將酷刑視為可引渡罪刑
• 報告國是否以條約的存在為引渡的條件；
• 報告國是否將《公約》視為就有關上述罪行實施引渡的法律根據；

美國普遍需要引渡條約才能引渡，故不將公約本身作為引渡的法律基礎
196.International extradition is a matter of federal law. See 18 U.S.C. §§ 3181-3196. As discussed above, under United States law the United States generally cannot extradite in the absence of an extradition treaty. For this reason, the United States will not avail itself of the permissive provision in article 8 (2) to consider the Convention against Torture itself as the legal basis for extradition

• 報告國與《公約》其他締約國之間將酷刑列為可引渡罪行之引渡條約

未提及特定條約

• 報告國准予引渡指稱犯有上述任何罪行者的案例。

當時未有酷刑罪行相關引渡案例
第 9 條
18. 根據本條，締約國須在所有涉及酷刑罪及相關酷刑未遂罪、共謀和參與酷刑罪的刑事訴訟事項中相互提供司法協助。報告應提供下列資訊：
• 有關涉及上述罪行案件中相互提供司法協助的法律規定，包括任何條約

201. United States law permits both law enforcement authorities and the courts to request and to provide many forms of “mutual legal assistance” in criminal cases

covered by the provisions of the Convention against Torture. The forms of possible assistance include the service of documents, the taking of testimony, provision of documents, execution of requests for searches and seizures, transfer of persons in custody, and forfeiture of assets, to name a few.

202. Statutory authority for the United States to act upon such requests from foreign countries is codified at 28 U.S.C. section 1782. As amended in 1996, U.S. law authorizes the appropriate federal district courts to order a person to give testimony or provide documents for use in "a proceeding in a foreign or international tribunal, including criminal investigations conducted before formal accusation". United States law does not prohibit voluntary cooperation with foreign criminal proceedings. A person may not, however, be compelled to give testimony or produce a document in violation of any legally applicable privilege.

203. As of the end of 1998, the United States had entered into 22 bilateral treaties and dozens of bilateral agreements with other countries to establish closer and more effective law enforcement cooperation and to increase the availability of admissible evidence in criminal investigations and proceedings. An additional 19 bilateral mutual legal assistance treaties were ratified by the United States during December 1998 and January 1999. Some of these treaties and agreements require dual criminality in the subject offences, others do not; but all cover a wide range of criminal offences, and all would permit the sharing of evidence and other forms of assistance in respect of the crimes covered by the Convention against Torture. Such treaties are considered self-executing and supersede any inconsistent pre-existing statutory domestic law. In re Erato, 2 F.3d 11 (2d Cir. 1993)

204. The United States has signed the Inter-American Convention on Mutual Legal Assistance in Criminal Matters, which was transmitted to the Senate for its advice and consent to ratification in 1997. Since that Convention is not yet in force for the United States, no requests for mutual assistance have been executed pursuant to its terms.

205. Also on the multilateral level, the United States played a substantial role in the establishment by the United Nations of the two ad hoc International Criminal Tribunals (for the Former Yugoslavia and for Rwanda) and has provided significant operational support to their activities. In 1996, the mutual legal assistance statute (§

1782) was amended to authorize assistance to the Tribunals and to foreign countries in gathering evidence for preliminary investigations as well as for prosecutions. The amendment ensured that several earlier federal court of appeals decisions limiting the use of that provision in preliminary stages of foreign investigations would not interfere with the United States obligation to provide assistance to the Tribunals.

• 報告國要求或被要求相互協助之涉及酷刑罪的案例，包括有關要求的結果。

報告並未提及任何案例

第 10 條

19. 根據本條及相關之第 16 條，締約國有義務就禁止酷刑、殘忍、不人道和侮辱之處遇與處罰事項，培訓參與拘押、審訊或處理在國家或官方控制之下之人的執法人員、司法官員和其他人員。報告應提供下列資訊：

• 就上述問題對擔任《公約》第 10 條所列各項職務者的培訓方案；

209. Training. All federal law enforcement and corrections officers receive mandatory training in the proper treatment of individuals in custody, which includes specific information regarding the prohibition against torture, excessive use of force, impermissible methods and techniques of interrogation and restraint, cultural sensitivity and diversity, and other issues relevant to compliance with the Convention.

215. Local governments and police officers may be liable as a matter of federal law for failing adequately to train officers on constitutional limitations on the use of force. City of Canton v. Harris, 489 U.S. 378 (1989). In Davis v. Mason Co., 927 F.2d 1473 (9th Cir. 1991), for example, four plaintiffs alleged that they had been the victims of police brutality when each was individually detained for supposed traffic violations. In each case, officers used excessive force while searching the victims. The appellate court affirmed judgement in favour of the plaintiffs, holding specifically that the trial court had been correct in instructing the jury that they could find the county government and the sheriff liable under 42 U.S.C. § 1983 for failure to train the sheriff's deputies properly.

216. During the basic training course provided to all Border Patrol Agents, the Border Patrol Academy provides a two-hour course in ethics and conduct. This course instructs Agents of their obligations toward individuals they arrest and the rights of

those who are arrested. The Academy also has a four-hour course in constitutional law that instructs Agents on the civil rights of those individuals that they encounter. The Academy also provides 23 hours of instruction on statutory authority under the Immigration and Nationality Act (INA). Part of this course informs Agents of the limitations on their authority and their obligations under the INA when making arrests. Finally, the Academy provides three hours of instruction on officer integrity. This course provides instruction on an Agent's responsibilities in dealing with members of the public.

217. In the refugee context, the U.S. Immigration and Naturalization Service has established a separate corps of asylum adjudicators, all of whom are given extensive training on issues relating to torture in order to sensitize them to the unique humanitarian aspects involved in claims for refugee status based on allegations of torture. All asylum officers are required to attend the Asylum Officer Basic Training Course (AOBTC) as well as on-going in-service training. The AOBTC is approximately four weeks in length and includes, inter alia, training in international human rights law, United States asylum and refugee law, interviewing techniques, and decision making skills. Incorporated into this course is training on interviewing survivors of torture and other severe trauma. Experts instruct the officers about the physical and psychological effects of torture, its implications for the interview, and stress/burnout that the asylum officer may experience as a result of continually interviewing individuals who may be survivors of torture.

218. In the military context, all personnel involved in custody, interrogation, or treatment of individuals subjected to any form of arrest, detention, or imprisonment receive appropriate training regarding the prohibition of torture and related maltreatment. This training is given to military police, interrogators, inspectors general and psychiatric hospital staff.

219. Through the International Criminal Investigative Training Assistance Program (ICITAP), the U.S. Department of Justice works with law enforcement organizations in various foreign countries to build democratically-based police forces which operate under the rule of law. Among the components of the ICITAP programme are a training course entitled "Human Dignity in Policing", the establishment of an independent oversight mechanism (such as an Inspector General's Office) to provide

objective and impartial investigation of alleged police abuses, and training courses in techniques for interviewing witnesses and suspects, appropriate uses of force, and proper techniques for arrest and humane handling of detainees and prisoners.

• 關於處理被拘留者或尋求庇護者問題之醫務人員的培訓，以發現揭露酷刑的生理和心理痕跡，以及對司法和其他官員的培訓的資訊；

211. Many law enforcement agencies rely on screening techniques to identify applicants and officers/agents who may be disposed to, or are at risk of, using excessive force through psychological methods; many also employ psychologists in order to monitor, train, counsel, evaluate law enforcement personnel in an effort to prevent abuses before they occur and to address the institutional or organizational factors which may contribute to incidents of ill treatment or excess.

220. Medical Personnel. Training in the principles of medical ethics and "standards of care" is normally a required element of the curriculum for medical doctors and other health care personnel. All health care personnel are trained in the basic obligations of the physicians' oaths (such as the Hippocratic Oath, the International Code of Medical Ethics, and the 1982 United Nations Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment). The Code of Medical Ethics of the American Medical Association (AMA) has guided medical practice in the United States for over 150 years and is the generally recognized ethical standard; the AMA promotes professional discussion and exchanges of views on ethical matters, e.g., through its Institute for Ethics which was established in 1997 to perform research in a range of biomedical ethics (end-of-life care, genetics, managed care and professionalism). Other codes exist; for example, the American College of Emergency Physicians established a new code of ethics in 1997.

221. To instruct students in this field, medical educational institutions use such textbooks as Beauchamp and Childress, Principles of Biomedical Ethics (4th ed., 1994); Beauchamp and Walters, Contemporary Issues in Bioethics (4th ed., 1994); Crigger, Cases in Bioethics (2nd ed., 1993); and Levine, Taking Sides (5th ed., 1993).

222. At the federal level there exists a National Center for Clinical Ethics, which was

established within the Department of Veterans Affairs in 1991 to provide a comprehensive bioethics programme to promote high ethical standards in health care for veterans.

223. Within the legal community of the United States there is a growing emphasis on medical/ethical issues. For example, specialized programmes in health law and bioethics are now widespread, including academic programmes to train medical clinicians to practice ethics consultation as a speciality as well as to prepare lawyers to practice in the field of health law. Professional associations such as the American Society of Law, Medicine and Ethics and the Association of American Law Schools' Section on Law, Medicine, and Health Care also promote the study of bioethics.

• 有關授課和培訓的性質和頻率；

210. The Federal Bureau of Prisons requires each new permanent employee (and certain designated temporary employees) to complete two weeks of familiarization training in proper correctional practices. In addition, each new permanent employee must complete a 120 hour (three week) course denominated "Introduction to Correctional Techniques" at the Federal Law Enforcement Training Center in Glynco, Georgia. This training includes review and testing in Bureau of Prisons policy, firearms proficiency and self-defence. Each employee stationed at a Bureau institution must receive 40 hours of refresher training in these subjects each year.

211. Many law enforcement agencies rely on screening techniques to identify applicants and officers/agents who may be disposed to, or are at risk of, using excessive force through psychological methods; many also employ psychologists in order to monitor, train, counsel, evaluate law enforcement personnel in an effort to prevent abuses before they occur and to address the institutional or organizational factors which may contribute to incidents of ill treatment or excess.

212. State and local criminal justice systems have independent programmes for the training of law enforcement and corrections officers, which also cover such subjects as proper techniques of search, interrogation, use of force, and mental health issues. State police officers, for example, receive an average of over 800 hours (20 weeks) of required training. For nearly two years, all states have had "peace officer standards and training" commissions.

213. At the state and local level, correctional training and staff development programmes are supplemented by the resources of public and private agencies, local police academies, private industry, educational institutions and libraries. The National Institute of Corrections, the National Academy of Corrections, the National Institute of Justice, the Federal Bureau of Investigation and others provide managerial, specialized and advanced training for state and local corrections officials. The International Association of Directors of Law Enforcement Standards and Training (IADLEST) provides an information system for employment and training of law enforcement and correctional personnel, including model minimum state standards.

• 關於確保適當地和尊重地對待婦女、青少年、以及族裔、宗教或其他各種群體之任何培訓的資訊，特別是有關不當影響這些群體之各種形式酷刑；

214. The American Corrections Association, a private non-profit organization dedicated to the improvement in management of American correctional agencies throughout the country, has developed a voluntary accreditation programme and nation-wide standards for correctional facilities. These criteria, which apply to about 80 percent of the state departments of corrections and youth services, as well as to facilities operated by the District of Columbia and the U.S. Department of Justice, require all new full-time employees to receive 40 hours of initial orientation training, which should include at a minimum orientation to the purposes, goals, policies, and procedures of the institution and parent agency; working conditions and regulations; employees' rights and responsibilities; and an overview of the correctional field. This training is in addition to the first year training and on-going training required in various job categories.

• 各種方案的效力。

第 11 條

20. 根據本條與相關之第 16 條，各國有義務經常檢討對遭到任何形式逮捕、拘留或監禁者進行審訊的規則、指示，方法和慣例，以及對其拘押和處遇的安排，以防止酷刑和其他殘忍、不人道或侮辱之處遇與處罰。報告應提供下列資訊：

• 有關被剝奪自由者待遇的法律、規章和指示；

227. In the United States, police interrogation of a criminal suspect is strictly

regulated by court-made rules based on constitutional law. Law enforcement officers are instructed in these rules as well as in the consequences of their failure to follow them. As a result, the methods and practices of interrogation of criminal suspects, as well as the arrangements for the custody and treatment of persons subjected to arrest, detention or imprisonment, are consistently under systematic review and revision.

228. In the first instance, United States law circumscribes the power of the police and other governmental authorities to detain or arrest individuals for any reason, including for purposes of interrogation. The Fourth Amendment not only requires "probable cause" for an arrest but prohibits the use of excessive force during an arrest, investigatory stop, or other "seizure" of a person. See Graham v. Connor, 490 U.S. 386 (1989).

• 關於要求迅速通知和接觸律師、醫生、家庭成員，以及在外國國民的案件中要求通知領事諸措施的資訊；
• 國內法和國家實踐在多大程度上符合下列規則和原則：《受刑人待遇最低限度標準規則》;《受刑人待遇基本規則》;《維護所有遭受任何刑事拘留或監禁的人的原則》;《關於醫務人員、特別是醫生在保護被監禁和拘留的人不受酷刑和其他殘忍、不人道或侮辱之處遇與處罰方面的任務的醫療道德原則》；和《執法人員行為守則》；
• 為檢查監獄和其他拘留地點、監督對男子和婦女進行之所有形式的暴力--包括對男子和婦女的各種形式之性暴力以及受刑人之間所有形式暴力--而設立之任何獨立機構或機制，包括授權國際監督或非政府組織進行檢查；
• 關於確保所有此類地點均為官方確認與不允許任何單獨拘留之規定的資訊；
• 審查負責審訊和拘押被拘留和監禁者的執法人員行為的機制，和此種審查的結果，以及任何合格或重新合格的程序；
• 關於保護承受特別風險者之任何保障的資訊。

第 12 條

21. 根據本條和相關之第 16 條，當有理由認為其管轄下已發生酷刑或殘忍、不人道或侮辱之處遇與處罰行為時，各國必須保證其主管機關立即進行公正調查；報告應說明：

231. As a matter of law, policy and practice, the competent authorities at all levels of Government should proceed with a thorough, prompt and impartial investigation

whenever they have reason to believe that an act of torture has been committed within their jurisdiction. While such investigations are frequently instigated by complaints from alleged victims and/or by independent press stories, the authorities in each jurisdiction have a clear and independent responsibility to monitor and correct abuses on their own. Investigations of torture and other types of physical, sexual, or emotional abuse are initiated as they would be for any other serious offence, based upon the existence of reasonable grounds to believe that the abuse took place.

• 在刑事和紀律層面上啟動和展開調查的主管機關；

232. Several mechanisms exist for this purpose. Virtually all major law enforcement organizations and agencies now have an internal review mechanism (such as an inspector general or internal affairs section) and/or some form of permanent, independent oversight body (a citizens' review board or governing commission) to which complaints of ill-treatment, excessive use of force, or other irregularities can be made. The touchstone is independence of review and investigation.

234. In all cases, complaints may also be made to the appropriate prosecutorial authorities, who are independent of the police and other law enforcement forces under the United States system. Prosecutors make their own decisions, frequently on the basis of complaints, about initiating investigations and filing criminal charges.

235. In the most significant cases, the Federal Government may have jurisdiction over allegations of misconduct at the state, county or local law enforcement levels. Jurisdiction can be based on criminal violations of the various civil rights statutes or on specifically tailored legislation such as the Civil Rights of Institutionalized Persons Act, which permits the Attorney General to institute civil lawsuits against state institutions regarding the civil rights of their residents, including the conditions of their confinement and use of excessive force.

• 相關適用程序，包括是否可立即近用醫療檢查和法醫判讀之措施；

• 指稱之酷刑或虐待行為者是否在調查期間立刻被停止職務和/或被禁止進一步與指稱的受害者接觸；

• 相關案件的起訴情況和處罰結果。

236. In addition, the Federal Government may institute civil actions pursuant to the Pattern or Practice of Police Misconduct provision of the Crime Bill of 1994, which prohibits law enforcement agencies from engaging in a pattern or practice of violating people's civil rights. By way of example, the statute allows the Civil Rights

Division of the U.S. Department of Justice to investigate and seek to remedy patterns or practices of excessive force, false arrests, improper searches and seizures, and discriminatory traffic stops or pedestrian stops.

237. The Civil Rights Division has filed two "pattern or practice" lawsuits, against the Pittsburgh, Pennsylvania, and Steubenville, Ohio Police Departments and entered into consent decrees in both cases. These decrees require comprehensive reforms in those departments' methods of supervising, training, and disciplining officers, as well as investigating the public's complaints of police misconduct.

238. Two other "pattern or practice" lawsuits, against the Columbus, Ohio Division of Police and the New Jersey State Police, have been announced but not yet filed as the Civil Rights Division and the affected jurisdictions are seeking to negotiate settlements that would be filed contemporaneously with the lawsuits. Numerous other civil "pattern or practice" investigations of police departments and sheriff's offices are ongoing. Among those that have been publicly reported are investigations of the New York Police Department (for, among other things, the Louima case), the Los Angeles Police Department, and the New Orleans Police Department.

第 13 條

22. 根據本條和相關之第 16 條，締約國必須保證，任何遭受酷刑或殘忍、不人道或侮辱之處遇與處罰的個人有權申訴並有權要求案件得到迅速和公正的調查，並保證申訴人和證人不受虐待或恐嚇。報告應提供下列資訊：

• 所稱酷刑或其他殘忍、不人道或侮辱之處遇與處罰行為之受害人可使用的救濟辦法；

239. In all situations, all victims of torture in the United States have the right to bring a complaint and to have their case promptly and impartially examined by competent authorities. When a victim alleges that he or she has been abused by an official, the avenues of redress include the right to complain to a competent official to initiate an impartial investigation. No restrictions on who can bring such a complaint (e.g., citizens, nationals, foreigners, illegal aliens). Such complaints do not need to await a criminal verdict, nor a verdict of acquittal in the case of a person charged with a crime. The alleged failure of a correctional institution to provide inmates with an adequate administrative remedial mechanism for dealing with complaints has been the

subject of federal litigation.

240. Initially, the complaint mechanism may involve an administrative proceeding. For prisoners in the custody of the Federal Bureau of Prisons, the initial route for filing a complaint or grievance is to file a complaint regarding the conditions of confinement or against a staff member with the Bureau's Administrative Remedy Program. Through this programme, a prisoner may present and appeal an issue at three levels, starting at the institutional level and proceeding through the regional level to the Central Office. See 28 C.F.R. Part 542. The Bureau of Prisons reports that, during calendar year 1998, 17,269 administrative complaints were filed at the institutional level (13.3 per cent granted); 11,106 at the regional level (6.7 per cent granted); and 4,535 at the Central Office (0.8 per cent granted).

241. Habeas corpus. The federal Constitution guarantees all detained individuals the right to petition for a writ of habeas corpus. This writ enables the independent judiciary to provide effective relief to any individual wrongfully detained in governmental custody, whether as a result of criminal or civil proceedings. In most criminal proceedings, the petitions allege some violation of constitutional standards of due process. A writ of habeas corpus may also be used to complain of unconstitutional conditions of confinement, including torture or ill-treatment. Although the federal Constitution does not foreclose statutory substitution of an alternative to habeas corpus review, that alternative must provide independent scrutiny of governmental detention., e.g., the Illegal Immigration Reform and Immigration Responsibility Act, Pub. L. 104-208, 110 Stat. 3546 (Sept. 30, 1996). State habeas corpus provisions generally follow the same guidelines.

• 在主管機關拒絕調查其案件的情況下，申訴人可使用的救濟辦法；
• 保護申訴人和證人免遭任何恐嚇或虐待的機制；

245. Victims' Rights. The United States legal community is currently debating whether new legislation (or possibly an amendment to the United States Constitution) should be adopted to recognize and expand the rights of victims of crimes, particularly violent crimes, including inter alia the right to be present and to be heard at any public proceeding involving an offender's release from custody, the right to have the safety of the victim considered in determining any conditional release from custody relating to the crime.

• 按性別、年齡、罪行和向國內主管機關申訴酷刑和殘忍、不人道或侮辱之處遇與處罰的申訴人所在地點和人數等分列之統計資料，及有關調查的結果。還應當列出被控犯有酷刑和/或其他形式虐待者所屬機關；

• 關於任何申訴人獲得獨立和公正的司法救濟的資訊，包括是否有妨礙人人在法律面前享有平等地位之任何歧視；任何有效防止騷擾或二度傷害受害者之任何規定或措施的資訊；
• 關於為處理涉及對婦女和特特殊族裔、宗教或其他少數群體之酷刑或殘忍、不人道或侮辱性之處遇案件而接受專門訓練的員警和檢察機關或類似權責機構的相關資訊；
248. Special protection is afforded to minor victims and witnesses under 18 U.S.C. section 3509, including protections of confidentiality, support of an adult attendant, services of a guardian ad litem, alternatives to live testimony, and issues of competency.

249. Domestic Assistance to Victims of Torture. In April 1997, the U.S. Department of Health and Human Services and United States Senator Paul D. Wellstone co-sponsored a conference entitled “Survivors of Torture: Improving Our Understanding”, at which representatives from the human rights, refugee, and medical communities discussed treatment of the survivors of torture. In addition, the National Institute of Mental Health has made available $1.5 million in funding for research for survivors of torture and related trauma. Indeed, the President has requested from Congress $7.5 million for services and rehabilitation for victims of torture in his FY 2000 budget. Also, as noted above, the United States continues to lead the world in its support of the United Nations Voluntary Fund For Victims of Torture.

250. For three years, the Office of Refugee Resettlement (ORR) of the U.S. Department of Health and Human Services has been awarding funds to assist torture victims. Beginning in 1996, ORR has gradually increased support and currently funds 10 organizations at a total of $1.7 million in Denver, San Francisco, San Jose, Dallas, Boston, Minneapolis and New York City. These programmes identify torture survivors among refugee communities and help to make survivors comfortable with obtaining help.

251. The activities funded by ORR include: training refugee resettlement staff, English language teachers, volunteers and community services staff so that torture survivors can be identified and be referred to the services they need; orienting refugees to the help available from mental health services; and orienting mental health professionals to effectively serve refugees across language and cultural barriers. ORR is also continually working with a network of non profit organizations around the country whose mission is to serve the needs of torture victims. The services needed by torture survivors are a unique combination of medical care, spiritual healing, psychological help and other social services. Some examples are: the Center for Victims of Torture in Minnesota has established a training programme for school teachers with students who are themselves victims of torture or whose families have suffered; Survivors International of San Francisco has established peer support groups and a community centre to offer survivors a path out of isolation; the International Institute of Boston is training mental health organizations throughout New England to treat torture survivors; and Solace in New York City helps survivors of torture reunite with their families and obtain services such as employment and housing.

• 關於任何此類措施效力的資訊。

第 14 條

23. 本條涉及酷刑受害者獲得補償、及取得公平和充分賠償和康復之權利。報告應提供下列資訊：

• 酷刑受害者及其家屬獲得賠償之現有程序，這些程序是否已經法制化；

269. Compensation. At the federal level, the principal avenues are administrative tort claims and civil litigation. Existing United States law establishes private rights of action for damages in several forms. Such suits could take the form of a common law tort action for assault, battery or wrongful death, a civil action for violations of federally protected civil rights, or a suit based on federal constitutional torts. Under the Equal Access to Justice Act, 28 U.S.C. § 2412, a federal court may award costs and reasonable attorney's fees and expenses to a plaintiff who prevails in a suit based on a for violation of his or her civil rights.

270. These mechanisms offer ample possibility for recovery of "adequate reparation"

and generally are not constrained by limits on awardable compensation. Survivors of a victim killed by torture have under common law a right to seek compensation for the victim's "wrongful death".

271. Section 1983. The most common method by which prisoners seek redress (monetary damages as well as equitable or declaratory relief) against state and municipal officials is by means of a civil law suit for violations of fundamental rights pursuant to 42 U.S.C. section 1983 (initially enacted as section 1 of the Federal Civil Rights Act of 1871). This provision states:

"Every person who, under colour of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

281. Torture Victims Protection Act. The remedies available under the Alien Tort Claims Act have recently been supplemented by the 1992 Torture Victims Protection Act, Pub. L. 105-256, 12 March 1992, 106 Stat. 73 (28 U.S.C. § 1350 note). While the Alien Tort Claims Act only provides a remedy to foreign nationals, the 1992 Torture Victims Protection Act allows both foreign nationals and United States citizens to claim damages against any individual who engages in torture or extrajudicial killing under "actual or apparent authority, or under colour of law of any foreign nation". The two statutes also differ in that the latter only allows suits for redress for torture or extrajudicial killings perpetrated by officials of foreign governments. While only aliens may sue under the Alien Tort Claims Act, that act does not expressly require that the defendant be either an official or foreign.

282. In some cases, the Federal Government has adopted statutory schemes of compensation for past wrongs to broad categories of individuals who do not have individual causes of action, even where the circumstances did not rise to the level of torture within the scope of the Convention. For example, under section 105 of the Civil Liberties Act of 1988, 50 U.S.C. App. § 1989b-4, the United States has provided redress to United States citizens and permanent resident aliens of Japanese ancestry

who were forcibly evacuated, relocated, and interned by the United States Government during World War II.

283. Additional support for rehabilitation and treatment for victims of torture has been provided through passage into law of the Torture Victims Relief Act of 1998 (discussed above), which authorizes various forms of assistance for victims of torture in the United States and abroad.

• 有關國家是否在法律上對犯罪者行為負責，從而有賠償受害者之責任；
"State actions", i.e., actions by state or local officials, may give rise to a suit under section 1983. Through such a suit, an individual may seek redress for an officer's violation of his or her Fourth Amendment rights during the course of an arrest, or a guard's violation of his or her Eighth Amendment rights by the infliction of cruel or inhuman punishment. Section 1983 actions are also available to individuals who claim they have been subjected to discipline or excessive force by prison officials without due process - a violation of the prisoner's Fifth and Fourteenth Amendment rights.

275. Other statutory tort claims. Another federal civil remedy is provided by the statutory grant of jurisdiction to sue the Federal Government for negligence or malfeasance. For example, the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b) and 2671 et seq., waives the sovereign immunity of the United States with respect to certain torts and gives the U.S. District Courts exclusive jurisdiction of civil actions against the United States for money damages for personal injury or loss of property caused by a negligent or wrongful act or omission of a government employee acting within the scope of his or her office or employment. This provision may be used by federal inmates, U.S. v. Munoz, 374 U.S. 150 (1963), and may be used to sue federal law enforcement officers for intentional torts, including, inter alia, assault, battery, and false arrest. See, e.g., Sami v. United States, 617 F.2d 755 (D.C. Cir. 1979).

276. State law. All states permit civil tort suits for negligence against state officials. See, e.g., Kansas Tort Claims Act, K.S.A. § 75-6104. Some states permit action for intentional torts against law enforcement officials. See, e.g., New Mexico Tort Claims Act, N.M Stat. Ann. 41 4 12. An increasing number of states now permit the award of damages for violations of state constitutional rights. For example, in

Brown v. State of New York, 89 N.Y.2d 172, 652 N.Y.S.2d 223 (1996), the New York Court of Appeals permitted a class action on behalf of some 300 citizens (non-white males) who had been systematically stopped and examined by local police after an elderly woman had been assaulted at knife point. Because the victim could only identify her assailant as an African-American man who may have cut his hand during the attack, the police questioned every black student enrolled at the local branch of the state university system and eventually every black male in the area. Claimants argued that the police action had been racially motivated and based their claims on the equal protection provisions of the New York State Constitution, since New York has no enabling statute similar to the federal civil rights statute. In upholding their cause of action, the court stated:

"[T]he State is appropriately held answerable for the acts of its officers and employees because it can avoid such misconduct by adequate training and supervision and avoid its repetition by discharging or disciplining negligent or incompetent employees … A damage remedy for constitutional torts depriving individuals of their liberty interests is the most effective means of deterring police misconduct ..." Id. at 194, 196.

• 關於下令賠償之主管機關所作決定的統計資料，報告中至少須提供有關案例，並說明此種決定是否得到執行，包括有關酷刑性質、受害者地位和身份及其取得賠償或其他補償數額之資訊；

272. While such suits can be filed in state courts, most are presented to the federal judiciary. The volume is substantial, approximately 58,000 cases in 1994 alone. While the statute was initially adopted to permit citizens to sue state and local government officials whose policies and practices fell below constitutional standards, it has come to be used primarily by prison and jail inmates challenging the conditions of their confinement. Typically, such cases claim that state officials have deprived prisoners of their constitutional rights, such as access to adequate medical treatment, Estelle v. Gamble, 429 U.S. 97 (1976), protection against excessive force by correctional officers, Hudson v. McMillian, 512 U.S. 995 (1992), violence by other inmates, Farmer v. Brennan, 114 U.S. 1970 (1994), or claiming denials of access to courts, law libraries and lawyers, Bounds v. Smith, 430 U.S. 817 (1977). Prisoners also frequently claim compensation for e.g. cruel and unusual punishment in violation of the Eighth Amendment (inadequate living conditions, failure to protect against

inmates with AIDS, exposure to tobacco smoke), for denial of equal protection under the Fifth and Fourteenth Amendments, and for violations of due process (e.g. improprieties in the conduct of disciplinary hearings, classifications, administrative segregation).

273. Section 1983 applies to state officers who act under colour of state law. Monroe v. Pape, 365 U.S. 167 (1961). It also extends to municipalities and encompasses suits in which "the action that is alleged to be unconstitutional implements or executes a policy statement, ordinance, regulation, or decision officially adopted or promulgated by those whose conduct or acts may fairly be said to represent official policy". Monell v. Dept. of Social Services, 436 U.S. 651, 690-691 (1978).

• 有關國家針對酷刑受害者的現今康復方案；

284. Treatment and rehabilitation. In addition to monetary compensation, states should of course take steps to make available other forms of remedial benefits to victims of torture, including medical and psychiatric treatment.

285. The United States has long been a haven for victims of persecution in foreign lands. Indeed, many recent arrivals are torture victims. Some estimates place the number of such refugees and asylees now living in the United States at between 200,000 and 400,000. Various private facilities now exist in the United States for the treatment of victims of torture. The Center for Victims of Torture in Minneapolis, Minnesota, established in 1985, is the nation's pre-eminent comprehensive torture treatment centre. Other facilities also exist, including the Marjorie Kovler Center for the Treatment of Survivors of Torture in Chicago, Illinois; Survivors International in San Francisco, California; and other centres in Boston, Massachusetts, Los Angeles, California, New York, New York, and Tucson, Arizona. In addition, a number of academic medical institutions (e.g., the Harvard School of Public Health) are conducting clinical research in this field. Other non-governmental organizations are also active in this field, including OMCT/SOS-Torture, Human Rights Watch, the International Human Rights Law Group, the Lawyers Committee for Human Rights, Amnesty International USA, and Physicians for Human Rights.

286. As indicated above, as of July 1999, the United States has contributed over $12.6

million to the United Nations Voluntary Fund for the Victims of Torture, and has been authorized by Congress to contribute an additional $3 million to the Fund in FY 2000.

• 除賠償外，關於恢復與尊重受害者尊嚴、安全和健康保護之措施，以及防止加害者再犯和協助受害者康復及重新融入社區之任何措施的資訊。

第 15 條

24. 根據本條規定，國家必須確保在任何訴訟程序中，不得採納以酷刑取得之口供作為證據，但這類口供可為證明施用酷刑者逼供的證據。報告應提供下列資訊：

• 關於禁止將通過酷刑所獲取之口供作為證據之法律規定；

230. Exclusionary rule. A confession or statement obtained by an officer who fails to follow these rules normally may not be used as evidence against the person who made the statement in criminal proceedings. Similarly, evidence obtained as a result of the police taking advantage of such a statement may not be used in criminal proceedings. State rules may provide more stringent restrictions for state and local law enforcement officers.

291. Exclusionary rule. If a criminal defendant's statement is obtained by methods which constitute coercion, the trial court must exclude the statement to prevent a violation of the Fifth Amendment. Hence, a statement made under coercion as the result of torture likely will be deemed inadmissible as evidence in a criminal proceeding, unless it is used against a person accused of torture, in which case it may be admissible only for limited purposes (e.g., as evidence that the statement was made, but not for the statement's truth). The specific legal grounds for exclusion may vary depending on the facts of the given case. In a criminal proceeding, an incriminating statement by the defendant may be excluded as an involuntary confession, as illegally obtained evidence, or as a violation of his constitutional rights.

295. Illegal search and seizure. Finally, a coerced statement may be held inadmissible because it was obtained improperly or illegally. The basis for this rule lies in the Fourth Amendment's prohibition of unreasonable searches and seizures and its requirement of due process. Evidence obtained in violation of the Fourth Amendment ordinarily must be excluded from the prosecution's case. This rule, established with respect to the Federal Government in Weeks v. United States, 232

U.S. 383 (1914), was made applicable to the states in Wolf v. Colorado, 338 U.S. 25 (1949). In Mapp v. Ohio, 367 U.S. 643 (1961), it was held to be an essential part of the Fifth as well as Fourth Amendment protections.

• 適用此類規定的相關案例；

288. Constitutional privilege. The Fifth Amendment to the United States Constitution provides that no one can be compelled in a criminal case to be a witness against him or herself. The Fifth Amendment protection applies only when the witness can cite a reasonable fear of criminal prosecution. Zicarelli v. New Jersey State Commission of Investigation, 406 U.S. 472, 480 (1972). The Fifth Amendment also permits an individual to refuse to answer official questions put to him or her in any other proceeding, either civil or criminal, formal or informal, where the answers might be incriminating in future criminal proceedings. Baxter v. Palmigiano, 425 U.S. 308, 316 (1976). However, concern with foreign prosecution is beyond the scope of the Self-incrimination Clause of the Fifth Amendment. United States v. Balsys, 524 U.S. 666, 118 S.Ct. 2218 (1998).

289. The Fifth Amendment has been interpreted by the U.S. Supreme Court to require the provision of warnings to persons in custody, including their rights to remain silent and to have an attorney, and that statements they might make can be used against them in court. Miranda v. Arizona, 384 U.S. 436 (1966). Since 1964, this privilege has been applicable to the states as well as to the Federal Government. Malloy v. Hogan, 378 U.S. 1 (1964).

290. In all states, the same or a similar privilege (e.g. no person may be compelled "to give evidence against himself") is also recognized as a matter of state constitutional law in some states, and the privilege is re-iterated in statutes and court rules. Some states, such as Connecticut, Florida and Oregon, have independently established "Miranda" rules on the basis of state constitutional law. The Supreme Court of Wyoming has recognized a state constitutional right to silence at all times (before, during and after arrest as well as before the "Miranda" warnings have been given); see Totolito v. State, 901 P.2d 387 (WY 1995).

292. A confession given during custodial law enforcement interrogation is subject to specific, indeed rigid, self-incrimination protections under Miranda v. Arizona, 384

U.S. 436 (1966), which has come to dominate the law of exclusion over the past 30 years. Miranda requires adequate warnings to protect constitutional rights; particularly, notification of the right to remain silent, that statements by the suspect can and will be used against him or her in court, and of the right to consult a lawyer and to have the lawyer present during interrogation; if he or she cannot afford one, a lawyer can be appointed prior to questioning. The Miranda rule ordinarily requires the exclusion of a statement taken in violation of its precepts even when no violation of the Fifth Amendment is proven.

293. These rights are, of course, subject to the suspect's "voluntary" and "intelligent" waiver; however, a confession obtained in violation of these requirements may, under the Supreme Court's Miranda jurisprudence, be excluded from evidence even if the confession could be deemed "voluntary". Much litigation has taken place over what constitutes custodial interrogation, but it has been held to include words or acts that the police should know are reasonably likely to elicit a confession or incriminating response from the suspect.

294. A statement coerced by torture may also be excludable as an involuntary out-of-court confession. Voluntariness has long been a constitutional prerequisite to the admissibility of confessions, applicable to the federal and state governments under the Fifth and Fourteenth Amendments respectively. See Hopt v. Utah, 110 U.S. 574 (1884); Brown v. Mississippi, 297 U.S. 278 (1936) (a state court conviction resting on a confession extorted by brutality and violence violates the accused's right to due process guaranteed under the Fourteenth Amendment). This rule is also rooted in the Fifth Amendment, and it applies whether or not formal criminal charges have been filed.

296. One of the best known examples of the exclusionary rule in operation is the U.S. Supreme Court's decision in Rochin v. California, 342 U.S. 165 (1952), in which the Court prohibited use of evidence obtained in manner which "shocks the conscience". In Rochin, use of stomach pumping to obtain two swallowed morphine tablets without a warrant was held to violate the Due Process Clause. More recently, an Ohio state appellate court held that it offended the concept of due process under the state and federal constitutions for a violent suspect shackled to a hospital bed to be held down by six people while a medical technician extracted a blood sample. State v. Sisler,

114 Ohio App.3d 337, 683 N.E.2d 106 (2d Dist. Clark Co. 1995).

297. The Fourth Amendment, by virtue of the Fourteenth Amendment, applies to all 50 states of the United States and constitutes a standard below which state law may not fall. In addition, the constitutions of some two thirds of the states have substantially the same "search and seizure" prohibitions; indeed, the Fourth Amendment to the United States Constitution was modelled after article 14 of the Massachusetts Constitution of 1780. In some states, constitutional protections of "privacy" may serve the same purpose as the Fourth Amendment or even offer broader protection. See, e.g., Alaska Const. art. 1, § 22; Calif. Const. art 1, § 13; Mont. Const. art 2, § 10. As indicated elsewhere, some states have exclusionary rules based on state constitutional and statutory law, see Duncan v. State, 278 Ala. 145, 176 So.2d 849 (1965), Dolliver v. State, 598 N.E.2d 525 (Ind. 1992), while others do not have their own rule and therefore must follow the federal constitutional standard, see State v. Greer, 114 Ohio App. 3d 299, 683 N.E.2d 82 (1996).

298. Confessional statements may also be deemed inadmissible for other reasons, for example when the custodians have failed to comply with statutory requirements for prompt presentation of arrested persons before magistrates, e.g., under the so-called McNabb-Mallory rule, or as the "poisoned fruit" of an illegal arrest or detention; see Wong Sun v. United States, 371 U.S. 471 (1963).

• 如果適用，締約國法律系統中是否允許衍生證據等資訊。

第 16 條

25.本條規定各國有義務禁止殘忍、不人道或侮辱之處遇與處罰的行為。報告應提供下列資訊：

• 締約國在何種程度上將殘忍、不人道或侮辱之處遇與處罰行為定為非法；關於國內法是否定義或以其他方式處理這些行為的資訊；

304. Federal Constitution. As indicated above, the federal Constitution has been amended and interpreted to provide extensive protections against cruel and inhuman punishment, and these protections reach much of the conduct and practice to which article 16 is in fact addressed.

305. State constitutions. The constitutions of almost 30 of the constituent states use

language identical to that of the federal Constitution; 21 say “cruel or unusual” as compared to 6 which say only “cruel”; Maryland uses both. State constitutional prohibitions against cruel and/or unusual punishment have been held to extend to “greatly disproportionate” sentences as well as to those exceeding any legitimate penal aim. Workman v. Commonwealth, 429 S.W. 2d 374 (KY 1968), Steeno v. State, 85 Wisc.2d 663, 271 N.W.2d 396 (Wisc. 1978) and to conditions at a county prison, Commonwealth ex. rel. Bryant v. Hendrick, 444 Pa. 83, 280 A.2d 110 (Penna. 1971).

306. Police brutality. The excessive use of force by law enforcement officers violates the United States Constitution as well as federal law. It also violates the laws of the state in which the incident occurs. Both federal and state laws provide victims of such abuses several methods for seeking compensation and rehabilitation as well as grounds for punishing those who have used excessive force.

309. Prison conditions. Although a significant percentage of the nation’s correctional facilities are relatively new, many are not, and in recent years virtually all have been subject to the pressures of overcrowding and the lack of adequate funding. As a result, the conditions in the nation’s prisons have continued to be a matter of concern.

315. Segregation and separation. As a general matter, only in limited circumstances may convicted prisoners be subjected to special security measures such as segregation or separation from the general prison population in specially constructed cells. Such measures may be employed for punitive reasons or as a means of maintaining the safety and security of inmates and staff in the institution as well as of the general public. No condition of confinement, including segregation, may violate the Eighth Amendment’s proscription against cruel or unusual punishment, nor may it violate the prisoner’s rights to due process and access to the courts under the Fifth and Fourteenth Amendments. Decisions to place prisoners in administrative segregation can be challenged in court by writ of habeas corpus, see Presier v. Rodriquez, 411 U.S. 475 (1973), or under section 1983, see Hech v. Humphrey, 512 U.S. 477 (1994); see also Brown v. Plaut, 131 F.3d 163 (D.C. Cir. 1997) (holding that a section 1983 action could be brought for damages arising from a decision to place an inmate in administrative segregation without due process of law).

• 締約國採取之防止此類行為的措施；

307. Although the Eighth Amendment's protections against cruel and unusual punishment apply only to those subject to "punishment" within the Amendment's meaning, the Fourth Amendment protects all individuals against unreasonable intrusions upon their bodily integrity and security of person. In Graham v. Connor, 490 U.S. 386 (1989), the U.S. Supreme Court held that an arrestee's claims that arresting officers used excessive force resulting in injury or death implicated the Fourth Amendment: "all claims that law enforcement officers have used excessive force - deadly or not - in the course of an arrest, investigatory stop, or other 'seizure' of a free citizen should be analysed under the Fourth Amendment and its 'reasonableness'
standard, rather than under a 'substantive due process' standard". Id. at 395. Excessive force in effecting an arrest may violate the individual's Fourth Amendment right even where probable cause for arrest exists. Tennessee v. Garner, 471 U.S. 1 (1985).

308. The civil rights statutes also provide a basis for challenging alleged police brutality. For instance, in Chew v. Gates, 27 F.3d 1432 (9th Cir. 1994), cert. denied, 513 U.S. 1148 (1995), an arrestee sued the City of Los Angeles, its police chief, and various police officers under section 1983, alleging a violation of his constitutional rights when he was injured by a police dog during an arrest. The Federal District Court granted the defendant summary judgement, relieving the officers and the city of liability and accountability; however, the decision was overturned on appeal, and the city eventually settled the case for $100,000.

313. The U.S. Department of Justice plays a central enforcement role in protecting the rights of prisoners throughout the country. The Department may file lawsuits and obtain relief either by court order or through negotiated settlements. The Department also may investigate and issue letters of findings, which often result in the jurisdictions taking the necessary remedial measures, but which also may be followed by the Department filing a lawsuit.

• 員警拘留中心和監獄的生活條件，包括女子和未成年人監獄，說明他們是否與男性/成年人分開。特別應當說明與監獄超收人犯、受刑人間暴力、對受刑人

的紀律措施、醫療和衛生條件、監獄最常見的疾病及其治療、受刑人獲得食品及未成年人拘留條件相關之問題。

316. All correctional systems in the United States impose codes of conduct on inmate behaviour which include provisions for imposing disciplinary sanctions when inmates violate the code. These disciplinary systems are essential to ensuring the security and good order of institutions. Inmates receive a copy of the code of conduct immediately upon their arrival. The disciplinary process is administered internally but must incorporate important constitutional requirements to guarantee that prisoners are not disciplined without due process.

317. As the U.S. Supreme Court stated in Wolff v. McDonnell, 418 U.S. 539 (1974), "though his rights may be diminished by the needs and exigencies of the institutional environment, a prisoner is not wholly stripped of constitutional protections when he is imprisoned for a crime". In that case, the Court recognized the inmate's right to due process preceding the imposition of disciplinary measures.

318. Similarly, a U.S. District Court found that conditions in the special housing unit at California's Pelican Bay State Prison constituted cruel and unusual punishment for the mentally ill among the prison population. Madrid v. Gomez, 889 F. Supp. 1146 (N.D. Cal. 1995). This case involved a class action brought by prisoners under the section 1983 to challenge their conditions of confinement. The court found a pattern of excessive force (including assaults, beatings, and confinement in outdoor cages during inclement weather) which violated the Eighth Amendment's restraint on excessive force, as well as systematic deficiencies in medical and mental health care and various violations of due process, notably in the procedures by which inmates were assigned to the special housing unit.

319. Sexual abuse of women in prison. Federal law prohibits sexual conduct between correctional staff and inmates regardless of gender. See 18 U.S.C. §§ 2241-44. Most states have similar rules. Federal Bureau of Prisons policy (set forth in Program Statement 5324.02, Sexual Abuse/Assault Prevention and Intervention Programs) is aimed at preventing sexual assault on inmates, providing for the safety and treatment needs of inmates who have been assaulted, and disciplining and prosecuting those who sexually assault inmates. As part of the 1998 Annual Refresher Training Program, all Federal Bureau of Prison staff are required to attend a

session on managing staff/inmate relationships. Staff will be trained to recognize the physical, behavioural, and emotional signs of sexual assault, to understand the referral process when a sexual assault occurs, and to have a basic understanding of sexual assault prevention and response techniques.

320. The National Institute of Corrections provides training and assistance to state and local prison and jail administrators in developing effective, humane and constitutionally correct facilities. It also funds technical assistance requests from the states in such areas as sex offender programmes and prevention/intervention strategies for sexual abuse in prisons. As part of its accreditation programme, the American Correctional Association promulgates standards regarding appropriate training, rules and regulations.

323. Juveniles in detention. Concern is frequently voiced about the circumstances in which minors (individuals of less than 18 years) are detained in prisons and jails throughout the country. On the whole, the correctional systems of the United States are operated in accordance with the relevant standards, and the United States adheres to the various requirements and recommendations adopted by the United Nations. Under federal law juveniles must be separated from adult offenders by sight and sound. More detailed information may be found in the 1997 report of the U.S. Department of Justice's Office of Juvenile Justice and Delinquency Prevention entitled "Juveniles in Federal Custody".

324. Despite a general policy and practice of segregating juvenile offenders separately from adults and according them treatment appropriate to their age and status (see article 10 (3) of the Covenant on Civil and Political Rights), in actuality these goals are not always possible to achieve because of overcrowding, under funding, and similar practical limitations.

325. The Department of Justice has authority under several statutes to file suit when it determines that juvenile offenders are not being afforded treatment appropriate to their age and status in violation of the United States Constitution or federal laws. Lawsuits have been filed by the United States concerning juvenile facilities in Georgia, Kentucky, Puerto Rico, Essex County, New Jersey and Louisiana, and settlements have been obtained with Georgia, Kentucky, Puerto Rico, and Essex

County. The U.S. Attorney General has circulated the Georgia settlement to all State Attorneys General as a model of appropriate practices for addressing the needs of incarcerated juvenile offenders.

327. Abuse of the institutionalized. Under the Civil Rights of Institutionalized Persons Act (CRIPA), 42 U.S.C. § 1997e, the U.S. Department of Justice is authorized to investigate public facilities (such as prisons, jails, nursing homes, and institutions for the mentally retarded or mentally ill) in which it is believed that confined individuals are being deprived of their constitutional rights. This responsibility is carried out through the Department's Civil Rights Division, which by 1 June 1999 had initiated CRIPA actions regarding approximately 340 facilities, resulting in nearly 100 consent decrees governing conditions in about 200 facilities.

328. These investigations and consent decrees typically focus on protection from abuse and harm, provision of adequate medical and mental health services, and proper sanitary and fire safety conditions. For example, in 1997, the Civil Rights Division entered into consent decrees with institutions in Wisconsin and Tennessee regarding those facilities' provision of proper medical treatment, use of restraints, and use of psychotropic medications on the mentally retarded. In that same year, the Division settled a lawsuit against the Montana State Prison with an agreement ensuring that vulnerable inmates are protected from predatory inmates.

330. Inmates with disabilities. In addition to the Rehabilitation Act, the federal Americans with Disabilities Act of 1990, codified at 42 U.S.C. § 12101, has been held to prohibit state prison facilities from discriminating against inmates with disabilities. Yeskey v. Com. Of Pa. Dept. Of Corrections, 118 F.3d 168 (3rd Cir. 1997), aff'd., Pennsylvania Department of Corrections et al. v. Yeskey, 524 U.S. 206, 118 S.Ct.1952 (1998).

331. Castration of habitual sex offenders. There has been considerable debate in the United States about the effectiveness of castration as a method of sex related crime prevention, especially in those cases in which the antecedent offence did not involve penile penetration. In August 1996 the State of California became the first state to require either the chemical or the surgical castration of repeat child molesters prior to their release from prison. See Cal. Penal Code § 645(b). The new law, which

applies to persons convicted after 1 January 1997, mandates that anyone, male or female, who has been convicted of two sexual assaults on minors, must be injected during the week prior to release on parole with a drug to reduce sexual drive if the individual does not choose to be surgically castrated. Montana and Georgia have adopted similar legislation, and proposed bills are or have been under consideration in at least 10 other states, including Florida, Massachusetts, Missouri, Texas and Wisconsin.

334. Prisoners on chain gangs. In May 1995 the State of Alabama reintroduced the practice of "chain gang" labour for felony convicts in the state correctional system (the term derives from the use of shackles attached to the prisoners legs and wrist to prevent escape). The practice was also instituted the following year for women in Maricopa County, Arizona, where teams of prisoners work along busy streets pulling weeds and performing similar tasks under armed guard. It has also been in use in Florida, Iowa, and Wisconsin. See Amnesty International, "Florida Reintroduces Chain Gangs" (January 1996).

335. Non consensual medical and scientific testing. Informed consent is the touchstone of the United States Government's approach to medical and scientific testing. In 1991 the Government adopted a formal policy for the protection of human subjects participating in research conducted, supported or regulated by any of the 17 federal agencies to which it applies. This policy is set out at 45 C.F.R. Part 46. Research covered by these regulations must be reviewed by an Institutional Review Board composed of experts knowledgeable about the research and at least one member who is not a scientist and one member who is not affiliated with the institution in question. The Institutional Review Board must review and approve any proposed research and informed consent documents. The National Bioethics Advisory Commission is currently studying the effectiveness of these protections, as well as other relevant topics, such as research involving individuals with diminished capacity.

344. Illegal immigrants in custody. In recent years, the number of intending illegal immigrants into the United States has increased markedly. When apprehended, those attempting or achieving illegal entry are typically detained pending the adjudication of their cases according to the Immigration and Nationality Act. The INS has focused significant attention on the conditions under which aliens awaiting the completion of immigration proceedings are detained. Over the years the INS has

worked on developing a comprehensive set of detention standards covering most of the issues identified for detainees housed in INS facilities. It has also focused attention on the conditions of confinement of its detainees housed in state and local facilities. The INS conducts regular inspections of such facilities and attempts to ensure that they meet or exceed the standards contained in its jail inspection programme, which are themselves undergoing review. INS officials have also engaged in discussions with representatives of the Department of Justice, the American Bar Association and state and local officials in an effort to inform them about its ongoing efforts to review and improve detention conditions.

附件十六
UNITED NATIONS

CAT

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

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COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Initial report of States parties due in 1996

JAPAN**

[20 December 2005]

* Reissued for technical reasons.

** In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

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The First Report of the Japanese Government under Paragraph 1 of Article 19 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

PART I. GENERAL INFORMATION

1. Japan deposited the instrument of accession to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as "the Convention") with the Secretary-General on June 29, 1999 and became a Contracting State of the Convention. The Convention was promulgated on July 5, 1999 and entered into force for Japan in accordance with paragraph 2 of Article 27 on July 29, 1999. The time frame that this first report of the Japanese Government covers is from July 29, 1999 to March, 2004.

Note: The term "he" as used in this report refers to persons of either gender.

2. Article 36 of the Constitution of Japan absolutely forbids the infliction of torture and cruel punishment by any public official. Articles 13 and 38 of the Constitution are also in line with the spirit of the Convention. Under these provisions of the Constitution, the Penal Code prescribes, inter alia, the crime of violence and cruelty by a special public official (Article 195) and its aggravated crime of causing death or injury (Article 196). For these crimes, a fair trial is guaranteed not only by normal criminal procedures but also by the special criminal procedures provided for in Articles 262 to 269 of the Code of Criminal Procedure. In Japan, it is ensured that all acts of torture, attempts to commit torture and acts by any person which constitute complicity or participation as defined in paragraph 1 of Article 1 of the Convention are offences under various laws including the Penal Code as described below, even if such acts do not fall under Article 195 or Article 196 of the Penal Code. In addition, all other obligations in the Convention are to be implemented in accordance with the existing domestic laws and regulations as described in detail in Part 2. (All the domestic laws and regulations cited in this report are provisional translations and contained in the annexes.)

3. Japan concluded in 1979 the International Covenant on Civil and Political Rights, which has a close relationship with the Convention, and prohibits torture in its Article 7. All acts which fall under the torture of the Convention are offences under Japanese domestic laws as described below in the section of Article 4.

(See annex I, Japanese legislation in relation to Part I of the Report: Constitution of Japan, Articles 13, 36, 38; The Penal Code, Articles 193, 194, 195, 196; The Code of Criminal Procedure, Articles 262-269; International Covenant of Civil and Political Rights, Article 7.)

4. In Japan, the main authorities in charge of matters concerning the Convention against Torture are as follows:

(a) Ministry of Foreign Affairs

5. The Ministry of Foreign Affairs is in charge of matters concerning the conclusion, interpretation, and implementation of the Convention as well as other treaties and international agreements.

(**b) Ministry of Justice**

6. The Ministry of Justice is in charge of the following matters concerning the Convention:

(a) Planning and drafting of criminal legislation, prevention of crime and other criminal affairs matters, extradition and assistance for mutual legal assistance;

(b) Investigation, relief, and prevention of human rights infringements;

(c) Execution of sentences and detention, and other matters concerning corrections (as described in Paragraph 101, wardens of prisons and branch prisons and other designated officials are authorized to investigate crimes committed in prisons or branch prisons as judicial police officials);

(d) Control of the departure from and return to Japan of Japanese nationals and entry into and departure from Japan of foreign nationals;

(e) Planning and drafting of civil legislation and other civil affairs matters;

(f) Matters concerning disputes relating to the interests of Japan.

7. In the area of criminal affairs, public prosecutors investigate and institute public prosecutions, request fair application of laws to courts, and supervise the enforcement of adjudication. With regard to other matters which come under the authority of the courts, public prosecutors will seek notification from the court, express their opinions, and conduct, in their role of representing the public interest, other matters designated by other laws and regulations if they deem it necessary for execution of their official duties.

(c) Police

8. Responsibilities and duties of the police are to protect the life, body and property of an individual, and take charge of the prevention, suppression and investigation of a crime, as well as the apprehension of a suspect, traffic control and other affairs concerning the maintenance of public safety and order. A police official as a judicial police official, when deeming a crime has been committed, is to investigate the criminal and evidence thereof pursuant to paragraph 2 of Article 189 of the Code of Criminal Procedure (refer to paragraph 39), which also applies to the offences referred to in Article 4 of the Convention. The police are also in charge of matters concerning international assistance in investigation.

(**d) Ministry of Health, Labour and Welfare**

9. The Ministry of Health, Labour and Welfare is in charge of the following in relation to the Convention:

(a) Matters concerning the prevention of outbreaks and spread of infectious diseases;

(b) Matters concerning the promotion of welfare for and the improvement of health of persons with disabilities;

(c) Matters concerning quarantine at ports and airports; and

(d) Matters concerning the direction and supervision of medical services.

10. With regard to the measures against infectious diseases, based on the Law Concerning the Prevention of Infections and Medical Care For Patients of Infection, prefectural governors may recommend a patient of new infections, category 1 infections and category 2 infections as specified in the law to be hospitalized and, when he refuses such recommendation, may take measures to hospitalize him.

11. With regard to mental health, based on the Law on Mental Health and Welfare for People with Mental Disorders (hereinafter "Mental Health Law") prefectural governors, mayors of cabinet-order designated cities, or managers of mental hospitals may take measures to hospitalize or restrict behaviours of a patient. Compulsory hospitalization, for example, may be carried out only when two or more designated mental health doctors agree, as a result of their medical examinations, that the patient may harm himself or others due to his mental disorder unless hospitalized for medical care and protection.

12. With regard to quarantine, based on the Quarantine Law, the directors of quarantine stations may isolate a patient of category 1 infections or cholera and have suspected patients of category 1 infections stay.

(e) Defense Agency

13. The Defense Agency is in charge of matters concerning the activities of Self-Defense Forces (SDF). Police affairs officers and assistant police affairs officers of the SDF conduct the duties as judicial police officials in accordance with the Code of Criminal Procedure concerning:

(a) The offences committed by the members of the SDF, offences against the members of the SDF in duty, offences committed by non-members of the SDF concerning the duty of the members of the SDF;

(b) Offences committed in vessels, office buildings, residential quarters and other facilities used by the SDF; and

(c) Offences against the facilities or properties owned or used by the SDF.

(f) Japan Coast Guard

14. The Japan Coast Guard is responsible to secure safety and security at sea by conducting matters concerning the prevention and suppression of crimes at sea and the investigation and arrest of offenders at sea. Pursuant to Article 31 of the Japan Coast Guard Law (see Paragraph 101), Coast Guard officers and assistant officers conduct, subject to the terms and conditions set forth by the Director-General of the Japan Coast Guard, the duties as judicial police officials in accordance with the Code of Criminal Procedure concerning the offences committed at sea.

(g) Other investigative organs

15. In Japan, in addition to police officials acting as judicial police officials, public prosecutors and their assistant officers may also investigate offences. Other specific administrative officers may act as judicial police officials for specific matters in accordance with their respective laws (Among such officers are, as mentioned above, the wardens of prisons and branch prisons, other designated prison officials, police affairs officers and assistant police affairs officers of the SDF, coast guard officers and assistant coast guard officers, regional and district forestry officers, Hokkaido prefectural government officials in charge of public forests and fields, captains of ships and high-ranking crew members, Imperial guards, prefectural government officials in charge of the protection of animals and birds or the control of hunting, labor standards inspectors, mariners labor inspectors, narcotics control officers, prefectural narcotics officials, postal inspectors, mine work inspectors, and fishery inspectors and fishery inspection officials). The inspectors for the National Tax Agency are vested with the authority to investigate offenders and evidence on offences committed by officials of the National Tax Agency with regard to their official duties. Though descriptions of these officials will not appear in Part 2, the provisions of the Code of Criminal Procedure and other relevant laws, will apply to their exercise of public authority as judicial police officials.

16. Since Japan is able to fulfil the obligations under the Convention with the existing domestic laws and regulations, it did not adopt new laws or change existing laws and regulations at the time of conclusion of the Convention. However, Japan is making efforts to fully observe the Convention by appropriate application of domestic laws and regulations. Furthermore, Japan is carrying out comprehensive reform of correctional administration (see paragraphs 84 and 85), and making further efforts to protect and promote human rights, inter alia, the prevention of torture and other cruel, inhuman or degrading treatment or punishment.

PART II. INFORMATION ON EACH ARTICLE OF PART I OF THE CONVENTION

A. Article 1

17. Article 36 of the Constitution absolutely prohibits torture by public officials by stipulating that “the infliction of torture by any public official and cruel punishments are absolutely forbidden”. It is ensured by criminal laws such as the Penal Code that all acts of torture, attempts to commit torture and acts which constitute complicity or participation in torture as defined in paragraph 1 of Article 1 of the Convention are punishable (see “D. Article 4”).

18. Japan maintains the death penalty as a statutory penalty, and has no corporal punishment. With regard to the death penalty in Japan (see “Q. Others (d) Death penalty system”).

B. Article 2

19. The legislative, administrative, judicial or other measures taken in Japan to prevent acts of torture in any territory under its jurisdiction are described in the following sections corresponding to the respective articles.

20. As described above, Article 36 of the Constitution absolutely prohibits the infliction of torture by any public official and cruel punishment, and there is no domestic law that allows anyone to invoke, as a justification of torture, exceptional circumstances such as a state of war, a threat of war, internal political instability or any other public emergency.

21. No domestic law stipulates that an order from a superior officer or a public authority may be invoked as a justification of torture.

C. Article 3

Deportation

22. Paragraph 1 of Article 53 of the Immigration Control and Refugee Recognition Act stipulates that any person subject to deportation shall be deported to a country of which he is a national or citizen. Paragraph 2 of that Article stipulates that, if a person cannot be deported to such a country as provided for in paragraph 1, such person shall be deported to one of the following countries in accordance with his wishes: (1) a country in which he had been residing immediately prior to his entry into Japan; (2) a country in which he once resided before his entry into Japan; (3) a country to which the port, where he boarded the vessel or aircraft departing for Japan, belongs; (4) a country where his place of birth is located; (5) a country to which his birthplace belonged at the time of his birth; and (6) any country other than those given in the preceding items. Therefore, when it is judged that there are substantial grounds for believing that he would be in danger of being subjected to torture in the country provided for in paragraph 1 of that Article, his case would fall under the provision of paragraph 2 of that Article where the "person cannot be deported" and therefore he will be deported, in accordance with his wishes, to any one of the countries provided for in paragraph 2.

(See annex II, Japanese Legislation in relation to Article 3 of the Convention against Torture: Immigration Control and Refugee Recognition Act, Article 53.)

23. With regard to the procedures for deportation of foreign nationals, the Immigration Control and Refugee Recognition Act stipulates that, if a foreign national who is a suspect agrees with the findings of an immigration inspector that the suspect comes under any one of the grounds for deportation (paragraph 4 of Article 47), if the suspect agrees with the findings of a special inquiry officer that there is no error in the findings of the immigration inspector (paragraph 8 of Article 48), or if the suspect receives notification from the Minister of Justice of his decision that the objection to the findings of the special inquiry officer filed by the suspect has no grounds (paragraph 5 of Article 49), then a supervising immigration inspector shall issue a written deportation order, which an immigration control officer shall execute or, if the deportee is to be sent back by the carrier, the immigration control officer shall deliver him to the carrier (paragraph 3 of Article 52). It is the Ministry of Justice that is responsible for the procedures for the decisions on "deportation".

24. The Immigration Control and Refugee Recognition Act further stipulates that, if a foreign national who is a suspect has any objections to the findings of an immigration inspector that the suspect comes under any one of the grounds for deportation, he may request a special inquiry officer for an oral hearing (paragraph 1 of Article 48); and, if the suspect does not accept the findings of the special inquiry officer that there is no error in the findings of the immigration

inspector (namely the suspect comes under any one of the grounds for deportation), he may file an objection with the Minister of Justice by submitting to a supervising immigration inspector a written statement containing the grounds for his complaint (paragraph 1 of Article 49). Accordingly this allows the filing of an objection in the procedures for deportation. When an immigration inspector has found that a foreign national who is a suspect does not come under any one of the grounds for deportation or when a special inquiry officer finds that such findings are not supported by factual evidence, that foreign national shall be released. When the Minister of Justice has decided that the objection filed by the foreign national is well-grounded, that foreign national shall be released. When the Minister has decided the objection has no grounds, a written deportation order shall generally be issued; however, he may grant the foreign national special permission to stay in Japan if he finds special grounds for such grant (paragraph 1 of Article 50). In addition, the foreign national may file a lawsuit to seek revocation of the written deportation order pursuant to the Code of Administrative Case Procedure.

(See annex II, Japanese Legislation in relation to Article 3 of the Convention against Torture: Immigration Control and Refugee Recognition Act, Articles 47-52.)

25. In order to determine whether there exist the "substantial grounds" referred to in paragraph 1 of Article 3 of the Convention, it is necessary to be fully familiar with and to analyze accurately all matters as may become a cause of torture such as the internal political situation, public security and infringement upon human rights in the country concerned. Therefore, the Immigration Bureau of the Ministry of Justice has been providing its officials with appropriate lectures to enhance their knowledge and ability at every possible opportunity such as training courses.

26. During the period from July 29, 1999, when the Convention entered into force in Japan, to March 31, 2004, of the administrative lawsuits seeking revocation of written deportation orders there were no rulings to revoke such order by reason of violating the Convention.

Extradition

27. Items 3 and 4 of paragraph 1 of Article 4 and paragraph 1 of Article 14 of the Law of Extradition stipulate that, if the Minister of Justice "deems it inappropriate to surrender the fugitive", the fugitive shall not be extradited. Cases where there are substantial grounds for believing that the fugitive would be in danger of being subjected to torture in the country requesting the extradition will fall under the cases where the Minister of Justice "deems it inappropriate to surrender the fugitive".

(See annex II, Japanese Legislation in relation to Article 3 of the Convention against Torture: Law of Extradition, Articles 3, 4 and 14.)

28. The Minister of Justice determines whether a particular case falls under items 3 and 4 of paragraph 1 of Article 4 and paragraph 1 of Article 14 of the Law of Extradition.

29. Against an extradition order made by the Minister of Justice pursuant to paragraph 1 of Article 14 of the Law of Extradition, an appeal for an objection based on the Administrative Appeal Law and a lawsuit for revocation based on the Code of Administrative Case Procedure may be filed.

30. During the period from July 29, 1999, when the Convention entered into force in Japan, to March 31, 2004, neither such an appeal nor lawsuit was filed.

D. Article 4

31. Any person who commits an act of torture, including an attempt to commit torture, an act which constitutes complicity or participation in torture, is punishable under the Penal Code and other criminal laws for various offences and their complicity (see below) including violence and cruelty by a special public official or causing death or injury thereby as described below and depending on the kinds of acts, abuse of authority by a public official, violence, injury, abandonment, arrest, detention, intimidation, and murder, forcible obscenity, rape, coercion and attempts thereof. These offences punish a wider range of acts of torture in that they do not require as their constituent element the "purposes" or "reason" referred to in paragraph 1 of Article 1 of the Convention. In this regard, it can be said that a wider range of acts of torture is punishable.

(See annex III, Japanese Legislation in relation to Article 4 of the Convention against Torture: Penal Code, Abuse of Authority by a Special Public Official, Article 194; Violence and Cruelty by a Special Public Official, Articles 195 and 196; Causing Death or Injury Thereby, Article 196; Complicity, Articles 61-65.)

32. As stated in annex III (see references in the paragraph above), all acts of torture, attempts to commit torture and acts which constitute "complicity" or "participation" in torture under the Convention, including those by order of a competent person, constitute an offence under criminal law. Furthermore, it is guaranteed that appropriate prosecution shall be instituted, taking into consideration the gravity of the offence and circumstances, and that appropriate penalties shall be imposed in courts, taking into account the gravity of the offence.

E. Article 5

33. "When the offences are committed in any territory under its jurisdiction or on board a ship or aircraft registered in that State" (sub-paragraph 1 (a) of Article 5 of the Convention), Japan establishes its jurisdiction in accordance with Article 1 of the Penal Code (Crimes within Japan).

34. "When the alleged offender is a national of that State" (sub-paragraph 1(b) of Article 5 of the Convention), Japan establishes its jurisdiction in accordance with Article 3 (Crimes committed by Japanese outside Japan), Article 4 (Crimes by a public official outside Japan) and Article 4 bis (Crimes committed outside Japan made punishable by a treaty) of the Penal Code as well as paragraph 3 of Article 1 bis of the Law concerning Punishment of Physical Violence and Others and Article 5 of the Law for Punishing Compulsion and Other Related Acts Committed by Those Having Taken Hostages.

35. Since the amendment of the Penal Code in July 2003, "when the victim is a national of that State if that State considers it appropriate" (sub-paragraph 1 (c) of Article 5 of the Convention), Japan establishes its jurisdiction over certain offences in accordance with Article 3 bis (Crimes by non-Japanese outside Japan) of the Penal Code, paragraph 3 of

Article 1 bis of the Law concerning Punishment of Physical Violence and Others and Article 5 of the Law for Punishing Compulsion and Other Related Acts Committed by Those Having Taken Hostages.

36. 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 1 of this Article" (Paragraph 2 of Article 5 of the Convention), Japan establishes its jurisdiction in accordance with Articles 1, 3, 3 bis, 4, and 4 bis of the Penal Code, paragraph 3 of Article 1 bis of the Law Concerning Punishment of Physical Violence and Others and Article 5 of the Law for Punishing Compulsion and Other Related Acts Committed by Those Having Taken Hostages.

(See annex IV, See annex II, Japanese Legislation in relation to Article 5 of the Convention against Torture: The Penal Code, Articles 1-4; Law concerning Punishment of Physical Violence and Others, Article 1 bis; Law for Punishment Compulsion and Other Related Acts Committed by Those Having Taken Hostages, Articles 1, 3 and 5.)

F. Article 6

37. The Japanese Government has taken the following legislative and other measures to fulfil its obligations prescribed in this Article of the Convention.

Custody and other legal measures

38. Japan, when a suspect of the offence referred to in Article 4 of the Convention is present in its territory and when it is satisfied, after examination of the information available to it that the circumstances so warrant, shall promptly take the following measures to ensure his presence:

(a) In cases where the country concerned requests extradition or provisional detention of the suspect, the authorities may place him under detention or provisional detention pursuant to the Law of Extradition;

(b) On the assumption that Japan has jurisdiction over the case in accordance with its domestic laws, the authorities may investigate the whereabouts of the suspect and request him to voluntarily cooperate with investigation, as well as arrest or detain him pursuant to the Code of Criminal Procedure.

(See annex V, Japanese Legislation in relation to Article 6 of the Convention against Torture: Law of Extradition, Articles 5, 23-25; the Code of Criminal Procedure, Articles 199, 203-207, 210 and 213.)

Preliminary inquiry

39. In Japan, the offences referred to in Article 4 of the Convention are investigated by judicial police officials or public prosecutors in accordance with the Code of Criminal Procedure. Therefore, the obligation of making a preliminary inquiry prescribed in paragraph 2 of the Article is fulfilled by such investigation.

(See annex V: The Code of Criminal Procedure, Articles 189 and 191.)

Assistance for communication with representatives of the State of nationality

40. It will be decided in accordance with Articles 80 and 81 of the Code of Criminal Procedure whether a representative of the State of which the detained defendant or suspect is a national is allowed to interview him. It will be decided in accordance with Article 45 of the Prison Law whether a representative of the State of which the person detained pursuant to the Law of Extradition is a national is allowed to interview him. Upon concluding the Convention, the relevant authorities such as the National Police Agency and the Ministry of Justice sent the wardens and other officials of detention facilities written instructions to observe the Convention.

(See annex V: The Code of Criminal Procedure, Articles 80 and 81; The Prison Law, Article 45.)

Notification to the country concerned

41. The Ministry of Foreign Affairs will make notifications or reports to the country concerned under paragraph 4 of this Article through diplomatic channels after receiving relevant information from the relevant authorities such as the Ministry of Justice and the National Police Agency. During the period from July 29, 1999, when the Convention entered into force for Japan, to March 31, 2004, there were no cases where Japan gave such notification.

G. Article 7

42. The "competent authorities" referred to in paragraph 1 of Article 7 of the Convention are public prosecutors for Japan. If a suspect is present in Japan and if Japan does not extradite the suspect concerned, the public prosecutors shall take the case and determine whether or not to institute criminal prosecution.

43. In Japan, public prosecutors determine whether or not to institute criminal prosecution for the offences referred to in Article 4 of the Convention, treating them in the same manner as any other offence of a serious nature.

44. With regard to the standards of evidence required for prosecution and conviction concerning the offences referred to in Article 4 of the Convention, no distinction is made between the cases referred to in paragraph 1 of Article 5, and those in paragraph 2 of Article 5.

45. In Japan, any person against whom a proceeding is instituted in connection with any of the offences referred to in Article 4 of the Convention is, regardless of his nationality, guaranteed the "fair treatment" referred to in paragraph 3 of Article 7 of the Convention at all stages of the proceedings pursuant to relevant domestic laws such as the Code of Criminal Procedure and by their proper application.

(See annex VI, Japanese Legislation in relation to Article 7 of the Convention against Torture: The Code of Criminal Procedure, Articles 242, 246 and 247.)

H. Article 8

46. With regard to extradition in Japanese domestic law, there is the Law of Extradition. Although Japan does not require a treaty as a prerequisite for extradition, as is stipulated in paragraph 2 of Article 3 of the Law of Extradition, when a request for extradition is made without a treaty, one of the requirements the requesting country has to meet is the assurance that the country will honor a request of the same kind made by Japan.

47. Paragraphs 3 and 4 of Article 2 of the Law of Extradition stipulate requirements for the statutory penalties concerning extraditable offences. However, the proviso of the Article stipulates "this shall not apply when a treaty of extradition provides otherwise", and therefore, upon conclusion of the Convention, the offences referred to in Article 4 of the Convention have all become extraditable offences in Japan even if they do not meet the requirements for the statutory penalties as referred to in paragraphs 3 and 4 of Article 2 of the Law of Extradition.

48. As a result of conclusion of the Convention, when a State Party of the Convention requests Japan to extradite any fugitive of the offences referred to in Article 4 of the Convention, Japan will deal with the case in accordance with the Law of Extradition and other related laws.

49. During the period from July 29, 1999 when the Convention entered into force in Japan, to March 31, 2004, there were no fugitives of the offences referred to in Article 4 of the Convention extradited from Japan or to Japan pursuant to Article 8 of the Convention.

(See annex VII, Japanese Legislation in relation to Article 8 of the Convention against Torture: Law of Extradition, Articles 2 and 3.)

I. Article 9

50. Japan has the Law for International Assistance in Investigation and Other Related Matters regarding mutual legal assistance in criminal investigation procedures and the Law for Judicial Assistance to Foreign Courts regarding mutual judicial assistance to be provided when requested by a foreign court.

51. Under the Law for International Assistance in Investigation and Other Related Matters, if there is a request by a foreign country for the provision of evidence necessary for investigation of a criminal case in the requesting country, if the request meets the requirements set out in the Law such as the non-political nature of the offence, double criminality, and the assurance of reciprocity (Article 2) and if it is considered appropriate to accept the request (Article 5), then the Law allows the competent authorities to collect and provide the foreign country with evidence by interviewing the persons concerned, requesting expert examinations, conducting on-the-spot investigations, requesting submission of documents and other items from the owners, making inquiries of public and private organizations, search, seizure, and inspection (Article 8), and examining witnesses (Article 9).

52. Furthermore, according to Article 17 of the Law for International Assistance in Investigation and Other Related Matters, if a request for cooperation to investigate a criminal case in a foreign country is received from the International Criminal Police Organization (ICPO), and if the request meets the requirements set out in the Law for International Assistance in

Investigation such as the non-political nature of the offence and double criminality, then the Law allows the police to ask questions to the persons concerned, conduct on-the-spot investigations, request submission of documents and other items from the owners, make inquiries to public and private organizations, and provide the collected materials and information to ICPO.

53. Based on the Law for Judicial Assistance to Foreign Courts, a Japanese court may examine the evidence when requested by a foreign court.

54. During the period from July 29, 1999 when the Convention entered into force in Japan, to March 31, 2004, there were no requests for assistance in investigation or requests for judicial assistance either received or made based on Article 9 of the Convention with regard to the offences referred to in Article 4 of the Convention.

(The full texts of the Law for International Assistance in Investigation and the Law for Judicial Assistance to Foreign Courts are attached.)

J. Article 10

Education, training, rules and directions

(a) Public officials in general

55. Article 36 of the Constitution stipulates the "infliction of torture by any public official and cruel punishments are absolutely forbidden." Article 99 of the Constitution also provides that public officials have obligations to respect and uphold the Constitution. Paragraph 1 of Article 98 of the National Public Service Law and Article 32 of the Local Public Service Law provide the obligations of public officials to comply with laws and regulations. Accordingly, any public official who committed violence against a person arrested, taken into custody, or detained is subject to not only penalties under the Penal Code but also strict disciplinary measures by clarifying his fault pursuant to the laws such as the National Public Service Law.

56. The public officials including local government officials have been provided with education on the importance of human rights, including the prohibition of torture, through various training programs. The Japanese government attaches importance to human rights education and has formulated Japan's National Plan of Action for "the United Nations Decade for Human Rights Education" in July 1997. It was decided, in line with this plan, to improve the human rights education of public officials as they are engaging in the occupations closely connected with human rights. For central government officials, human rights education is given through various training courses in each ministry and agency including the courses by the National Personnel Authority provided for separate levels of officials. For local government officials, the human rights education is given at local municipal entities as well as through various training courses carried out by the Ministry of Internal Affairs and Communications at the Local Autonomy College and the Fire and Disaster Management College.

(See annex VIII, Japanese Legislation in relation to Article 10 of the Convention against Torture: The Constitution of Japan, Articles 36 and 99; National Public Service Law, Article 98; Local Public Service Law, Article 32.)

(b) Police

57. The police give continuously all police personnel education on the prohibition of "torture and other cruel, inhuman or degrading treatment" at various levels of police academies and at working places such as police stations.

58. For example: (1) in police academies, law including Constitution, Penal Code and Code of Criminal Procedure, police ethics, and disciplines by academy's principals and other senior police officials are taught to newly recruited and promoted police officials; (2) technical training courses are provided to those engaged in criminal investigations and prison work; and (3) various training courses and discussions on the police ethics are held at working places such as police stations.

59. In particular, at prefectural police academies, training is provided for police officials to be appointed in charge of detention to acquire the knowledge and skills necessary for proper management of detainees and prevention of accidents. At the National Police Academy, training is provided for senior police officials who supervise at prefectural police headquarters the detention work of each police station to acquire advanced knowledge necessary for the supervision and management of detention work.

60. Major rules or instructions concerning the prohibition of torture in the police include paragraph 1 of Article 168 of the Rule of Criminal Investigation, Articles 2, 19 and 21 of the Rules for Detaining Suspects, and Article 3 of the Instructions on the Standard and Procedures to Use Restraining Devices in Police Detention Cells. Upon the entry into force of the Convention in Japan on July 29, 1999, the National Police Agency issued written instructions to the police nationwide to inform the contents of the Convention and draw attention to: (1) further promoting education on the prohibition of torture; (2) strengthening direction and supervision concerning proper investigations; and (3) promoting treatment of detainees taking into due consideration their human rights.

61. The officials in charge of detention are trained to check whether detainees have any bodily injury whenever the detainees are in or out of the police detention cell. When the officials discover new external injuries on the body of the detainees or are informed by the detainees that there were inappropriate examinations such as assaults, intimidations and forcible demands, the officials are to record the facts and report them to the chief of police station, who is to examine them and take appropriate measures.

(See annex VIII: The Rule of Criminal Investigation, Article 168; The Rules of Detaining Suspects, Articles 2, 19 and 21; Instructions on the Standard and Procedures to Use Restraining Devices in Police Detention Cells, Article 3.)

(c) Public prosecutors

62. Public prosecutors are appointed when they have studied the Constitution, have received human rights education and have appropriate knowledge on human rights. Furthermore, they are instructed, by superiors in daily work and through training courses on the Convention and other human rights conventions, that torture and inhuman treatment are prohibited and that they should give full consideration to the human rights of suspects in carrying out their duties.

(d) Correctional institutions

63. Systematic and intensive training is given to correctional institution officials at the Training Institute for Correctional Personnel, such as basic educational training for newly recruited officials (7 months), educational training necessary to become lower level senior officials (3 months), educational training necessary to become upper level senior officials (6 months), and special educational training in specific fields (up to 3 months). Of the correctional institution officials, medical assistants (practical nurses) are given educational and practical training for two years at the practical nurses' training center annexed to a medical prison. During the course of such educational training, lectures are given on the legal framework for the prohibition of torture, the fundamental human rights of inmates, human rights conventions including this Convention, international guidelines such as the United Nations Standard Minimum Rules for the Treatment of Prisoners and the requirements and limits on the use of force based on the laws and regulations on prisons. Furthermore, practical education and training are provided in each correctional institution.

64. Through such educational training, efforts have been made towards proper execution of duties by officials. After eight prison officials of Nagoya Prison were prosecuted for causing death or injury by violence and cruelty by a special public official (one of them was found guilty in the first trial and the trials for the other seven are pending) as described in Paragraph 106 below, training courses for better practices on compliance with various human rights conventions including the Convention and on performance of duties taking human rights into full consideration have been introduced. In addition, from the perspective of social psychology, efforts are being made to improve the contents of human rights education programs and expand the opportunities to participate in such programs by, for example, introducing classes on human rights issues in correctional institutions and to further improve human rights education, which is necessary for appropriate treatment of inmates.

65. The Regulations for the Duties of Prison Officials to Maintain the Discipline of Penal Institutions are one of the major rules or instructions concerning the prohibition of torture in correctional institutions. The Regulations stipulate that, when taking measures to restrain inmates' actions that may hinder the maintenance of discipline and order in penal institutions, such measures shall not exceed the limit that is deemed reasonable to achieve the purpose, and body searches of inmates shall be conducted in a manner that will not degrade the inmates.

66. The above-mentioned body searches are conducted when they are necessary to maintain the discipline and order of penal institutions, and at the same time, serve the purpose of checking whether there are any abnormal symptoms such as external injuries. When such symptoms are found, the prison officials are to report them to the warden, who shall examine them and take appropriate measures including investigation as a criminal case.

(See annex VIII: Regulations for the Duties of Prison Officials to Maintain Discipline of Prison Facilities, Articles 7, 8 and 20; Prison Law Enforcement Regulation, Article 46.)

(e) Immigration Centers

67. In the treatment of detainees in the detention facilities of the Immigration Bureau (immigration centers), the human rights of the detainees are always taken into full consideration.

Education and enlightenment activities to instil respect for the human rights of detainees are provided at every possible opportunity such as training programs for newly recruited immigration control officers, officials who have been employed for several years and officials in charge of the treatment of detainees (conducted annually).

68. Major rules or instructions for the prohibition of torture in the immigration centers include Articles 3 and 4 of the Duties and Instructions for Immigration Control Officers and the Regulations for Treatment of Detainees.

(See annex VIII: Duties and Instructions for Immigration Control Officers, Articles 3 and 4; Regulations for Treatment of Detainees, Articles 1 and 2-2.)

(f) Medical personnel

69. With regard to education and training for the medical personnel concerning the prohibition of torture, as a result of the inclusion of enhancement of human rights education at schools and training schools for medical personnel in the National Action Plan for "the UN Decade for Human Rights Education", education on human dignity, as a part of human rights education, has been conducted mainly in the training courses of medical personnel.

70. In the Mental Health Law, it is prescribed that the findings of designated psychiatrists are the conditions to isolate or restrain a patient and to hospitalize a patient for mental disorder without the person's consent (see paragraph 36). Accordingly, the designated psychiatrists are obliged to receive training courses on human rights before and once in every five years after being designated.

(g) Self-defense personnel

71. In each of the educational training provided to police affairs officers and assistant police affairs officers, education is given to place importance on human rights during investigations based on the Constitution, and the Code of Criminal Procedure, and the purpose of the Convention is thoroughly instructed.

72. Human rights education including the prohibition of torture is provided in the curriculums of the National Defense Academy and the National Defense Medical College as well as the officer candidate schools for Ground, Maritime and Air Self-Defense Forces.

73. Major rules or instructions concerning the prohibition of torture and respect of human rights for police affairs officers and assistant police affairs officers including Article 56 of the Self-Defense Forces Law, which stipulates the obligations to comply with laws and regulations, as well as paragraph 2 of Article 4 and Article 5 (basic principles for investigation), Article 92 (implementation of investigation) and Article 266 (examination) of the Code of Conduct for Self-Defense Forces Criminal Investigations.

(See annex VIII: Self-defense Forces Law, Article 56; Code of Conduct for Self-Defense Forces Criminal Investigations, Articles 4, 5, 92 and 266.)

(h) Coast Guard officers

74. The Japan Coast Guard has been providing human rights education including the prohibition of torture at the Coast Guard schools and in level-specific training courses for Coast Guard officers.

75. Major rules or instructions of Japan Coast Guard concerning the compliance with the Constitution and other laws, the respect for human rights and the prohibition of torture include Article 134 of the Code of Coast Guard Criminal Investigations, and paragraph 2 of Article 1 and Article 20 of the Japan Coast Guard Detention Administration Regulations.

(See annex VIII: Code of Coast Guard Criminal Investigations, Article 134; Japan Coast Guard Detention Administration, Articles 1 and 20.)

K. Article 11

76. 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 Japan's jurisdiction are systematically reviewed by the relevant organizations, and revisions are made to relevant regulations as necessary.

(a) Criminal justice

Regulations on interrogations

77. Rules on supervision and direction for criminal investigations by the police include Articles 16, 17, 18 and 20 of the Rule of Criminal Investigation. The National Police Agency instructs the sections in charge of investigation management at prefectural police departments to strengthen operation management with a view to ensuring proper examination.

(See annex IX, Japanese Legislation in relation to Article 11 of the Convention against Torture: Rule of Criminal Investigation, Articles 16-18 and 20.)

Arrangements for the custody and treatment

78. With regard to the examination on suspects, the Constitution, the Code of Criminal Procedure and other laws provide: (1) obligations to inform the suspect of the right to remain silent; (2) prohibition of compulsion and torture; and (3) procedures for preparing a written statement which is to be read out or shown to the suspect and to be signed and sealed by the suspect after the interrogator makes an addition if the suspect so requests and after the suspect confirms that the contents are correct. The Police supervise and instruct the interrogators to observe these provisions. Should any violation are found, such violator will be severely sanctioned to prevent recurrence of such violation.

79. A rule on the supervision and direction at police detention cell is Article 4 of the Rules for Detaining Suspects. Directors or chief officials of police detention cells management section of prefectural police headquarters make regular inspections of police detention cells at police stations under their jurisdiction from coast to coast and provides individual guidance to officials

in charge of police detention cells. In addition, the chief official of prison management and his staff members at the National Police Agency make regular inspections of police detention cells from coast to coast to ensure proper management and operation of police detention cells.

(See annex IX: Rules for Detaining Suspects, Article 4.)

80. Detention houses accommodate unconvicted inmates such as suspects and defendants awaiting trial, where careful consideration is given to ensure the right to defense and a fair criminal trial. The unconvicted inmates are treated in an appropriate manner in accordance with relevant laws, such as the Code of Criminal Procedure and the Prison Law, and regulations which are supplemented by official instructions.

(b) Correctional institutions

81. Supervisory systems for correctional institutions include inspections by officials designated by the Minister of Justice (Article 4 of the Prison Law and paragraph 2 of Article 3 of the Juvenile Training School Law) and inspections by the regional correction headquarters which are middle-level supervisory institutions.

82. Under these supervisory systems, senior officials of the Ministry of Justice and the regional correction headquarters inspect the facilities under their respective jurisdictions on a regular basis, give appropriate guidance for the overall operation of the facilities, recommend necessary correctional measures, report the results of their inspections to the Minister of Justice or the Director General of the Correction Bureau of the Ministry of Justice, and monitor subsequent improvements. In particular, focused investigations are conducted for matters that may seriously affect the mind and body of inmates, such as the use of disciplinary punishments, restraining devices and solitary confinement, nutrition, medical and hygiene conditions, as well as matters that are related to instructions and training for prison officials. The results of such focused investigations are examined from a comprehensive and systematic viewpoint at the Correction Bureau of the Ministry of Justice and regional correction headquarters, and necessary directions are given to the correctional institutions under their respective jurisdictions. With regards to the supervisory systems, recommendations were made at the Correctional Administration Reform Council (consisting of private experts) held under the direction of the Minister of Justice in 2003 attaching importance to enhancing the supervisory function of the Correction Bureau and regional correction headquarters in order to ensure the transparency of prison administration. In particular, expansion of on-site inspections and publication of the results are sought in order to enhance the function of internal inspections.

(See annex IX: The Prison Law, Article 4; and Juvenile Training School Law, Article 3.)

83. The officials of the correctional institutions in Japan provide proper treatment for inmates in accordance with laws and regulations, giving full consideration to their human rights. However, it is true that there are some cases, although very rare, where officials are sanctioned for having committed illegal or wrongful acts towards inmates. If such cases occur, the Inspection Office in the Correction Bureau of the Ministry of Justice, which is established solely for the purpose of handling such cases, investigates the case. When it is found that the official performed an illegal or wrongful act on an inmate, the Office takes measures, when necessary, to provide relief to the inmate from damages, reviews penalties imposed on the official concerned,

carries out overall analysis of the causes and problems of each case, and immediately notifies the correctional institutions across the country of the results, making the results widely available through various consultative meetings and training programs at the Training Institute for Correctional Personnel in order to prevent the recurrences of similar incidents. The regional correction headquarters, middle-level supervisory institutions, also provide proper directions or supervision to prevent recurrences.

84. In addition to constant overcrowding, the Japanese correctional administration faces difficulties related to an increase in the number of elderly prisoners, foreign prisoners and prisoners who are difficult to deal with, and thus the environment for detention in our country's prisons is worsening in both quality and quantity. To achieve the purposes of prison administration under such severe circumstances, it is necessary to administer prisons using well-designed methods enabling appropriate handling of diversified prisoners. Under the present condition of overcrowding, both the human capacity such as the prison officials and the physical capacity such as the facilities accommodating the prisoners have reached their limits and such lack has caused problems in various aspects of prison administration.

85. The Ministry of Justice has been endeavoring to improve prison administration and has taken necessary measures. However, in response to the fact that prison officials of Nagoya Prison were prosecuted for causing death or injury by violence and cruelty by a special public official as described below (see Paragraph 106), intensive discussions on the role of prison administration were held in the Diet, and based on the results of these discussions, the Ministry of Justice is taking further steps to improve prison administration. The main measures taken so far to improve prison administration include the improvement of training programs on human rights for the officials of penal institutions (see Paragraphs 63 and 64), abolishment of the use of leather handcuffs and the introduction of a new restraining device carefully designed to ensure the safety of inmates (see Paragraphs 150 to 152), and re-examination of the procedures for petition to the Minister of Justice by inmates (see Paragraph 115). In addition, to examine reform of prison administration from a broad viewpoint, the Correctional Administration Reform Council consisting of private experts was established. The Council examines the actual conditions by interviewing NGOs and by conducting questionnaires given to prisoners and prison officials, and holds discussions from various viewpoints such as: (1) proper treatment in the prison regulations and disciplinary punishment system; (2) securing transparency through the system of information disclosure and filing of complaints; and (3) the medical and organizational systems of prisons including improvements in medical standards and the working environment of the officials. In December 2003, the Council released its recommendation report titled "Recommendations by the Correctional Administration Reform Council - Prisons that Gain the Understanding and Support of the Citizens". In the report, various recommendations on the basic direction for reform of correctional administration were made in order to: (1) achieve real rehabilitation and integration of inmates by respecting their individuality; (2) ease the excessive burden on prison officials; and (3) realize correctional administration open to the public. The recommendations include: (1) review of the proper form of regulations for prisons; (2) improvement in the system for human rights relief; (3) improvement in correctional medical care; (4) an increase in communications with people outside the prisons; (5) clarification of the administrative authority of the officials; (6) establishment of a Penal Institutions Inspection Committee (tentative name), and (7) improvement in information disclosure and cooperation with local communities. Based on the recommendations made by the Correctional

Administration Reform Council, the Ministry of Justice set up the Committee for the Promotion of Correctional Administration Reform and makes every effort to carry out the reform. As the first step, measures have already been taken including review of the regulations for prison facilities, review of the specifications of protective cells, introduction of video taping of all cases of use of the protective cells and storing of the recorded materials for a certain period of time, and regular publication of information related to the treatment of inmates. Furthermore, revision of the Prison Law (established in 1908), which is the most important part of reform of correctional administration, is now in progress.

(c) Immigration Centers

86. Based on paragraph 6 of Article 61-7 of the Immigration Control and Refugee Recognition Act, the Regulations for Treatment of Detainees were formulated as the basic law for the treatment of detainees for the purpose of stipulating necessary matters to provide appropriate treatment while respecting the human rights of the detainees. Article 2-2 of the Regulations stipulates that appropriate treatment shall be expected of the directors of the immigration centers by taking measures such as hearing the opinions of the detainees concerning their treatment and patrolling the immigration centers. Paragraph 1 of Article 41-2 of the Regulations stipulates that the detainee can file a complaint with the director when he has a complaint about the treatment administered to him by immigration control officers. Paragraph 1 of Article 41-3 of the Regulations stipulates that when the detainee is not satisfied with the judgment of the director on the filed complaint, he may file a complaint with the Minister of Justice. Furthermore, paragraph 1 of Article 4 of the Duties and Instructions for Immigration Control Officers stipulates that the immigration control officer shall always be calm, polite, and orderly, shall keep a calm attitude make correct decisions and be patient when executing duties, shall refrain from rude or humiliating language or such attitude toward any person, and shall strive for appropriate treatment of detainees.

87. There are rules for detainees to observe in order to keep safety and order in the immigration centers and facilitate their lives in the center. When a detainee violates or attempts to violate the rules, the officials may order the detainees to stop such act, stop the act when deemed reasonably necessary, or take any other measures to suppress the act. Isolation of a detainee may be carried out based on the decision of the director pursuant to Article 18 of the Regulations for Treatment of Detainees if the detainee hurts himself, assaults others, yells uncontrollably, displays violent behavior such as kicking the cell door, attacks officials who try to stop such actions or intentionally breaks equipment in the cell. However, such isolation is a measure to be taken when different treatment from other detainees is necessary in order to protect the life or body of the detainee or to maintain discipline in the immigration centers, and is not a punishment against the detainee.

88. When there is suspicion that an official of the immigration center has conducted an illegal or wrongful act against a detainee which may fall under torture, a fact-finding investigation will be carried out. When it is found that such act took place, severe sanctions will be imposed on the official concerned such as referring the matter to the authorities depending on the contents of the act. The causes and problems of the individual incident will be analyzed, and the results will be immediately notified to the detention facilities and immigration centers all over the country, in order to prevent the recurrence of similar incidents.

(See annex IX: Immigration Control and Refugee Recognition Act, Articles 61-7; Regulations for Treatment of Detainees, Articles 2, 2-2, 7, 17-2, 18, 41-2, 41-3; Duties Instructions for Immigration Control Officers, Article 4.)

(d) Medical related matters

89. With regard to hospitalization for infectious diseases, paragraph 5 of Article 20 of the Law Concerning the Prevention of Infections and Medical Care for Patients of Infection stipulates that prefectural governors shall, when recommending hospitalization after emergency hospitalization or extending the period of hospitalization, hear beforehand the opinions of a council concerning the examination of infectious diseases, which consists of academic experts of medical care for the patients of infectious diseases, in order to judge objectively whether such recommendation or extension is necessary.

90. Article 25 of the Law stipulates that, if a request for review was made to the Minister of Health, Labour and Welfare by a patient who has been hospitalized over 30 days after emergency hospitalization, the Minister has to make a decision within five days by hearing the opinions of the Council or other agency.

91. With regard to the stoppage for quarantine, paragraph 2 of Article 16 of the Quarantine Law stipulates maximum period for each disease. Article 16 bis of the Law also stipulates that, if a request for review was made to the Minister of Health, Labour and Welfare by a patient who has been hospitalized over 30 days, the Minister has to make a decision within five days by hearing the opinions of the Council or other agency.

92. Article 29 of the Mental Health Law stipulates that, in order for a person to be forcibly hospitalized, the results of examination by at least two designated psychiatrists shall concur that the person is likely to hurt himself or others because of mental disorder unless admitted to a hospital for medical care and protection. Article 36 of the Law stipulates that the judgment on the necessity of restraint or continuation of hospitalization shall be made by designated psychiatrists. Article 19-4-2 stipulates the obligations to record the results of examination used for these judgments in medical examination record. Article 36 of the Law stipulates that the Minister of Health, Labour and Welfare shall hear the opinion of Social Security Council when he establishes the judging standards for restraints. In addition, prefectural governments conduct on-site instructions once a year per facility in principle, and administrators of mental hospitals are to inform a patient of the matters related to a request for release when hospitalizing them (Article 29 of the Law) and regularly report to the prefectural governor the conditions of the patient (Article 38 bis of the Law). The prefectural governor is to release the patient immediately when the person is deemed not likely to hurt himself or others if the hospitalization is discontinued (Article 29-4 of the Law).

93. Based on Article 38-5 of the Mental Health Law, when those hospitalized at a mental hospital or those responsible for their custody request to discharge them or to take necessary measures to improve their treatment, the prefectural governor is to the Psychiatric Review Board, consisting of designated psychiatrists and academic experts, for their review, and when such request is accepted as the result of the review, the prefectural governor is to discharge them or take necessary measures to improve their treatment. With regard to compulsory hospitalization,

a review pursuant to the Administrative Appeal Law may be sought and a lawsuit pursuant to the Code of Administrative Case Procedure may be filed against the Minister of Health, Labour and Welfare.

94. Law on the Medical Care and Observation for Mentally Incompetent Person Who Committed Serious Harm on Others (hereinafter "Law for Medical Observation on Mentally Incompetent Person") was enacted and promulgated in 2003. The purposes of the Law are to improve the state of disease, to prevent recurrence of similar incidents caused by the disease and to promote the patient's reintegration into society, by stipulating procedures to decide appropriate treatment for the person who did serious harm on others when mentally incompetent, and by providing continuous and appropriate medical care together with observation and instruction to assure the medical care. The Law is to be put in force on the day a Cabinet order stipulates, which is within two years after the date of promulgation. The Law for Medical Observation on Mentally Incompetent Person stipulates that a panel consisting of a judge and a mental health judge (psychiatrist) shall agree to decide on the treatment of the person the Law is applied to, on whether to hospitalize him or to make him go to hospital (Article 6, paragraph 1 of Article 11, Article 14, Article 42, etc.). With regard to the treatment of the person hospitalized in a designated medical institution for hospitalization according to the Law (hereinafter referred to as "hospitalized person"), the Law stipulates as follows so that his human rights is well taken into consideration:

(a) The administrator of a designated medical institution for hospitalization shall not restrict the activities that the Minister of Health, Labour and Welfare prescribes by hearing the opinions of Social Security Council such as sending and receiving a correspondence and meeting an attorney or official of administrative organ (paragraph 2 of Article 92);

(b) The restriction on activities such as the patient's isolation that the Minister of Health, Labour and Welfare prescribes by hearing the opinions of Social Security Council shall not be conducted unless a designated psychiatrist who works at a designated medical institution for hospitalization deems it necessary (paragraph 3 of Article 92);

(c) The Minister of Health, Labour and Welfare may set out other necessary standards for treatment of the hospitalized person, and when such standards are set out, the administrator of a designated medical institution for hospitalization shall comply with the standards (paragraphs 1 and 2 of Article 93).

Furthermore, the Law for Medical Observation on Mentally Incompetent Person stipulates the following to assure appropriate treatment:

(a) The hospitalized person or those responsible for his custody may request the Minister of Health, Labour and Welfare to give an order to the administrator of a designated medical institution for hospitalization to take necessary measures to improve his treatment. When receiving such request, the Minister shall ask the Social Security Council to review the request, and based on the result of the review, the Minister shall, when he deems necessary, give an order to the administrator of a designated medical institution for hospitalization to take necessary measures to improve the treatment (Article 95, paragraphs 1 and 5 of Article 96);

(b) The Minister of Health, Labour and Welfare may, when he deems necessary, request the administrator of a designated medical institution for hospitalization to report on the treatment of the hospitalized person , and when he deems that the treatment does not satisfy the standards he set out, may make an order to take necessary measures to improve the treatment.

(See annex IX: The Law Concerning the Prevention of Infections and Medical Care for Patients of Infection, Articles 6, 20, 24 and 25; Quarantine Law, Articles 2, 14 and 16; Law Related to Mental Health and Welfare of the Person with Mental Disorder, Articles 19-4-2, 29, 29-4, 36, 38-2, 38-4, 38-5; Law on the Medical Care and Observation for Mentally Incompetent Person who Committed Serious Harm on Others, Articles 6, 11, 14, 92, 93, 95 and 96.)

(e) Self-Defense Forces (SDF)

95. The inspection system with regard to the duties of judicial police in the Police Affairs Corps of the SDF is established in accordance with the internal rules as described in annex IX:

(See annex IX: Directives concerning the Organization and Operation of the Police Affairs Corps, Articles 29-31; Maritime Self-Defense Force, Article 18; Air Self-Defense Force, Articles 12-14.)

(f) Coast Guard officers

96. With the Japan Coast Guard, Japan Coast Guard Detention Administration Regulations stipulate that appropriate administration on detention is to be carried out under the command of senior officials.

97. The Japan Coast Guard has Administrative Inspector General and Administrative Inspectors who inspect any act of breach by Coast Guard officials and situations of administration under its jurisdiction.

(See annex IX: Japan Coast Guard Detention Administration Regulations, Article 3; Japan Coast Guard Law, Article 33; Coast Guard Law Enforcement Ordinance, Article 6; Regulations for Coast Guard Organization, Articles 2-5.)

L. Article 12

98. In Japan, the competent authorities who conduct an investigation when there are reasonable grounds to believe that an act of torture or other cruel, inhuman or degrading treatment has been committed are those who have investigative authority based on the Code of Criminal Procedure including public prosecutors, public prosecutors' assistant officers and judicial police officials (in addition to police officials, wardens of prisons and of branch prisons, other designated prison officials, Coast Guard officers, police affairs officers and assistant police affairs officers of the SDF). The human rights organs of the Ministry of Justice carry out non-compulsory investigation with the cooperation of the people concerned. Furthermore, with regard to administrative organs authorized to detain a certain person in accordance with laws and regulations, the officials with the power of authorization investigate a case upon a petition or ex officio and impose a disciplinary sanction when a violation is found as described in Paragraph 112 below.

99. The investigation procedures based on the Code of Criminal Procedure are as follows:

When a judicial police official deems an offence has been committed, the official is to investigate the offender and evidence thereof, and, after having conducted investigation of the offence, the official is to promptly refer the case together with the documents and evidence to the public prosecutor (paragraph 2 of Article 189 and Article 246 of the Code of Criminal Procedure). In addition to police officials, judicial police officials include wardens of prisons and of branch prisons, other designated prison officials, Coast Guard officers, and police affairs officers and assistant police affairs officers of the SDF. They are to carry out their respective duties of investigation as judicial police officials for the offences committed in prisons or branch prisons, on the sea, or by the officials of the SDF.

(See annex X, Japanese Legislation in relation to Article 12 of the Convention against Torture: The Code of Criminal Procedure, Articles 189-191 and 246.)

(a) Public prosecutors and public prosecutors' assistant officers

100. Any public prosecutor may, when he deems necessary, investigate an offence by himself, and any public prosecutor's assistant officer is to conduct an investigation under the command of a public prosecutor (Article 191 of the Code of Criminal Procedure).

(b) Police (see paragraph 38 in this report)

(c) Prison officials

101. Wardens of prisons and of branch prisons and other designated prison officials are to conduct investigation as judicial police officials on the offences committed in the prisons and branch prisons pursuant to Article 190 of the Code of Criminal Procedure, Article 1 of the Emergency Measures Act for Designation of Judicial Police Officers and the Ordinance for the Designation of Judicial Police Officers and Those Who Shall Perform the Duties of Judicial Police Officers.

(See Annex X: The Emergency Measures Act for Designation of Judicial Police Officers, Article 1; Ordinance for the Designation of Judicial Police Officers and Those Who Shall Perform the Duties of Judicial Police Officers, Articles 2-4.)

(d) Coast Guard officers

102. Coast Guard officers and assistant Coast Guard officers are to perform the duties as judicial police officials on the offences committed on the sea (Article 31 of the Japan Coast Guard Law), and when he deems that an act of torture was committed on the sea, he is to conduct investigation for a criminal case pursuant to the Code of Criminal Procedure.

(See annex X: The Japan Coast Guard Law, Article 31.)

(e) Self-Defense Forces (SDF)

103. Police Officers Corps (Ground SDF), Maritime SDF Police Officers Corps and Air SDF Police Officers Corps are to investigate as judicial police officials on the offences committed within the SDF pursuant to Article 96 of the Self-Defense Forces Law.

(See annex X: Self-defense Forces Law, Article 96.)

104. As described in Article 96 of the Self-defense Forces Law, when there are reasonable grounds to believe that an act of torture or other cruel, inhuman or degrading treatment has been committed, the respective investigative organs are to conduct investigations. Generally speaking, an investigation tends to follow the procedure of acknowledgement; questioning of the victims and persons concerned; collection of other relevant evidence; questioning of the suspect; arrest; and referral to the public prosecutors. Victims of an offence, which includes the offence of torture, may make a complaint to request punishment of the offender. A third party may also make an accusation when he thinks that an offence has been committed. The investigative organ that received the complaint or accusation conducts necessary investigations depending on the nature of the case, such as questioning of victims and others, inspection of the scene of the crime, collection of evidence and questioning of the suspect. When the suspect is not prosecuted, the person who made the complaint or accusation will be notified of the fact and, upon request, the reason. When the person who made the complaint or accusation is not satisfied with the disposition, he may apply to the Committee for the Inquest of Prosecution for review of the disposition. The Committee, consisting of citizens selected from the electoral register, reviews it from an independent stance and decides whether the disposition is appropriate. When it is decided that the disposition of non-institution of prosecution is inappropriate or that prosecution is appropriate, a public prosecutor conducts investigation for another disposition taking into account the decision. Furthermore, regarding violence and cruelty by a special public official, the person who made the complaint or accusation may, when he is not satisfied with the disposition of non-institution, request that the case be sent to a court for trial. If the request is deemed to be well-grounded by the court, the case will be sent to trial and the prosecution is deemed to have been instituted for the case. This system was established in the Code of Criminal Procedure to make effective the provision of Article 36 of the Constitution, which prohibits torture.

105. Under Japanese domestic laws, as mentioned above in the section of Article 4, any violence by a public official is punishable under offences such as violence and cruelty by a special public official (Article 195 of the Penal Code) or causing death or injury thereby (Article 196 of the Penal Code). The numbers of the cases convicted for the above-mentioned offences from 1999 to 2003 are shown in the table below, and the cases include obscene conduct and violence toward suspects by police officials as well as violence toward prisoners by prison officials. During the period that this report covers, there were no cases where the court decided to send a case to trial upon a request against a disposition of non-institution of violence and cruelty by a special public official, as described in Paragraph 104.

	1999	2000	2001	2002	2003
Violence and cruelty by a special public official	1	5	3	1	0
Causing death or injury thereby	1	0	1	0	0

106. In the case where eight prison officials of Nagoya Prison are alleged to have seriously injured one prisoner and caused the deaths of two other prisoners by assault using leather handcuffs, the prison officials were arrested and investigated from November 8, 2002 to March 20, 2003, and subsequently prosecuted for causing death or injury by violence and cruelty by a special public official. Out of those eight prison officials, one was convicted by the Nagoya District Court on March 31, 2004, and the remaining seven cases are pending at the same court.

Human rights organs

107. Human rights organs of the Ministry of Justice do not have the authority for compulsory investigation. However, pursuant to the Guidelines for Investigation and Resolution of Human Rights Infringement Cases, when they acknowledge a case suspected of being a human rights infringement by receiving a report from a person who alleges to have been subjected to torture or from other sources of information, they investigate such case and, when the facts of human rights infringement are confirmed, they take appropriate relief measures depending on the case, and urge the persons concerned to have respect for human rights, thereby giving relief to the victims and preventing human rights infringement.

108. After July 29, 1999, when the Convention entered into force in Japan, the case of Nagoya Prison, where prison officials were prosecuted for having abused prisoners and for killing or seriously injuring them, was investigated as required, and recommendations were made to the warden of the prison to thoroughly educate all the prison officials to respect human rights, to establish an effective instruction and supervision system and to take all possible measures to prevent recurrence of similar incidents.

(See annex X: Guidelines for Investigation and Resolution of Human Rights Infringement Cases, Articles 2, 8 and 14.)

M. Article 13

109. As a comprehensive provision of domestic laws regarding this Article, Article 16 of the Constitution stipulates that every person shall have the right of peaceful petition for the redress of damage, for the removal of public officials, for the enactment, repeal or amendment of laws, ordinances or regulations and for other matters; nor shall any person be in any way discriminated against for sponsoring such a petition. In addition, the right to complain and the protection of the complainant and witnesses provided for in this Article of the Convention are guaranteed as follows:

Guarantee of the right to complain by any individual who alleges he has been subjected to torture

(a) Measures citizens may take

Filing a complaint

110. Any person who alleges he has been subjected to torture may, as described above, file a complaint (Article 230 of the Code of Criminal Procedure), seek a review by the Committee for the Inquest of Prosecution on the appropriateness of non-institution of prosecution (paragraph 1

of Article 30 of the Law for the Inquest of Prosecution), and request the court for a trial of the case on violence and cruelty by a special public official (paragraph 1 of Article 262 of the Code of Criminal Procedure).

111. Any person whose liberty is deprived without due process of law may request relief to either a high court or district court in accordance with Article 2 of the Habeas Corpus Act.

(See annex XI, Japanese Legislation in relation to Article 13 of the Convention against Torture: The Code of Criminal Procedure, Articles 230 and 262; Law for the Inquest of Prosecution, Articles 2 and 30; Habeas Corpus, Articles 2 and 4.)

(b) Measures detainees may take

Police detention cell

112. When received from a detainee in a Police detention cell reports that he was tortured, the person in charge of the cell is to inform the chief of the police station through the detention chief, and the chief of the police station is to immediately investigate the matter sincerely and inform to the detainee of the result.

(See annex XI: The Rules of Detaining Suspects, Article 19.)

113. Within the Police, the inspector general system is established to investigate or examine offences, illegal conducts, and accidents during official duties from the standpoint of the administrative supervision in order to ensure the penetration of orders from senior officials to subordinates and maintain the discipline. When there is or is reported a violation of the discipline such as improper treatment of a suspect by a police official, the official in charge of the inspection is to immediately investigate the fact and report the result to the person who appointed the official. When it is deemed that there was a conduct which constitutes a reason for disciplinary sanctions, the person with authority may impose sanctions, such as a reprimand, a pay cut, suspension, or discharge from duty on the said police official.

Correctional institutions

114. When any inmate of a correctional institution claims that he has been tortured, he may file a petition with an investigative organ by using the criminal complaint procedure mentioned above and ask for prompt and fair examination, as well as file a civil or administrative lawsuit.

115. In addition, there is a system of petition for inmates of prisons to file a complaint with the Minister of Justice or a visiting inspector who is an official of the Ministry of Justice, to be appointed by the Minister (Article 7 of the Prison Law). The petition may be made not only for torture and other cruel, inhuman or degrading treatment which is prohibited by the Convention but also for complaints on the treatment in general in prison, which is to be made in writing to the Minister of Justice and either orally or in writing to a visiting inspector. There is no limit on the number of petitions an inmate may make, and the confidentiality of the petition is guaranteed to avoid the contents being known to the officials (paragraph 2 of Article 4 and Article 6 of the Prison Law Enforcement Regulations). The Minister of Justice reads the petition that he receives, and the Correction Bureau, in principle, conducts a detailed investigation. Depending

on the contents, however, the Human Rights Bureau may conduct an investigation based on the Minister's direction, in order to review operations and improve the effectiveness of the system. The complaints are thoroughly investigated and examined, the result of which is notified to the complainant. At the time, if it is revealed that an official had engaged in acts of torture, the official is to be subjected to disciplinary sanction and criminal punishment. Furthermore, there is a system for inmates to request an interview with the warden in order to seek redress or advice concerning treatment by a prison official or their personal affairs (Article 9 of the Prison Law Enforcement Regulation). With regard to the system of petition for redress, the Correctional Administration Reform Council (consisting of private experts) established under the direction of the Minister of Justice held discussions for fundamental reform of the system and made its recommendations in December 2003. At present, reviews on improvement measures are in progress (see Paragraph 85).

116. The system of petition for redress was utilized in 2003 for 466 criminal complaints, 37 accusations, 217 lawsuits, and 5,884 petitions to the Minister of Justice. However, these petitions included not only cases related to torture but other complaints on treatment including requests, opinions and comments.

(See annex XI: The Prison Law, Article 7; Prison Law Enforcement Regulation, Article 9.)

Immigration Centers

117. In addition, any detainee of an immigration center who claims that he has been tortured may file a petition with an investigative organ by using the above-mentioned criminal complaint procedure, ask for prompt and fair examination, and file a civil or administrative lawsuit. In addition, when a detainee has complaints about the treatment in the center, the director of the center who is not an immigration control officer (Note: Only the immigration control officer is authorized to detain persons who are subject to the execution of written detention orders or deportation orders - Article 61-3-2 of the Immigration Control and Refugee Recognition Act) is to hear the opinions of the detainee concerning the treatment, and to examine the actual facts of the treatment and ensure appropriate treatment by taking measures such as inspection of the site of treatment in the immigration center (Article 2-2 of the Regulations for Treatment of Detainees). The method of filing a complaint is either in writing addressed to the director, which may be filed anonymously, or orally in the meeting with the director. The filing of opinions or complaints shall not be grounds for unfair treatment, and notice to this effect is made widely known to the detainees by posting as such in the immigration centers. The director of the immigration center, on receiving a complaint shall, when deemed necessary, ask the detainee and the officials concerned to explain the contents of the complaint, and shall take necessary measures. In addition, when a detainee has a complaint about the treatment by an immigration control officer, such complaint may be filed with the director of the center (paragraph 1 of Article 41-2 of the Regulations for Treatment of Detainees), and when the detainee is not satisfied with the judgment of the director on the filing of the complaint, he may file a complaint with the Minister of Justice (paragraph 1 of Article 41-3 of the Regulations).

118. Any detainee may send letters, the contents of which are not subject to change unless they contain inappropriate contents for the security of the facility and, in some well-equipped immigration centers, phone calls may be made freely during certain hours, and detainees can speak to any organization (Article 37 of the Regulations for Treatment of Detainees).

119. The number of complaints filed in 2003 was 28, the reasons of which were not only torture, but included complaints unrelated to measures taken by immigration control officers and those not covered by the system of filing complaints.

(See annex XI: Immigration Control and Refugee Recognition Act, Articles 61-3-2; Regulations for Treatment of Detainees, Articles 2-2, 37, 41-2 and 41.)

Infectious diseases

120. Patients who are hospitalized on the ground of infectious diseases may request the prefectural governor to discharge them from hospital in accordance with the Law Concerning the Prevention of Infections and Medical Care For Patients of Infection. According to the Law, the governor is to, when such request is made, find out whether the person has pathogens, and, if it is confirmed that he does not have pathogens, discharge him from the hospital.

121. Any person who is separated or suspended for quarantine may petition to be released to the director of quarantine center in accordance with the Quarantine Law. When such petition is made, the director of quarantine center is to, in accordance with the Law, find out whether the person has pathogens, and, if it is confirmed that he does not have pathogens, release him from the separation or suspension.

(See annex XI: The Law Concerning the Prevention of Infections and Medical Care for Patients of Infection, Article 22; The Quarantine Law, Article 15 bis and 16.)

Mental patients

122. As described in Paragraph 93, based the Mental Health Law, those hospitalized at a mental hospital or those responsible for their custody may request the prefectural governor to discharge them or to take necessary measures to improve their treatment, and if, the Psychiatric Review Board consisting of designated psychiatrists and academic experts deems that hospitalization is not necessary or that the treatment is not appropriate, the prefectural governor is to discharge them or order to take necessary measures to improve their treatment. With regard to compulsory hospitalization, a petition for review based on the Administrative Appeal Law and a lawsuit based on the Code of Administrative Case Procedure may be filed against the Minister of Health, Labour and Welfare.

123. As described in Paragraph 94, Law for Medical Observation on Mentally Incompetent Person stipulates the following to assure appropriate treatments:

(a) Those hospitalized at a mental hospital or those responsible for their custody may request that the Minister of Health, Labour and Welfare order the administrator of a designated medical institution for hospitalization to take necessary measures to improve their treatment. When receiving such a request, the Minister of Health, Labour and Welfare requests the Social Security Council to review the said request, and, based on the result of the review, the Minister, when deems necessary, gives an order to the administrator of the designated hospital to take necessary measures to improve the treatment.

(b) The Minister of Health, Labour and Welfare may request a report concerning treatment on those hospitalized to the administrator of a designated medical institution for hospitalization, and when he thinks that the treatment does not meet the standards set out by him, he may make an order to take necessary measures to improve the treatment.

Conducts by officials of the Self-Defense Forces or by the Coast Guard officers

124. With regard to the conduct by officials of the Self-Defense Forces or by the Coast Guard officers, upon complaint of a person who alleges that he has been tortured, police affairs officers, or assistant police affairs officers of the Self-Defense Forces or Coast Guard officers conduct investigations within their respective authorities as judicial police officers.

Protection of complainants and witnesses

125. With regard to protection of complainants and witnesses, the following measures are taken:

(a) A person who intimidates or inflicts other harmful conduct upon a complainant or a witness is punishable, depending on the case, under intimidation of a witness (Article 105 bis of the Penal Code), physical violence (Article 208 of the Penal Code), intimidation (Article 222 of the Penal Code), or other offences;

(b) The existence of reasonable grounds to suspect that the defendant may harm the body or the property of the victim or any other person are grounds for refusal of bail (Item (5) of Article 89 of the Code of Criminal Procedure);

(c) When a witness or his family members is injured or killed, payment is made by the State for medical treatment and other related expenses (Article 3 of the Law on the Benefits for Damages of Witnesses);

(d) When a public official who received a petition treats the complainant unfairly, the official may be subject to disciplinary sanctions even if such conduct does not constitute an offence (paragraph 1 of Article 82 of the National Public Service Law, paragraph 1 of Article 29 of the Local Public Service Law);

(e) In the examination of a witness, when it is deemed that the witness may feel considerable anxiety or tension, the court may allow a person, who is deemed to be appropriate to relieve such anxiety or tension, to accompany the witness during the examination (Article 157 bis of the Code of Criminal Procedure);

(f) In order to alleviate the psychological burden on a witness testifying in front of the defendant and the courtroom spectators, the court may set up a shield that separates the witness from the defendant and the spectators (Article 157 of the Code of Criminal Procedure);

(g) In order to ease the psychological burden on a witness testifying in an open court, examination of the witness may be made by the method of having a witness in a place other than the courtroom and using devices that allow communications while recognizing the appearance of each other by images and sound (video link system) (Article 157quat of the Code of Criminal Procedure).

(See annex XI: The Penal Code, Articles 105 bis, 208 and 222; The Code of Criminal Procedure, Articles 89, 157-2, 157-3 and 157-4; Law on the Benefits for Damages of Witnesses, Article 3; National Public Service Law, Article 82; Local Public Service Law, Article 29.)

N. Article 14

126. In Japan, Article 1 of the State Redress Law stipulates the compensation for damages inflicted by a public official who exercises public authority. In addition, Article 709 of the Civil Code stipulates the compensation for damages inflicted when a private person is involved.

127. With regard to the compensation for damages to a victim of an act of torture, as mentioned above, the State or a private person may have liability for damages based on the State Redress Law or the Civil Code.

128. When a victim is a foreign national, the provisions concerning the right to claim damages under the State Redress Law apply only if there is the guarantee of reciprocity (Article 6 of the State Redress Law). The provisions concerning the right to claim damages under the Civil Code apply equally to foreign and Japanese nationals.

129. Such right to claim damages is inherited if the victim dies (Article 896 of the Civil Code).

130. When a person who is liable for damages based on a court decision does not fulfill the obligation, the victim may enforce the right to claim damages in accordance with judicial procedures.

131. The compensation to a victim is, in principle, pecuniary. The expenses for rehabilitation in medical and mental treatment required for recovery from harm inflicted by an act of torture are also subject to such compensation. Under Japanese laws, there is no upper limit for damages.

132. In addition, based on the society's spirit of mutual cooperation and for the purpose of alleviating damages of criminal victims, the Crime Victims Benefit Payment Law was enacted in 1980. The system was established by this Law that the State provides the benefits for criminal victims to a bereaved family member of a person who unexpectedly died or to a person badly injured due to criminal acts. Any Japanese national or foreign national who has residence in Japan at the time when the criminal acts that caused the criminal damage took place is entitled to receive such payment.

(See annex XII, Japanese Legislation in relation to Article 14 of the Convention against Torture: State Redress Law, Articles 1 and 6; The Civil Code of Japan, Articles 709, 715 and 896; The Care Victims Benefit Payment Law, Article 3.)

O. Article 15

133. It is ensured that any statement which is found to have been made as a result of torture shall not be used as evidence in any proceedings, under paragraph 2 of Article 38 of the Constitution which stipulates, "Confession made under compulsion, torture or threat, or after prolonged arrest or detention shall not be admitted in evidence", as well as the Code of Criminal Procedure as described below.

134. In criminal proceedings, confessions made under compulsion, torture or threat, or after prolonged arrest or detention, or which are suspected of not having been made voluntarily shall not be admitted in evidence (paragraph 1 of Article 319 of the Code of Criminal Procedure). Public prosecutors are to prove that the confession was made voluntarily, and courts shall not admit the confession as evidence unless such proof is made. In addition, the defendant will not be convicted if the confession is the only proof against him (paragraph 2 of Article 319 of the Code of Criminal Procedure). Such confession includes any admission of the defendant which acknowledges himself to be guilty of the offence charged (paragraph 3 of Article 319 of the Code of Criminal Procedure). Even when a document or statement is admissible as evidence in accordance with other provisions of the Code of Criminal Procedure, the court shall not admit it as evidence, unless the court believes after investigation that the document or statement has been made voluntarily (Article 325 of the Code of Criminal Procedure). Any document or statement which public prosecutors and defendants have consented to for use as evidence may be admitted only if the court finds it proper after considering the circumstances under which the document or statement was made (paragraph 1 of Article 326 of the Code of Criminal Procedure). In addition, it is understood and is the practice that public prosecutors have the responsibility of checking that judicial police officials do not conduct inappropriate investigations and of preventing such investigations from occurring.

135. In Japan, as described above, confessions made under compulsion, torture or threat, or after prolonged arrest or detention are not admitted in evidence, but there are no statistics available on the number of cases in which confessions were denied as evidence because they were deemed to have been made under torture.

136. In the Code of Civil Procedure, there is no explicit provision that restricts the admissibility of a statement which is deemed to have been made under torture. The prevailing view, however, is that evidence gained through extremely antisocial means that violate constitutional rights should not be admitted in civil proceedings. Since a statement made under torture by a public official is a typical example of such evidence, it is therefore understood that such statement would not be admitted as evidence.

(See annex XIII, Japanese Legislation in relation to Article 15 of the Convention against Torture: The Constitution of Japan, Article 38 bis; The Code of Criminal Procedure, Articles 319, 325 and 326.)

P. Article 16

137. In Japanese domestic law, torture is not defined as a separate offence, and the offences referred to in Paragraph 31 above concerning Article 4 of the Convention apply not only to acts of torture as defined by the Convention, but also to acts of other forms of cruel, inhuman or degrading treatment or punishment by public officials. In particular, the obligations provided for in Articles 10, 11, 12 and 13 of the Convention are fulfilled with respect to acts of other forms of cruel, inhuman or degrading treatment or punishment by public officials in the same way as acts of torture.

Q. Others

(a) Cooperation with NGOs

138. The Japanese Government fully acknowledges the significance of various activities of civil society for the implementation of the Convention and other human rights conventions, has frequent dialogues with non-governmental organizations whenever necessary and takes their views into consideration in making relevant policies. It intends to build constructive relationships with civil society by exchanging views in order to effectively implement the Convention.

(b) So-called substitute prisons

139. In Japan, approximately 1,300 police detention cells are established in police stations. Detainees in police detention cells include suspects arrested pursuant to the Code of Criminal Procedure, and pretrial detainees held in custody on a warrant of detention issued by a judge based on the Code of Criminal Procedure. The number of suspects detained in police detention cells was approximately 190,000 during the year of 2003.

140. An arrested suspect is, unless released, brought before a judge upon the request of custody made by a public prosecutor and the judge determines whether or not the suspect is to be taken into custody. The place of detention for suspects is stipulated as a prison in the Code of Criminal Procedure (paragraph 1 of Article 64 of the Code of Criminal Procedure), and the Prison Law stipulates that a police detention cell may be used as a substitute for a prison (paragraph 3 of Article 1 of the Prison Law). This system to use a police detention cell as a substitute for a prison is the so-called “substitute prison system”. With regard to the place of detention, there is no provision in the Code of Criminal Procedure stipulating selection of a detention house or police detention cell, and a judge, upon a request from a public prosecutor, makes a decision case by case, taking various conditions into consideration (paragraph 1 of Article 64 of the Code of Criminal Procedure).

141. Even after a prosecution has been instituted, the court may detain the defendant when there is reasonable ground to suspect that the defendant may destroy or alter evidence, or escape (Article 60 of the Code of Criminal Procedure). The place of detention for this case is specified as a prison similarly to the case of suspects, and a police detention cell may be used as a substitute.

142. This system falls under the lawful sanctions referred to in paragraph 1 of Article 1 of the Convention and the detention itself in a so-called substitute prison does not fall under the torture referred to in the Convention. In the so-called substitute prison system, officials in charge of detention who belong to a department not in charge of investigation supervise detainees, taking their human rights into consideration in accordance with relevant laws and regulations, and do not conduct treatment or punishment as may be deemed inhumanly cruel with unnecessary mental or physical pain. Therefore, it is understood that the so-called substitute prison system does not cause any problems of cruel, inhuman or degrading treatment or punishment under the Convention as long as it is operated appropriately.

143. With regard to living conditions in police detention cells, see Paragraphs 118 to 133 of the fourth report of Japan pursuant to subparagraph 1(b) of Article 40 of the International Covenant on Civil and Political Rights. With regard to the separation of investigation and detention, see Paragraphs 134 to 143 of the said report.

(See annex XIV, Japanese Legislation not related to any Article of the Convention against Torture: The Code of Criminal Procedure, Articles 64-1, 203-1; The Prison Law, Article 1-3.)

(c) The individual communication system provided for in Article 22

144. Although this system is considered noteworthy in terms of effective implementation of the Convention, it has also been pointed out that the system needs careful examination as it may cause problems in relation to the judicial system including the independence of the judiciary guaranteed by the Constitution. Considering it necessary to further examine the operation of this system by the Committee against Torture from various viewpoints, Japan did not make the declaration provided for in Article 22 at the time of accession to the Convention. Japan intends to continue serious and careful consideration, while examining operation of the system.

R. Article 22

(a) Death penalty system

145. The death penalty system in Japan is a punishment provided for in the Penal Code. It falls under the lawful sanctions referred to in paragraph 1 of Article 1 of the Convention and does not constitute the torture referred to in the Convention. Furthermore, hanging, presently practiced in Japan, is not considered to be inhumanly cruel compared to other methods, and does not fall under cruel, inhuman or degrading punishment. The death penalty system is strictly administered as stated below.

146. The offences to which the death penalty applies as a statutory penalty are limited to 18 serious offences such as murder, robbery causing death, and rape on the scene of robbery causing death. For the 17 offences, other than inducement of foreign aggression, imprisonment with or without appointed work is provided for as an optional punishment. For all the 18 offences, mitigating circumstances such as diminished capacity and extenuations are also provided for. Application of the death penalty for individual cases is made carefully and strictly based on the standard established by a Supreme Court judgment, which states, “Under the present legal system which retains the death penalty, the death penalty may apply when criminal responsibility is extremely significant and capital punishment is considered unavoidable in terms of the balance between a crime and its punishment and of the general prevention of crimes, when considering various circumstances such as the nature and motive of the crime, the method of the crime, in particular the pertinacity and brutality of the method of murder, the seriousness of the result, in particular the number of murdered victims, the suffering of the bereaved family, social effects, the offender’s age, his criminal records, and the circumstances after the crime.” Therefore, in Japan today, the death penalty applies only to those who have committed atrocious crimes of extremely significant responsibility.

147. The defendant against a judgment of guilty including the death penalty has the right to appeal and may file an appeal to the high courts or the Supreme Court depending on the instance. Even after the above-mentioned appeal against the judgment of guilty has been exhausted, the person sentenced as guilty may request reopening of the proceedings.

148. If a person was under 18 years of age at the time of commission of the crime, the death penalty may not apply. For such a person, even when the death penalty would otherwise apply, a life sentence will be imposed (paragraph 1 of Article 51 of the Juvenile Law). If a woman sentenced to death is pregnant, the execution will be stayed by the order of the Minister of Justice (paragraphs 2 and 3 of Article 479 of the Code of Criminal Procedure).

149. In 2003, the death penalty of two persons who committed murder and other crimes became final, and one death row inmate was executed.

(Reference) Crimes committed by the two persons whose death penalty became final in 2003.

(a) Murder in the course of robbery, and fraud;

(b) Murder, attempted murder, unlawful entry, violation of the Firearms and Swords Control Law, violence, injury, and destruction of property.

(See annex XIV: Juvenile Law, Article 51; The Code of Criminal Procedure, Article 479.)

(b) Use of restraining devices and custodial cells (rooms)

Correctional institutions

150. When there is the risk of escape, violence or suicide, or when an inmate does not follow the directions of officials to stop shouting or making unnecessary noise, or when there is the risk that an inmate may repeat abnormal behavior such as contaminating the cell, then he may be housed in a protective cell (solitary cell with an appropriate structure or equipment which has been designed to calm and protect inmates), as far as it is deemed inappropriate to house him in an ordinary cell. In addition, when there is the risk of escape, violence or suicide, instruments of restraint (handcuffs) may be used. A protective cell is designed for such specific purpose, and its structure is built to stand noise and destruction, by eliminating fixtures, equipment and protrusions as may be used for suicide and using soft materials for the walls and floor. Accommodation in a protective cell is a type of solitary confinement in cases where isolation is necessary based on laws and regulations.

151. Both protective cells and restraining devices are used based on relevant laws and regulations, only when there is the risk of escape, violence or suicide and when they are necessary for the prevention of such acts. Therefore, as long as such use is appropriate, it does not fall under the torture referred to in paragraph 1 of Article 1 of the Convention, since there are no purposes or reasons which are required to constitute torture. In addition, such measures do not give unnecessary pain to the inmate and, as described below, due consideration is given so as not to harm the inmate’s dignity and integrity, which is why use of these measures does not fall under the cruel, inhuman or degrading treatment referred to in the Convention. In particular, the use of restraining devices or protective cells is to be based on relevant laws and regulations, and

based on official instructions, should not exceed the limit, depending on the situation, reasonably necessary to achieve its purpose. For the inmate on whom a restraining device is used or the inmate in a protective cell, encouragement is given so that such restrictions can be lifted as soon as possible, and a doctor, when necessary, shall monitor his mental and physical conditions.

152. Leather handcuffs, a kind of restraining device used until recently (handcuffs made of a leather band with cylindrical leather bangles to fix both wrists), were abolished on October 1, 2003, because of the above-mentioned case where prison officials of Nagoya Prison were prosecuted for causing death or injury by violence and cruelty by a special public official as the leather handcuffs tightly squeezed the abdomen of the inmate. As an alternative, a new type of handcuffs has been adopted, which restrains only the wrists without squeezing the abdomen. The new type of handcuffs is considered safer than conventional leather handcuffs because they do not restrain parts other than the wrists. Furthermore, to secure appropriate and safe operation, the following guidelines have been clearly set out and officials are made fully aware of the guidelines through drills and training. The new type of handcuffs can be used on an inmate housed in a protective cell only when housing him in it is not enough to prevent violence or suicide; and the new type of handcuffs may not be used in a way that harms the inmate's body.

(See annex XIV: The Prison Law, Articles 15 and 19; The Prison Enforcement Regulations, Articles 47-49.)

Immigration Centers

153. The use of restraining devices is permitted but kept to a minimum, in accordance with the Regulations for Treatment of Detainees formulated based on the Immigration Control and Refugee Recognition Act, only when there is the risk of escape, violence or suicide by the detainees and it is considered that there is no other way to prevent such acts. In addition, when based on the Regulations isolation is deemed necessary to protect the life and body of the detainees and to maintain order within the facility, those detainees may be housed in protective cells. Therefore, both restraining devices and protective cells, as long as they are used appropriately, do not fall under the torture referred to in Article 1, paragraph 1 of the Convention because there are no purposes or reasons, which are required to constitute torture. In addition, these restraining devices and protective cells do not give unnecessary pain as long as they are used appropriately in accordance with the Regulations, and in March 2003 the Immigration Bureau revised the guidelines for using restraining devices and for isolation in order to enhance appropriate usage; thus giving due consideration to avoid harming the dignity and integrity of detainees. Therefore they do not fall under the cruel, inhuman or degrading treatment or punishment provided for in the Convention. Isolation is conducted according to the decision of the director based on Article 18 of the Regulations and the period of isolation is decided by the director depending on the case. As soon as it becomes unnecessary to isolate the detainee, he is released from isolation. A protective cell is designed with a structure which eliminates protrusions as much as possible and uses soft material for the walls and floor to protect the detainee's life and body.

(See annex XIV: Regulations for Treatment of Detainees, Article 18.)

154. The use of restraining devices and protective cells is allowed when the director orders as such in accordance with laws and regulations. When there is no time to get an order from the director for use of a restraining device or a protective cell, this shall be reported to the director immediately after the use, thus ensuring careful and appropriate decisions on the use of restraining devices and protective cells. Leather handcuffs, a kind of restraining device formerly used in immigration centers, whose use has been suspended since March 10, 2003, were abolished totally on January 28, 2003 due to the introduction of a new type of handcuffs as a substitute, which does not restrain parts of the body other than the wrists.

(See annex XIV: Regulations for Treatment of Detainees, Article 19 and 20.)

(c) Solitary confinement in the treatments

Correctional institutions

155. Inmates in correctional institutions, when isolation is necessary for detention in accordance with laws and regulations, are to be put in solitary confinement, for a period within six months, in principle, and this period can be extended every three months where extraordinarily necessary. The final decision as to whether solitary confinement is necessary and whether to extend the period is made by the warden of the correctional institution, in practice, after careful examination of the necessity by the classification examination committee established in the institution and after taking the inmate's mental and physical conditions into due consideration. Long-term solitary confinement has, of course, the possibility of exerting a negative influence on the physical and mental health of the inmates. In order to promote inmates' rehabilitation, it is important to facilitate their socialization through living and interacting in a group with other people. Prison facilities therefore would like inmates to go out and work in factories as much as possible. From this viewpoint, at every possible opportunity, prison facilities try to transfer inmates from solitary confinement to group cells by such methods as prison officials in charge giving guidance to the inmates in solitary confinement and senior officials having interviews with them. However, there are still a small number of cases where long-term solitary confinement is inevitable.

(See annex I, pages …: The Prison Law, Article 15; The Prison Law Enforcement Regulation, Articles 47 and 27.)

Immigration Centers

156. The purpose of detention in an immigration center is to facilitate deportation procedures in accordance with the Immigration Control and Refugee Recognition Act and to prohibit residence and activity in Japan. The Immigration Control and Refugee Recognition Act stipulates that detainees are to be given as much freedom as possible unless this causes a problem for the security of the facility. In principle, detainees are housed in a group room for two or more people. However, there are some detainees who wish to be housed in single rooms due to various reasons such as differences in nationality and culture and an inability to adjust to living in a group, and these detainees are, in principle, housed in single rooms in accordance with their wishes. Even in such cases, there are no restrictions on communication among the detainees, and when a detainee requests to be housed in a group room this is also granted.

(d) Disciplinary punishments

Correctional institutions

157. In penal institutions, it is necessary to keep discipline and order appropriately so that many inmates may be managed as a group, they can be prevented from escaping and kept in custody, and so that the purpose of detention depending on the legal status of the respective detainee may be achieved. To this end, the acts prohibited in the facilities are stipulated in the "Rules for Inmates", which are made known and easily comprehensible, in advance, to the detainees. By punishing persons who violate the rules, the recurrence of prohibited acts is prevented, and discipline and order in the facilities are maintained. Among the punishments, there are reprimands, prohibition of reading documents and looking at pictures for up to three months, docking of part or all of the remuneration for prison work, and minor solitary confinement for up to two months. Minor solitary confinement is when a detainee is kept in a single cell with the same structure as an ordinary cell, communication with other inmates is cut off, and the detainee is made to sit in the cell and is given the chance for self-reflection in order to encourage penitence. This is the severest form of punishment actually practiced. When minor solitary confinement is conducted, a medical examination by a doctor is required beforehand, and minor solitary confinement may not commence unless it is deemed that there will be no harm to the inmate's health. During the confinement, medical examinations by a doctor are also conducted, and the confinement is suspended if there are any special factors which may cause harm to the health of the inmate, which is why consideration is given so as not to harm the health of the inmate. The procedures of punishment conform to the official directions of the Minister of Justice. First, the person who is suspected of having violated the rules is informed of the suspicion of such violation and interviewed on the facts and background. Then other information is collected such as reports from officials who witnessed the violation, and interviews of other inmates who saw or heard about the violation. Afterwards, a punishment examination committee consisting of senior officials of the penal institution is convened, where the suspicion of violation is notified to the suspect who is present at the meeting. After giving the suspect an opportunity to defend himself, a senior official who plays the role of supporting the suspect gives his opinion on behalf of the suspect. The committee forms an opinion taking into account all the factors such as whether the act falls under a violation of the rules, the cause, contents, and circumstances, the suspect's behavior and the progress of treatment, and the security conditions of the prison facility concerned. The warden of the penal institution, based on the opinion reported by the committee and considering all of the various factors, decides whether to give a punishment and what punishment is to be given. In this way, the decision for the punishment meets the requirement for securing fairness.

Appendix: Relevant domestic laws

- Law of Extradition
- Law for International Assistance in Investigation
- Law for Judicial Assistance to Foreign Courts

Annexes to the Initial Report of Japan

Annex I	Japanese Legislation is respect of Part I of the report
Annex II	Japanese Legislation in relation to Article 3 of the Convention against Torture
Annex III	Japanese Legislation in relation to Article 4 of the Convention against Torture
Annex IV	Japanese Legislation in relation to Article 5 of the Convention against Torture
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Annex XIV	Japanese Legislation not relation to any specific article of the Convention against Torture

Annex I

JAPANESE LEGISLATION IN RESPECT OF PART I

General Information

The Constitution of Japan

Article 13

All of the people shall be respected as individuals. Their right to life, liberty, and the pursuit of happiness shall, to the extent that it does not interfere with the public welfare, be the supreme consideration in legislation and in other governmental affairs.

Article 36

The infliction of torture by any public officer and cruel punishments are absolutely forbidden.

Article 38

1. No person shall be compelled to testify against himself.

2. Confession made under compulsion, torture or threat, or after prolonged arrest or detention shall not be admitted in evidence.

3. No person shall be convicted or punished in cases where the only proof against him is his own confession.

The Penal Code

Article 193

When a public official abuses the official's authority and causes another to perform an act which the person has no obligation to, or hinders another from exercising the person's right, imprisonment with appointed work or imprisonment without appointed work for not more than 2 years shall be imposed.

Article 194

When a person performing or assisting in judicial, prosecution or police functions, abuses the person's authority and detains or confines another, imprisonment with appointed work or imprisonment without appointed work for not less than 6 months but not more than 10 years shall be imposed.

Article 195

1. When a person performing or assisting in judicial, prosecution or police functions commits, in the performance of the person's duties, an act of physical violence or physical or mental cruelty upon the accused, suspect etc., imprisonment with appointed work or imprisonment without appointed work for not more than 7 years shall be imposed.

2. The same shall apply when a person who is guarding or escorting another person detained or confined in accordance with laws commits an act of physical violence or physical or mental cruelty upon the person.

Article 196

A person who commits a crime prescribed for in the preceding two Articles and thereby causes death or bodily injury of another shall be dealt with by the punishment prescribed for the crimes of bodily injury or the Articles whichever is the graver.

The Code of Criminal Procedure

Article 262

1. If, in a case with respect to which complaint or accusation is made concerning the offences mentioned in Articles 193 to 196 of the Penal Code Article 45 of the Subversive Activities Prevention Act (Law No. 240 of 1952) or Articles 42 to 43 of the Act Regarding the Control of Organizations Which Committed Indiscriminate Mass Murder (Law No. 147 of 1999), the complainant or accuser is dissatisfied with the disposition made by a public prosecutor not to prosecute, he may apply to a District Court having jurisdiction over the place of the public prosecutors office to which that public prosecutor belongs for committing the case to a court for trial.

2. The application mentioned in the preceding paragraph shall be made by submitting a written application to a public prosecutor from the day on which the notice mentioned in Article 260 was received.

Article 263

1. The application mentioned in Paragraph 1 of the preceding Article may be withdrawn before ruling of Article 262 is rendered.

2. The person who made the withdrawal as provided in the preceding paragraph shall not make anew the application mentioned in Paragraph 1 of the preceding Article in respect to the same case.

Article 264

A public prosecutor shall institute prosecution if he considers the application mentioned in Paragraph 1 of Article 262 well-founded.

Article 265

1. Trial and decision on the application mentioned in Paragraph 1 of Article 262 shall be conducted and delivered by a collegiate court.

2. The court may, if it deems necessary, cause a member of a collegiate court to investigate the fact, or requisition a judge of a District or Summary Court to do so. In this case a commissioned judge or a requisitioned judge shall have the same authority as the court or a presiding judge has.

Article 266

On receipt of the application mentioned in Paragraph 1 of Article 262, a court shall render a ruling according to the following classification:

(a) In the event of the application having been made contrary to the form fixed by law or ordinance or after the rights of application has extinguished or of its being without grounds, it shall be dismissed;

(b) If the application is well-founded, the case shall be committed to a competent District Court for trial.

Article 267

When the ruling mentioned in Item (2) of the preceding Article has been rendered, prosecution shall be deemed to have been instituted on the case.

Article 268

1. When a case has been committed to it for trial in accordance with provision of Article 266, Item (2) the court shall designate from among practicing attorneys one who shall sustain the prosecution on such case.

2. The practicing attorney designated as mentioned in the preceding paragraph shall exercise the functions of a public prosecutor in order to sustain the prosecution until the decision has become final. However, the practicing attorney mentioned in the preceding paragraph shall commission a public prosecutor to direct public prosecutor's assistant officer or judicial police official for criminal investigation.

3. The practicing attorney who exercises the functions of a public prosecutor in accordance with the preceding paragraph shall be deemed to be an official engaged in the public service in accordance with laws or ordinances.

4. A court may cancel the designation of the practicing attorney designated in accordance with the first paragraph at any time if it finds that he is not qualified to exercise his functions or there are any other special circumstances.

5. The practicing attorney designated in accordance with the first paragraph shall be given allowances as fixed by Cabinet Order.

Article 269

When a court dismisses the application mentioned in Paragraph 1 of Article 262 or when the application is withdrawn, the court may, by means of a ruling, order the person who made the application to compensate for the whole or a part of the costs arising form the procedure relating to the application. An immediate *Kokoku* appeal may be filed against the ruling.

International Covenant on Civil and Political Rights

Article 7

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

(Reference for Part I, paragraphs 1-5)

Annex II

JAPANESE LEGISLATION IN RELATION TO ARTICLE 3 OF THE CONVENTION AGAINST TORTURE

Immigration Control and Refugee Recognition Act

Article 53

1. Any person subject to deportation shall be deported to a country of which he is a national or citizen.

2. If a person cannot be deported to such a country as provided for in the preceding paragraph, such a person shall be deported to one of the following countries in accordance with his wishes:

(a) A country in which he had been residing immediately prior to his entry into Japan;

(b) A country in which he once resided before his entry into Japan;

(c) A country to which the port, where he boarded the vessel or aircraft departing for Japan, belongs;

(d) A country where his place of birth is located;

(e) A country to which his birthplace belonged at the time of his birth; and

(f) Any country other than those given in the preceding items.

(Reference to paragraphs 6-24)

Immigration Control and Refugee Recognition Act

Article 47

1. An Immigration Inspector shall release a suspect without delay when he has found, as a result of examination, that the suspect does not come under any one of the items of Article 24.

2. If an Immigration Inspector finds, as a result of examination, that the suspect comes under any one of the items of Article 24, such an Immigration Inspector shall immediately notify a Supervising Immigration Inspector and the person concerned of his findings in writing together with the statement of grounds for such findings.

3. If an Immigration Inspector submits a notification in accordance with the preceding paragraph, he shall notify the suspect that he may request a hearing pursuant to the provisions of Article 48.

4. In the case of Paragraph 2, if the suspect agrees with the findings, the Supervising Immigration Inspector shall, after having the alien sign a document with a statement that he will not request a hearing, issue without delay a written deportation order pursuant to the provisions of Article 51.

Article 48

1. A suspect who has received a notification provided for in Paragraph 2 of the preceding Article may, if he has any objections to the findings provided for in the same paragraph, orally request a Special Inquiry Officer for a hearing within 3 days from the date of notification.

2. An Immigration Inspector shall, when a request has been made for a hearing under the preceding paragraph, submit a record provided for in Article 45 Paragraph 2 and other pertinent documents to a Special Inquiry Officer.

3. A Special Inquiry Officer shall, when a request is made for the hearing in accordance with Paragraph 1, notify the suspect of the time and place of hearing and conduct the hearing without delay.

4. A Special Inquiry Officer shall, when a hearing is held in accordance with the preceding paragraph, prepare a record of the hearing.

5. The provisions of Article 10, Paragraphs 3 to 6 shall apply mutatis mutandis to the proceedings of a hearing under Paragraph 3.

6. If a Special Inquiry Officer finds, as a result of the hearing, that the findings mentioned in Paragraph 2 of the preceding Article are not supported by factual evidence, he shall immediately release the person concerned.

7. When a Special Inquiry Officer finds, as a result of a hearing, that there is no error in the findings mentioned in Paragraph 2 of the preceding Article , he shall immediately notify the Supervising Immigration Inspector and the suspect to that effect, and at that time notify the suspect that he may file an objection pursuant to the provisions of Article 49.

8. If the suspect, upon receipt of the notification mentioned in the preceding paragraph, agrees to the findings mentioned in the paragraph, the Supervising Immigration Inspector shall have him sign a document with a statement that he will not file an objection and immediately issue a written deportation order provided for in Article 51.

Article 49

1. A suspect who has been notified in accordance with Paragraph 7 of the preceding article, may, in case he does not accept the findings under the same paragraph, file an objection with the Minister of Justice by submitting to a Supervising Immigration Inspector, within 3 days from the date of receipt of the notification, a written statement containing the grounds for his complaint in accordance with the procedures provided for by the Ministry of Justice Ordinance.

2. When the objection provided for in the preceding paragraph has been filed, a Supervising Immigration Inspector shall submit to the Minister of Justice a record of the examination mentioned in Article 45, Paragraph 2, and a record of the hearing mentioned in Paragraph 4 of the preceding Article and other pertinent documents.

3. When the Minister of Justice has received the objection filed under Paragraph 1, he shall decide whether the objection is well-grounded and notify a Supervising Immigration Inspector of his decision.

4. The Supervising Immigration Inspector shall, upon receipt of the notification from the Minister of Justice of his decision that the objection is well-grounded, immediately release the suspect.

5. The Supervising Immigration Inspector shall, upon receipt of the notification from the Minister of Justice of his decision that the objection is well-grounded, immediately release the suspect.

Article 50

1. The Minister of Justice may, even if he finds that the objection filed is groundless in making a decision under Paragraph 3 of the preceding Article , grant the suspect special permission to stay in Japan if:

(a) He has obtained permission for permanent residence;

(b) He has had in the past a permanent domicile in Japan as a Japanese national; or

2. The Minister of Justice finds grounds for granting special permission to stay, other than the previous two subparagraphs.

3. In the case of the preceding paragraph, the Minister of Justice may impose conditions which he may deem necessary, such as period of stay etc., in accordance with the Ministry of Justice Ordinance.

4. The permission in accordance with Paragraph 1 shall be regarded as the decision that the objection filed is well-grounded with respect to the application of Paragraph 4 of the preceding Article.

Article 52

1. A written deportation order shall be executed by an Immigration Control Officer.

3. A Police Official or Maritime Safety Official may, at the request of a Supervising Immigration Inspector who finds it necessary due to shortage of Immigration Control Officers, execute a written deportation order.

4. In executing a deportation order, an Immigration Control Officer (including a Police Official or Maritime Safety Official who executes a written deportation order pursuant to the

provision of the preceding paragraph; the same shall apply in this Article) shall produce the deportation order or its copy to a deportee and have him be deported without delay to the destination as provided for in Article 53. However, an Immigration Control Officer shall hand him over to a carrier if the deportee is to be sent back by such a carrier in accordance with Article 59.

5. In the case of the preceding paragraph, if a person against whom a deportation order has been issued desires to leave Japan voluntarily at his own expense, a Director of an Immigration Center or a Supervising Immigration Inspector may permit him to do so upon application by the said person.

6. If, in the case of the main sentence in Paragraph 3, a deportee cannot be deported immediately, an Immigration Control Officer may detain him in an Immigration Center, detention house, or other places designated by the Minister of Justice or by a Supervising Immigration Inspector commissioned by the Minister of Justice until such time as deportation becomes possible.

7. In the case of the preceding paragraph, a Director of an Immigration Center or a Supervising Immigration Inspector may, if it is found that a deportee cannot be deported, release him under conditions deemed necessary such as restrictions on place of residence and area of movement and duty of appearing at a summons.

(Reference to paragraphs 25-29)

Law of Extradition

Article 3

1. When a request for the surrender of a fugitive is made, the Minister of Foreign Affairs shall, except in any of the following circumstances, forward to the Minister of Justice the written request or a certificate which he has prepared stating that the request for extradition has been made, together with the related documents:

(a) When, in the case of a request which has been made pursuant to a treaty of extradition, it is deemed that the form of the request is not consistent with the requirements of the treaty of extradition;

(b) When, in the case of a request which has not been made pursuant to a treaty of extradition, the requesting country has not assured that it would honor a request of the same kind made by Japan.

Article 4

1. Upon receiving the documents concerning a request for extradition from the Minister of Foreign Affairs as provided for in Article 3, the Minister of Justice shall, except in any of the following circumstances, forward the related documents to the Superintending Prosecutor of the Tokyo High Public Prosecutors Office and order him to apply to the Tokyo High Court for examination as to whether the case is one in which the fugitive can be surrendered:

(The middle omitted)

2. In addition to cases falling under Item (2) above, when a case falls under a provision of a treaty of extradition which leaves the determination as to whether the fugitive shall be surrendered to the discretion of Japan and it is deemed to be inappropriate to surrender the fugitive.

3. In the case of a request for surrender which is not made pursuant to a treaty of extradition, when it is deemed to be inappropriate to surrender the fugitive.

Article 14

When the Minister of Justice deems it to be appropriate to surrender the fugitive, in the case of a decision rendered as provided for in Article 10, Paragraph 1, Sub-paragraph (3) (Note: Decision of the Tokyo High Court that the case falls under the category where a fugitive can be surrendered), he shall order the Superintending Prosecutor of the Tokyo High Public Prosecutors Office to surrender the fugitive, and at the same time notify the fugitive to that effect; however, when he deems it to be inappropriate to surrender the fugitive, he shall immediately notify the Superintending Prosecutor of the Tokyo High Public Prosecutors Office and the fugitive to that effect, and at the same time order the Superintending Prosecutor of the Tokyo High Public Prosecutors Office to release the fugitive who is detained under a permit of detention.

(The rest omitted)

(Reference to paragraph 33)

Annex III

JAPANESE LEGISLATION IN RELATION TO ARTICLE 4 OF THE CONVENTION AGAINST TORTURE

The Penal Code

(Abuse of Authority by a Special Public Official)

Article 194

When a person performing or assisting in judicial, prosecution or police functions, abuses the person's authority and detains or confines another, imprisonment with appointed work or imprisonment without appointed work for not less than 6 months but not more than 10 years shall be imposed.

(Violence and Cruelty by a Special Public Official)

Article 195

1. When a person performing or assisting in judicial, prosecution or police functions commits, in the performance of the person's duties, an act of physical violence or physical or mental cruelty upon the accused, suspect etc., imprisonment with appointed work or imprisonment without appointed work for not more than 7 years shall be imposed.

2. The same shall apply when a person who is guarding or escorting another person detained or confined in accordance with laws commits an act of physical violence or physical or mental cruelty upon the person.

(Causing Death or Injury Thereby)

Article 196

A person who commits a crime prescribed for in the preceding two Articles and thereby causes death or bodily injury of another shall be dealt with by the punishment prescribed for the crimes of bodily injury or the Articles whichever is the graver.

(Complicity)

Article 60

Two or more persons who commit a crime in connected action are all principals.

Article 61

1. A person who induces another to commit a crime shall be dealt with in sentencing as a principal.

2. The same shall apply to a person who induces another to induce.

Article 62

1. A person who aids a principal is an accessory.

2. A person who induces an accessory shall be dealt with in sentencing as an accessory.

Article 63

The punishment of an accessory shall be reduced from the punishment of the principal.

Article 65

1. When a person collaborates in a criminal act in which the status of the criminal establishes the criminal's punishability, the person is an accomplice even without such status.

2. When the gravity of a punishment varies depending upon whether a criminal has a certain status or not, a normal punishment shall be imposed on a person without such status.

(Reference to paragraph 37 of the report)

Annex IV

JAPANESE LEGISLATION ON ARTICLE 5 OF THE CONVENTION AGAINST TORTURE

The Penal Code

Article 1

1. This Code shall apply to anyone who commits a crime within the territory of Japan.

2. It shall also apply to anyone who commits a crime on board a Japanese vessel or air craft outside the territory of Japan.

Article 2

This Code shall apply to anyone who commits one of the following crimes outside the territory of Japan.

(The rest omitted)

Article 3

1. This Code shall apply to the nationality of Japan who commits one of the following crimes outside the territory of Japan:

(The middle omitted)

2. The crimes provided for in Articles 176 through 179 (Forcible Obscenity; Rape; Quasi Forcible Obscenity and Quasi Rape; Attempts),

3. 181 (Causing Death or Injury Resulting by Rape, etc), and 184 (Bigamy);

4. The crime provided for in Articles 199 (Homicide) and attempt thereof;

5. The crimes provided for in Articles 204 (Bodily Injury) and 205 (Causing Death by Bodily Injury);

(The middle omitted)

6. The crime provided for in Article 218 (Abandonment by Person Responsible for Protection; etc.) and the crime of causing death or injury through the commission of the above-mentioned crime;

7. The crimes provided for in Articles 220 (Detention; Confinement) and 221 (Causing Death or Bodily Injury by Unlawful Detention or Confinement);

(The rest omitted)

Article 3bis

1. This code shall apply to anyone without the nationality of Japan who commits an act of the following crimes against a person with the nationality of Japan outside the territory of Japan.

2. The crimes provided for in Articles 176 through 179 (Forcible Obscenity; Rape; Quasi Forcible Obscenity and Quasi Rape; Attempts), 181 (Causing Death or Injury Resulting by Rape, etc.) and 184 (Bigamy);

3. The crime provided for in Articles 199 (Homicide) and attempt thereof;

4. The crimes provided for in Articles 204 (Bodily Injury) and 205 (Causing Death by Bodily Injury);

5. The crimes provided for in Articles 220 (Detention; Confinement) and 221 (Causing Death or Bodily Injury by Unlawful Detention or Confinement);

6. The crimes provided for in Articles 224 through 228 (Kidnapping; Kidnapping for Profit, etc.; Kidnapping for Ransom, etc.; Kidnapping for Transportation to Foreign Country, etc. Receiving Kidnapped Person, etc.; Attempts);

7. The crimes provided for in Articles 236 (Robbery), 238 through 241 (Robbery by Thief; Robbery by Causing Unconsciousness; Death or Injury caused by Robber; Rape on the Scene of Robbery; Causing Death thereby), and 243 (Attempts).

Article 4

1. This Code shall apply to a public official of Japan who commits one of the following crimes outside the territory of Japan:

(The middle omitted)

2. The crimes provided for in Articles 193 (Abuse of Authority by Public Official), Paragraph 2 of Article 195 (Violence and Cruelty by a Special Public Official) and Articles 197 through 197-4 (Acceptance of Bribe; Acceptance with Request; Acceptance in Advance of Assumption of Office; Bribe to Third Person; Aggravated Acceptance; Acceptance after Resignation of Office; Acceptance for Exertion of Influence), and the crime of causing death or injury through the commission of the crime provided for in Paragraph 2 of Article 195.

Article 4bis

Besides Article 2 through the preceding Article this Code shall also apply to anyone who commits outside the territory of Japan those crimes provided for in Book II which are made punishable by treaty even if committed outside the territory of Japan.

Law concerning Punishment of Physical Violence and Others

Article 1bis

1. A person who inflicts bodily injury on another person by using a firearm or sword shall be punished with imprisonment with appointed work for not less than one year nor more than 10 years.

2. Attempts of the offences provided for in the preceding paragraph shall be punished.

3. The offences provided for in the preceding two paragraphs are subject to the examples in Articles 3, 3 bis and 4 bis of the Penal Code.

Law for Punishing Compulsion and Other Related Acts Committed by Those Having Taken Hostages

Article 1

1. A person who seizes, confines, or takes hostage of another person and demands a third party to perform an act which the party has no obligation to perform or obstructs the party from exercising a right which the party is entitled to shall be punished with imprisonment with labor for not less than six months nor more than 10 years.

2. The same shall apply to a person who seizes, confines, or takes hostage of another person for the purpose of requesting a third party to perform an act which the party has no obligation to perform or obstructs the party from exercising a right which the party is entitled to exercise.

3. The attempt of the offence provided for in the preceding paragraph shall be punished.

Article 3

When a person who committed the offence provided for in Article 1 Paragraph 1 of the Law Concerning Punishment of Unlawful Seizure of an Aircraft (Law No. 68 of 1970) takes hostage of a person or persons in the aircraft and demands a third party to perform an act which the party has no obligation to perform or obstructs the party from exercising a right which the party is entitled to the person shall be punished with imprisonment with labor for life or for no less than 10 years.

Article 5

The offences mentioned in Article 1 shall be subject to the examples in Articles 3, 3 bis, and 4 bis of the Penal Code (Law No. 45 of 1907) and the offences in the preceding three articles shall be subject to the examples in Article 2 of the Penal Code.

(Reference to paragraphs 39-42)

Annex V

JAPANESE LEGISLATION IN RELATION TO ARTICLE 6 OF THE CONVENTION AGAINST TORTURE

Law of Extradition

Article 5

1. Upon receiving an order from the Minister of Justice as provided for in Paragraph 1 of Article 4 (Note: refer to Paragraph 27), the Superintending Prosecutor of the Tokyo High Public Prosecutors Office shall, except when the fugitive is detained under a permit of provisional detention or except when his detention under a permit of provisional detention is suspended, cause a public prosecutor of the Tokyo High Public Prosecutors Office to detain the fugitive under a permit of detention which shall have been issued in advance by a judge of the Tokyo High Court. Provided that this provision shall not apply when the fugitive has a fixed residence and the Superintending Prosecutor of the Tokyo High Public Prosecutors Office deems that there is no apprehension that the fugitive will escape.

2. A permit of detention provided for in Paragraph 1 above may be issued on request from a public prosecutor of the Tokyo High Public Prosecutor's Office.

3. The permit of detention shall contain the full name of the fugitive, the name of the offence for which extradition is requested, the name of the requesting country, the effective period of the permit, a statement that after the expiration of the effective period no detention may be commenced and the permit must be returned, and the date of issue of the permit, and shall bear the name and seal of the issuing judge.

Article 23

1. When the Minister of Foreign Affairs receives a request pursuant to a treaty of extradition from a contracting country for the provisional detention of an offender whose surrender by Japan may be requested under the treaty of extradition, for an offence (for which the contracting country may request the offender's surrender by Japan under the treaty of extradition), the Minister of Foreign Affairs shall, except in any of the following circumstances, forward to the Minister of Justice a certificate stating that the request for provisional detention has been made, together with the related documents:

(a) When there has been no notification either that a warrant has been issued for the arrest of the person concerned or that a sentence has been imposed on him;

(b) When there has been no assurance that a request for the extradition of the person concerned will be made.

2. When a request for the provisional detention of an offender is not made pursuant to a treaty of extradition, Paragraph 1 above shall apply only if the requesting country has assured that it would honor a request of the same kind made by Japan.

Article 24

When the Minister of Justice receives the documents provided for in Article 23 and deems it to be appropriate to provisionally detain the offender concerned, he shall order the Superintending Prosecutor of the Tokyo High Public Prosecutors Office to provisionally detain the offender concerned.

Article 25

The Superintending Prosecutor of the Tokyo High Public Prosecutors Office shall, when he receive the order from the Minister of Justice provided for in Article 24, cause a public prosecutor of the Tokyo High Public Prosecutors Office to detain the offender concerned under a permit of provisional detention which is to be issued in advance by a judge of the Tokyo High Court.

The Code of Criminal Procedure

Article 199

1. Where there exists any reasonable cause enough to suspect that an offence has been committed by the suspect, a public prosecutor, public prosecutor's assistant officer or judicial police official may arrest him upon a warrant of arrest issued in advance by a judge. However, in respect to the offences punishable with a fine not exceeding 300,000 yen (20,000 yen as a temporary measure, for offences other than those prescribed in the Penal Code, the Law Concerning Punishment of Physical Violence and Others (Law No. 60 of 1925) and the Law for Improvements of Penal Regulations of Economic Relations (Law No. 4 of 1944), penal detention or a minor fine, such arrest may be effected only in cases where the suspect has no fixed dwelling or where he fails to appear without good reason notwithstanding that he has been called in accordance with the provision of the preceding Article.

2. In case a judge deems that there exists reasonable cause enough to suspect that the suspect has committed an offence, he shall issue a warrant of arrest mentioned in the preceding paragraph, upon request of a public prosecutor or a judicial police officer (in the case of a judicial police officer who is police official, only the person designated by the National Public Safety Commission or the Prefectural Public Safety Commission and ranking as or above the police inspector; the same shall apply hereinafter in this Article) However, this shall not apply in case he deems that there is evidently no necessity for arresting the suspect.

3. When asking for a warrant mentioned in the first paragraph, a public prosecutor or judicial police official shall inform the court of all the requests or issuance of warrants, if any, that have been made previously against the same suspects for the same offence.

Article 203

1. When a judicial police officer has arrested a suspect upon a warrant of arrest or received a suspect who was arrested upon a warrant of arrest, he shall immediately inform him of the essential facts of crime and the fact that he is entitled to select a defense counsel, and then,

giving him an opportunity for explanation, he shall immediately release the suspect when he believes there is no need to detain him, or take steps to transfer the suspect together with the documents and evidence to a public prosecutor within 48 hours after the person of the suspect was subjected to restrains, when he believes it necessary to detain him.

2. In the case of the preceding paragraph, the suspect shall be asked whether or not he has a defense counsel and, if he has, he need not be informed of his right to select a defense counsel.

3. If the suspect is not transferred within the time limitation mentioned in the first paragraph, he shall be released immediately.

Article 204

1. When a public prosecutor has arrested the suspect upon a warrant of arrest or received the suspect who was arrested upon a warrant of arrest (excluding such suspect as was delivered in accordance with the preceding Article), he shall immediately inform him of the essential facts of crime and the fact that he is entitled to select a defense counsel, and then, giving him an opportunity for explanation, shall immediately release him when he believes there is no need to detain him, or shall request a judge to detain him within 48 hours after his person was subjected to restraints, when he believes it necessary to detain him. However, the request for detention is not necessary, in case a prosecution has been instituted within the limitation of time.

2. If the request for detention or the institution of prosecution is not made within the time limitation mentioned in the preceding paragraph, the suspect shall be released immediately.

3. The provisions of Paragraph 2 of the preceding Article shall apply mutatis mutandis to the cases of Paragraph 1 of this Article.

Article 205

1. When a public prosecutor has received the suspect delivered in accordance with the provisions of Article 203, he shall give the suspect an opportunity for explanation, and immediately release the suspect if he believes there is no need to detain him, or shall request a judge to detain him within 24 hours after he received the suspect, if he believes it necessary to detain the suspect.

2. The time limitation mentioned in the preceding paragraph shall not exceed 72 hours after the person of the suspect was subjected to restrains.

3. When a prosecution is instituted with the time limitation provided by the preceding two paragraphs, a request for detention need not be made by the public prosecutor.

4. If the request for detention or the institution of prosecution is not made within the time limitation mentioned in the first and second paragraphs, the subject shall immediately be released.

Article 206

1. When unavoidable circumstances prevented a public prosecutor or judicial police officer from complying with the time limitations provided for in the preceding three Articles, a public prosecutor may, offering presumptive proof of the grounds thereof, request a judge to detain the suspect.

2. The judge who has been requested as prescribed in the preceding paragraph shall not issue a warrant of detention, unless he recognizes that the unavoidable circumstances have justified the delay involved.

Article 207

1. The judge who has received the request for detention mentioned in the preceding three Articles shall have the same power as court or presiding judge, regarding the disposition thereof. However, this shall not apply to release on bail.

2. A judge shall promptly issue a warrant of detention when he has received the request mentioned in the preceding paragraph. However, when he recognizes that there are no grounds for detention or when a warrant of detention cannot be issued in accordance with the provisions of Paragraph 2 of the preceding Article, he shall immediately order to release the suspect without issuing a warrant of detention.

Article 210

When there are sufficient grounds to suspect the commission of an offence punishable by the death penalty, or imprisonment with/without forced labor for life or for a maximum period of three years or more: and if, in addition, because of great urgency a warrant of arrest cannot be obtained beforehand from a judge, a public prosecutor, a public prosecutor's assistant officer or a judicial police official may, upon statement of the reasons therefore, apprehend the suspect. In such cases, measures for obtaining a warrant of arrest from a judge shall be immediately taken. If a warrant of arrest is not issued, the suspect must be released immediately.

(The rest omitted)

Article 213

Any person whosoever may arrest a flagrant offender without warrant.

(Reference to paragraphs 43-44)

The Code of Criminal Procedure

Article 189

1. A police official shall perform his duties as a judicial police official as authorized by law, or regulations of the National Public Safety Commission or of the Prefectural Public Safety Commission.

2. A judicial police official shall, when he deems an offence has been committed, investigate the offender and evidence thereof.

Article 191

1. A public prosecutor may, if he deems necessary, investigate an offence himself.

2. A public prosecutor's assistant officer shall investigate an offence under the instruction of a public prosecutor.

(Reference to paragraph 45 of the report)

The Code of Criminal Procedure

Article 80

The accused who has been detained may, subject to the relevant legislation, have an interview or deliver/receive documents or Articles with a person other than as stipulated in Paragraph 1 or Article 39. The same applies to the accused who has been detained in a prison by the warrant of bringing to the court.

Article 81

When there are reasonable grounds to suspect that the accused who has been detained escapes or that he/she destroys or conceals evidence, the court may, upon the request of a public prosecutor or *ex-officio*, prohibit such accused from having an interview or from delivering/receiving documents or other Articles with a person other than as stipulated in Paragraph 1 of Article 39, or inspect or seize such documents or Articles. However, the court may neither prohibit the delivery/receipt of food nor seize such food.

The Prison Law

Article 45

1. A person applying for permission to interview an inmate shall be given it.

2. No convicted person or person under "Kanchi" confinement shall be permitted to have an interview with any person other than a relative; provided that the same shall not apply if it is deemed necessary especially to permit his interview with such person.

(Reference to paragraph 46 of the report)

Annex VI

JAPANESE LEGISLATION IN RELATION TO ARTICLE 7 OF THE CONVENTION AGAINST TORTURE

The Code of Criminal Procedure

Article 242

On receipt of a complaint or accusation, a judicial police official shall promptly forward the documents and piece of evidence pertaining thereto to public prosecutor.

Article 246

Except as otherwise provided in this Law when a judicial police official has conducted the investigation of a crime, he shall send the case together with the documents and pieces of evidence to a public prosecutor. However, this shall not apply to the case which is specially designated by a public prosecutor.

Article 247

Prosecution shall be instituted by a public prosecutor.

(Reference to paragraph)

Annex VII

JAPANESE LEGISLATION TO ARTICLE 8 OF THE CONVENTION AGAINST TORTURE

Law of Extradition

Article 2

1. A fugitive shall not be surrendered in any of the following circumstances, provided that this shall not apply, in cases falling under items (3), (4), (8), or (9), when the treaty of extradition provides otherwise.

(a) When the offence for which extradition is requested is a political offence;

(b) When the request for extradition is deemed to have been made with a view to trying or punishing the fugitive for a political offence which he has committed;

(c) When the offence for which extradition is requested is not punishable by death, or by imprisonment for life or for a maximum term of three years or more by the laws, regulations or ordinances of the requesting country;

(d) When the act constituting the offence for which extradition is requested would not be punishable under the laws, regulations or ordinances of Japan by death or by imprisonment with or without forced labor for life or for a maximum term of three years or more if the act were committed in Japan;

(e) When it is deemed that under the laws, regulations or ordinances of Japan it would be impossible to impose or to execute punishment upon the fugitive, if the act constituting the offence for which extradition is requested were committed in Japan, or if the trial therefore were held in a court of Japan;

(f) Except in the case of a fugitive who has been convicted of an offence for which extradition is requested by a court of the requesting country, when there is no probable cause to suspect that the fugitive has committed an act which constitutes an offence for which extradition is requested;

(g) When a criminal prosecution based on the act constituting an offence for which extradition is requested is pending in a Japanese court, or when a judgment in such a case has become nonappealable;

(h) When a criminal prosecution for an offence committed by the fugitive other than an offence for which extradition is requested is pending in a Japanese court, or when the fugitive has been sentenced to punishment by a Japanese court for such an offence and the execution of his sentence has not been completed or he may not yet no longer be subjected to the execution of the sentence;

(i) When the fugitive is a Japanese national.

Article 3

1. When a request for the surrender of a fugitive is made, the Minister of Foreign Affairs shall, except in any of the following circumstances, forward to the Minister of Justice the written request or a certificate which he has prepared stating that the request for extradition has been made, together with the related documents:

(a) When, in the case of a request which has been made pursuant to a treaty of extradition, it is deemed that the form of the request is not consistent with the requirements of the treaty of extradition;

(b) When, in the case of a request which has not been made pursuant to a treaty of extradition, the requesting country has not assured that it would honor a request of the same kind made by Japan.

(Reference to Article 8 of the report)

Annex VIII

JAPANESE LEGISLATION TO ARTICLE 10 OF THE CONVENTION AGAINST TORTURE

The Constitution of Japan

Article 36

The infliction of torture by any public officer and cruel punishments are absolutely forbidden.

Article 99

The Emperor or the Regent as well as Ministers of State, members of the Diet, judges, and all other public officers have the obligation to respect and uphold this Constitution.

National Public Service Law

Article 98

In carrying out their duties, public officials shall obey laws and ordinances and faithfully follow the orders of their superiors.

(The rest omitted)

Local Public Service Law

Article 32

The officials shall, in the performance of their duties, comply with laws and ordinances, regulations, rules of local public bodies and regulations made by organizations of local municipal entities and shall faithfully observe the orders on the duties by their superiors.

(See reference to Article 10 of the report)

The Rule of Criminal Investigation

Article 168

1. In case of examination, no such measure as to make the voluntariness seem doubtful including compulsion, torture, intimidation, etc. shall be taken.

2. In case of examination, no measures which could cause the trust of statement to be lost shall be taken, such as leading the suspect to state what a police officer himself expect or desires by indicating such a statement, or promising to give him an advantage in exchange for a statement.

3. Examination shall not be made at midnight unless there is the unavoidable reason for doing it.

The Rules for Detaining Suspects

Article 2

The suspect under detention (thereinafter called “detainee”) shall be treated properly according to this law as well as other laws and orders, and any abuse of his/her fundamental human right shall be strictly prohibited.

Article 19

A guard shall, when a detainee makes request regarding his/her treatment, selection of defense counsel, etc., forthwith report it to the detention chief, and cause necessary measures to be taken.

Article 21

1. A guard shall, when he finds something unusual about the detainee or the cell, take a temporary measure and forthwith report it to the chief of the police station via detention chief.

2. The chief of the police station shall, when he receives the report provided for in the preceding paragraph, forthwith report it to the Chief of Prefectural Police Headquarters if it is concerned with suicide, death by disease, escape, or any other serious accident of a detainee.

Instructions on the Standard and Procedures to Use Restraining Devices in Police Detention Cells

Article 3

Among the restraining devices, handcuffs and arresting ropes may be used for detainees who might escape, commit violence or suicide, gags may be used for detainees who cry out neglecting inhibitions recklessly, and straight jacket may be used for detainees who might commit violence or suicide.

(Reference to paragraphs 63-67)

Regulations for the Duties of Prison Officials to Maintain Discipline of Prison Facilities

Article 7

1. When an inmate inflicts injury on himself or others, escapes, obstructs the official duties of the officials of the prison facility, or commits an act that may hinder the maintenance of discipline and order of the prison facility, or attempts to commit the aforementioned acts, prison officials shall suppress such act, restrain the inmate and take other measures to deter the act.

2. The measures referred to in the preceding paragraph shall not exceed the limit that is deemed rationally necessary to achieve the purpose depending on the situation.

Article 8

When conducting the inspection in the preceding paragraph by having the inmate take off his/her clothes, the prison official shall give consideration not to embarrass the inmate, by a method such as conducting it at a place others cannot see him/her.

Article 20

When a prison official uses a restraining device, a gun, a tear-gas gun, or a truncheon, the use shall not exceed the limit deemed to be reasonably necessary to achieve the purpose in accordance with its use and the situation.

Prison Law Enforcement Regulation

Article 46

The warden shall cause prison officials to search the bodies and clothing of prisoners on their return from workshops or from outside the prison.

(Reference to paragraphs 68-72 of the report)

Duties and Instructions for Immigration Control Officers

Article 3

(An Immigration Control Officer) shall respect basic human rights and shall not abuse his/her authority and power such as interfering with freedom and rights of individuals.

Article 4

An Immigration Control Officer shall strictly observe the following items:

An Immigration Control Officer shall always be calm, polite, and orderly. When executing duties, he/she shall keep a calm attitude, make right decisions and be patient. The official shall refrain from using a rude and humiliating language or taking such attitude to any person.

Regulations for Treatment of Detainees

Article 1

The purpose of these regulations is to execute the appropriate treatment of foreign nationals with respecting their human rights, who are detained (hereinafter referred to as “detainees”) in the Immigration Centers or detention houses (hereinafter referred to as “Immigration Centers, etc”) under the Immigration Control and Refugee Recognition Act (Cabinet Order No. 319 of 1951).

Article 2-2

The director, etc. (the Director of an Immigration Center and of a Regional Immigration Bureau) shall expect to ensure the appropriate treatment of detainees by hearing the opinions from the detainees concerning their treatments, patrolling the Immigration Centers, etc, and taking other measures.

(Reference to paragraphs 73 and 74)

Self-Defense Forces Law

Article 56

Any member of the Self-Defense Forces shall obey laws and ordinances, execute his duty faithfully, never evade danger or responsibility in the line of his duty, and never quit his duty without receiving orders from superiors.

Code of Conduct for Self-Defense Forces Criminal Investigations

Article 4

In conducting any investigation, the basic human rights of individuals shall be respected and the power of investigation shall be used fairly and faithfully.

Article 5

In conducting any investigation, a police affairs official, etc. shall strictly observe the Self-Defense Force Law, the Code of Criminal Procedure and other laws, ordinances, and regulations and shall be careful not to unfairly infringe the freedom and rights of individuals.

Article 92

In conducting any investigation, a police affairs official, etc. shall take a moderate and reasonable approach, and in conducting any investigation by compulsory measures (hereinafter referred to as “compulsory investigation”), shall be specially careful not to exceed the necessary limit and, in addition, not to infringe the basic human rights of the suspect and other people concerned.

Article 266

In conducting any interview, a police affairs official, etc. shall not use any method that may arouse suspicion as to the voluntariness of the statement, considering that any statement based on compulsion, torture, or intimidation and any other statement that arouses suspicion as to its voluntariness is inadmissible as an evidence.

(Reference to paragraphs 75-79 of the report)

Code of Coast Guard Criminal Investigations

Article 134

1. In conducting an interview, compulsion, torture, intimidation or any other method that would arouses suspicions as to the voluntariness of the statement shall not be used.

2. In conducting interviews, methods that may cause the statement lose its credibility, such as making leading questions without a reason or promising a profit in return for a statement, shall not be used.

3. Interviews shall not be conducted late at night except in unavoidable cases.

Japan Coast Guard Detention Administration

Article 1

In the treatment of detainees, laws, ordinances and this regulation shall be observed and a particular attention shall be paid so as not to unfairly infringe the human rights of the detainees.

Article 20

When a detainee makes a request on an appointment of a defense council or on his/her treatment, the detention chief shall take an appropriate measure in response, such as reporting it to the investigation chief.

(Reference to paragraphs 80-81)

Annex IX

JAPANESE LEGISLATION TO ARTICLE 11 OF THE CONVENTION AGAINST TORTURE

Rule of Criminal Investigation

Article 16

Chief of Prefectural Police Headquarters (including Superintendent General) is responsible for supervising and directing criminal investigation as a whole, allocating officials rationally, giving them guidance and training, and making preparation for investigation by providing resources and facilities in order to carry out reasonable and fair investigation.

Article 17

Chief of division or section responsible for investigation including Criminal Division Chief and Security Division Chief shall assist Chief of Prefectural Police Headquarters and supervise the criminal investigation under his direction.

Article 18

Chief of Police Station is responsible not only for direction and supervise with regard to the Police Station thereof, but also reasonable and fair investigation under direction of Chief of Prefectural Police Headquarters.

Article 20

1. Chief of Prefectural Police Headquarters or Chief of Police Station shall appoint an investigation chief for the investigation concerned.

2. The investigation chief shall, under the direction provided for in Article 16 to the preceding Article (direction and supervision by the Chief of Prefectural Police Headquarters, Chief of the department in charge of the investigation, or Chief of Police Station), conduct the following duties on the concerned investigation:

(a) Decide the matter to be investigated and the division of duties for each investigator;

(b) Approve confiscated materials and accounts for the amounts converted into money, and always know their condition of custody;

(c) Make the investigation plan in accordance with the provision in Article 3 Paragraph 5 (investigation policy);

(d) Request investigators to report on the status of the investigation;

(e) Discuss with the detention chief (the detention chief provided for in Article 4, Paragraph 2 of the Rules for Detaining Suspects - Rule No. 4 of the National Public Safety Commission in 1957. Same in Article 136-2, Paragraph 1) when making a plan provided for in Article 136-2 about the suspect detained in a police detention cell (called “detained suspect” in Paragraph 1 of Article 136-2 Note for crime scene inspection with the suspect);

(f) Give instructions and educations to investigators on appropriate execution of the investigation and on prevention of escape and suicide of the suspect and other accidents;

(g) In addition to the duties provided for in each proceeding item, the matters under his jurisdiction in accordance with laws and ordinances and the matters specially ordered by Chief of Prefectural Police Headquarters or Chief of Police Station.

3. Chief of Prefectural Police Headquarters or Chief of Police Station shall, when appointing an investigation chief pursuant to the provision in Paragraph 1, appoint a person deemed to be capable of conducting the duties provided for in the preceding paragraph, considering content of the case, investigative ability of his subordinate officials, his knowledge, experience, and job performance.

4. When the investigation chief is changed, handover shall be done carefully to avoid its affect on the subsequent investigation by ensuring the handover of related documents and proofs and clarifying necessary matters such as the progress of the investigation.

(Reference to Article 11, paragraphs 82 and 83 of the report)

The Rules for Detaining Suspects

Article 4

1. Chief of Police Station (or a concerned section chief with regard to a detention house established at Prefectural Police Headquarters; the same as follows) shall take charge of direction and supervision as a whole, with regard to the detention of a suspect and management of a detention house, assuming responsibility to Chief of Prefectural Police Headquarters (who is either Superintendent General or Chief of Do-Fu-Ken Police Headquarters; the same as follows).

2. A chief of the section or sub-section responsible for General Affairs or the one responsible for Police Administration of a Police Station (or a chief of police box with regard to a detention house established at a Prefectural Police Headquarters) shall, as a detention chief, assist the Chief of Police Station, take charge of direction and supervision of the police official in charge of guarding (hereinafter “guard”), and administer on the detention of suspects and the detention house.

3. When a detention chief is absent, the person in charge of watch or the person the Chief of Police Station specified shall perform the duties instead of the detention chief.

(Reference to paragraphs 84-85)

The Prison Law

Article 4

The Minister of Justice shall cause officials to inspect the prisons at least once every two years.

The Juvenile Training School Law

Article 3

The Minister of Justice shall be responsible for the appropriate maintenance and thorough inspection of the Juvenile Training Schools.

(Reference to paragraphs 86-89)

Article 247

Prosecution shall be instituted by a public prosecutor.

Immigration Control and Refugee Recognition Act

Article 61-7

1. The person detained in an Immigration Center or detention house (hereinafter referred to as “detainee”) shall be given the maximum liberty consistent with the security requirements of the Immigration Center or the detention house.

2. The detainee shall be provided with prescribed bedding and supplied with prescribed food.

3. The supplies furnished to the detainee shall be adequate and the accommodation of the Immigration Center or detention house shall be maintained in sanitary conditions.

4. A Director of the Immigration Center or Regional Immigration Bureau may, when he considers it necessary for security or sanitation purposes of the Immigration Center or detention house, examine the person, personal effects, or clothing of the detainee, and may hold in custody the detainee’s personal effects or clothing.

5. Director of the Immigration Center or Regional Immigration Bureau may, when he considers it necessary for security of the Immigration Center or detention house inspect any communications the detainee may dispatch and receive, and may prohibit or restrict such dispatch and receipt.

6. Besides those provided for in the preceding paragraphs, necessary matters concerning the treatment of detainees shall be prescribed by the Ministry of Justice Ordinance.

Regulations for Treatment of Detainees

Article 2

The Director of an Immigration Center or a Regional Immigration Bureau (hereinafter referred to as the "director, etc.") shall respect the lifestyle of the detainee, which is based on the manners and customs of the home country of the detainee, within a scope that does not affect the security of the Immigration Center, etc.

Article 2-2

The director, etc. shall be expected to ensure the appropriate treatments of detainees by hearing the opinions from the detainees concerning their treatments, patrolling the Immigration Centers, etc., and taking other measures.

Article 7

1. The matters which need to be observed by the detainees in order to maintain safety and order in the Immigration Centers, etc. and to make their lives in the Immigration Centers, etc. smooth (hereinafter referred to as the "Rules for Detainees") shall be as follows:

(a) Not to escape or not to attempt to escape;

(b) Not to harm oneself or not to attempt to harm oneself;

(c) Not to harm others or not to attempt to harm others;

(d) Not to disturb others;

(e) Not to damage the facilities, equipments, and other things in the Immigration Centers, etc.;

(f) Not to receive goods from outsiders without permission;

(g) Not to possess or use weapons, firebombs, or any other hazardous materials;

(h) Not to obstruct the duties of the officials;

(i) Try to keep tidy and clean.

2. The director, etc. may, besides the rules in the preceding paragraph, decide additional Rules for Detainees in line with the actual conditions of the Immigration Centers, etc. by getting the approval of the Minister of Justice.

3. When detaining a new person in the Immigration Centers, etc., the director, etc. shall inform the person of the Rules for Detainees in advance.

4. An Immigration Control Officer may provide necessary guidance to a detainee to have the detainee observe the Rules for Detainees.

Article 17-2

When a detainee violates the Rules for Detainees or attempts to do so, an Immigration Control Officer may order the detainee to stop such act, restrain the act within the limit judged to be reasonably necessary, and take any other measures to suppress the act.

Article 18

1. When a detainee commits an act that falls under any one of the following items or attempts to do so, or colludes, incites, abets, or assists such an act, the director, etc. may isolate the detainee from other detainees for a determined period. In such case, however, the director, etc. shall immediately cease the isolation when it became unnecessary regardless of the determined period:

(a) To escape, commit an act of violence, damage the properties, or commit any other acts that violate punitive laws and orders;

(b) To rebel against or obstruct the execution of duties by an official;

(c) To commit suicide or harm oneself.

2. In a case prescribed in the preceding paragraph, when there is no time to get the order of the director, etc., an Immigration Control Officer may isolate the detainee from other detainees on his/her own judgment.

3. In case of implementing the isolation prescribed in the preceding paragraph, the Immigration Control Officer shall immediately report it to the director, etc.

Article 41-2

A detainee, when he/she is dissatisfied with the treatment of him/her by an Immigration Control Officer, may file a complaint with the director, etc. in writing by stating the ground for the complaint within seven days from the date the treatment was made.

Article 41-3

A detainee who is dissatisfied with the judgment under the provision of Paragraph 2 of the preceding Article may file an objection with the Minister of Justice by submitting to the director, etc. a document stating the ground for the complaint within three days from the date he/she received the notification under the provision of the same paragraph.

Duties Instructions for Immigration Control Officers

Article 4

An Immigration Control Officer shall strictly observe the following items:

(a) An Immigration Control Officer shall always be calm, polite, and orderly. When executing duties, he/she shall keep a calm attitude, make right decisions and be patient. The official shall refrain from using a rude and humiliating language or taking such an attitude to any person.

(Reference to paragraphs 90-99)

The Law Concerning the Prevention of Infections and Medical Care For Patients of Infection

Article 6

1. The "infectious diseases" referred to in this Law are Infectious Disease - Type I, Infectious Disease - Type II, Infectious Disease - Type III, Infectious Disease - Type IV, Infectious Disease - Type V, Designated Infectious Disease, and New Infectious Disease.

2. The "Infectious Disease - Type I" referred to in this Law are Ebola hemorrhagic fever, Crimea-Congo hemorrhagic fever, severe acute respiratory syndrome (only the type caused by SARS corona virus), smallpox, plague, Marburg disease, and Lassa fever.

3. The "Infectious Disease - Type II" referred to in this Law are acute anterior poliomyelitis, cholera, bacillary dysentery, diphtheria, typhoid, and paratyphoid.

(4.-7. omitted)

8. The "New Infectious Disease" referred to in this Law are the diseases that are recognized to be transmitted from person to person, of which medical conditions and therapeutic result obviously differ from those of already known infectious diseases, of which symptoms are severe, and of which spread may exert serious impact on the nation's life and health.

(9.-14. omitted)

Article 20

1. A prefectural governor, when he considers it necessary for the prevention of the spread of the Infectious Disease - Type I, may advise the patient of the infectious disease who is in hospital in accordance with the preceding Article to enter a designated medical institution for special infectious disease or a designated medical institution for Infectious Disease - Type I for a specified period not longer than ten days, or advise the guardian of the patient to have the patient hospitalized at such a medical institution. When there is an unavoidable reason such as an emergency, the prefectural governor may advise the patient to enter a hospital or a medical clinic that he judges as appropriate, other than the designated medical institution for special infectious

disease or a designated medical institution for Infectious Disease - Type I, for a specified period not longer than ten days, or advise the guardian of the patient to have the patient hospitalized at such a medical institution.

2. When the person who received the advice based on the preceding paragraph does not follow the advice, the prefectural governor may hospitalize the patient at a designated medical institution for special infectious disease or a designated medical institution for Infectious Disease - Type I, for a specified period not longer than ten days (when the person does not follow the advice based on the proviso of the preceding paragraph, at a hospital or a medical clinic that the governor judges as appropriate, other than the designated medical institution for special infectious disease or a designated medical institution for Infectious Disease - Type I).

3. When there is an unavoidable reason such as an emergency, the prefectural governor may hospitalize the patient at a hospital or a medical institution that the governor judges as appropriate, other than the hospital or medical institution at which the patent is currently hospitalized in accordance with the preceding two paragraphs, for a specified period not longer than ten days counting from the day when the patient was hospitalized in accordance with the preceding two paragraphs.

4. When the patient hospitalized pursuant to the preceding three paragraphs is deemed to require a longer stay in the hospital after the period specified under the same paragraph, the prefectural governor may extend the hospitalization for a specified period not longer than ten days. The same shall apply when the period of hospitalization needs to be further extended after the said extended period.

5. The prefectural governor shall, when he intends to extend the period of the hospitalization made based on the advice provided for in paragraph 1 or on the provision of the preceding paragraph, hear beforehand the opinion of the council that is set up in accordance with Article 24 Paragraph 1 in the public health center having jurisdiction over the hospital or clinic at which the patient is being hospitalized.

Article 24

In order to deliberate the necessary matters concerning the advice provided for in Article 20, Paragraph 1, or the extension of the hospitalization period provided for in Paragraph 4 of the same article in response to a request from the prefectural governor, a council concerning the examination of infectious diseases (hereinafter referred to as the “council” in this article) shall be set up in each public health center.

(2.-5. omitted)

Article 25

1. The patient who has been hospitalized in accordance with the provision of Paragraph 2 or Paragraph 3 of Article 20 for more than thirty days or his/her guardian may make a request for examination either in writing or orally of the measure of hospitalization taken under the said paragraph (including a request for re-examination, hereinafter the same in this article) to the Minister of Health, Labour and Welfare.

2. When a request for examination under the previous paragraph is made, the Minster of Health, Labour and Welfare shall render a decision on the request for examination within five days from the day on which the request was made.

3. When the patient who has been hospitalized in accordance with the provision of Paragraph 2 or Paragraph 3 of Article 20 for less than thirty days or his/her guardian made a request for examination to the Minister of Health, Labour and Welfare based on the Administrative Appeal Law (Law No. 160 of 1962), the Minister shall render a decision on the request within thirty-five days from the day on which the patient concerned was hospitalized under the provision of the said article.

(4.-5. omitted)

6. When rendering the decision under Paragraph 2 or the one under Paragraph 3 (limited to the one concerning a patient whose period of hospitalization exceeds thirty days), the Minister of Health, Labour and Welfare shall hear in advance the opinion of the deliberative council, etc. (an organization provided for in Article 8 of the National Government Organization Law - Law No. 120 of 1948).

Quarantine Law

Article 2

1. The “quarantine infectious diseases” referred to in this law mean the following infectious diseases:

(a) The Infectious Disease - Type I provided for in the Law Concerning the Prevention of Infections and Medical Care for Patients of Infection (Law No. 114 of 1998);

(b) Cholera;

(c) Yellow fever.

2. In addition to the ones prescribed in the preceding three items, infectious diseases are those that are not constantly present in Japan and that a government ordinance provides for the inspection of the existence of pathogens to prevent them from entering into Japan.

Article 14

1. The director of a quarantine station may take all or part of the following measures to the extent considered to be reasonably necessary for the vessels that originated from an area where a quarantine infectious disease is prevalent or that made a port call at such an area en route to Japan, for the vessels that produced a quarantine infectious disease patient or dead person en route to Japan, for the vessels on which a quarantine infectious disease patient or dead body, or a rat that holds or is suspected to hold plague bacilli was detected, and for the vessels that are contaminated or suspected to have been contaminated with pathogens of quarantine infectious disease:

(a) To isolate or to have a quarantine officer isolate the patient suffering from quarantine infectious disease or cholera referred to in Article 2, Item 1;

(b) To stop or to have a quarantine officer stop the person who is suspected to have contracted a pathogen of infectious diseases referred to in Article 2, Item 1 (limited to the case that the infectious disease referred to in the said Item broke out in a foreign country, and that it is considered the pathogens would enter into Japan and exert serious influence on the nation's life and health);

((c)-(d) omitted)

(2. omitted)

Article 16

1. The stoppage provided in Article 14, Paragraph 1, Item 2, shall be implemented, by setting the period of time, in the form of hospitalization that is consigned to a designated medical institution for special infectious disease or a designated medical institution for Infectious Disease - Type I. When there is an unavoidable reason such as an emergency, the hospitalization may be consigned to a hospital or a medical clinic that the director of the quarantine station judges as appropriate other than the designated medical institution for special infectious disease or a designated medical institution for Infectious Disease - Type I, or such persons, with the consent of the captain of the vessel, may be locked within the vessel.

2. The period referred to in the preceding paragraph shall not exceed the period set by government ordinance in accordance with the incubation period of each infectious disease, including a period not exceeding one-hundred and forty-four hours for plague referred to in Article 2, Item 1, and a period not exceeding five-hundred and four hours for the infectious diseases other than plague referred to in the same Item.

(3.-6. omitted)

Article 16bis

1. The patient who has been isolated in accordance with the provision of Article 14, Paragraph 1, Item 1, for more than thirty days or his/her guardian may make a request for review either in writing or orally of the measure of isolation (including a request for re-examination, hereinafter the same in the next paragraph and Paragraph 3) to the Minister of Health, Labour and Welfare.

2. When a request for review under the previous paragraph is made, the Minster of Health, Labour and Welfare shall render a decision on the request for examination within five days from the day on which the request was made.

(3.-5. omitted)

6. When rendering the decision under Paragraph 2 or the one under Paragraph 3 (limited to the one concerning a patient whose period of hospitalization exceeds thirty days), the Minister of

Health, Labour and Welfare shall hear in advance the opinion of the deliberative council, etc. (an organization provided for in Article 8 of the National Government Organization Law - Law No. 120 of 1948).

Law related to Mental Health and Welfare of the Person with Mental Disorder

Article 19-4-2

The Designated Physician shall promptly describe his/her name and other matters prescribed by the Health and Welfare Ministerial Order in the medical record when he/she has performed the duties under Paragraph 1 of the preceding article (Note: Judgment on whether it is necessary to continue hospitalization and whether to restrict activities).

Article 29

1. If a prefectural governor recognizes that the person thus examined is mentally disordered and is likely to hurt himself/herself or others because of mental disorder unless hospitalized for medical care and protection based on the result of examination under Article 27 (Note: Examinations of a designated physician performed in accordance with an application, reporting, or notification), the governor may cause said person to enter a mental hospital established by the national or prefectural government or a Designated Hospital.

2. The prefectural governor shall cause said person to enter the hospital under the preceding Paragraph only when said person has been examined by at least two Designated Physicians and the results of examination by each physician concur in that said person is mentally disordered and that he/she is likely to hurt himself/herself or others because of mental disorder unless admitted to a hospital for medical care and protection.

3. When taking the measure under Paragraph 1, the prefectural governor shall notify in writing to said Person with Mental Disorder that said measure of hospitalization is being taken and the matters related to request for release, etc. under Article 38-4 and other matters prescribed by the Health and Welfare Ministerial Order.

4. The administrator of a mental hospital established by the national or a prefectural government or of a Designated Hospital shall admit the Person with Mental Disorder mentioned in Paragraph 1 unless no bed is available because there are already persons hospitalized under Paragraph 1 or Paragraph 1 of the following Article (beds designated in the hospital where a ward is designated under Article 19-8).

Article 29-4

1. The prefectural governor shall immediately release the person hospitalized under Paragraph 1 of Article 29 (hereinafter referred to as “Involuntary Patient”) when said person is deemed not likely to hurt himself/herself or others because of his/her mental disorder even if hospitalization is discontinued. In this case, the prefectural governor shall ask in advance the opinion of the administrator of the mental hospital or the Designated Hospital where said person is being hospitalized.

2. The prefectural governor releasing said person under the preceding paragraph shall base his/her judgment that said person is no longer likely to hurt himself/herself or others because of mental disorder even if hospitalization is discontinued only on the result of examination by the Designated Physician appointed by him/her or the result of medical examination under the following Article (Note: Examination by a designated physician).

Article 36

1. The administrator of a mental hospital may impose necessary restraints on a person hospitalized within the limit essential for his/her medical care and protection.

2. Notwithstanding the preceding paragraph, the administrator of a mental hospital shall not impose restraints that are prescribed in advance by the Minister of Health, Labour and Welfare based on the opinion of the Social Security Council, said restraints being those on receipt/dispatch of confidential papers, interviews, etc. with the staff of the prefectural governments or other administrative organs.

3. Of the restraints imposed under Paragraph 1, restraints such as isolation, etc. prescribed in advance by the Minister of Health, Labour and Welfare based on the opinion of the Social Security Council shall be imposed only when the Designated Physician deems it necessary.

Article 38-2

1. The administrator of a mental hospital or a Designated Hospital where an Involuntary Patient is hospitalized shall regularly report to the prefectural governor via the director of the nearest Health Center the conditions of Involuntary Patient and other matters prescribed by the Health and Welfare Ministerial Order (hereinafter referred to as “the Reported Matters”) under the Health and Welfare Ministerial Order. In this case, the matters prescribed by the Health and Welfare Ministerial Order among the Reported Matters shall be based on the result of examination by the Designated Physician.

2. The provisions of the preceding paragraph shall be applied mutatis mutandis to the administrator of a mental hospital where the patient under medical care and protection is being hospitalized. In this case, the term “the Involuntary Patient” shall read as “the Patient Under Medical Care and Protection.”

Article 38-4

The person hospitalized at a mental hospital or the person responsible for his/her custody may request the prefectural governor under the Health and Welfare Ministerial Order to cause said person to be discharged, order the administrator of the mental hospital to discharge him/her or to take measures necessary for improving his/her treatment.

Article 38-5

1. When a request under the preceding Article is received, the prefectural governor shall notify the content of said request to the Psychiatric Review Board and shall ask for their review to determine whether or not the person concerned with said request requires hospitalization and whether or not his/her treatment is adequate.

2. When the review under the preceding Article is requested, the Psychiatric Review Board shall review whether or not the person concerned with said review requires hospitalization, and his/her treatment is adequate, and notify the result to the prefectural governor.

3. In conducting the review under the preceding paragraph, the Psychiatric Review Board shall ask the opinion of the person making the request for review under the preceding paragraph and the administrator of the mental hospital where the person for whom the review was requested is being hospitalized. Provided, however, this provision shall not apply if the Psychiatric Review Board specifically recognizes that there is no need for asking their opinions.

4. In addition to those prescribed in the preceding paragraph, if the Psychiatric Review Board recognizes it necessary in conducting the review under Paragraph 2, the Board may cause the committee to examine the person hospitalized, for whom the review is related, with his/her consent, or ask the administrator of the mental hospital where said person is hospitalized or the other person concerned to report, order submission of the medical record and other documents, or order to appear for a hearing.

5. Based on the result of review by the Psychiatric Review Board notified under Paragraph 2, the prefectural governor shall discharge the person for whom hospitalization is deemed not necessary, or order the administrator of said mental hospital to discharge said person or to take necessary measures for improving his/her treatment.

6. The prefectural governor shall notify the person making the request under the preceding article of the result of the review related to the request by the Psychiatric Review Board and the measure taken based on the review result.

Law on the Medical Care and Observation for Mentally Incompetent Person who Committed Serious Harm on Others

Article 6

1. A mental health judge shall be appointed by a district court for each treatment case from among the persons listed in the name list of the following paragraph who are selected in advance each year by the district court in accordance with the Supreme Court Rules.

2. The Minister of Health, Labour and Welfare shall, in order to contribute to the selection of those to be appointed as a mental health judge, send to the Supreme Court every year a list of doctors who have the necessary experience and academic background to perform the duties of a mental health judge that are provided for in this law (hereinafter referred to as “mental health judging doctor”) pursuant to a government ordinance.

3. A mental health judge shall be paid allowances in accordance with a separate law, and be paid traveling expenses, daily allowances, and accommodation fee in accordance with the Supreme Court Rule.

Article 11

Notwithstanding the provisions of Article 26 of the Court Organization Law (Law No. 59 of 1947), a district court shall deal with a treatment case by a collegial body of one judge and one mental health judge. However, this does not apply to the matters that are otherwise specified under this law.

Article 14

The judgment by the collegial body under Article 11, Paragraph 1 shall be rendered by consensus between the judge and the mental health judge.

Article 92

1. The manager of a designated medical institution for hospitalization may impose necessary limitations to the activities of the person who is hospitalized in accordance with the decision under Article 42, Paragraph 1, Item 1, or Article 61, Paragraph 1, Item 1, to the extent that is essential for the medical treatment or protection of that person.

2. Notwithstanding the provision in the preceding paragraph, the manager of a designated medical institution for hospitalization shall not limit sending and receiving of letters, interviews with attorneys and with officials of administrative organs, or any other activities that the Ministry of Health, Labour and Welfare has specified in advance by hearing the opinion of the Social Security Council.

3. Among the limitations of activities under Paragraph 1, isolation of the patient and limitation of other activities that the Ministry of Health, Labour and Welfare has specified in advance by hearing the opinion of the Social Security Council may not be implemented unless a designated mental health doctor working for the designated medical institution for hospitalization judges it to be necessary.

Article 93

1. In addition to those prescribed in the preceding article , the Minister of Health, Labour and Welfare may establish necessary standards on the treatment of a person who is hospitalized in a designated medical institution for hospitalization by the decision made pursuant to Article 42, Paragraph 1, Item 1, or Article 61, Paragraph 1, Item 1.

2. When the standards under the preceding paragraph are established, the managers of designated medical institution for hospitalization shall observe those standards.

3. When establishing the standards prescribed in Paragraph 1, the Ministry of Health, Labour and Welfare shall hear the opinion of the Social Security Council in advance.

Article 95

The person who is hospitalized in a designated medical institution for hospitalization by the decision made pursuant to Article 42, Paragraph 1, Item 1, or Article 61, Paragraph 1, Item 1, or his/her guardian may, in accordance with an ordinance of the Ministry of Health, Labour and Welfare, request the Minister of Health, Labour and Welfare to order the manager of the designated medical institution for hospitalization to take necessary measures to improve the treatment of the hospitalized person.

Article 96

1. When receiving the request under the preceding article , the Minister of Health, Labour and Welfare shall notify the content of the request to the Social Security Council and ask the council to examine whether or not the treatment of the hospitalized person subject to the request is appropriate.

2. The Social Security Council shall, when asked to make the examination of the preceding paragraph, examine whether or not the treatment of the hospitalized person subject to the examination is appropriate and shall notify its result to the Minister of Health, Labour and Welfare.

3. In making the examination under the preceding paragraph, the Social Security Council shall hear the opinion of the person who made the request under the preceding Article in relation to the examination and the opinion of the manager of the designated medical institution for hospitalization in which the hospitalized person subject to the examination is hospitalized. However, this does not apply when the Social Security Council specially judges that there is no need to hear the opinions of these persons.

4. In addition to getting the opinions specified in the preceding paragraph, the Social Security Council may, if it considers it necessary in making the examination under Paragraph 2, have a designated mental health doctor examine the hospitalized person subject to the examination with his/her consent, or request the manager of the designated medical institution for hospitalization where the person concerned is hospitalized or other persons concerned to report, to submit records and documents including the medical record, or to submit himself/herself for an inquest.

5. The Minister of Health, Labour and Welfare shall, when judging it necessary based on the result of examination by the Social Security Council informed pursuant to Paragraph 2, order the manager of the designated medical institution for hospitalization to take measures to improve the treatment of the hospitalized person.

6. The Minister of Health, Labour and Welfare shall inform the person who made the request under the preceding article about the result of the examination of the Social Security Council and about the measures taken based on the result.

(Reference to paragraphs 100-110)

Directives concerning the Organization and Operation of the Police Affairs Corps

Article 29

The inspection of judicial police duties shall be implemented to examine the propriety of the execution of judicial police duties by the Police Affairs Corps and to make it reasonable and efficient.

Article 30

1. The Chief of Staff of the Ground Self-Defense Force shall conduct inspection of the judicial police duties of the Police Affairs Corps and report its result to the Director General.

2. The District Commending General shall conduct inspection of the judicial police duties of the District Police Affairs Corps in accordance with rules set up by the Chief of Staff of the Ground Self-Defense Force.

Article 31

The Chief of Staff of the Ground Self-Defense Force shall determine the matters necessary for the planning and implementation of inspection of judicial police duties every year and obtain approval of the Director General.

Maritime Self-Defense Force

Directives concerning the Organization and Operation of the Police Affairs Corps of the Maritime Self-Defense Force (Maritime Self-Defense Criminal Investigation Command)

Article 18

1. The Chief of Staff of the Maritime Self-Defense Force shall conduct inspection of the judicial police duties to examine the propriety of the execution of judicial police duties by the Police Affairs Corps and to make it reasonable and efficient.

2. The Chief of Staff of the Maritime Self-Defense Force shall draw up a police affairs inspection plan every year and obtain approval of the Director General, and report the result of inspection to the Director General.

Air Self-Defense Force

Directives concerning the Duty and Operation of the Police Affairs Corps of the Air Self-Defense Force (Air Self-Defense Force Air Police Group)

Article 12

The inspection of judicial police duties shall be implemented to examine the propriety of the execution of judicial police duty by the Police Affairs Corps of the Air Self-Defense Force and to make it reasonable and efficient.

Article 13

The Chief of Staff of the Air Self-Defense Force shall determine the matters necessary for the planning and implementation of inspection of judicial police duties every year and obtain approval of the Director General.

Article 14

The Chief of Staff of the Air Self-Defense Force shall conduct inspection of the judicial police duties of the Police Affairs Corps of the Air Self-Defense Corp and report its result to the Director General.

(Reference to paragraph 111)

Japan Coast Guard Detention Administration Regulations

Article 3

1. The persons who are the officials of the Regional Coast Guard Headquarters and designated by the Chairman of the Regional Coast Guard Headquarters, the head of the administrative division of the Coast Guard Office, deputy head of the Maritime Guard and Rescue Office or the Coast Guard Station, or the persons who are not engaged in business concerning investigation of offences committed at sea and designated by the head of the Maritime Guard and Rescue Office or the head of Coast Guard Station, or heads of operation groups not engaged in business concerning investigations of offences committed at sea and designated by the captain of a patrol boat (hereinafter referred to as “chief detention officer”) shall conduct detention business by respective orders from the Chairman of the Regional Coast Guard Headquarters, the head of the Coast Guard Office, the head of the Maritime Guard and Rescue Office, the head of the Coast Guard Station or the captain of the patrol boat (hereinafter to be called “the head of the Coast Guard Office, etc.”).

2. The chief detention officer of the Coast Guard Office shall conduct the detention business of the branch prisons administered by the Coast Guard Office by orders of the head of the Coast Guard Office.

3. When the chief detention officer is absent due to a disease or an official trip, the person who is designated beforehand by the head of the Coast Guard Office, etc. shall act as a proxy.

4. Of the detention officials (the Coast Guard officials other than chief detention officers engaged in detention business, hereinafter the same), those designated by the head of the Coast Guard Office, etc. (hereinafter referred to “persons in charge of detention”) shall direct and supervise other detention officials under the command of the chief detention officer.

Japan Coast Guard Law

Article 33

Matters other than those provided by this Law, concerning classification of the personnel of the Japan Coast Guard, their functions, and other necessary matters concerning the personnel of the Japan Coast Guard shall be provided by the Cabinet Order.

Coast Guard Law Enforcement Ordinance

Article 6

1. A chief inspector shall be stationed in the Coast Guard pursuant to the provision of Article 33 (government ordinance authorization).

2. The chief inspector, with orders from his superior, shall inspect any act of breach by Coast Guard officials and the actual conditions of administrative affairs under his/her jurisdiction.

Regulations for Coast Guard organization

Article 2-5

1. An inspection official shall be posted under the chief inspection officer.

2. The inspection official shall conduct, with orders from the chief inspection officer, the business concerning inspection of any act of breach by Coast Guard officials and the actual conditions of administrative affairs under his/her jurisdiction.

(Reference to paragraphs 112-113)

Annex X

JAPAN LEGISLATION IN RELATION TO ARTICLE 12 OF THE CONVENTION AGAINST TORTURE

The Code of Criminal Procedure

Article 189

1. A police official shall perform his duties as a judicial police official as authorized by law, or regulations of the National Public Safety Commission or of the Prefectural Public Safety Commission.

2. A judicial police official shall, when he deems an offence has been committed, investigate the offender and evidence thereof.

Article 190

Those who are to exercise the functions of judicial police officials in regard to forestry, railways or other special matters, and the scope of their functions shall be provided by other laws.

Article 191

A public prosecutor may, if he deems necessary, investigate an offence himself.

Article 246

Except as otherwise provided in this Law when a judicial police official has conducted the investigation of a crime he shall send the case together with the documents and pieces of evidence to a public prosecutor. However, this shall not apply to the case which is specially designated by a public prosecutor.

(Reference to paragraphs 114-115)

The Emergency Measures Act for Designation of Judicial Police Officers

Article 1

Regarding the person who shall execute the duties as a judicial police officer concerning forestry, railways and other specific matters; the scope of the duties shall be in accordance with the provision in the Ordinance for the Designation of Judicial Police Officers and Those Who Shall Perform the Duties of Judicial Police Officers (Imperial Order No. 528 of 1923) for the time being unless otherwise prescribed specifically in other laws.

Ordinance for the Designation of Judicial Police Officers and Those Who Shall Perform the Duties of Judicial Police Officers

Article 2

The prison warden or a warden of a branch prison shall execute the duty of a judicial police officer provided for in Article 248 of the Code of Criminal Procedure regarding the offences committed in the prison or in a branch prison.

Article 3

A person listed below who is appointed by the discussion between the director and the chief public prosecutor of the district court which has jurisdiction over the area the governmental office is located shall perform the duty of the judicial police officer provided for in Article 248 of the Code of Criminal Procedure if he/she is listed in (i) to (viii) of the list and the duty of judicial police if he/she is listed in (ix) to (xiv) of the list.

(a) Official of an external prison who is a second-grade or third-grade official of the Ministry of Justice except a warden of prison, a warden of branch prison, and a guard;

(b) Guard who is an official of the Ministry of Justice.

Article 4

The scope of the duty of the person who performs the duties of the judicial public officer pursuant to the preceding article is limited to the duties concerning the following offences:

(a) The offences in the prison or in a branch prison by the person prescribed in Item 3 and Item 11 of the preceding article.

(Reference to paragraphs 116-117)

Japan Coast Guard Law

Article 31

In regard to crimes committed at sea, a Coast Guard officer and an assistant Coast Guard officer shall, as fixed by the Commandant of the Japan Coast Guard, perform the duties of a judicial police official as provided by the Code of Criminal Procedure (Law No. 131 of 1948).

(Reference to paragraph 118)

Self-Defense Forces Law

Article 96

1. Among the Self-Defense officials, those that perform full-time the duties of maintaining order within departments shall perform the duties of judicial police officials prescribed in the

Code of Criminal Procedure (Law No. 131 of 1948) regarding the following offences in accordance with the laws and ordinances unless otherwise provided for in the laws and ordinances.

(a) Offences committed by a Self-Defense official, by a member other than an official of the Ground Self-Defense Force staff office, the Maritime Self-Defense Force staff office, the Air Self-Defense Force staff office, of a unit, by a student, by a Self-Defense reserve or an immediate Self-Defense reserve ("sokuou") who is on a training call, by an assistant Self-Defense official who is on a training call (hereinafter referred to as "member"), offences against a member or members of Self-Defense Forces on duty, and offences committed by a person other than the members of Self-Defense Forces regarding the duty of the members;

(b) Offences committed on sea vessels, in office buildings, residential quarters or other facilities used by the Self-Defense Forces;

(c) Offences against the facilities or properties owned or used by the Self-Defense Forces.

(The rest omitted)

(Reference to paragraphs 119-129)

Guidelines for Investigation and Resolution of Human Rights Infringement Cases

Article 2

The purpose of investigation and resolution of the case suspected as a human rights infringement is to give relief and to prevent it by taking measures to assist and conciliate the parties concerned, or by confirming the fact of human rights infringement and taking appropriate measures depending on the result of the confirmation, and by encouraging the parties concerned to improve their understanding on the principle of respecting human rights (hereinafter referred to as "encouragement").

Article 8

1. The Director of Legal Affairs Bureau or the director of District Legal Affairs Bureau shall, when required to take measures to give relief or to prevent human rights infringement by receiving an application from a victim, a victim's attorney, or related parties such as relatives (hereinafter referred to as "victims, etc.") which insist that the person suffered damage or might suffer damage from a human rights infringement, conduct necessary investigation without delay and take appropriate measures unless it is considered inappropriate to handle the applied case at the Legal Affairs Bureau or the District Legal Affairs Bureau.

2. When the Director of Legal Affairs Bureau or the director of District Legal Affairs Bureau comes into contact with a fact which is considered necessary to start investigation as human rights infringement case in accordance with a notice or information from a Human Rights

Volunteer or related administrative organ, he or she shall conduct necessary investigation without delay and take appropriate measures if he or she considers it appropriate in the light of the purpose provided in Article 2.

Article 14

1. The Director of Legal Affairs Bureau or the director of District Legal Affairs Bureau shall, when he or she confirms the fact of human rights infringement as a result of the investigation of the case, take measures provided in each item of the preceding article or in the following:

(a) To request the person who is capable of taking effective measures regarding the relief or prevention of the damages by human rights infringement to take necessary measures (request);

(b) To instruct the fact and reason to the opposite party in order to urge them to reflect what they did and to take adequate measures (instruction);

(c) To make necessary recommendation in writing to the opposite party by specifying the fact of human rights infringement, in order to stop the human rights infringement or to prevent him or her from recommitting a similar human infringement (recommendation);

(d) To inform the fact of human rights infringement to related administrative organs and to request them to exercise appropriate measures in writing (warning);

(e) To make an accusation in writing in accordance with the provision of the Code of Criminal Procedure (Law No. 131 of 1948) (Accusation).

(The rest omitted)

(Reference to paragraphs 130-132)

Annex XI

JAPAN LEGISLATION IN RELATION TO ARTICLE 14 OF THE CONVENTION AGAINST TORTURE

The Code of Criminal Procedure

Article 230

A person who has been injured by an offence may file a complaint.

Article 262

1. If, in a case with respect to which complaint or accusation is made concerning the offences mentioned in Articles 193 to 196 of the Penal Code Article 45 of the Subversive Activities Prevention Act (Law No. 240 of 1952) or Articles 42 to 43 of the Act Regarding the Control of Organizations Which Committed Indiscriminate Mass Murder (Law No. 147 of 1999), the complainant or accuser is dissatisfied with the disposition made by a public prosecutor not to prosecute, he may apply to a District Court having jurisdiction over the place of the public prosecutors office to which that public prosecutor belongs for committing the case to a court for trial.

2. The application mentioned in the preceding paragraph shall be made by submitting a written application to a public prosecutor within seven days from the day on which the notification stipulated in Article 260 was received.

Law for the Inquest of Prosecution

Article 2

1. The Committee for the Inquest of Prosecution shall, when receiving a claim from a person who made complaint or accusation, from a person who filed a request of a case to be accepted upon request, or from a person who suffered damage by an offence (in case the person who suffered damage died, the spouse, a lineal relative, brother or sister of the person), conduct the examination provided for in Item 1 of the preceding paragraph.

Article 30

1. The person prescribed in Article 2, Paragraph 2 may, when dissatisfied with the public prosecutor's disposition of not to institute public prosecution, request the Committee for the Inquest of Prosecution having jurisdiction over the place of the public prosecutor's office to which the said public prosecutor belongs, to review the propriety of the said disposition. This provision shall not apply, however, to the case provided for in Article 16, Item 4 of the Court Organization Law and the case regarding violation of the Act concerning Prohibition of Private Monopoly and Maintenance of Fair Trade.

Habeas Corpus Act

Article 2

1. Any person whose liberty of person is under restraint without due process of law may apply for relief pursuant to the provisions of this Act.

2. Any person may make the application mentioned in the preceding paragraph on behalf of the person restrained.

Article 4

The application mentioned in Article 2 may be made, either in writing or by word of month, to the High Court or District Court having jurisdiction over the locality in which the person restrained, the person putting him under restraint, or the applicant is found or resides.

(Reference to paragraphs 130-133)

The Rules for Detaining Suspects

Article 19

A guard shall, when detainee makes request regarding his treatment, selection of defense counsel, etc., forthwith report it to the detention chief, and cause necessary measures to be taken.

(Reference to paragraph 133)

The Prison Law

Article 7

If an inmate is dissatisfied with the disposition of the prison, he may petition the competent minister or a visiting inspector in accordance with the provisions of the ordinances by the Ministry of Justice.

Prison Law Enforcement Regulation

Article 9

1. The warden shall grant an interview to an inmate who makes a petition to him regarding the treatment of in the prison or his personal affairs.

2. In case an inmate offers to make a petition to the warden according to the preceding paragraph, his name shall be entered in the interview book. After having an interview with an inmate in the order of the name listed, the warden shall write the summary of his opinion given to the inmate in the interview book.

(Reference to paragraphs 134-139)

Immigration Control and Refugee Recognition Act

Article 61-3-2

1. The duties of an Immigration Control Officer shall be as follows:

(a) To conduct investigations with regard to cases of violation of the provisions of laws and ordinances relating to entry, landing, or residence;

(b) To detain, escort, and send back those persons who are subject to execution of written detention orders or deportation order;

(c) To guard Immigration Centers, detention houses, or any other facility.

Regulations for Treatment of Detainees

Article 2-2

The director, etc., (the Directors of Immigration Center and of Regional Immigration Bureaus) shall expect to ensure the appropriate treatments of detainees by hearing the opinions from the detainees concerning their treatments, patrolling the Immigration Centers, etc. and taking other measures.

Article 37

The director, etc. shall, upon censoring letters a detainee intends to send and finding that there is a part which hinders the security of the Immigration Center, notify it to the detainee and have him correct it or delete it before sending it. If the detainee does not follow the instruction, the letter shall be retained. (The rest is omitted.)

Article 41-2

1. A detainee may, when he/she is dissatisfied with the treatment of him by an Immigration Control Officer, may file a complaint to the director, etc. in writing by stating the ground for the complaint within seven days from the date of the treatment was made.

2. The director, etc. shall, when the filing is made pursuant to the preceding paragraph, conduct the necessary investigation immediately, judge within fourteen days after the day the filing was made whether or not the complaint is well-grounded, and notify the result in writing to the person who filed the complaint pursuant to the preceding paragraph (hereinafter referred to as “complainant”). However, if the complainant has been released before receiving the notification, director, etc. may send the notice within fourteen days after the day the filing was made to the address the person informed the director, etc. as the place of residence or place to contact after the release.

3. In the notice provided for in the preceding paragraph, it shall be written when the complainant is still in the center that a demurral may be made pursuant to paragraph 1 of the following article.

Article 41

1. A detainee who is dissatisfied with the disposition under the Paragraph 2 of the preceding article may file an objection with the Minister of Justice by submitting a document stating the ground for the complaint to the director, etc. within three days after the date he/she received the notification under the provision of the same paragraph.

2. The director, etc. shall, when the demurral is made pursuant to the preceding paragraph, send the said petition of the demurral and the documents concerning the investigation of the Paragraph 2 of the preceding article immediately to the Minister of Justice.

3. The Minister of Justice shall, when the demurral is made pursuant to the preceding paragraph, judge immediately whether or not the demurral is well-grounded, and notify it in writing to the person who made the demurral (hereinafter referred to as "demurrer") via the director, etc. However, if the demurrer has been released before receiving the notification, it may be sent to the address the person informed the director, etc. as the place of residence or place to contact after the release.

(Reference to paragraphs 140-142)

The Law Concerning the Prevention of Infections and Medical Care for Patients of Infection

Article 22

1. It is confirmed that a patient hospitalized pursuant to the provisions of Article 19 or Article 20 does not have the pathogen of the category 1 infection for which such patient was hospitalized, the prefectural governor shall discharge said patient from hospital.

2. The patient who has been hospitalized pursuant to the provisions of Article 19 or Article 20, or the parent of such patient may file a request for discharge form the hospital with the prefectural governor.

The Quarantine Law

Article 15bis

1. The chief of the quarantine station who has implemented any of the procedures provided in the preceding paragraph shall discontinue isolation immediately after it is confirmed that any patient of any of the infectious diseases specified in Article 2 item(1) does not have the causative agent of the quarantinable disease for which such patient was isolated, or that the patient does not have the causative agent or the symptoms of cholera have disappeared in the case of a cholera patient.

2. The person who is being isolated pursuant to the provisions of paragraph 1 item (1) of the preceding article (Note: Refer to the end of K.(d)) or the parent of such person (hereinafter referring to the person in parental authority or the guardian) may request the chief of the quarantine station to release such person from isolation.

Article 16

1. The stoppage provided in Article 14, Paragraph 1, Item 2, shall be implemented, by setting the period of time, in the form of hospitalization that is consigned to a designated medical institution for special infectious disease or a designated medical institution for Infectious Disease - Type I. When there is an unavoidable reason such as an emergency, the hospitalization may be consigned to a hospital or a medical clinic that the director of the quarantine station judges as appropriate other than the designated medical institution for special infectious disease or a designated medical institution for Infectious Disease - Type I, or such persons, with the consent of the captain of the vessel, may be locked within the vessel.

(The middle omitted)

2. When the director took the measure provided for in Paragraph 1, the director of quarantine shall forthwith release the suspension of the said person when it is confirmed that the said person does not have the pathogens of the infectious disease for the said stoppage.

(The middle omitted)

3. The person kept pursuant to the provision of Article 14, Paragraph 1, Item 2, or his/her guardian may request the director of quarantine to release the person from the stoppage.

(Reference to paragraphs 143-144)

The Penal Code

Article 105bis

A person who in relation to the person's own or another's criminal cases, forcibly demands without justifying reason an interview with any person, or intimidates any person deemed to have knowledge necessary for investigation or trial of such case, or the person's relative, shall be punished by imprisonment with appointed work for not more than 1 year or a fine of not more than 200,000 yen.

Article 208

When a person uses physical violence against another without bodily injury, imprisonment with appointed work for not more than 2 years, a fine of not more than 300,000 yen, minor penal detention or a minor fine shall be imposed.

Article 222

1. A person who intimidates another through the threat to the another's life, body, freedom, fame or property, shall be punished by imprisonment with appointed work for not more than 2 years or a fine of not more than 300,000 yen.

2. The same shall apply to a person who intimidates another through the threat to the life, body, freedom, fame or property of the another's relative.

The Code of Criminal Procedure

Article 89

The request for bail shall be granted, except when:

(The middle omitted)

(a) There is a reasonable cause to suspect that the accused may harm the body or property of the victim or any other person who is deemed to have knowledge necessary for the trial of the case, or his/her relatives, or threat them.

(The rest omitted)

Article 157-2

1. In the examination of a witness, when it is deemed that the witness may feel the considerable anxiety or tension in the light of his/her age, mental or physical situation or other circumstances, the court may, after hearing the opinions of the public prosecutor and the accused or his/her counsel, allow a person who is deemed to be appropriate to relieving such anxiety or tension to accompany the witness during the examination unless it is feared that such person may disturb the examination by a judge or other party concerned or the testimony by the witness, or that such person may give inappropriate influence on the statement.

2. The person who is allowed to accompany the witness in accordance with the preceding paragraph shall not behave during the testimony in the manner which may disturb the examination by a judge or other party concerned or the testimony by the witness or may give an inappropriate influence on the statement.

Article 157-3

1. In the examination of a witness, when it is deemed that the witness would feel pressure and his/her peace of mind would be seriously harmed while testifying in the presence of the accused (including the case under the method provided in the Paragraph 1 of the following article), due to the nature of the alleged crime, his/her age, mental or physical situation, relationship with the accused or other circumstances, and when it is deemed appropriate, the court may, after hearing the opinions of the public prosecutor and the accused or his/her counsel, take measures to prevent the accused and the witness from recognizing the state of others either from one side or from both sides. However, the measures to prevent the accused from recognizing the state of the witness may be taken only when the counsel is present.

2. In the examination of a witness, when it is deemed appropriate in the light of the nature of the crime, his/her age, mental or physical situation, effects upon his/her reputation or other circumstances, the court may, after hearing the opinions of the public prosecutor and the accused or his/her counsel, take measures to prevent the galleries and the witness from recognizing the state of each other.

Article 157-4

1. In the examination of a witness stipulated in the following sub-paragraphs, when it is deemed appropriate, the court may, after hearing the opinions of the public prosecutor and the accused or his/her counsel, have the witness be present in a place other than where the judge or other parties concerned are present (but within the same premises), and examine the witness by using devices that allows communications, while recognizing the state of each other by transmitting the picture and sound:

(a) The victim of crimes or attempts of crimes provided in Article 176 to 178, 181, 225 (limited to the case under the purpose of obscenity or marriage; the same shall apply in this sub-paragraph hereafter), Paragraph 1 (limited to the case under the purpose of aiding the person who commits the crime provided in Article 225) or 3 (limited to the case under the purpose of obscenity) of Article 227, or the first part of 241 of Penal Code;

(b) The victim of crimes provided in Paragraph 1 of Article 60 or Paragraph 2 of Article 60 on Sub-paragraph 9, Paragraph 1 of Article 34 of Child Welfare Law (Law No. 164, 1947), or Article 4 to 8 of Law for Punishing Acts Related to Child Prostitution and Child Pornography, and for Protecting Children (Law No. 512, 1999);

(c) In addition to those as stipulated in the preceding two sub-paragraphs, the person who is deemed, due to the nature of the crime, hiss/her age, mental or physical situation, the relationship with the accused, or other circumstances, feel pressure and whose peace of mind be seriously harmed while testifying at the place where the judge and the other party concerned are present.

2. In the examination of a witness by the measure as stipulated in the preceding paragraph, the court may, when it is considered that the witness will be requested to testify the same fact again in the criminal procedure which may be held afterward and when the witness consents, record the examination and the testimony in the recordable-media (It means material that is able to record the picture and the sound simultaneously. The same shall apply hereinafter.) after hearing the opinions of the public prosecutor and the accused or his/her counsel.

3. The recordable-media in which the witness examination, the testimony and those situations are recorded in accordance with the preceding paragraph shall be attached to the trial record as part of the minutes.

Law on the Benefits for Damages of Witnesses, etc.

Article 3

If a witness, an official state counsel, or a spouse of any of them (including a person who is in a de facto marriage relationship regardless of marriage registration), lineal consanguinity or a relative living together (hereinafter referred to as “witness, etc.,”) suffered damage to his/her life or body by another person or persons due to the fact that the witness, etc. gave a statement (including statements made in writing in the case of a witness, hereinafter the same), appeared, or intended to appear to give a statement to the court, to a judge, or to the investigative organ

regarding a criminal case, or due to the fact that the official state counsel conducted or intended to conduct his/her duty, the State shall make the payment of the benefits to the victim and others in accordance with the provision of this law.

National Public Service Law

Article 82

When he/she falls under one of the following cases, an employee may, as disciplinary punishment, be dismissed, suspended from duty, suffer reduction in pay or administration of a reprimand:

(a) When he/she has acted contrary to this law, the National Public Service Ethics Law, or orders issued thereunder;

(b) When he/she breached official responsibilities or neglected duties;

(c) When he/she committed misconduct not suitable as a servant of the entire people.

(The rest omitted)

Local Public Service Law

Article 29

When an official falls under any of the following items, the local municipal entity may give the said official disposition such as reprimand, wage cut, suspension from duty or discharge:

(a) When the official violates this law, or laws prescribing special cases provided in Article 57 (Note: The Special Law for Educational Public Officers, etc.) or ordinances based on the said laws, regulations of local municipal entities, or rules of organs of local municipal entity;

(b) When the official violates or neglects the official duties;

(c) When the official did misconduct not suitable for a public servant of the nation.

(Reference to paragraphs 145-148)

Annex XII

JAPAN LEGISLATION IN RELATION TO ARTICLE 14 OF THE CONVENTION AGAINST TORTURE

State Redress Law

Article 1

When a governmental official who is in a position to wield governmental powers of the State or of a public entity has, in the course of performing his duties, illegally inflicted losses upon another person either intentionally or negligently, the State or the public entity concerned shall be liable to compensate such losses.

Article 6

When a victim is a foreign national, this law is applied only when there is the guarantee of reciprocity.

The Civil Code of Japan

Article 709

A person who violates intentionally or negligently the right of another is bound to make compensation for damage arising therefrom.

Article 715

A person who employs another to carry out an undertaking is bound to make compensation for damage done to a third person by the employee in the course of the execution of the undertaking; however, this shall not apply, if the employer has exercised due care in the appointment of the employee and in the supervision of the undertaking or if the damage would have ensued even if due care had been exercised.

Article 896

A successor succeeds, as from the time of the opening of the succession, to all the rights and duties pertaining to the property of the person succeeded to; excepting, however, such as are entirely personal to that person.

The Crime Victims Benefit Payment Law

Article 3

The State shall, when there is a person who is damaged by an offence (hereinafter referred to as “a victim”), provide the “benefits for criminal victims” to a criminal victim or the bereaved family member (Among these persons, a person who did not have Japanese nationality and did not have the residence in Japan at the time when the offence that caused the said damage took place is excluded.) according to the prescription of this law.

(Reference to paragraphs 149-155)

Annex XIII

JAPANESE LEGISLATION IN RELATION TO ARTICLE 15 OF THE CONVENTION AGAINST TORTURE

The Constitution of Japan

Article 38bis

Confession made under compulsion, torture or threat, or after prolonged arrest or detention cannot be used as evidence.

The Code of Criminal Procedure

Article 319

1. Confession made under compulsion, torture or threat, or after prolonged arrest or detention, or which is suspected not to have been made voluntarily shall not be admitted in evidence.

2. The accused shall not be convicted in cases where his own confession, whether made in open court or not, is the only proof against him.

3. Confession mentioned in the preceding two paragraphs includes any admission of the accused which acknowledges himself to be guilty of the offence charged.

Article 325

Even when a document or statement is admissible as evidence in accordance with Articles 321 to 324, it shall not be used as evidence by the court, unless it believes after investigation that the statement described in the document or the statement of a person contained in oral statement by another on the date either for the preparation for public trial or for the public trial has been made voluntarily.

Article 326

1. Despite Articles 321 to 325, any document or statement may be used as evidence only when a public prosecutor and the accused give consent thereto and the court finds it proper after considering the circumstances under which the document of statement was obtained.

2. In cases where examination of evidences may be carried out in spite of non-attendance of the accused and the accused does not appear, he shall be deemed to have given the consent mentioned in the preceding paragraph. However, this shall not apply where his proxy or defense counsel appears for him.

(Reference to paragraphs 156-160)

Annex XIV

JAPAN LEGISLATION NOT RELATED TO ANY SPECIFIC ARTICLE OF THE CONVENTION AGAINST TORTURE

The Code of Criminal Procedure

Article 64-1

A warrant of bringing to the court or detention shall contain the name and domicile of the accused; the name of offence; the substance of the prosecuted offence; the place where to bring him/her or the prison where to detain him/her; effective period and a statement that the warrant shall not be executed after such period and shall be returned to the court; the date of issue; other matters as stipulated in the rules of the courts as well as the name seal of the presiding judge or the commissioned judge.

Article 203-1

When a judicial police officer has arrested a suspect upon a warrant of arrest or received a suspect who was arrested upon a warrant of arrest, he shall immediately inform him of the essential facts of crime and the fact that he is entitled to select a defense counsel, and then, giving him an opportunity for explanation, he shall immediately release the suspect when he believes there is no need to detain him, or take steps to transfer the suspect together with the documents and evidence to a public prosecutor within 48 hours after the person of the suspect was subjected to restraints, when he believes it necessary to detain him.

The Prison Law

Article 1-3

The police jail may be substituted for a prison; provided that a convicted person sentenced to imprisonment at forced labor or imprisonment without forced labor shall not be detained therein continuously for one month or more.

(Reference to paragraphs 161-167)

Juvenile Law

(Mitigation of Death Penalty and Penalty for Life)

Article 51

In case a person who is under 18 years of age at the time of his commission of an offence is to be punished with death penalty, the person shall be sentenced to penalty for life.

The Code of Criminal Procedure

Article 479

1. If a person condemned to death is in a state of insanity, the execution shall be stayed by order of the Minister of Justice.

2. If a woman condemned to death is pregnant the execution shall be stayed by order of the Minister of Justice.

3. When the execution of the death penalty has been stayed under the provision of the preceding two paragraphs, the penalty shall not be executed unless an order is given by the Minister of Justice subsequent to recovery from the state of insanity or delivery.

(The rest omitted)

(Reference to paragraphs 168-173)

The Prison Law

Article 15

The prison inmate may be placed in solitary confinement, except if he is deemed unfit for such treatment because of his mental or physical condition.

Article 19

In case there is a fear of escape of an inmate or of his committing violence or suicide, or in case an inmate is outside the prison, instruments of restraint may be used.

The Prison Law Enforcement Regulations

Article 47

Prisoners considered necessary to be isolated from others for security shall be placed under solitary confinement.

Article 48

The instruments of restraint shall be of the following four kinds:

(a) Straight Jacket;

(b) Gag;

(c) Handcuff;

(d) Arresting rope.

Article 49

1. No restraining devices shall be used without the order of the warden, provided that this shall not apply in case of emergency.

2. In the case of the proviso to the preceding paragraph, the use of devices shall immediately be reported to the warden.

(Reference to paragraphs 174-178)

Regulations for Treatment of Detainees

Article 18

1. When a detainee commits an act that falls under any one of the following items or attempts to do so, or colludes, incites, abets, or assists such an act, the director, etc. may isolate the detainee from other detainees for a determined period. In such case, however, the director, etc. shall immediately cease the isolation when it became unnecessary regardless of the determined period:

(a) To escape, commit an act of violence, damage property, or commit any other acts that violate punitive laws and orders;

(b) To rebel against or obstruct execution of duties by an official;

(c) To commit suicide or harm oneself.

2. In a case prescribed in the preceding paragraph, when there is no time to get the order of the director, etc., an Immigration Control Officer may isolate the detainee from other detainees on his/her own judgment.

3. In case of implementing the isolation prescribed in the preceding paragraph, the Immigration Control Officer shall immediately report it to the director, etc.

(Reference to paragraphs 179-183)

Regulations for Treatment of Detainees

Article 19

4. The director, etc. (Director of the Immigration Center or of a Regional Immigration Bureau) may give an order to an Immigration Control Officer to use to the minimum necessary extent a restraining device on an inmate who might commit any of the following acts when it is considered that there is no other way to prevent such attempt. When there is no time to get the order of the director, etc., an Immigration Control Officer may make a decision himself to use a restraining device:

(a) To escape;

(b) To harm himself/herself or others;

(c) To damage the facilities, equipment, and other articles in the Immigration Center, etc.

(Reference to paragraph 184)

Article 20

1. The restraining devices shall be the following four types:

(a) Type I handcuff;

(b) Type II handcuff;

(c) Type I arresting rope;

(d) Type II arresting rope.

The Prison Law

Article 15

The prison inmate may be placed in solitary confinement, except if he is deemed unfit for such treatment because of his mental or physical condition.

The Prison Law Enforcement Regulation

Article 47

Prisoners considered necessary to be isolated from others for security shall be placed under solitary confinement.

Article 27

The period of solitary confinement shall not exceed 6 months; provided that in case its special extension is required, the renewal of the period may be effected every 3 months.

(Reference to paragraph 185-186)

附件十七

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COMPILATION OF GUIDELINES ON THE FORM AND CONTENT OF REPORTS TO BE SUBMITTED BY STATES PARTIES TO THE INTERNATIONAL HUMAN RIGHTS TREATIES

Report of the Secretary-General

In its resolutions 52/118 and 53/138, the General Assembly requested the Secretary-General to compile in a single volume the guidelines regarding the form and content of reports to be submitted by States parties that have been issued by the Human Rights Committee, the Committee on Economic, Social and Cultural Rights, the Committee on the Elimination of Discrimination against Women, the Committee on the Elimination of Racial Discrimination, the Committee on the Rights of the Child and the Committee against Torture. This compilation was prepared pursuant to that request and is being updated on a regular basis. In addition to the guidelines issued by the above bodies, the updated compilation contains guidelines for reports to be submitted to the Committee on Migrant Workers, and harmonized guidelines on reporting under the international human rights treaties, including guidelines on a common core document.

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Chapter I

HARMONIZED GUIDELINES ON REPORTING UNDER THE INTERNATIONAL HUMAN RIGHTS TREATIES, INCLUDING GUIDELINES ON A CORE DOCUMENT AND TREATY-SPECIFIC DOCUMENTS*

Purpose of guidelines

1. These guidelines are intended to guide States parties in fulfilling their reporting obligations under:

- Article 40 of the International Covenant on Civil and Political Rights, reporting to the Human Rights Committee (CCPR)
- Articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights, reporting to the Committee on Economic, Social and Cultural Rights (CESCR)
- Article 9 of the International Convention on the Elimination of All Forms of Racial Discrimination, reporting to the Committee on the Elimination of Racial Discrimination (CERD)
- Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women, reporting to the Committee on the Elimination of Discrimination Against Women (CEDAW)
- Article 19 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment, reporting to the Committee Against Torture (CAT)
- Article 44 of the Convention on the Rights of the Child, reporting to the Committee on the Rights of the Child (CRC)
- Article 73 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, reporting to the Committee on Migrant Workers (CMW)

These guidelines do not apply to initial reports prepared by States under article 8 of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict and article 12 of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, although States may wish to consider the information provided in those reports when preparing their reports for the treaty bodies.

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* Contained in document HRI/MC/2006/3, issued on 10 May 2006.

2. States parties to each of these human rights treaties undertake, in accordance with the provisions (reproduced in Appendix 1), to submit to the relevant treaty body initial and periodic reports on the measures, including legislative, judicial, administrative or other measures, which they have adopted in order to achieve the enjoyment of the rights recognized in the treaty.

3. Reports presented in accordance with the present harmonized guidelines will enable each treaty body and State party to obtain a complete picture of the implementation of the relevant treaties, set within the wider context of the State's international human rights obligations, and provide a uniform framework within which each committee, in collaboration with the other treaty bodies, can work.

4. The harmonized guidelines aim at strengthening the capacity of States to fulfil their reporting obligations in a timely and effective manner, including the avoidance of unnecessary duplication of information. They also aim at improving the effectiveness of the treaty monitoring system by:

(a) Facilitating a consistent approach by all committees in considering the reports presented to them;

(b) Helping each committee to consider the situation regarding human rights in every State party on an equal basis; and

(c) Reducing the need for a committee to request supplementary information before considering a report.

5. Where considered appropriate, and in accordance with the provisions of their respective treaties, each treaty body may request additional information from States parties for the purpose of fulfilling its mandate to review the implementation of the treaty.

6. The harmonized guidelines are divided into three sections. Sections I and II apply to all reports being prepared for submission to any of the treaty bodies, and offer general guidance on the recommended approach to the reporting process and the recommended form of reports, respectively. Section III provides guidance to States parties on the contents of reports, i.e. the common core document to be submitted to all treaty bodies and the treaty-specific document to be submitted to each treaty body.

I. THE REPORTING PROCESS

Purpose of reporting

7. The reporting system as described in these guidelines is intended to provide a coherent framework within which States can meet their reporting obligations under all of the international human rights treaties to which they are a party through a coordinated and streamlined process.

Commitment to treaties

8. The reporting process constitutes an essential element in the continuing commitment of a State to respect, protect and fulfil the rights set out in the treaties to which it is party. This

commitment should be viewed within the wider context of the obligation of all States to promote respect for the rights and freedoms, set out in the Universal Declaration of Human Rights and international human rights instruments, by measures, national and international, to secure their universal and effective recognition and observance.

Review of the implementation of human rights at the national level

9. States parties should see the process of preparing their reports for the treaty bodies not only as an aspect of the fulfilment of their international obligations, but also as an opportunity to take stock of the state of human rights protection within their jurisdiction for the purpose of policy planning and implementation. The report preparation process thus offers an occasion for each State party to:

(a) Conduct a comprehensive review of the measures it has taken to harmonize national law and policy with the provisions of the relevant international human rights treaties to which it is a party;

(b) Monitor progress made in promoting the enjoyment of the rights set forth in the treaties in the context of the promotion of human rights in general;

(c) Identify problems and shortcomings in its approach to the implementation of the treaties; and

(d) Plan and develop appropriate policies to achieve these goals.

10. The reporting process should encourage and facilitate, at the national level, public scrutiny of government policies and constructive engagement with relevant actors of civil society conducted in a spirit of cooperation and mutual respect, with the aim of advancing the enjoyment by all of the rights protected by the relevant convention.

Basis for constructive dialogue at the international level

11. At the international level, the reporting process creates a basis for constructive dialogue between States and the treaty bodies. The treaty bodies, in providing these guidelines, wish to emphasize their supportive role in fostering effective national implementation of the international human rights instruments.

Collection of data and drafting of reports

12. All States are parties to at least one of the main international human rights treaties the implementation of which is monitored by independent treaty bodies (see paragraph 1), and more than seventy-five per cent are party to four or more. As a consequence, all States have reporting obligations to fulfil and should benefit from adopting a coordinated approach to their reporting for each respective treaty body.

13. States should consider setting up an appropriate institutional framework for the preparation of their reports. These institutional structures-which could include an inter-ministerial drafting committee and/or focal points on reporting within each relevant government department-could

support all of the State's reporting obligations under the international human rights instruments and, as appropriate, related international treaties (for example, Conventions of the International Labour Organization and the United Nations Educational, Scientific and Cultural Organization), and could provide an effective mechanism to coordinate follow-up to the concluding observations of the treaty bodies. Such structures should allow for the involvement of sub-national levels of governance where these exist and could be established on a permanent basis.

14. Institutional structures of this nature could also support States in meeting other reporting commitments, for example to follow up on international conferences and summits, monitor implementation of the Millennium Development Goals, etc. Much of the information collected and collated for such reports may be useful in the preparation of States' reports to the treaty bodies.

15. These institutional structures should develop an efficient system for the collection (from the relevant ministries and government statistical offices) of all statistical and other data relevant to the implementation of human rights, in a comprehensive and continuous manner. States can benefit from technical assistance from the Office of the United Nations High Commissioner for Human Rights (OHCHR) in collaboration with the Division for the Advancement of Women (DAW), and from relevant United Nations agencies.

Periodicity

16. In accordance with the terms of the relevant treaty, each State party undertakes to submit an initial report on the measures in place or taken to give effect to that treaty's provisions within a specified period after the treaty's entry into force for the reporting State. Thereafter, States parties are required to submit further reports periodically, in accordance with the provisions of each treaty, on the progress made during the reporting period. The periodicity of reports varies from treaty to treaty.

17. Reports under the revised reporting system will consist of two parts: the common core document and the treaty-specific document. In accordance with the different periodicity requirements of treaties, submission of these reports under different treaties may not be due at the same time. However, States could coordinate the preparation of their reports in consultation with the relevant treaty bodies with a view to submitting their reports not only in a timely manner, but with as little time lag between the different reports as possible. This will ensure that States receive the full benefit of submitting information required by several treaty bodies in a common core document.

18. States should keep their common core documents current. States should endeavour to update the common core document whenever they submit a treaty-specific document. If no update is considered necessary, this should be stated in the treaty-specific document.

II. THE FORM OF REPORTS

19. Information which a State considers relevant to assisting the treaty bodies in understanding the situation in the country should be presented in a concise and structured way. Although it is

understood that some States have complex constitutional arrangements which need to be reflected in their reports, reports should not be of excessive length. If possible, common core documents should not exceed 60-80 pages, initial treaty-specific documents should not exceed 60 pages, and subsequent periodic documents should be limited to 40 pages. Pages should be formatted for A4-size paper, with 1.5 line spacing, and text set in 12 point Times New Roman type. Reports should be submitted in electronic form (on diskette, CD-ROM or by electronic mail), accompanied by a printed paper copy.

20. States may wish to submit separately copies of the principal legislative, judicial, administrative and other texts referred to in the reports, where these are available in a working language of the relevant committee. These texts will not be reproduced for general distribution, but will be made available to the relevant committee for consultation.

21. Reports should contain a full explanation of all abbreviations used in the text, especially when referring to national institutions, organizations, laws, etc., that are not likely to be readily understood outside of the State party.

22. Reports must be submitted in one of the official languages of the United Nations (Arabic, Chinese, English, French, Russian or Spanish).

23. Reports should be comprehensible and accurate when submitted to the Secretary-General. In the interests of efficiency, reports submitted by States whose official language is one of the official languages of the United Nations will not necessarily be edited by the Secretariat. Reports submitted by States whose official language is not one of the official languages of the United Nations may be edited by the Secretariat. Reports which, upon receipt, are found to be manifestly incomplete or require significant editing may be returned to the State for modification before being officially accepted by the Secretary-General.

III. THE CONTENT OF REPORTS

General

24. Both the common core document and the treaty-specific document form an integral part of each State's reports. Reports should contain information sufficient to provide each respective treaty body with a comprehensive understanding of the implementation of the relevant treaty by the State.

25. Reports should elaborate both the *de jure* and the *de facto* situation with regard to the implementation of the provisions of the treaties to which States are a party. Reports should not be confined to lists or descriptions of legal instruments adopted in the country concerned in recent years, but should indicate how those legal instruments are reflected in the actual political, economic, social and cultural realities and general conditions existing in the country.

26. Reports should provide relevant statistical data, disaggregated by sex, age,[1] and population groups, which may be presented together in tables annexed to the report. Such information should allow comparison over time and should indicate data sources. States should endeavour to analyze this information insofar as it is relevant to the implementation of treaty obligations.

27. The common core document should contain information of a general and factual nature relating to the implementation of the treaties to which the reporting State is party and which may be of relevance to all or several treaty bodies. A treaty body may request that the common core document be updated if it considers that the information it contains is out of date. Updates may be submitted in the form of an addendum to the existing common core document or a new revised version, depending on the extent of the changes which need to be incorporated.

28. States preparing a common core document for the first time and which have already submitted reports to any of the treaty bodies may wish to integrate into the common core document information contained in those reports, insofar as it remains current.

29. The treaty-specific document should contain information relating to the implementation of the treaty which the relevant committee monitors. In particular, recent developments in law and practice affecting the enjoyment of rights under that treaty should be included, as well as - except for initial treaty-specific documents - a response to issues raised by the committee in its concluding observations or its general comments.

30. Each document may be submitted separately - though States are referred to consider paragraph 17 - the procedure for reporting will be as follows:

(a) The State party submits the common core document to the Secretary-General which is then transmitted to each of the treaty bodies monitoring the implementation of the treaties to which the State is party;

(b) The State party submits treaty-specific documents to the Secretary-General which are then transmitted to the specific treaty bodies concerned;

(c) Each treaty body considers the State party's report on the treaty the implementation of which it monitors, consisting of the common core document and the treaty-specific document, according to its own procedures.

FIRST PART OF REPORTS: THE COMMON CORE DOCUMENT

31. For convenience, the common core document should be structured using the headings contained in sections 1-3 in accordance with the guidelines. The common core document should include the following information.

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[1] Including with respect to children (persons under the age of 18 years).

1. General information about the reporting State

32. This section should present general factual and statistical information relevant to assisting the committees in understanding the political, legal, social, economic and cultural context in which human rights are implemented in the State concerned.

A. Demographic, economic, social and cultural characteristics of the State

33. States may provide background information on the national characteristics of the country. States should refrain from providing detailed historical narratives; it is sufficient to provide a concise account of key historical facts where these are necessary to assist the treaty bodies in understanding the context of the State's implementation of the treaties.

34. States should provide accurate information about the main demographic and ethnic characteristics of the country and its population, taking into account the list of indicators contained in the section "Demographic indicators" in Appendix 3.

35. States should provide accurate information on the standard of living of the different segments of the population, taking into account the list of indicators contained in the section "Social, Economic and Cultural Indicators" in Appendix 3.

B. Constitutional, political and legal structure of the State

36. States should provide a description of the constitutional structure and the political and legal framework of the State, including the type of government, the electoral system, and the organization of the executive, legislative and judicial organs. States are also encouraged to provide information about any systems of customary or religious law that may exist in the State.

37. States should provide information on the principal system through which non-governmental organizations are recognized as such, including through registration where registration laws and procedures are in place, granting of non-profit status for tax purposes, or other comparable means.

38. States should provide information on the administration of justice. They should include accurate information on crime figures, including inter alia, information indicating the profile of perpetrators and victims of crime and sentences passed and carried out.

39. Information submitted in respect of paragraphs 36 to 38 should take into account the list of indicators contained in the section "Indicators on the Political System" and "Indicators on Crime and the Administration of Justice" in Appendix 3.

2. General framework for the protection and promotion of human rights

C. Acceptance of international human rights norms

40. States should provide information on the status of all of the main international human rights treaties. Information may be organized in the form of a chart or table. It should include information on:

(a) *Ratification of main international human rights instruments.* Information on the status of ratification of the main international human rights treaties and optional protocols listed in Appendix 2, Section A, indicating if and when the State envisages acceding to those instruments to which it is not yet a party or which it has signed but has not yet ratified.

(i) Information on the acceptance of treaty amendments;

(ii) Information on the acceptance of optional procedures.

(b) *Reservations and declarations.* Where a State has entered reservations to any of the treaties to which it is a party, the common core document should provide information on:

(i) The nature and scope of such reservations;

(ii) The reason why such reservations were considered to be necessary and have been maintained;

(iii) The precise effect of each reservation in terms of national law and policy;

(iv) In the spirit of the World Conference on Human Rights and other similar conferences which encouraged States to consider reviewing any reservation with a view to withdrawing it,[2] any plans to limit the effect of reservations and ultimately withdraw them within a specific time frame.

(c) *Derogations, restrictions, or limitations.* Where States have restricted, limited or derogated from the provisions of any of the treaties to which they are a party, the common core document should include information explaining the scope of such derogations, restrictions or limitations; the circumstances justifying them; and the timeframe envisaged for their withdrawal.

41. States may wish to include information relating to their acceptance of other international norms related to human rights, especially where this information is directly relevant to each State's implementation of the provisions of the main international human rights treaties. In particular, the attention of States is drawn to the following relevant sources of information:

(a) *Ratification of other United Nations human rights and related treaties.* States may indicate whether they are party to any of the other United Nations conventions related to human rights listed in Appendix 2, Section B;

(b) *Ratification of other relevant international conventions.* States are encouraged to indicate whether they are party to the international conventions relevant to human rights protection and humanitarian law listed in Appendix 2, Sections C to F;

(c) *Ratification of regional human rights conventions.* States may indicate whether they are party to any regional human rights conventions.

D. Legal framework for the protection of human rights at the national level

42. States should set out the specific legal context for the protection of human rights in the country. In particular, information should be provided on:

[2] See A/CONF.157/23, Part II, paras. 5 and 46.

(a) Whether, and if so, which of the rights referred to in the various human rights instruments are protected either in the constitution, a bill of rights, a basic law, or other national legislation and, if so, what provisions are made for derogations, restrictions or limitations and in what circumstances;

(b) Whether human rights treaties have been incorporated into the national legal system;

(c) Which judicial, administrative or other authorities have competence affecting human rights matters and the extent of such competence;

(d) Whether the provisions of the various human rights instruments can be, and have been, invoked before, or directly enforced by, the courts, other tribunals or administrative authorities;

(e) What remedies are available to an individual who claims that any of his or her rights have been violated, and whether any systems of reparation, compensation and rehabilitation exist for victims;

(f) Whether any institutions or national machinery exist with responsibility for overseeing the implementation of human rights, including machinery for the advancement of women or intended to address the particular situations of children, the elderly, persons with disabilities, those belonging to minorities, indigenous peoples, refugees and internally-displaced persons, migrant workers, non-authorized aliens, non-citizens or others, the mandate of such institutions, the human and financial resources available to them, and whether policies and mechanisms for gender mainstreaming and corrective measures exist;

(g) Whether the State accepts the jurisdiction of any regional human rights court or other mechanism and, if so, the nature and progress of any recent or pending cases.

E. Framework within which human rights are promoted at the national level

43. States should set out the efforts made to promote respect for all human rights in the State. Such promotion may encompass actions by government officials, legislatures, local assemblies, national human rights institutions, etc, together with the role played by the relevant actors in civil society. States may offer information on measures such as dissemination of information, education and training, publicity, and allocation of budgetary resources. In describing these in the common core document, attention should be paid to the accessibility of promotional materials and human rights instruments, including their availability in all relevant national, local, minority or indigenous languages. In particular, States should provide information on:

(a) *National and regional parliaments and assemblies*. The role and activities of the national parliament and sub-national, regional, provincial or municipal assemblies or authorities in promoting and protecting human rights, including those contained in international human rights treaties;

(b) *National human rights institutions.* Any institutions created for the protection and promotion of human rights at the national level, including those with specific responsibilities

with regard to gender equality for all, race relations and children's rights, their precise mandate, composition, financial resources and activities, and whether such institutions are independent;[3]

(c) *Dissemination of human rights instruments.* The extent to which each of the international human rights instruments to which the State is party have been translated, published and disseminated within the country;

(d) *Raising human rights awareness among public officials and other professionals.* Any measures taken to ensure adequate education and training in human rights for those with responsibilities for the implementation of the law, such as Government officials, police, immigration officers, prosecutors, judges, lawyers, prison officers, members of the armed forces, border guards, as well as teachers, medical doctors, health workers and social workers;

(e) *Promotion of human rights awareness through educational programmes and Government-sponsored public information*. Any measures taken to promote respect for human rights through education and training, including Government-sponsored public information campaigns. Details should be provided on the extent of human rights education within schools, (public or private, secular or religious) at various levels;

(f) *Promotion of human rights awareness through the mass media.* The role of the mass information media, such as the press, radio, television and internet, in publicizing and disseminating information about human rights, including the international human rights instruments;

(g) *Role of civil society, including non-governmental organizations.* The extent of the participation of civil society, in particular non-governmental organizations, in the promotion and protection of human rights within the country, and the steps taken by the Government to encourage and promote the development of a civil society with a view to ensuring the promotion and protection of human rights;

(h) *Budget allocations and trends.* Where available, budget allocations and budgetary trends, as percentages of national or regional budgets and gross domestic product (GDP) and disaggregated by sex and age for the implementation of the State's human rights obligations and the results of any relevant budget impact assessments;

(i) *Development cooperation and assistance.* The extent to which the State benefits from development cooperation or other assistance which supports human rights promotion, including budgetary allocations. Information on the extent to which the State provides development cooperation or assistance to other States which supports the promotion of human rights in those countries.

[3] See the "Principles relating to the status of national human rights institutions" (Paris Principles) E/1992/22 (A/RES/48/134).

44. The reporting State may indicate any factors or difficulties of a general nature affecting or impeding the implementation of international human rights obligations at the national level.

F. Reporting process at the national level

45. States should provide information on the process by which both parts of their reports (common core document and treaty-specific documents) are prepared, including on:

(a) The existence of a national coordinating structure for reporting under the treaties;

(b) Participation of departments, institutions and officials at national, regional and local levels of governance and, where appropriate, at federal and provincial levels;

(c) Whether reports are made available to or examined by the national legislature prior to submission to the treaty monitoring bodies;

(d) The nature of the participation of entities outside of government or relevant independent bodies at the various stages of the report preparation process or follow-up to it, including monitoring, public debate on draft reports, translation, dissemination or publication, or other activities explaining the report or concluding observations of the treaty bodies. Such participants may include human rights institutions (national or otherwise), non-governmental organizations, or other relevant actors of civil society, including those persons and groups most affected by the relevant provisions of the treaties;

(e) Events, such as parliamentary debates and governmental conferences, workshops, seminars, radio or television broadcasts, and publications issued explaining the report, or any other similar events undertaken during the reporting period.

Follow-up to concluding observations of human rights treaty bodies

46. States should provide general information in the common core document on the measures and procedures adopted or foreseen, if any, to ensure effective follow-up to and wide dissemination of the concluding observations or recommendations issued by any of the treaty bodies after consideration of the State's reports, including any parliamentary hearing or media coverage.

G. Other related human rights information

47. States are invited to consider, where appropriate, the following additional sources of information for inclusion in their common core document.

Follow-up to international conferences

48. States may provide general information on follow-up to the declarations, recommendations, and commitments adopted at world conferences and subsequent reviews insofar as these have a bearing on the human rights situation in the country.

49. Where such conferences include reporting procedures (eg, the Millennium Summit), States may integrate the relevant information contained in those reports in the common core document.

3. Information on non-discrimination and equality and effective remedies

Non-discrimination and equality

50. States should provide in their common core document general information on the implementation of its obligations to guarantee equality before the law and equal protection of the law for everyone within their jurisdiction, in accordance with the relevant international human rights instruments, including information on the legal and institutional structures.

51. The common core document should include general factual information on measures taken to eliminate discrimination in all its forms and on all grounds, including multiple discrimination, in the enjoyment of civil, political, economic, social and cultural, rights, and on measures to promote formal and substantive equality for everyone within the jurisdiction of the State.

52. It should contain general information on whether the principle of non-discrimination is included as a general binding principle in a basic law, the constitution, a bill of rights or in any other domestic legislation and the definition of and legal grounds for prohibiting discrimination (if not already provided in para. 42(a)). Information should also be provided on whether the legal system allows for or mandates special measures to guarantee full and equal enjoyment of human rights.

53. Information should be provided on steps taken to ensure that discrimination in all its forms and on all grounds is prevented and combated in practice, including information on the manner and the extent to which the provisions of the existing penal laws, as applied by the courts, effectively implement the State parties' obligations under the principal human rights instruments.

54. States should provide general information regarding the human rights situation of persons belonging to specific vulnerable groups in the population.

55. States should provide information on specific measures adopted to reduce economic, social and geographical disparities, including between rural and urban areas, to prevent discrimination, as well as situations of multiple discrimination, against the persons belonging to the most disadvantaged groups.

56. States should provide general information on the measures, including educational programmes and public information campaigns, that have been taken to prevent and eliminate negative attitudes to, and prejudice against, individuals and groups which prevent them from fully enjoying their human rights.

57. States should provide general information on the implementation of their international obligations to guarantee equality before the law and equal protection of the law for everyone within their jurisdiction, in accordance with the international human rights instruments.

58. States should provide general information on the adoption of temporary special measures in specific circumstances to help accelerate progress towards equality. Where such measures

have been adopted, States should indicate the expected timeframe for the attainment of the goal of equality of opportunity and treatment and the withdrawal of such measures.

Effective remedies

59. States should include general information in the common core document on the nature and scope of remedies provided in their domestic legislation against violations of human rights and whether victims have effective access to these remedies (if not already provided in para. 42(e)).

SECOND PART OF REPORTS: THE TREATY-SPECIFIC DOCUMENT

60. The treaty-specific document should contain all information relating to States' implementation of each specific treaty which is relevant principally to the committee charged with monitoring the implementation of that treaty. This part of the report allows States to focus their attention on the specific issues relating to the implementation of the respective Convention. The treaty-specific document should include the information requested by the relevant committee in its most current treaty-specific guidelines. The treaty-specific document should include, where applicable, information on the steps taken to address issues raised by the committee in its concluding observations on the State party's previous report.

Appendix 1

MANDATE OF TREATY BODIES TO REQUEST REPORTS FROM STATES PARTIES

International Covenant on Economic, Social and Cultural Rights

Article 16

1. The States Parties to the present Covenant undertake to submit in conformity with this part of the Covenant reports on the measures which they have adopted and the progress made in achieving the observance of the rights recognized herein.

2. (a) All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit copies to the Economic and Social Council for consideration in accordance with the provisions of the present Covenant; […]

Article 17

1. The States Parties to the present Covenant shall furnish their reports in stages, in accordance with a programme to be established by the Economic and Social Council within one year of the entry into force of the present Covenant after consultation with the States Parties and the specialized agencies concerned.

2. Reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Covenant.

3. Where relevant information has previously been furnished to the United Nations or to any specialized agency by any State Party to the present Covenant, it will not be necessary to reproduce that information, but a precise reference to the information so furnished will suffice.

International Covenant on Civil and Political Rights

Article 40

1. The States Parties to the present Covenant undertake to submit reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made in the enjoyment of those rights:

(a) Within one year of the entry into force of the present Covenant for the States Parties concerned;

(b) Thereafter whenever the Committee so requests.

2. All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit them to the Committee for consideration. Reports shall indicate the factors and difficulties, if any, affecting the implementation of the present Covenant.

3. The Secretary-General of the United Nations may, after consultation with the Committee, transmit to the specialized agencies concerned copies of such parts of the reports as may fall within their field of competence.

4. The Committee shall study the reports submitted by the States Parties to the present Covenant. It shall transmit its reports, and such general comments as it may consider appropriate, to the States Parties. The Committee may also transmit to the Economic and Social Council these comments along with the copies of the reports it has received from States Parties to the present Covenant.

5. The States Parties to the present Covenant may submit to the Committee observations on any comments that may be made in accordance with paragraph 4 of this article.

International Convention on the Elimination of All Forms of Racial Discrimination

Article 9

1. States Parties undertake to submit to the Secretary-General of the United Nations, for consideration by the Committee, a report on the legislative, judicial, administrative or other measures which they have adopted and which give effect to the provisions of this Convention:

(a) Within one year after the entry into force of the Convention for the State concerned; and

(b) Thereafter every two years and whenever the Committee so requests. The Committee may request further information from the States Parties.

[…]

Convention on the Elimination of All Forms of Discrimination against Women

Article 18

1. States Parties undertake to submit to the Secretary-General of the United Nations, for consideration by the Committee, a report on the legislative, judicial, administrative or other measures which they have adopted to give effect to the provisions of the present Convention and on the progress made in this respect:

(a) Within one year after the entry into force for the State concerned;

(b) Thereafter at least every four years and further whenever the Committee so requests.

2. Reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Convention.

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

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. […]

Convention on the Rights of the Child

Article 44

1. States Parties undertake to submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made on the enjoyment of those rights:

(a) Within two years of the entry into force of the Convention for the State Party concerned;

(b) Thereafter every five years.

2. Reports made under the present article shall indicate factors and difficulties, if any, affecting the degree of fulfilment of the obligations under the present Convention. Reports shall also contain sufficient information to provide the Committee with a comprehensive understanding of the implementation of the Convention in the country concerned.

3. A State Party which has submitted a comprehensive initial report to the Committee need not, in its subsequent reports submitted in accordance with paragraph 1 (b) of the present article, repeat basic information previously provided.

4. The Committee may request from States Parties further information relevant to the implementation of the Convention.

5. The Committee shall submit to the General Assembly, through the Economic and Social Council, every two years, reports on its activities.

6. States Parties shall make their reports widely available to the public in their own countries.

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

Article 73

1. States Parties undertake to submit to the Secretary-General of the United Nations for consideration by the Committee a report on the legislative, judicial, administrative and other measures they have taken to give effect to the provisions of the present Convention:

(a) Within one year after the entry into force of the Convention for the State Party concerned;

(b) Thereafter every five years and whenever the Committee so requests.

2. Reports prepared under the present article shall also indicate factors and difficulties, if any, affecting the implementation of the Convention and shall include information on the characteristics of migration flows in which the State Party concerned is involved.

3. The Committee shall decide any further guidelines applicable to the content of the reports.

4. States Parties shall make their reports widely available to the public in their own countries.

Article 74

1. The Committee shall examine the reports submitted by each State Party and shall transmit such comments as it may consider appropriate to the State Party concerned. This State Party may submit to the Committee observations on any comment made by the Committee in accordance with the present article. The Committee may request supplementary information from States Parties when considering these reports. […]

Appendix 2

PARTIAL LIST OF MAJOR INTERNATIONAL CONVENTIONS RELATING TO ISSUES OF HUMAN RIGHTS

A. Main international human rights conventions and protocols

International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966
International Covenant on Civil and Political Rights (ICCPR), 1966
International Convention on the Elimination of All Forms of Racial Discrimination, (ICERD), 1965
Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), 1984
Convention on the Rights of the Child (CRC), 1989
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, (ICMW), 1990
Optional Protocol to the CRC on the involvement of children in armed conflict, 2000
Optional Protocol to the CRC on the sale of children, child prostitution, and child pornography, 2000
Optional Protocol to ICCPR, concerning individual petition, 1966
Second Optional Protocol to ICCPR, concerning abolition of the death penalty, 1989
Optional Protocol to CEDAW, concerning individual complaints and inquiry procedures, 1999
Optional Protocol to CAT, concerning regular visits by national and international institutions to places of detention, 2002

B. Other United Nations human rights and related conventions

Convention on the Prevention and Punishment of the Crime of Genocide, 1948
Slavery Convention, 1926 as amended 1955
Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 1949
Convention relating to the Status of Refugees, 1951, and its 1967 Protocol
Convention relating to the Status of Stateless Persons, 1954
Convention on the Reduction of Statelessness, 1961
Rome Statute of the International Criminal Court, 1998
United Nations Convention against Transnational Organized Crime, 2000, and its Protocols against the smuggling of migrants by land, sea and air, and to prevent, suppress and punish trafficking in persons, especially women and children

C. Conventions of the International Labour Organization

Weekly Rest (Industry) Convention, 1921 (No. 14)
Forced or Compulsory Labour Convention, 1930 (No. 29)
Labour Inspection Convention, 1947 (No. 81)
Migration for Employment Recommendation, 1949 (No. 86)
Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)

Migration for Employment Convention, 1949 (No. 97)
Right to Organize and Collective Bargaining Convention, 1949 (No. 98)
Equal Remuneration Convention 1951 (No. 100)
Social Security (Minimum Standards) Convention, 1952 (No. 102)
Abolition of Forced Labour Convention, 1957 (No. 105)
Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106)
Discrimination (Employment and Occupation) Convention, 1958 (No. 111)
Equality of Treatment (Social Security) Convention, 1962 (No. 118)
Employment Policy Convention, 1964 (No. 122)
Labour Inspection (Agriculture) Convention, 1969 (No. 129)
Minimum Wage-Fixing Convention, 1970 (No. 131)
Holidays with Pay Convention (Revised), 1970 (No. 132)
Minimum Age Convention, 1973 (No. 138)
Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)
Migrant Workers Recommendation, 1975 (No. 151)
Labour Relations (Public Service) Convention, 1978 (No. 151)
Occupational Safety and Health Convention, 1981 (No. 155)
Equal Opportunities and Equal Treatment for Men and Women Workers: Workers with Family Responsibilities Convention, 1981 (No. 156)
Indigenous and Tribal Peoples in Independent Countries Convention, 1989 (No. 169)
Worst Forms of Child Labour Convention, 1999 (No. 182)
Maternity Protection Convention, 2000 (No. 183)

D. Conventions of the United Nations Educational, Scientific and Cultural Organization

Convention against Discrimination in Education, 1960

E. Conventions of the Hague Conference on Private International Law

Convention relating to the settlement of the conflicts between the law of nationality and the law of domicile, 1955
Convention on the law applicable to maintenance obligations towards children, 1956
Convention concerning the recognition and enforcement of decisions relating to maintenance obligations towards children, 1958
Convention concerning the powers of authorities and the law applicable in respect of the protection of minors, 1961
Convention on Jurisdiction, Applicable Law and Recognition of Decrees Relating to Adoptions, 1965
Convention on the Law Applicable to Maintenance Obligations, 1973
Convention on the Recognition of Divorces and Legal Separations, 1970
Convention on the Recognition and Enforcement of Decisions relating to Maintenance Obligations, 1973
Convention on the Civil Aspects of International Child Abduction, 1973
Convention on Celebration and Recognition of the Validity of Marriages, 1978
Convention on the Law Applicable to Matrimonial Property Regimes, 1978
Convention on International Access to Justice, 1980

Convention on the Law Applicable to Succession to the Estates of Deceased Persons, 1989
Convention on Protection of Children and Co-operation in respect of Intercountry Adoption, 1993
Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children, 1996
Convention on the International Protection of Adults, 2002

F. Geneva Conventions and other treaties on international humanitarian law

Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 1949
Geneva Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, 1949
Geneva Convention (III) relative to the Treatment of Prisoners of War, 1949
Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War, 1949
Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 1977
Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 1977
Ottawa Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and On Their Destruction, 1987

Appendix 3

INDICATORS FOR ASSESSING THE IMPLEMENTATION OF HUMAN RIGHTS

Demographic indicators

Reporting States should provide accurate information, where available, about the main demographic characteristics and trends of its population, including the following. The information should cover at least the last five years and be disaggregated by sex, age, and main population groups.

Population size
Population growth rate
Population density
Population distribution by mother tongue, religion and ethnicity, in rural and urban areas

Age-composition
Dependency ratio (percentage of population under 15 and over 65 years of age)
Statistics on births and deaths
Life expectancy
Fertility rate
Average household size
Proportion of single-parent households and households headed by women
Proportion of population in rural and urban areas

Social, economic and cultural indicators

Reporting States should provide information reflecting the standard of living, including the following, covering at least the last five years and disaggregated by sex, age, and main population groups:

Share of (household) consumption expenditures on food, housing, health and education
Proportion of population below the national poverty line
Proportion of population below the minimum level of dietary consumption
Gini coefficient (relating to distribution of income or household consumption expenditure)
Prevalence of underweight children under five years of age
Infant and maternal mortality rates
Percentage of women of child/bearing age using contraception or whose partner is using contraception
Medical terminations of pregnancy as a proportion of live births
Rates of infection of HIV/AIDS and major communicable diseases
Prevalence of major communicable and non-communicable diseases
Ten major causes of death

Net enrolment ratio in primary and secondary education
Attendance and drop-out rates in primary and secondary education
Teacher-student ratio in public funded schools

Literacy rates
Unemployment rate
Employment by major sectors of economic activity, including break-down between the formal and informal sectors
Work participation rates
Proportion of work force registered with trade unions

Per capita income
Gross domestic product (GDP)
Annual growth rate
Gross National Income (GNI)
Consumer Price Index (CPI)
Social expenditures (eg., food, housing, health, education, social protection, etc.) as proportion of total public expenditure and GDP
External and domestic public debt

Proportion of international assistance provided in relation to the State budget by sector and in relation to GNI

Indicators on the political system

Reporting States should provide information on the following, covering at least the last five years and disaggregated by sex, age, and main population groups:

Number of recognized political parties at the national level
Proportion of population eligible to vote
Proportion of non-citizen adult population registered to vote
Number of complaints on the conduct of elections registered, by type of alleged irregularity
Population coverage and breakdown of ownership of major media channels (electronic, print, audio, etc.)

Number of recognized non-governmental organizations*
Distribution of legislative seats by party
Percentage of women in parliament
Proportions of national and sub-national elections held within the schedule laid out by law
Average voter turnouts in the national and sub-national elections by administrative unit (eg, states or provinces, districts, municipalities and villages)

* In accordance with the reporting State's system of granting recognition to non-governmental organizations, information on which is requested is paragraph 37.

Indicators on crime and the administration of justice

Reporting States should provide information on the following, covering at least the last five years and disaggregated by sex, age, and main population groups:

Incidence of violent death and life threatening crimes reported per 100,000 persons
Number of persons and rate (per 100,000 persons) who were arrested/brought before a court\convicted\sentenced\incarcerated for violent or other serious crimes (such as homicide, robbery, assault and trafficking)
Number of reported cases of sexually motivated violence (such as rape, female genital mutilation, honour crimes and acid attacks)
Maximum and average time of pre-trial detention
Prison population with breakdown by offence and length of sentence
Incidence of death in custody
Number of persons executed under the death penalty per year
Average backlog of cases per judge at different levels of the judicial system
Number of police\security personnel per 100,000 persons
Number of prosecutors and judges per 100,000 persons
Share of public expenditure on police\security and judiciary
Of the accused and detained persons who apply for free legal aid, the proportion of those who receive it
Proportion of victims compensated after adjudication, by type of crime

Chapter II

COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS*

GUIDELINES ON TREATY-SPECIFIC DOCUMENTS TO BE SUBMITTED BY STATES PARTIES UNDER ARTICLES 16 AND 17 OF THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS[1]

Note by the Secretary-General

1. In accordance with article 17 of the International Covenant on Economic, Social and Cultural Rights, the Economic and Social Council, by its resolution 1988 (LX) of 11 May 1976, established a programme under which the States parties to the Covenant would furnish in stages the reports referred to in article 16 of the Covenant and the Secretary-General, at the Council's request, subsequently drew up an appropriate set of general guidelines. In response to the introduction of a new reporting cycle, the Committee on Economic, Social and Cultural Rights, at its fifth session, held from 26 November to 14 December 1990, adopted a set of revised general guidelines which replaced the original guidelines.

2. The purpose of reporting guidelines is to advise States parties on the form and content of their reports, so as to facilitate the preparation of reports and ensure that reports are comprehensive and presented in a uniform manner by States parties.

3. The Committee has decided to replace the revised general guidelines (E/C.12/1991/1) by the present guidelines to take into account the harmonized guidelines on reporting under the international human rights treaties (HRI/GEN/2/Rev.5), as well as the evolving practice of the Committee in relation to the application of the Covenant, as reflected in its concluding observations, general comments and statements.

4. The text of the guidelines on treaty-specific documents to be submitted by States parties under articles 16 and 17 of the Covenant is contained in the annex to the present document.

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* Adopted by the Committee on Economic, Social and Cultural Rights at its 49th meeting (forty-first session) on 18 November 2008, taking into consideration the guidelines on a common core document and treaty-specific documents, as contained in the harmonized guidelines (HRI/GEN/2/Rev.5).

[1] Adopted by the Committee on Economic, Social and Cultural Rights at its 49th meeting (forty first session) on 18 November 2008, taking into consideration the guidelines on a common core document and treaty-specific documents, as contained in the harmonized guidelines (HRI/GEN/2/Rev.5).

Annex

GUIDELINES ON TREATY-SPECIFIC DOCUMENTS TO BE SUBMITTED BY STATES PARTIES UNDER ARTICLES 16 AND 17 OF THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

A. The revised reporting system and organization of information to be included in the common core document and in the treaty-specific document submitted to the Committee on Economic, Social and Cultural Rights

1. State reports submitted under the harmonized guidelines on reporting under the international human rights treaties consist of two parts: a common core document and treaty-specific documents. The common core document should contain general information about the reporting State, the general framework for the protection and promotion of human rights, as well as information on non-discrimination and equality, and effective remedies, in accordance with the harmonized guidelines.

2. The treaty-specific document submitted to the Committee on Economic, Social and Cultural Rights should not repeat information included in the common core document or merely list or describe the legislation adopted by the State party. Rather, it should contain specific information relating to the implementation, in law and in fact, of articles 1 to 15 of the Covenant, taking into account the general comments of the Committee, as well as information on recent developments in law and practice affecting the full realization of the rights recognized in the Covenant. It should also contain information on the concrete measures taken towards that goal, and the progress achieved, including - except for initial treaty-specific documents - information on the steps taken to address issues raised by the Committee in the concluding observations on the State party's previous report, or in its general comments.

3. In relation to the rights recognized in the Covenant, the treaty-specific document should indicate:

(a) Whether the State party has adopted a national framework law, policies and strategies for the implementation of each Covenant right, identifying the resources available for that purpose and the most cost-effective ways of using such resources;

(b) Any mechanisms in place to monitor progress towards the full realization of the Covenant rights, including identification of indicators and related national benchmarks in relation to each Covenant right, in addition to the information provided under appendix 3 of the harmonized guidelines and taking into account the framework and tables of illustrative indicators outlined by the Office of the United Nations High Commissioner for Human Rights (OHCHR) (HRI/MC/2008/3);

(c) Mechanisms in place to ensure that a State party's obligations under the Covenant are fully taken into account in its actions as a member of international organizations and

international financial institutions, as well as when negotiating and ratifying international agreements, in order to ensure that economic, social and cultural rights, particularly of the most disadvantaged and marginalized groups, are not undermined;

(d) The incorporation and direct applicability of each Covenant right in the domestic legal order, with reference to specific examples of relevant case law;

(e) The judicial and other appropriate remedies in place enabling victims to obtain redress in case their Covenant rights have been violated;

(f) Structural or other significant obstacles arising from factors beyond the State party's control which impede the full realization of the Covenant rights;

(g) Statistical data on the enjoyment of each Covenant right, disaggregated by age, gender, ethnic origin, urban/rural population and other relevant status, on an annual comparative basis over the past five years.

4. The treaty-specific document should be accompanied by a sufficient number of copies in one of the working languages of the Committee (English, French, Russian and Spanish) of all other supplementary documentation which the State party may wish to have distributed to all members of the Committee to facilitate the consideration of the report.

5. If a State party is party to any of the ILO Conventions listed in appendix 2 of the harmonized guidelines, or to any other relevant conventions of United Nations specialized agencies, and has already submitted reports to the supervisory committee(s) concerned that are relevant to any of the rights recognized in the Covenant, it should append the respective parts of those reports rather than repeat the information in the treaty-specific document. However, all matters which arise under the Covenant and are not fully covered in those reports should be dealt with in the present treaty-specific document.

6. Periodic reports should address directly the suggestions and recommendations of the previous concluding observations.

B. Part of the treaty-specific document submitted to the Committee relating to general provisions of the Covenant

Article 1 of the Covenant

7. In what manner has the right to self-determination been implemented?

8. Indicate the ways and means by which the State party recognizes and protects the rights of indigenous communities, if any, to ownership of the lands and territories which they traditionally occupy or use as traditional sources of livelihood.[a] Also indicate the extent to which indigenous

[a] General comment 12, para. 13; general comment 14, para. 27.

and local communities are duly consulted, and whether their prior informed consent is sought, in any decision-making processes affecting their rights and interests under the Covenant, and provide examples.

Article 2

9. Indicate the impact of international economic and technical assistance and co-operation, whether received or provided by the State party, on the full realization of each of the Covenant rights in the State party or, as the case may be, in other countries, especially developing countries.

10. In addition to information provided in the common core document (paras. 50 to 58 of the harmonized guidelines), provide disaggregated and comparative statistical data on the effectiveness of specific anti-discrimination measures and the progress achieved towards ensuring equal enjoyment of each of the Covenant rights by all, in particular the disadvantaged and marginalized individuals and groups.

11. If the State party is a developing country, provide information on any restrictions imposed under article 2, paragraph 3, of the Covenant, on the enjoyment by non-nationals of the economic rights recognized in the Covenant.

Article 3

12. What steps have been taken to eliminate direct and indirect discrimination based on sex in relation to each of the rights recognized in the Covenant, and to ensure that men and women enjoy these rights on a basis of equality, in law and in fact?

13. Indicate whether the State party has adopted gender equality legislation and the progress achieved in the implementation of such legislation. Also indicate whether any gender-based assessment of the impact of legislation and policies has been undertaken to overcome traditional cultural stereotypes that continue to negatively affect the equal enjoyment of economic, social and cultural rights by men and women.

Articles 4 and 5

14. See paragraph 40 (c) of the harmonized guidelines on a common core document.

C. Part of the report relating to specific rights

Article 6

15. Provide information on effective measures taken to reduce unemployment including on:

(a) The impact of targeted employment programmes in place to achieve full and productive employment among persons and groups considered particularly disadvantaged, in particular women, young persons, older persons, persons with disabilities and ethnic minorities, in rural and deprived urban areas; and

(b) The impact of measures to facilitate re-employment of workers, especially women and long-term unemployed workers, who are made redundant as a result of privatization, downsizing and economic restructuring of public and private enterprises.

16. Provide information on work in the informal economy in the State party, including its extent and the sectors with a large percentage of informal workers, and the measures taken to enable them to move out of the informal economy, as well as on measures taken to ensure access by informal workers, in particular older workers and women, to basic services and social protection.

17. Describe the legal safeguards in place to protect workers from unfair dismissal.

18. Indicate what technical and vocational training programmes are in place in the State party and their impact on empowering the workforce, especially disadvantaged and marginalized individuals, to enter or re-enter the labour market.

Article 7

19. Indicate whether a national minimum wage has been legally established, and specify the categories of workers to which it applies, as well as the number of persons covered by each category. If any category of workers is not covered by the national minimum wage, explain the reasons why. In addition, indicate:

(a) Whether a system of indexation and regular adjustment is in place to ensure that the minimum wage is periodically reviewed and determined at a level sufficient to provide all workers, including those who are not covered by a collective agreement, and their families, with an adequate standard of living; and

(b) Any alternative mechanisms in place, in the absence of a national minimum wage, to ensure that all workers receive wages sufficient to provide an adequate standard of living for themselves and their families.

20. Provide information on working conditions for all workers, including overtime, paid and unpaid leave and on the measures taken to reconcile professional, family and personal life.

21. Indicate the impact of the measures taken to ensure that women with the same qualifications do not work in lower-paid positions than men, in accordance with the principle of equal pay for work of equal value.

22. Indicate whether the State party has adopted and effectively implemented legislation that specifically criminalizes sexual harassment in the workplace, and describe the mechanisms to monitor such implementation. Also indicate the number of registered cases, the sanctions imposed on perpetrators and the measures taken to compensate and assist victims of sexual harassment.

23. Indicate what legal, administrative or other provisions have been taken to ensure safety and healthy conditions at the workplace and their enforcement in practice.

Article 8

24. Indicate:

(a) What substantive or formal conditions, if any, must be fulfilled to form or join the trade union of one's choice. Also indicate whether there are any restrictions on the exercise of the right to form or join trade unions by workers, and how they have been applied in practice; and

(b) How trade unions are guaranteed independence to organize their activities without interference, as well as to federate and join international trade union organizations, and the legal and de facto restrictions, if any, on the exercise of this right.

25. Provide information on collective bargaining mechanisms in the State party and their impact on labour rights.

26. Indicate:

(a) Whether the right to strike is constitutionally or legally guaranteed and to what extent such guarantees are observed in practice;

(b) Any restrictions on the right to strike in the public and private sectors and their application in practice; and

(c) The definition of essential services for which strikes may be prohibited.

Article 9

27. Indicate whether there is universal social security coverage in the State party. Also indicate which of the following branches of social security are covered: health care, sickness, old age, unemployment, employment injury, family and child support, maternity, disability, and survivors and orphans.[b]

28. Indicate whether there are legally established and periodically reviewed minimum amounts of benefits, including pensions, and whether they are sufficient to ensure an adequate standard of living for recipients and their families.[c]

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[b] General comment 19, para. 12 (a) to (i).

[c] Ibid., paras. 22 and 59 (a).

29. Indicate whether the social security system also guarantees non-contributory social assistance allowances for disadvantaged and marginalized individuals and families who are not covered by the contributory schemes.[d]

30. Indicate whether the public social security schemes described above are supplemented by any private schemes or informal arrangements.[e] If so, describe these schemes and arrangements and their inter-relationship with the public schemes.

31. Indicate if there is equal enjoyment by men and women of pension rights as regards the age of access,[f] qualifying periods and amounts.

32. Provide information on social security programmes, including informal schemes, to protect workers in the informal economy, in particular in relation to health care, maternity and old age.[g]

33. Indicate to what extent non-nationals benefit from non-contributory schemes for income support, access to health care and family support.[h]

Article 10

34. Indicate how the State party guarantees the right of men and, particularly, women to enter into marriage with their full and free consent and to establish a family.

35. Provide information on the availability, coverage and funding of social services to support families, as well as on legal provisions in place to ensure equal opportunities for all families, in particular poor families, families from ethnic minorities, and single parent families, in relation to:

(a) Child care;[i] and

(b) Social services that enable older persons and persons with disabilities to remain in their normal living environment for as long as possible[j] and to receive adequate health and social care when they are dependent.

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[d] Ibid., paras. 4 (b) and 50.

[e] Ibid., para. 5.

[f] General comment 16, para. 26 and general comment 19, para. 32.

[g] General comment 19, paras. 16 and 34.

[h] Ibid., para. 37.

[i] Ibid., paras. 18 and 28; general comment 5, para. 30; general comment 6, para. 31.

[j] General comment 19, paras. 15, 18 and 20; general comment 5, para. 30; general comment 6, para. 31.

36. Provide information on the system of maternity protection in the State party, including working conditions and prohibition of dismissal during pregnancy. In particular, indicate:

(a) Whether it also applies to women involved in atypical work[k] and women who are not covered by work-related maternity benefits;

(b) The duration of paid maternity leave before and after confinement and the cash, medical and other support measures provided during pregnancy, confinement and after childbirth;[l] and

(c) Whether paternity leave is granted to men, and parental leave to men and women.[m]

37. Indicate the measures of protection and assistance taken on behalf of children and young persons, including:

(a) Age limits below which the paid employment of children in different occupations is prohibited under the law of the State party and the application of criminal law provisions in place punishing the employment of under-aged children and the use of forced labour of children;[n]

(b) Whether any national survey has been undertaken in the State party on the nature and extent of child labour and whether there is a national action plan to combat child labour; and

(c) The impact of measures taken to protect children against work in hazardous conditions harmful to their health and against exposure to various forms of violence and exploitation.[o]

38. Provide information on the legislation and mechanisms in place to protect the economic, social and cultural rights of older persons in the State party, in particular on the implementation of laws and programmes against abuse, abandon, negligence and ill-treatment of older persons.

39. Provide information on the economic and social rights of asylum seekers and their families and on legislation and mechanisms in place for family reunification of migrants.

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[k] General comment 19, para. 19.

[l] Idem.

[m] General comment 16, para. 26; see also draft general comment 20, paras. 10 (b) (vii) and 16.

[n] General comment 18, para. 24.

[o] Ibid., para. 15.

40. Indicate:

(a) Whether there is legislation in the State party that specifically criminalizes acts of domestic violence, in particular violence against women and children,[p] including marital rape and sexual abuse of women and children and the number of registered cases, as well as the sanctions imposed on perpetrators;

(b) Whether there is a national action plan to combat domestic violence, and the measures in place to support and rehabilitate victims;[q] and

(c) Public awareness-raising measures and training for law enforcement officials and other involved professionals on the criminal nature of acts of domestic violence.

41. Indicate:

(a) Whether there is legislation in the State party that specifically criminalizes trafficking in persons and the mechanisms in place to monitor its strict enforcement. Also indicate the number of reported trafficking cases from, to and through the State party, as well as the sentences imposed on perpetrators; and

(b) Whether there is a national plan of action to combat trafficking and the measures taken to support victims, including medical, social and legal assistance.

Article 11

A. The right to the continuous improvement of living conditions

42. Indicate whether the State party has defined a national poverty line and on what basis it is calculated. In the absence of a poverty line, what mechanisms are used for measuring and monitoring the incidence and depth of poverty?

43. Indicate:

(a) Whether the State party has adopted a national action plan or strategy to combat poverty that fully integrates economic, social and cultural rights[r] and whether specific mechanisms and procedures are in place to monitor the implementation of the plan or strategy and evaluate the progress achieved in effectively combating poverty; and

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[p] General comment 16, para. 27; general comment 14, paras. 21 and 51.

[q] General comment 16, para. 27.

[r] See Committee's Statement on poverty and the International Covenant on Economic, Social and Cultural Rights (2001).

(b) Targeted policies and programmes to combat poverty, including among women and children, and the economic and social exclusion of individuals and families belonging to the disadvantaged and marginalized groups, in particular ethnic minorities, indigenous peoples and those living in rural and deprived urban areas.

B. The right to adequate food

44. Provide information on the measures taken to ensure the availability of affordable food in quantity and quality sufficient to satisfy the dietary needs of everyone, free from adverse substances, and culturally acceptable.[s]

45. Indicate the measures taken to disseminate knowledge of the principles of nutrition, including of healthy diets.

46. Indicate the measures taken to promote equality of access by the disadvantaged and marginalized individuals and groups, including landless peasants and persons belonging to minorities, to food, land, credit, natural resources and technology for food production.[t]

47. Indicate whether the State party has adopted or envisages the adoption, within a specified time frame, of the 'Voluntary Guidelines to support the progressive realization of the right to adequate food in the context of national food security'.[u] If not, explain the reasons why.

C. The right to water

48. Indicate:

(a) The measures taken to ensure adequate and affordable access to water that is sufficient and safe for personal and domestic uses for everyone;[v]

(b) The percentage of households without access to sufficient and safe water in the dwelling or within its immediate vicinity, disaggregated by region and urban/rural population[w] and the measures taken to improve the situation;

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[s] General comment 12, para. 8.

[t] General comment 15, para. 7.

[u] Adopted by the 127th session of the Council of the Food and Agriculture Organization of the United Nations, November 2004.

[v] General comment 15, paras. 12 (a) and 37 (a); general comment 14, para. 43 (c).

[w] General comment 15, paras. 12 (c) (i) and 37 (c).

(c) The measures taken to ensure that water services, whether privately or publicly provided, are affordable for everyone;[x] and

(d) The system in place to monitor the quality of water.[y]

49. Provide information on education concerning the hygienic use of water, protection of water sources and methods to minimize water wastage.[z]

D. The right to adequate housing

50. Indicate whether a national survey on homelessness and inadequate housing has been undertaken, as well as its findings, in particular the number of individuals and families who are homeless or inadequately housed and without access to basic infrastructures and services such as water, heating, waste disposal, sanitation, and electricity, as well as the number of persons living in over-crowded or structurally unsafe housing.

51. Indicate:

(a) The measures taken to ensure access to adequate and affordable housing with legal security of tenure for everyone, irrespective of income or access to economic resources;

(b) The impact of social housing measures, such as the provision of low-cost social housing units for disadvantaged and marginalized individuals and families, in particular in rural and deprived urban areas, whether there are waiting lists for obtaining such housing and the average length of waiting time;

(c) Measures taken to make housing accessible and habitable for persons with special housing needs, such as families with children, older persons[aa] and persons with disabilities;[bb]

52. Indicate the legislative and other measures in place to ensure that housing is not built on polluted sites or in immediate proximity of pollution sources that threaten the health of inhabitants.[cc]

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[x] Ibid., paras. 24 and 27.

[y] Ibid., para. 12 (b).

[z] Ibid., para. 25.

[aa] GCGeneral comment 6, para. 33.

[bb] Idem.

[cc] General comment 4, para. 8 (f).

53. Indicate whether there are any disadvantaged and marginalized individuals and groups, such as ethnic minorities, who are particularly affected by forced evictions and the measures taken to ensure that no form of discrimination is involved whenever evictions take place.[dd]

54. Indicate the number of persons and families evicted within the last five years and the legal provisions defining the circumstances in which evictions may take place and the rights of tenants to security of tenure and protection from eviction.[ee]

Article 12

55. Indicate whether the State party has adopted a national health policy and whether a national health system with universal access to primary health care is in place.

56. Provide information on the measures taken to ensure:

(a) That preventive, curative, and rehabilitative health facilities, goods and services are within safe reach and physically accessible for everyone, including older persons and persons with disabilities;[ff]

(b) That the costs of health-care services and health insurance, whether privately or publicly provided, are affordable for everyone, including for socially disadvantaged groups;[gg]

(c) That drugs and medical equipment are scientifically approved and have not expired or become ineffective; and

(d) Adequate training of health personnel, including on health and human rights.[hh]

57. Provide information on the measures taken:

(a) To improve child and maternal health, as well as sexual and reproductive health services and programmes, including through education, awareness-raising, and access to family planning, pre- and post-natal care and emergency obstetric services, in particular in rural areas and for women belonging to disadvantaged and marginalized groups;[ii]

[dd] General comment 7, para. 10.

[ee] Ibid., paras. 9, 13-15, 16 and 19; see also Basic principles and guidelines on development-based evictions and displacement (A/HRC/4/18, annex 1).

[ff] General comment 14, para. 12 (b).

[gg] Ibid., paras. 12 (b), 19 and 36.

[hh] Ibid., paras. 12 (d) and 44 (e).

[ii] Ibid., paras. 14, 21-23 and 44 (a).

(b) To prevent, treat and control diseases linked to water and ensure access to adequate sanitation;[jj]

(c) To implement and enhance immunization programmes and other strategies of infectious disease control;[kk]

(d) To prevent the abuse of alcohol and tobacco, and the use of illicit drugs and other harmful substances, in particular among children and adolescents, ensure adequate treatment and rehabilitation of drug users, and support their families;[ll]

(e) To prevent HIV/AIDS and other sexually transmitted diseases, educate high-risk groups, children and adolescents as well as the general public on their transmission, provide support to persons with HIV/AIDS and their families, and reduce social stigma and discrimination;[mm]

(f) To ensure affordable access to essential drugs, as defined by the WHO, including anti-retroviral medicines and medicines for chronic diseases;[nn] and

(g) To ensure adequate treatment and care in psychiatric facilities for mental health patients, as well as periodic review and effective judicial control of confinement.

Article 13

58. Indicate to what extent the form and substance of education in the State party are directed towards the aims and objectives identified in article 13, paragraph 1,[oo] and whether school curricula include education on economic, social and cultural rights.

59. Indicate how the obligation to provide primary education that is compulsory and available free for all is implemented in the State party, in particular:

(a) The level or grade until which education is compulsory and free for all;

(b) Any direct costs such as school fees, as well as the measures taken to eliminate them; and

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[jj] General comment 15, paras. 8 and 37 (i).

[kk] General comment 14, paras. 16 and 44 (b)

[ll] Ibid., para. 16.

[mm] Ibid., para. 16.

[nn] Ibid., para. 43 (d).

[oo] General comment 13, paras. 4-5 and 49.

(c) Any indirect costs (e.g. expenses for school books, uniforms, transport, special fees such as exam fees, contributions to district education boards, etc.) and the measures taken to alleviate the impact of such costs on children from poorer households.

60. Indicate the measures taken to make secondary education in its different forms, including technical and vocational education, generally available and accessible to all, including:

(a) Concrete steps taken by the State party towards progressively achieving free secondary education;[pp] and

(b) The availability of technical and vocational education, and whether it enables students to acquire knowledge and skills which contribute to their personal development, self-reliance and employability.[qq]

61. Indicate the measures taken to make higher education equally accessible to all and without discrimination, on the basis of capacity, and the concrete steps taken towards progressively achieving free higher education.[rr]

62. Indicate the measures taken to promote literacy, as well as adult and continuing education, in a life-long perspective.

63. Indicate whether minority and indigenous children have adequate opportunities to receive instruction in or of their native language and the steps taken to prevent lower educational standards for these children,[ss] their segregation in special classes, and their exclusion from mainstream education.

64. Indicate the measures taken to ensure the same admission criteria for boys and girls at all levels of education,[tt] and to raise awareness among parents, teachers and decision-makers on the value of educating girls.[uu]

65. Indicate the measures taken to reduce the drop-out rates, at the primary and secondary levels, for children and young persons, in particular girls, children from ethnic minorities, indigenous communities and poorer households, as well as migrant, refugee and internally displaced children.

[pp] Ibid., para. 14.

[qq] Ibid., paras. 15-16.

[rr] Ibid., para. 20.

[ss] Ibid., para. 30.

[tt] General comment 16, para. 30.

[uu] Idem.

Article 14

66. If compulsory and free primary education is not currently enjoyed in the State party, provide information on the required plan of action[vv] for the progressive implementation, within a reasonable number of years fixed in this plan, of this right. Also indicate any particular difficulties encountered, in the adoption and implementation of this plan of action, as well as the measures taken to overcome these difficulties.

Article 15

67. Provide information on the institutional infrastructure to promote popular participation in, and access to, cultural life, especially at the community level, including in rural and deprived urban areas. In this regard, indicate the measures taken to promote broad participation in, and access to, cultural goods, institutions and activities, including measures taken:

(a) To ensure that access to concerts, theatre, cinema, sport events and other cultural activities is affordable for all segments of the population;

(b) To enhance access to the cultural heritage of mankind, including through new information technologies such as the Internet;

(c) To encourage participation in cultural life by children, including children from poorer families, and migrant or refugee children; and

(d) To eliminate physical, social and communication barriers preventing older persons and persons with disabilities from fully participating in cultural life.[ww]

68. Indicate the measures taken to protect cultural diversity, promote awareness of the cultural heritage of ethnic, religious or linguistic minorities and of indigenous communities, and create favourable conditions for them to preserve, develop, express and disseminate their identity, history, culture, language, traditions and customs.

69. Provide information on school and professional education in the field of culture and the arts.

70. Indicate:

(a) The measures taken to ensure affordable access to the benefits of scientific progress and its applications for everyone, including disadvantaged and marginalized individuals and groups; and

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[vv] In general comment 11, paragraph 11, the Committee asks States parties to submit their plans of action as an integral part of the reports required under the Covenant.

[ww] General comment 5, paras. 36-38; general comment 6, paras. 39-41.

(b) The measures taken to prevent the use of scientific and technical progress for purposes which are contrary to the enjoyment of human dignity and human rights.

71. Indicate the measures taken to ensure the effective protection of the moral and material interests of creators,[xx] in particular:

(a) To protect the right of authors to be recognized as the creators and for the protection of the integrity of their scientific, literary and artistic productions;[yy]

(b) To protect the basic material interests of authors resulting from their productions, which enable them to enjoy an adequate standard of living;[zz]

(c) To ensure the protection of the moral and material interests of indigenous peoples relating to their cultural heritage and traditional knowledge;[aaa] and

(d) To strike an adequate balance between the effective protection of the moral and material interests of authors and the State party's obligations in relation to the other rights recognized in the Covenant.[bbb]

72. Indicate the legal provisions in place to protect the freedom indispensable for scientific research and creative activity and any restrictions on the exercise of this freedom.

73. Indicate the measures taken for the conservation, development and diffusion of science and culture and to encourage and develop international contacts and co-operation in the scientific and cultural fields.

[xx] General comment 17, paras. 39 (a).

[yy] Ibid., para. 39 (b).

[zz] Ibid., para. 39 (c).

[aaa] Ibid., para. 32.

[bbb] Ibid., para. 39 (e).

Chapter III

HUMAN RIGHTS COMMITTEE*

A. Introduction

A.1 These guidelines replace all earlier versions issued by the Human Rights Committee, which may now be disregarded (CCPR/C/19/Rev.1 of 26 August 1982, CCPR/C/5/Rev.2 of 28 April 1995 and Annex VIII to the Committee's 1998 report to the General Assembly (A/53/40)); the Committee's general comment 2 (13) of 1981 is also superseded. The present guidelines do not affect the Committee's procedure in relation to any special reports which may be requested.

A.2 These guidelines will be effective for all reports to be presented after 31 December 1999.

A.3 The guidelines should be followed by States parties in the preparation of initial and all subsequent periodic reports.

A.4 Compliance with these guidelines will reduce the need for the Committee to request further information when it proceeds to consider a report; it will also help the Committee to consider the situation regarding human rights in every State party on an equal basis.

B. Framework of the Covenant concerning reports

B.1 Every State party, upon ratifying the Covenant, undertakes, under article 40, to submit, within a year of the Covenant's entry into force for that State, an initial report on the measures it has adopted which give effect to the rights recognized in the Covenant ("Covenant rights") and progress made in their enjoyment; and thereafter periodic reports whenever the Committee so requests.

B.2 For subsequent periodic reports the Committee has adopted a practice of stating, at the end of its concluding observations, a date by which the following periodic report should be submitted.

C. General guidance for contents of all reports

C.1 *The articles and the Committee's general comments*. The terms of the articles in Parts I, II and III of the Covenant must, together with general comments issued by the Committee on any such article, be taken into account in preparing the report.

C.2 *Reservations and declarations*. Any reservation to or declaration as to any article of the Covenant by the State party should be explained and its continued maintenance justified.

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* Contained in document CCPR/C/66/GUI/Rev.2 entitled *Consolidated guidelines for State reports under the International Covenant on Civil and Political Rights*. The guidelines were adopted during the sixty-sixth session (July 1999) of the Human Rights Committee and amended during its seventieth session (October 2000).

C.3 *Derogations*. The date, extent and effect of, and procedures for imposing and for lifting any derogation under article 4 should be fully explained in relation to every article of the Covenant affected by the derogation.

C.4 *Factors and difficulties*. Article 40 of the Covenant requires that factors and difficulties, if any, affecting the implementation of the Covenant should be indicated. A report should explain the nature and extent of, and reasons for every such factor and difficulty, if any such exist; and should give details of the steps being taken to overcome these.

C.5 *Restrictions or limitations*. Certain articles of the Covenant permit some defined restrictions or limitations on rights. Where these exist, their nature and extent should be set out.

C.6 *Data and statistics*. A report should include sufficient data and statistics to enable the Committee to assess progress in the enjoyment of Covenant rights, relevant to any appropriate article.

C.7 *Article 3*. The situation regarding the equal enjoyment of Covenant rights by men and women should be specifically addressed.

C.8 *Core document*. Where the State party has already prepared a core document, this will be available to the Committee: it should be updated as necessary in the report, particularly as regards "General legal framework" and "Information and publicity" (HRI/CORE/1, see chapter 1 of the present document).

D. The initial report

D.1 General.

This report is the State party's first opportunity to present to the Committee the extent to which its laws and practices comply with the Covenant which it has ratified. The report should:

- Establish the constitutional and legal framework for the implementation of Covenant rights
- Explain the legal and practical measures adopted to give effect to Covenant rights
- Demonstrate the progress made in ensuring enjoyment of Covenant rights by the people within the State party and subject to its jurisdiction

D.2 Contents of the report.

D.2.1 A State party should deal specifically with every article in Parts I, II and III of the Covenant; legal norms should be described, but that is not sufficient: the factual situation and the practical availability, effect and implementation of remedies for violation of Covenant rights should be explained and exemplified.

D.2.2 The report should explain:

How article 2 of the Covenant is applied, setting out the principal legal measures which the State party has taken to give effect to Covenant rights; and the range of remedies available to persons whose rights may have been violated;

Whether the Covenant is incorporated into domestic law in such a manner as to be directly applicable;

If not, whether its provisions can be invoked before and given effect to by courts, tribunals and administrative authorities;

Whether the Covenant rights are guaranteed in a Constitution or other laws and to what extent; or

Whether Covenant rights must be enacted or reflected in domestic law by legislation so as to be enforceable.

D.2.3 Information should be given about the judicial, administrative and other competent authorities having jurisdiction to secure Covenant rights.

D.2.4 The report should include information about any national or official institution or machinery which exercises responsibility in implementing Covenant rights or in responding to complaints of violations of such rights, and give examples of their activities in this respect.

D.3 Annexes to the report.

D.3.1 The report should be accompanied by copies of the relevant principal constitutional, legislative and other texts which guarantee and provide remedies in relation to Covenant rights. Such texts will not be copied or translated, but will be available to members of the Committee; it is important that the report itself contains sufficient quotations from or summaries of these texts so as to ensure that the report is clear and comprehensible without reference to the annexes.

E. Subsequent periodic reports

E.1 There should be two starting points for such reports:

The concluding observations (particularly "Concerns" and "Recommendations") on the previous report and summary records of the Committee's consideration (insofar as these exist);

An examination by the State party of the progress made towards and the current situation concerning the enjoyment of Covenant rights by persons within its territory or jurisdiction.

E.2 Periodic reports should be structured so as to follow the articles of the Covenant. If there is nothing new to report under any article it should be so stated.[1]

[1] E.2 in fine: adopted at the seventieth session.

E.3 The State party should refer again to the guidance on initial reports and on annexes, insofar as these may also apply to a periodic report.

E.4 There may be circumstances where the following matters should be addressed, so as to elaborate a periodic report:

There may have occurred a fundamental change in the State party's political and legal approach affecting Covenant rights: in such a case a full article-by-article report may be required;

New legal or administrative measures may have been introduced which deserve the annexure of texts and judicial or other decisions.

F. Optional protocols

F.1 If the State party has ratified the Optional Protocol and the Committee has issued Views entailing provision of a remedy or expressing any other concern, relating to a communication received under that Protocol, a report should (unless the matter has been dealt with in a previous report) include information about the steps taken to provide a remedy, or meet such a concern, and to ensure that any circumstance thus criticized does not recur.

F.2 If the State party has abolished the death penalty the situation relating to the Second Optional Protocol should be explained.

G. The Committee's consideration of reports

G.1 General

The Committee intends its consideration of a report to take the form of a constructive discussion with the delegation, the aim of which is to improve the situation pertaining to Covenant rights in the State.

G.2 List of issues

On the basis of all information at its disposal, the Committee will supply in advance a list of issues which will form the basic agenda for consideration of the report. The delegation should come prepared to address the list of issues and to respond to further questions from members, with such updated information as may be necessary; and to do so within the time allocated for consideration of the report.

G.3 The State party's delegation

The Committee wishes to ensure that it is able effectively to perform its functions under article 40 and that the reporting State party should obtain the maximum benefit from the reporting requirement. The State party's delegation should, therefore, include persons who, through their knowledge of and competence to explain the human rights situation in that State, are able to respond to the Committee's written and oral questions and comments concerning the whole range of Covenant rights.

G.4 Concluding observations

Shortly after the consideration of the report, the Committee will publish its concluding observations on the report and the ensuing discussion with the delegation. These concluding observations will be included in the Committee's annual report to the General Assembly; the Committee expects the State party to disseminate these conclusions, in all appropriate languages, with a view to public information and discussion.

G.5 Extra information.

G.5.1 Following the submission of any report, subsequent revisions or updating may only be submitted:

(a) No later than 10 weeks prior to the date set for the Committee's consideration of the report (the minimum time required by the United Nations translation services); or

(b) After that date, provided that the text has been translated by the State party into the working languages of the Committee (currently English, Spanish and French).

If one or other of these courses is not complied with, the Committee will not be able to take an addendum into account. This, however, does not apply to updated annexes or statistics.

G.5.2 In the course of the consideration of a report, the Committee may request or the delegation may offer further information; the secretariat will keep a note of such matters which should be dealt with in the next report.

G.6.1 The Committee may, in a case where there has been a long-term failure by a State party, despite reminders, to submit an initial or a periodic report, announce its intention to examine the extent of compliance with Covenant rights in that State party at a specified future session. Prior to that session it will transmit to the State party appropriate material in its possession. The State party may send a delegation to the specified session, which may contribute to the Committee's discussion, but in any event the Committee may issue provisional concluding observations and set a date for the submission by the State party of a report of a nature to be specified.

G.6.2 In a case where a State party, having submitted a report which has been scheduled at a session for examination, informs the Committee, at a time when it is impossible to schedule the examination of another State party report, that its delegation will not attend the session, the Committee may examine the report on the basis of the list of issues either at that session or at

another to be specified. In the absence of a delegation, it may decide either to reach provisional concluding observations, or to consider the report and other material and follow the course in paragraph G.4 above.[2]

H. Format of the report

The distribution of a report, and thus its availability for consideration by the Committee, will be greatly facilitated if:

(a) The paragraphs are sequentially numbered;

(b) The document is written on A4-sized paper;

(c) Is single-spaced; and

(d) Allows reproduction by photo-offset (is on one side only of each sheet of paper).

[2] G.6.1 and 2: adopted during the seventieth session.

Chapter IV

COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Guidelines for the CERD-Specific document to be submitted by States parties under article 9, paragraph 1, of the Convention

Adopted by the Committee at its seventy-first session (30 July-17 August 2007) taking into consideration the guidelines on a common core document and treaty specific documents, as contained in the harmonized guidelines on reporting under the international human rights treaties (HRI/MC/2006/3 and Corr.1).

A. Introduction

1. In accordance with article 9, paragraph 1, of the International Convention on the Elimination of All Forms of Racial Discrimination (the Convention), each State party has undertaken to submit to the Secretary-General of the United Nations, for consideration by the Committee on the Elimination of Racial Discrimination (the Committee), a report on the legislative, judicial, administrative or other measures which it has adopted and which give effect to the provisions of the Convention: (a) within one year after the entry into force of the Convention for the State concerned, and (b) thereafter every two years and whenever the Committee so requests. Article 9, paragraph 1, also provides that the Committee may request further information from the States parties.

2. The purpose of the reporting guidelines is to advise States parties on the form and content of their reports, so as to ensure that reports are comprehensive and presented in a uniform manner. Compliance with the reporting guidelines will also reduce the need for the Committee to request further information under article 9 and under rule 65 of its rules of procedure.

3. States should consider the reporting process, including the process of preparation of their reports, not only as a means to ensure compliance with their international obligations, but also as an opportunity to fully comprehend the state of human rights protection within their jurisdiction for the purpose of more efficient policy planning and implementation of the Convention. Furthermore, States parties should encourage and facilitate the involvement of non-governmental organizations in the preparation of reports. Such constructive engagement on the part of non-governmental organizations will enhance the quality of reports as well as promote the enjoyment by all of the rights protected by the Convention.

4. The Committee has decided to replace its previous reporting guidelines (CERD/C/70/Rev.5) with the present document in order to take into consideration the guidelines on a common core document and treaty specific documents, as contained in the harmonized guidelines on reporting under the international human rights treaties (HRI/MC/2006/3 and Corr.1), as well as to take into account the evolving practice and interpretation of the Convention by the Committee, as reflected in its general recommendations, opinions under article 14 of the Convention, decisions and concluding observations.

B. The revised reporting system and organization of information to be included in the common core document and the CERD-specific document

5. State reports under the treaty body reporting system consist of two parts: a common core document and treaty-specific documents. The common core document should include general information about the reporting State, the general framework for the protection and promotion of human rights, as well as general information on non-discrimination and equality and effective remedies in accordance with the harmonized guidelines (HRI/MC/2006/3 and Corr.1).

6. The CERD-specific document to be submitted under article 9 of the Convention should not repeat information included in the common core document. It should contain specific information relating to the implementation of articles 1 to 7 of the Convention, taking into account the general recommendations of the Committee. The report should reflect in all its parts the actual situation as regards the practical implementation of the Convention and progress achieved. It should also contain - except for the initial CERD-specific document - a response to the concerns expressed by the Committee in its concluding observations and decisions, as well as information on implementation of its recommendations therein, taking into consideration the guidelines for follow-up on concluding observations and recommendations.

7. Furthermore, the report should provide information on machinery developed at the national level to ensure follow-up to the concluding observations of the Committee, including information on the involvement of civil society in this process (if not already included in the common core document, as requested under paragraph 46 of the harmonized guidelines).

8. Part 3 of the common core document should contain information on non-discrimination and equality and effective remedies, which are matters of particular interest for the Committee. Whereas information included in the common core document is of a general nature, information included in the CERD-specific document must be more detailed, taking into account the definition of racial discrimination provided in article 1 of the Convention. The guidelines set out in section C below provide further details.

9. In accordance with paragraph 27 of the harmonized guidelines, the Committee may request that the common core document be updated if it considers that the information it contains is out of date.

10. The ethnic characteristics of the population, including those resulting from a mixing of cultures, are of particular importance in relation to the Convention.[1] Indicators for assessing the implementation of human rights, including demographic indicators, should be provided in the common core document. If this information has not been included in the common core document, it should be provided in the CERD-specific document.

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[1] See general recommendations No. 16 (1993) concerning the application of article 9 of the Convention; No. 8 (1990) concerning the interpretation and application of article 1, paragraphs 1 and 4, of the Convention; and No. 24 (1999) concerning article 1 of the Convention.

11. Many States consider that, when conducting a census, they should not draw attention to factors like race, lest this reinforce divisions they wish to overcome or affect rules concerning the protection of personal data. If progress in eliminating discrimination based on race, colour, descent, or national or ethnic origin (hereinafter racial discrimination) is to be monitored, some indication is needed in the CERD-specific document of the number of persons who might be treated less favourably on the basis of these characteristics. States that do not collect information on these characteristics in their censuses are therefore requested to provide information on mother tongues, languages commonly spoken, or other indicators of ethnic diversity, together with any information about race, colour, descent, or national or ethnic origins derived from social surveys. In the absence of quantitative information, a qualitative description of the ethnic characteristics of the population should be supplied. States are advised and encouraged to develop appropriate methodologies for the collection of relevant information.

12. The Committee is also interested in information indicating whether groups, and if so which groups, are officially considered to be national or ethnic minorities, or indigenous peoples in the State party. It also recommends that descent-based communities, non-citizens and internally displaced persons be identified.[2]

13. If needed, the report should be accompanied by sufficient copies in one of the working languages of the Committee of all other supplementary documentation which the reporting State may wish to have distributed to all members of the Committee to facilitate the consideration of its report.

14. When reporting, if States refer the Committee to information provided either in the common core document or in any other treaty-specific document, they should indicate precisely the relevant paragraphs in which such information is provided.

15. As required in paragraph 19 of the harmonized guidelines, initial treaty-specific documents should not exceed 60 pages, and subsequent periodic documents should be limited to 40 pages.

C. Information relating to articles 1 to 7 of the Convention

16. The Committee invites States parties to incorporate in this part, under appropriate headings, the relevant extracts of the laws, regulations and judicial decisions referred to therein, as well as all other elements which they consider essential for the consideration of their reports by the Committee. The State party may, if necessary, append to the report in separate annexes all documents that it deems important for the further clarification of the report.[3]

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[2] See general recommendation No. 29 (2002) on article 1, paragraph 1, (Descent); general recommendation No. 27 (2000) on discrimination against Roma; general recommendation No. 23 (1997) on the rights of indigenous peoples and general recommendation; and No. 30 (2004) on discrimination against non-citizens.

[3] Annexes are not part of the report but are kept by the Secretariat and available for consultation.

17. States parties are also required to report to the Committee on difficulties they meet, if any, in implementing each provision of the Convention. Reports should not only focus on measures they plan to take to overcome these difficulties, but also on what has been achieved during the reporting period.

18. The Committee recommends that States parties include in their reports information on action plans or other measures taken to implement the Durban Declaration and Programme of Action at the national level.[4]

19. The information contained in the CERD-specific report should be arranged as follows:

Article 1

A. Assessment of the compliance of the definition of racial discrimination in domestic law with the definition provided in article 1, paragraph 1 of the Convention,[5] in particular:

1. Information on whether the definition of racial discrimination in domestic law encompasses discrimination based on race, colour, descent, or national or ethnic origin;

2. Information on whether direct as well as indirect forms of discrimination are included in the definition of racial discrimination in domestic law;

3. Information should be provided by the State party on its understanding of the term "public life" in article 1, paragraph 1, and on the scope of anti-discrimination law;

4. Information relating to reservations and declarations, as well as derogations, restrictions or limitations regarding the scope of the definition of racial discrimination in domestic law should be included in the common core document as required in paragraph 40 b) and c) of the harmonized guidelines.[6]

5. Information relating to the extent to which domestic law provides for differential treatment based on citizenship or immigration, taking into consideration paragraphs 2 and 3 of article 1 of the Convention, as well as general recommendation No. 30 (2004) on discrimination against non-citizens.

B. Information on whether the legal system of the State party allows or provides for special measures to secure the adequate advancement of groups and individuals protected under the

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[4] See general recommendation No. 28 (2002) on the follow-up to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance.

[5] See in particular general recommendation No. 14 (1993) on article 1, paragraph 1 of the Convention.

[6] If this information has not been included in the common core document, it should be provided in the CERD-specific document.

Convention, should be provided in the common core document as required in paragraph 52 of the harmonized guidelines. If this information has not been included in the common core document, it should be provided in the CERD-specific document.

Article 2

A. Brief description of the legal framework and general policies to eliminate racial discrimination and to give effect to the provisions of article 2, paragraphs 1 and 2, of the Convention (if not already provided in the common core document under paragraphs 50 to 58 of the harmonized guidelines).

B. Specific and detailed information on the legislative, judicial, administrative or other measures taken:

1. To give effect to the undertaking to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation;

2. To give effect to the undertaking to prohibit and bring to an end racial discrimination by any persons, groups or organizations;

3. To give effect to the undertaking not to sponsor, defend or support racial discrimination by any persons or organizations;

4. To review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists, bearing in mind information already provided under paragraph 42 of the harmonized guidelines;

5. To encourage, where appropriate, non-governmental organizations and institutions that combat racial discrimination and foster mutual understanding.

C. Information on whether a national human rights institution, created in accordance with the Paris principles (General Assembly resolution 48/134 of 20 December 1993), or other appropriate bodies, have been mandated with combating racial discrimination (if not already provided in the common core document in accordance with paragraphs 42 f) and 43 b) of the harmonized guidelines).[7]

D. Information on groups and individuals benefiting from special and concrete measures taken in the social, economic, cultural and other fields in accordance with article 2, paragraph 2, of the Convention. Furthermore, detailed information on results achieved should be provided under article 5 of the Convention.

[7] See general recommendation No. 17 (1993) on the establishment of national institutions to facilitate implementation of the Convention.

Article 3

Information on the legislative, judicial, administrative or other measures which give effect to the provisions of article 3 of the Convention, in particular:

1. Recalling general recommendation No. 19 (2002) on article 1, paragraph 1, the reference to apartheid may have been directed exclusively to South Africa, but the article as adopted prohibits all forms of racial segregation in all countries. Therefore information should be supplied on measures to prevent, prohibit and eradicate all practices of racial segregation in territories under the jurisdiction of the reporting State, in particular in cities where residential patterns may result from multiple discrimination based on low income and race, colour, descent or national or ethnic origin;[8]

2. Measures to ensure proper monitoring of all trends that can give rise to racial segregation and ghettoization, recalling that a condition of racial segregation can also arise without any initiative or direct involvement by public authorities;[9]

3. Measures to prevent and avoid as much as possible the segregation of groups and individuals protected under the Convention, including the Roma,[10] descent-based communities[11] and non-citizens,[12] in particular in the areas of education and housing.

Article 4

A. Information on the legislative, judicial, administrative or other measures which give effect to the provisions of article 4 of the Convention, bearing in mind information already provided in the common core document as requested under paragraph 53 of the harmonized guidelines, in particular on measures:

1. To give effect to the undertaking to adopt immediate measures designed to eradicate all incitement to, or acts of, racial discrimination, with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of the Convention;

2. To publicly condemn all propaganda and organizations based on ideas or theories of the superiority of one group of persons on the basis of race, colour, descent or national or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form;

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[8] See general recommendation No. 19 (1995) on article 3 of the Convention.

[9] Ibid.

[10] See general recommendation No. 27 (2000) on discrimination against Roma.

[11] See general recommendation No. 29 (2002) on article 1, paragraph 1, (Descent).

[12] See general recommendation No. 30 (2004) on discrimination against non-citizens.

3. To declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, or incitement to racial discrimination against any person or group of persons;

4. To declare an offence punishable by law all acts of violence or incitement to such acts against persons or groups of persons because of their race, colour, descent or national or ethnic origin;

5. To declare an offence punishable by law the provision of any assistance to racist activities, including the financing thereof;

6. To declare illegal and prohibit organizations, as well as organized and all other propaganda activities, which promote and incite racial discrimination, and to recognize participation in such organizations or activities as an offence punishable by law;[13]

7. To prohibit public authorities or public institutions, national or local, from promoting or inciting racial discrimination.

B. Information on whether racial motives are considered an aggravating circumstance under domestic penal legislation.[14]

C. The Committee recalls its general recommendations No. 7 (1985) relating to the implementation of article 4 and No. 15 (1993) on article 4 of the Convention in which it stresses that the provisions of article 4 are of a mandatory character. Where, however, no specific legislation has been enacted to implement article 4 of the Convention, States parties should:

1. Explain the reasons for the absence of legislation, and the difficulties they face in implementing that provision;

2. Inform the Committee of the manner and the extent to which the provisions of existing penal laws, as applied by the courts, effectively implement their obligations under that provision.[15]

D. To satisfy their obligations under article 4 of the Convention, States parties have not only to enact appropriate legislation but also to ensure that it is effectively enforced. Therefore, they should provide information concerning decisions taken by national tribunals and other State institutions regarding acts of racial discrimination, and in particular those offences dealt with in

[13] See in particular general recommendation No. 15 (1993) on article 4 of the Convention.

[14] See for example general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, para. 4.

[15] Information requested in Decision 3 (7) adopted by the Committee on 4 May 1973.

article 4 (a) and (b).[16] Statistical data should also be provided on complaints filed, prosecutions launched and sentences passed for acts prohibited under article 4 of the Convention over the reporting period, as well as a qualitative assessment of such data.[17]

Article 5

States Parties are required to report on the non-discriminatory implementation of each of the rights and freedoms referred to in article 5 of the Convention. They should provide information on the legislative, judicial, administrative or other measures taken to that effect, presented either under the right in question (with subsections devoted to the implementation of each right listed in that provision) or for the benefit of relevant groups of victims or potential victims of racial discrimination based (with subsections devoted to each relevant group).

The list of rights and freedoms, as provided in article 5, is not exhaustive. The equal enjoyment of the rights and freedoms referred to in article 5, and any similar rights, shall be protected by States parties. Such protection may be achieved in different ways, be it by the use of public institutions or through the activities of private institutions. In any case, it is the obligation of States parties to ensure the effective implementation of the Convention and to report thereon under article 9 of the Convention. To the extent that private institutions influence the exercise of rights or the availability of opportunities, the concerned State party must ensure that the result has neither the purpose nor the effect of creating or perpetuating racial discrimination.[18]

When special measures have been adopted for the benefit of specific groups and individuals in accordance with article 2, paragraph 2, of the Convention, detailed information on results achieved should be provided under that section.

I. INFORMATION GROUPED UNDER PARTICULAR RIGHTS

Requests for information listed below are only indicative and not limitative

A. The right to equal treatment before tribunals and all other organs administering justice. In particular, information should be provided on measures taken to:

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[16] See general recommendation No. 7 (1985) relating to the implementation of article 4.

[17] See general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system.

[18] See general recommendation No. 20 (1996) on article 5 of the Convention.

1. Ensure that any measures taken in the fight against terrorism do not discriminate, in purpose or effect, on the grounds of race, colour, descent, or national or ethnic origin, and that individuals are not subjected to racial or ethnic profiling or stereotyping;[19]

2. Ensure that claims of racial discrimination by individuals are investigated thoroughly and that claims made against officials, notably those concerning discriminatory or racist behaviour, are subject to independent and effective scrutiny;

3. Implement general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system.

B. The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual, group or institution. In particular, information should be provided on measures taken to:

1. Ensure equal protection of the security and integrity of victims or potential victims of racial discrimination by adopting measures for preventing racially motivated acts of violence against them; ensure prompt action by the police, prosecutors and the judiciary in investigating and punishing such acts; and ensure that perpetrators, be they public officials or other persons, do not enjoy any degree of impunity;[20]

2. Prevent the use of illegal force by the police against persons belonging to groups protected under the Convention, in particular in connection with arrest and detention;[21]

3. Encourage appropriate arrangements for communication and dialogue between the police and groups of victims or potential victims of racial discrimination, with a view to preventing conflicts caused by racial prejudice and combating acts of racially motivated violence against members of these groups, as well as against other persons;[22]

4. Encourage recruitment of members of groups protected under the Convention into the police force and other law enforcement agencies;[23]

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[19] See statement on racial discrimination and measures to combat terrorism (official Records of the General Assembly, fifty-seventh session, supplement No. 18 (A/57/18), chapter XI, section C).

[20] See for example general recommendation No. 27 (2000) on discrimination against Roma, para. 12.

[21] Ibid., para. 13.

[22] Ibid., para. 14.

[23] Ibid., para. 15.

5. Ensure that non-citizens are not returned or removed to a country or territory where they are at risk of being subject to serious human rights abuses, including torture and cruel, inhuman or degrading treatment or punishment.[24]

C. Political rights, in particular the right to participate in elections, to vote and to stand for election on the basis of universal and equal suffrage, to take part in government as well as in the conduct of public affairs at any level and to have equal access to public service. In particular, information should be provided on:

1. Measures adopted to guarantee these rights, and on their enjoyment in practice. For example, do members of indigenous peoples and persons of different ethnic or national origin exercise such rights to the same extent as the rest of the population? Are they proportionately represented in all State public service and governance institutions?

2. The extent to which groups of victims or potential victims of racial discrimination are involved in the development and implementation of policies and programmes affecting them.[25]

3. Measures taken to promote awareness among members of the groups and communities concerned of the importance of their active participation in public and political life, and to eliminate obstacles to such participation.[26]

D. Other civil rights. In particular information should be provided on:

1. The right to freedom of movement and residence within the border of the State;

2. The right to leave any country, including one's own, and to return to one's country;

3. The right to nationality.

In particular, information should be provided on (a) measures taken to ensure that particular groups of non-citizens are not discriminated against with regard to access to citizenship or naturalization; (b) the specific situation of long-term or permanent

[24] See general recommendation No. 30 (2004) on discrimination against non-citizens, para. 27.

[25] See for example general recommendation No. 27 (2000) on discrimination against Roma, para. 43; general recommendation No. 23 (1997) on the rights of indigenous peoples, para. 4.

[26] See for example general recommendation No. 27 (2000) on discrimination against Roma, para. 44.

residents; (c) action taken to reduce statelessness; and (d) whether different standards of treatment for accessing citizenship are applied to non-citizen spouses (female and male) of citizens;[27]

4. The right to marriage and choice of spouse;

5. The right to own property alone as well as in association with others;

6. The right to inherit;

7. The right to freedom of thought, conscience and religion.

The Committee would like to recall the possible intersectionality of racial and religious discrimination, including the effects of anti-terrorism measures, which may lead to discrimination on ethnic grounds against members of specific religious communities;

8. The right to freedom of opinion and expression;[28]

9. The right to freedom of peaceful assembly and association.

E. Economic, social and cultural rights. In particular information should be provided on:

1. The right to work.

States parties should, for example, (a) indicate whether persons belonging to groups protected under the Convention are over- or underrepresented in certain professions or activities, and in unemployment; and (b) describe governmental action to prevent racial discrimination in the enjoyment of the right to work;

2. The right to form and join trade unions.

States parties should, for example, (a) indicate whether the right to form and join trade unions is granted to non-citizens, and/or which restrictions apply depending on their status, and (b) whether the right to form and join trade unions is restricted for specific professions or for specific types of contract, for which persons belonging to groups protected under the Convention are over-represented;

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[27] On these issues, see in particular general recommendation No. 30 (2004) on discrimination against non-citizens.

[28] See in this regard general recommendation No. 15 (1993) on article 4 of the Convention, according to which "in the opinion of the Committee, the prohibition of the dissemination of all ideas based upon racial superiority or hatred is compatible with the right to freedom of opinion and expression".

3. The right to housing.

   States parties should, for example, (a) indicate whether groups of victims or potential victims of racial discrimination are concentrated in particular sectors or tend to concentrate in particular localities; (b) describe governmental action to prevent racial discrimination by those who rent or sell houses or apartments; and (c) describe measures taken to implement the right to housing of nomadic or semi-nomadic people, with full respect for their cultural identity;[29]

4. The right to public health, medical care, social security and social services.

   Different groups of victims or potential victims of racial discrimination within the population may have different needs for health and social services. States parties should (a) describe any such differences and (b) describe governmental action to secure the equal provision of these services;

5. The right to education and training.

   States parties should, for example, (a) indicate any variations in the level of education and training between members of groups protected under the Convention; (b) provide information on languages spoken and taught in schools; and (c) describe governmental action to prevent racial discrimination in the enjoyment of this right;

6. The right to equal participation in cultural activities.

   States parties should, for example, report (a) on measures taken to enhance the right of all persons without discrimination to participate in cultural life, while at the same time respecting and protecting cultural diversity; (b) on measures taken to encourage creative activities by persons belonging to groups protected under the Convention, and to enable them to preserve and develop their culture; (c) on measures taken to encourage and facilitate their access to the media, including newspapers, television and radio programmes, and the establishment of their own media; (d) on measures taken to prevent racial hatred and prejudice in competitive sports; and (e) on the status of minority, indigenous and other languages in domestic law and in the media;

7. The right of access to places of service.

   States parties should report on action taken to prevent racial discrimination in access to any place or service intended for use by the general public, such as transport, hotels, restaurants, cafés, discos, cinemas, theatres and parks.

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[29] See, for instance, in relation to Roma, the recommendations made by the Committee in paragraphs 31 and 32 of its general recommendation No. 27 (2000) on discrimination against Roma; see also the recommendation made by the Committee on Economic, Social and Cultural Rights in paragraph 7 of its general comment No. 4 (1991) on the right to adequate housing (article 11(1) of the Covenant).

II. INFORMATION BY RELEVANT GROUPS OF VICTIMS OR POTENTIAL VICTIMS OF RACIAL DISCRIMINATION

A. The Committee wishes to ascertain to what extent all persons within the State's jurisdiction, and particularly members of groups protected by the Convention, in practice enjoy, free from racial discrimination, all the rights and freedoms referred to in article 5 of the Convention. Information provided on indicators in the common core document, in accordance with appendix 3 of the harmonized guidelines, should be supplemented with (a) a qualitative assessment of these indicators and (b) information on progress achieved over the reporting period. Specific information should be provided, and in particular:

1. On refugees and displaced persons, bearing in mind general recommendation No. 22 (1996) on article 5 of the Convention on refugees and displaced persons;

2. On non-citizens, including immigrants, refugees, asylum-seekers and stateless persons, bearing in mind general recommendation No. 30 (2004) on discrimination against non-citizens;

3. On indigenous peoples, bearing in mind general recommendation No. 23 (1997) on the rights of indigenous peoples;

4. On minorities, including the Roma, bearing in mind general recommendation No. 27 (2000) on discrimination against Roma;

5. On descent-based communities, bearing in mind general recommendation No. 29 (2002) on article 1, paragraph 1 of the Convention (Descent);

6. On women, bearing in mind general recommendation No. 25 (2000) on gender-related dimensions of racial discrimination. States parties are requested to describe, as far as possible in quantitative and qualitative terms, factors affecting and difficulties experienced in ensuring the equal enjoyment by women, free from racial discrimination, of rights under the Convention. They should provide data by race, colour, descent and national or ethnic origin, which are then disaggregated by gender within those groups.

B. Particular attention should be brought to complex forms of disadvantage in which racial discrimination is mixed with other causes of discrimination (such as those based on age, sex and gender, religion, disability and low socio-economic status). States parties are asked to bear in mind the circumstances of the persons concerned, and to refer to any available social indicators of forms of disadvantage that may be linked with racial discrimination.[30]

C. Where no quantitative data relevant to the enjoyment of these rights is available, States parties should provide relevant information derived from social surveys, and report the opinions of representatives of disadvantaged groups.

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[30] See general recommendation No. 25 (2000) on gender-related dimensions of racial discrimination.

Article 6

A. Information on the legislative, judicial, administrative or other measures which give effect to the provisions of article 6 of the Convention, bearing in mind information already provided in accordance with paragraph 59 of the harmonized guidelines. In particular, information should be provided on:

1. The practice and decisions of courts and other judicial and administrative organs relating to cases of racial discrimination, as defined under article 1 of the Convention;

2. Measures taken to ensure (a) that victims have adequate information concerning their rights; (b) that they do not fear social censure or reprisals; (c) that victims with limited resources do not fear the cost and complexity of the judicial process; (d) that there is no lack of trust in the police and judicial authorities; and (e) that the authorities are sufficiently alert to, or aware of, offences with racial motives;

3. Whether national human rights institutions and ombudspersons and other similar institutions are authorized to hear and consider individual complaints of racial discrimination;

4. Types of reparation and satisfaction, with examples, which are considered adequate in domestic law in case of racial discrimination;[31]

5. The burden of proof in civil proceedings for cases involving racial discrimination.[32]

B. If relevant, States parties should indicate whether they intend to make the optional declaration provided in article 14. Information on obstacles to that effect may be provided. For those States that have made the declaration under article 14 of the Convention, information should be provided on whether, in accordance with paragraph 2 of article 14, they have established or identified a body within their national legal order which shall be competent to receive and consider petitions from individuals and groups of individuals within their jurisdiction who claim to be victims of a violation of any of the rights set forth in the Convention and who have exhausted other available local remedies.

Article 7

Information should supplement that already provided in the common core document in accordance with paragraph 56 of the harmonized guidelines. Reports should provide information on each of the main subjects mentioned in article 7 under the following separate headings: (a) education and teaching; (b) culture; and (c) information. Within these broad parameters, the

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[31] See general recommendation No. 26 (2000) on article 6 of the Convention. See also in this regard general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system and No. 23(1997) on the rights of indigenous peoples, para. 5.

[32] See general recommendation No. 30 (2004) on discrimination against non-citizens, para. 24.

information provided should reflect the measures taken by States parties (i) to combat prejudices which lead to racial discrimination; and (ii) to promote understanding, tolerance and friendship among nations and all groups.

A. Education and teaching. In particular, information should be provided on:

1. Legislative and administrative measures taken in the field of education and teaching to combat prejudices which lead to racial discrimination, including general information on the educational system;

2. Steps taken to include, in school curricula and in the training curricula of teachers and other professionals, programmes and subjects to help promote human rights issues which would lead to better understanding, tolerance and friendship among all groups. Information should also be provided on whether the purposes and principles of the Charter of the United Nations, the Universal Declaration of Human Rights and the Convention are included in education and teaching;

3. Steps taken to review all language in textbooks which conveys stereotyped or demeaning images, references, names or opinions concerning groups protected under the Convention, and replace it by images, references, names and opinions which convey the message of the inherent dignity of all human beings and their equality in the enjoyment of human rights;[33]

4. Steps taken to include in textbooks, at all appropriate levels, chapters about the history and culture of groups protected under the Convention and living on the State's territory, and to encourage and support the publication and distribution of books and other print materials as well as the broadcasting of television and radio programmes, as appropriate, about their history and culture, including in languages spoken by them;[34]

5. Measures taken for intensive training of law enforcement officials to ensure that in the performance of their duties they respect as well as protect human dignity and maintain and uphold the human rights of all persons without distinction as to race, colour or national or ethnic origin.[35]

B. Culture. In particular, information should be provided on:

1. The role of institutions or associations working to develop national culture and traditions, to combat racial prejudices and to promote intra-national and intra-cultural understanding, tolerance and friendship among all groups;

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[33] See for example general recommendation No. 29 (2002) on article 1, paragraph 1, (Descent), para. 48.

[34] See general recommendation No. 27 (2000) on discrimination against Roma, para. 26.

[35] See general recommendation No. 13 (1993) on the training of law enforcement officials in the protection of human rights.

2. Support provided by the States parties to such institutions and associations, and more generally, action taken to ensure the respect and promotion of cultural diversity, for example in the area of artistic creation (cinema, literature, painting, etc.);

3. The linguistic policies adopted and implemented by the State party.

C. Information. In particular, information should be provided on:

1. The role of State media in the dissemination of information to combat prejudices which lead to racial discrimination, and in fostering better understanding of the purposes and principles of the Convention;

2. The role of mass information media, i.e. the press, radio and television and Internet in publicizing human rights and disseminating information on the purposes and principles of human rights instruments;

3. Action taken to encourage awareness among professionals of all media of their particular responsibility not to encourage prejudice and to avoid reporting incidents involving individual members of groups protected under the Convention in a way which blames such groups as a whole;[36]

4. Action taken to encourage methods of self-monitoring by the media, through a code of conduct for media organizations, in order to avoid racial, discriminatory or biased language;[37]

5. Action to develop educational and media campaigns to educate the public about the life, society and culture of groups protected under the Convention and the importance of building an inclusive society while respecting the human rights and cultural identity of all groups.[38]

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[36] See for example general recommendation No. 27 (2000) on discrimination against Roma, para. 37.

[37] Ibid., para. 40.

[38] Ibid., para. 38.

Chapter V

COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN[1]

A. Introduction

A.1. The present treaty-specific reporting guidelines must be applied in conjunction with the harmonized reporting guidelines on a common core document.[2] Together they constitute the harmonized guidelines on reporting under the Convention on the Elimination of All Forms of Discrimination against Women. They replace all earlier reporting guidelines issued by the Committee on the Elimination of Discrimination against Women.[3]

A.2. States parties' reports on the implementation of the Convention thus constitute two parts: a common core document and a document that specifically relates to the implementation of the Convention.

A.3. Common core document

A.3.1. The common core document constitutes the first part of any report prepared for the Committee in accordance with the harmonized reporting guidelines.[4] The common core document contains information of a general and factual nature.

A.3.2. In general, information that is contained in the common core document need not be repeated in the Convention-specific document submitted to the Committee. The Committee underlines that, should a State party not have submitted a common core document, or if the information in the common core document has not been updated, all relevant information must be included in the Convention-specific document. In addition, the Committee encourages States to review information given by them in the common core document as to its sex and gender dimensions. If that is found to be insufficient, States are encouraged to include relevant information in the Convention-specific document and in the next update of the common core document.

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[1] Technical assistance may be sought from the Office of the United Nations High Commissioner for Human Rights or other United Nations entities for reporting and for the creation of mechanisms to collect data.

[2] The harmonized guidelines on reporting under the international human rights treaties, including guidelines on a common core document and treaty-specific documents (HRI/GEN/2/Rev.4, chap. I).

[3] HRI/GEN/2/Rev.4, chap. V.

[4] See, in particular, sect. III, and the general and first parts of reports.

A.4. Convention-specific document

A.4.1. The present guidelines pertain to the preparation of the second part of reports and apply to the initial as well as all subsequent periodic reports to the Committee. The Convention-specific document should contain all information relating to the implementation of the Convention.

A.4.2. While general factual information on the general framework for the protection and promotion of human rights disaggregated according to sex, where applicable, and on non-discrimination and equality and effective remedies should be included in the common core document,[5] additional information specific to the implementation of the Convention and the relevant general recommendations of the Committee, as well as information of a more analytical nature on the impact of laws, the interaction of plural legal systems, policies, programmes on women, should be provided in the Convention-specific document. Analytical information should also be provided on the progress made in ensuring enjoyment of the provisions of the Convention by all groups of women throughout their lifecycle within the territory or jurisdiction of the State party.

B. Reporting obligation

B.1. Every State party, upon ratifying or acceding to the Convention, undertakes, under article 18, to submit, within one year of the Convention's entry into force for that State, an initial report on the legislative, judicial, administrative or other measures it has adopted to give effect to the provisions of the Convention and progress made in this respect; and thereafter periodic reports at least every four years and further whenever the Committee so requests.

C. General guidance for the contents of the reports

C.1. General

C.1. The report should follow paragraphs 24 to 26 and 29 of the harmonized reporting guidelines.[6]

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[5] See paras. 40-59 of the harmonized reporting guidelines (HRI/GEN/2/Rev.4, chap. I). This includes general information on customary or religious law affecting women's equality in and before the law; inclusion of the prohibition of sex discrimination in the constitution; the existence of specific anti-discrimination legislation, equal opportunities legislation, legislation prohibiting violence against women; whether the legal system allows for or mandates special measures; the number of court cases on allegations of sex discrimination; the institution(s) serving as the national machinery for women; the gender dimension of national human rights institutions; the existence of gender budgeting and its results; specifically women-targeted human rights education.

[6] HRI/GEN/2/Rev.4, chap. I.

C.2. The Committee's general recommendations.

C.2. General recommendations, adopted by the Committee, should be taken into account in preparing the Convention-specific document.

C.3. Reservations and declarations.

C.3. General information on reservations and declarations should be included in the common core document in accordance with paragraph 40 (b) of the harmonized reporting guidelines. In addition, specific information in respect of reservations and declarations to the Convention should be included in the Convention-specific document submitted to the Committee in accordance with the present guidelines, the Committee's statements on reservations[7] and, where applicable, the Committee's concluding observations. Any reservation to or declaration relating to any article of the Convention by the State party should be explained and its continued maintenance clarified. States parties that have entered general reservations which do not refer to a specific article, or which are directed at articles 2 and/or 7, 9 and 16 should report on the interpretation and the effect of those reservations. States parties should provide information on any reservations or declarations they may have lodged with regard to similar obligations in other human rights treaties.

C.4. Factors and difficulties.

C.4. Information on factors and difficulties of particular relevance to the implementation of the provisions of the Convention and not covered in the common core document, in accordance with paragraph 44 of the harmonized reporting guidelines, should be provided in the Convention-specific document, including details of the steps being taken to overcome them.

C.5. Data and statistics.

C.5. While general factual and statistical information should be included in the common core document,[8] the Convention-specific document should include specific data and statistics disaggregated by sex[9] which are relevant to the implementation of each article of the Convention and the general recommendations of the Committee in order to enable the Committee to assess progress in the implementation of the Convention.

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[7] *Official Records of the General Assembly, Fifty-third Session, Supplement No. 38* (A/53/38/Rev.1), part two, chap. I, sect. A.

[8] See para. 32 of the harmonized reporting guidelines (HRI/GEN/2/Rev.4, chap. I).

[9] Using appropriate indicators as stated in appendix 3 of the harmonized reporting guidelines (HRI/GEN/2/Rev.4, chap. I).

D. The initial report

D.1. The initial Convention-specific document, together with the common core document, constitutes the State party's initial report and is the State party's first opportunity to present to the Committee the extent to which its laws and practices comply with the Convention.

D.2. A State party should deal specifically with every article in parts I to IV of the Convention; in addition to information contained in the common core document, a detailed analysis of the impact of legal norms on women's factual situation and the practical availability, implementation and effect of remedies for violations of provisions of the Convention should be provided and explained in the Convention-specific document.

D.3. The initial Convention-specific document should, to the extent that such information is not already contained in the common core document, outline any distinctions, exclusions or restrictions made on the basis of sex and gender, even of a temporary nature, imposed by law, practice or tradition, or in any other manner on women's enjoyment of each provision of the Convention.

D.4. The initial Convention-specific document should contain sufficient quotations from or summaries of the relevant principal constitutional, legislative, judicial and other texts which guarantee and provide remedies in relation to the rights and provisions of the Convention, in particular when those are not attached to the report or are not available in one of the working languages of the United Nations.

E. Periodic reports

E.1. The subsequent Convention-specific document, which, together with the common core document, forms a subsequent periodic report, should focus on the period between the consideration of the State party's previous report and the presentation of the current report.

E.2. Periodic Convention-specific documents should be structured so as to follow the main clusters (parts I-IV) of the Convention. If there is nothing new to report under any article, it should be so stated.

E.3. There should be at least three starting points for such subsequent Convention-specific documents:

(a) Information on the implementation of concluding observations (particularly "Concerns" and "Recommendations") to the previous report and explanations for the non-implementation or difficulties encountered;[10]

[10] States parties may decide to present such information at the beginning of the report or to integrate it, with specific reference to the particular concluding observation, under the relevant parts of the report.

(b) An analytical and result-oriented examination by the State party of additional legal and other appropriate steps and measures undertaken towards the implementation of the Convention;

(c) Information on any remaining or emerging obstacles to the exercise and enjoyment by women of their human rights and fundamental freedoms in the civil, political, economic, social, cultural or any other field on the basis of equality with men, as well as information on measures envisaged to overcome these obstacles.

E.4. Periodic Convention-specific documents should in particular address the impact of measures taken, and should analyse trends over time in eliminating discrimination against women and ensuring women's full enjoyment of their human rights.

E.5. Periodic Convention-specific documents should also address the implementation of the Convention with respect to different groups of women, in particular those subject to multiple forms of discrimination.

E.6. Where a fundamental change has occurred in the State party's political and legal approach affecting the implementation of the Convention or new legal or administrative measures have been introduced by the State party which require the annexure of texts, and judicial or other decisions, such information should be provided in the Convention-specific document.

F. Exceptional reports

F.1. The present guidelines do not affect the Committee's procedure in relation to any exceptional reports that may be requested and are governed by rule 48.5 of the Committee's rules of procedure and its decisions 21/I and 31/III (h) on exceptional reports.

G. Annexes to reports

G.1. If needed, the report should be accompanied by a sufficient number of copies, in one of the working languages of the United Nations, of the principal legislative, judicial, administrative and other supplementary documentation that the reporting States may wish to have distributed to all members of the Committee to facilitate the consideration of their report. These texts may be submitted in accordance with paragraph 20 of the harmonized guidelines on reporting.

H. Optional Protocol

H.1. If the State party has ratified or acceded to the Optional Protocol and the Committee has issued views entailing provision of a remedy or expressing any other concern, relating to a communication received under that Protocol, the Convention-specific document should include further information about the remedial steps taken as well as other steps taken to ensure that any circumstance giving rise to the communication does not recur.

H.2. If the State party has ratified or acceded to the Optional Protocol and the Committee has conducted an inquiry under article 8 of the Optional Protocol, the Convention-specific document should include details of any further measures taken in response to an inquiry, and to ensure that the violations giving rise to the inquiry do not recur.

I. Measures to implement outcomes of United Nations conferences, summits and reviews

I.1. There is a significant synergy between the substantive content of the Convention and the Beijing Platform for Action and they are therefore mutually reinforcing. The Convention comprises legally binding obligations and sets out women's right to equality in civil, political, economic, social, cultural or any other field. The Platform, through its 12 critical areas of concern, provides a policy and programmatic agenda that can be used for the implementation of the Convention. The Convention-specific document should also contain information on how the implementation of the 12 critical areas of the Platform, as they relate to specific articles of the Convention, is integrated into the State party's implementation of the Convention's substantive equality framework.

I.2. The Convention-specific document should also include information on the implementation of the gender elements of the Millennium Development Goals and on the outcomes of other relevant United Nations conferences, summits and reviews.

I.3. Where applicable, the Convention-specific document should include information on the implementation of Security Council resolution 1325 (2000) and its outcomes.

J. Format of the Convention-specific document

J.1. The format of the Convention-specific document should be in accordance with paragraphs 19 to 23 of the harmonized reporting guidelines. The initial report should not exceed 60 pages, and subsequent Convention-specific documents should be limited to 40 pages. Paragraphs should be numbered sequentially.

K. The Committee's consideration of reports

K.1. General.

K.1. The Committee intends its consideration of a report to the Committee to take the form of a constructive dialogue with the delegation, the aim of which is to improve the implementation of the Convention by the State party.

K.2. List of issues and questions with respect to initial and periodic reports.

K.2. On the basis of all information at its disposal, the Committee will supply in advance a list of issues and questions intended to clarify and complete information provided in the common core document and the Convention-specific document. Written answers to the list will be required from the State party at least three months in advance of the session at which the report will be considered. The delegation should come prepared to respond to additional questions by Committee experts.

K.3. The State party's delegation.

K.3. The State party's delegation should include persons who, through their knowledge and competence and their position of authority or accountability, are able to explain all aspects of women's human rights in the reporting State and are able to respond to the Committee's questions and comments concerning the implementation of the Convention.

K.4. Concluding observations.

K.4. After its consideration of the report, the Committee will adopt and publish its concluding observations on the report and the constructive dialogue with the delegation. The concluding observations will be included in the annual report of the Committee to the General Assembly. The Committee expects the State party to disseminate the concluding observations widely, in all appropriate languages, with a view to public information and discussion for implementation.

Chapter VI

COMMITTEE AGAINST TORTURE

A. Initial reports*

1. Under article 19 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment each State party undertakes to submit a report on the measures taken to give effect to its undertakings under the Convention. The initial report is due within one year after the entry into force of the Convention for that State party and thereafter every four years unless the Committee requests other reports.

2. In order to assist States parties in fulfilling their obligations under article 19, the Committee has adopted the following general guidelines as to the form and content of initial reports. The present Guidelines replace the earlier version adopted by the Committee at its 82nd meeting (sixth session) in April 1991.

PART I. GENERAL INFORMATION

A. Introduction

3. In the introductory part of the report, cross-references to the expanded core document should be made regarding information of a general nature, such as the general political structure, general legal framework within which human rights are protected, etc. It is not necessary to repeat that information in the initial report.

4. Information on the process of preparing the report should be included in this section. The Committee considers that drafting of reports would benefit from broad-based consultations. It therefore welcomes information on any such consultations within Government, with national institutions for the promotion and protection of human rights, non-governmental organizations and other organizations that might have taken place.

B. General Legal Framework under which torture and other cruel, inhuman or degrading treatment or punishment is prohibited

5. In this section the Committee envisages receiving specific information related to the implementation of the Convention to the extent that it is not covered by the core document, in particular the following:

- A brief reference to constitutional, criminal and administrative provisions regarding the prohibition of torture and other cruel, inhuman or degrading treatment or punishment.

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* Contained in CAT/C/4/Rev.3 entitled *Guidelines on the form and content of initial reports under article 19 to be submitted by States parties*. The guidelines were adopted by the Committee at its thirty-forth session on 2-21 May 2005.

- International treaties dealing with torture and other cruel, inhuman or degrading treatment or punishment to which the reporting State is a party.

- The status of the Convention in the domestic legal order, i.e. with respect to the Constitution and the ordinary legislation.

- How domestic laws ensure the non-derogability of the prohibition of any cruel, inhuman or degrading treatment or punishment.

- Whether the provisions of the Convention can be invoked before and are directly enforced by the courts or administrative authorities or whether they have to be transformed into internal laws or administrative regulations to be enforced by the authorities concerned. Should the latter be a requirement, the report should provide information on the legislative act incorporating the Convention into the domestic legal order.

- Judicial, administrative or other competent authorities with jurisdiction/a mandate covering matters dealt with in the Convention, such as the Constitutional Court, the Supreme Court, the ordinary and military courts, the public prosecutors, disciplinary bodies, administrative authorities in charge of police and prison administration, national institutions for the promotion and protection of human rights, etc. Provide an overview of the practical implementation of the Convention at the federal, central, regional and local levels of the State, and indicate any factors and difficulties that may affect the fulfilment of the obligations of the reporting State under the Convention. The report should include specific information related to the implementation of the Convention in such circumstances. Relevant documentation collected by the authorities or other private or public institutions is welcome.

II. INFORMATION IN RELATION TO EACH SUBSTANTIVE ARTICLE OF THE CONVENTION

6. As a general rule the report should include, in connection with each article, the following information:

- The legislative, judicial, administrative or other measures giving effect to the provisions

- Concrete cases and situations where measures giving effect to the provisions have been enforced, including any relevant statistical data

- Cases or situations of violation of the Convention, the reasons for such violations and the measures taken to remedy the situation. It is important for the Committee to obtain a clear picture not only of the legal situation, but also of the de facto situation

Article 1

7. This article contains the definition of torture for the purposes of the Convention. Under this provision the report should include:

- Information on the definition of torture in domestic law, including indications as to whether such a definition is in full conformity with the definition of the Convention

- In the absence of a definition of torture in domestic law in conformity with the Convention, information on criminal or legislative provisions that cover all cases of torture

- Information on any international instruments or national legislation that contains or may contain provisions of wider application

Article 2, paragraph 1

8. This provision introduces the obligation of the States parties to take effective measures to prevent acts of torture. The report should contain information on:

- Pertinent information on effective measures taken to prevent all acts of torture, inter alia with respect to: duration of police custody; incommunicado detention; rules governing the rights of arrested persons to a lawyer, a medical examination, contact with their family, etc.; emergency or anti-terrorist legislation that could restrict the guarantees of the detained person

9. The Committee would welcome an assessment by the reporting State of the effectiveness of the measures taken to prevent torture, including measures to ensure that those responsible are brought to justice.

Article 2, paragraph 2

10. The report should contain information on effective measures to ensure that no exceptional circumstances are invoked, in particular:

- Whether legal and administrative measures exist to guarantee that the right not to be tortured is not subject to derogation during a state of war, a threat of war, internal political instability or any other public emergency

Article 2, paragraph 3

11. The report should indicate:

- Whether legislation and jurisprudence exist with regard to the prohibition on invoking superior orders, including orders from military authorities, as a justification of torture; if these exist, information should be provided on their practical implementation

- Whether there are any circumstances in which a subordinate is permitted lawfully to oppose an order to commit acts of torture, the recourse procedures available to him/her and information on any such cases that may have occurred

- Whether the position of public authorities with respect to the concept of "due obedience" as a criminal law defence has any impact on the effective implementation of this prohibition

Article 3

12. This article prohibits the expulsion, return or extradition of a person to a State where he/she might be tortured. The report should contain information on:

- Domestic legislation with regard to such prohibition

- Whether legislation and practices concerning terrorism, emergency situations, national security or other grounds that the State may have adopted have had any impact on the effective implementation of this prohibition

- Which authority determines the extradition, expulsion, removal or refoulement of a person and on the basis of what criteria

- Whether a decision on the subject can be reviewed and, if so, before which authority, what are the applicable procedures and whether such procedures have suspensive effects

- Decisions taken on cases relevant to article 3 and the criteria used in those decisions, the information on which the decisions are based and the source of this information

- The kind of training provided to officials dealing with the expulsion, return or extradition of foreigners

Article 4

13. It is implicit in the reporting obligations imposed by this article that each State shall enact legislation criminalizing torture in terms that are consistent with the definition in article 1. The Committee has consistently expressed the view that the crime of torture is qualitatively distinguishable from the various forms of homicide and assault that exist and therefore should be separately defined as a crime. The report should contain information on:

- Civil and military criminal provisions regarding these offences and the penalties related to them

- Whether statutes of limitations apply to such offences

- The number and the nature of the cases in which those legal provisions were applied and the outcome of such cases, in particular, the penalties imposed upon conviction and the reasons for acquittal

- Examples of judgements relevant to the implementation of article 4

- Existing legislation on disciplinary measures during the investigation of an alleged case of torture to be taken against law enforcement personnel responsible for acts of torture (e.g. suspension)

- Information on how established penalties take into account the grave nature of torture

Article 5

14. Article 5 deals with the States parties' legal duty to establish jurisdiction over the crimes mentioned in article 4. The report should include information on:

- Measures taken to establish jurisdiction in the cases covered under (a), (b) and (c) of paragraph 1. Examples of cases where (b) and (c) were applied should also be included

- Measures taken to establish jurisdiction in cases where the alleged offender is present in the territory of the reporting State and the latter does not extradite him/her to a State with jurisdiction over the offence in question. Examples of cases where (a) extradition was granted and (b) extradition was denied should be provided

Article 6

15. Article 6 deals with the exercise of jurisdiction by the State party, particularly the issues concerning the investigation of a person who is in the territory and is alleged to have committed any offence referred to in article 4. The report should provide information on:

- The domestic legal provisions concerning, in particular, the custody of that person or other measures to ensure his/her presence; his/her right to consular assistance; the obligation of the reporting State to notify other States that might also have jurisdiction that such a person is in custody; the circumstances of the detention and whether the State party intends to exercise jurisdiction

- The authorities in charge of the implementation of the various aspects of article 6

- Any cases in which the above domestic provisions were applied

Article 7

16. This article contains the obligation of the State to initiate prosecutions relating to acts of torture whenever it has jurisdiction, unless it extradites the alleged offender. The report should provide information on:

- Measures to ensure the fair treatment of the alleged offender at all stages of the proceedings, including the right to legal counsel, the right to be presumed innocent until proved guilty, the right to equality before courts, etc

- Measures to ensure that the standards of evidence required for prosecution and conviction apply equally in cases where the alleged offender is a foreigner who committed acts of torture abroad

- Examples of practical implementation of the measures referred to above

Article 8

17. By virtue of article 8 of the Convention, the States parties undertake to recognize torture as an extraditable offence for purposes of facilitating the extradition of persons suspected of having committed acts of torture and/or the related crimes of attempting to commit and complicity and participation in torture. The report should include information on:

- Whether torture and related crimes are considered by the reporting State as extraditable offences

- Whether the reporting State makes extradition conditional on the existence of a treaty

- Whether the reporting State considers the Convention as the legal basis for extradition in respect of the offences referred to above

- Extradition treaties between the reporting State and other States parties to the Convention that include torture as an extraditable offence

- Cases where the reporting State granted the extradition of persons alleged to have committed any of the offences referred to above

Article 9

18. By virtue of this article the States parties undertake to provide mutual judicial assistance in all matters of criminal procedure regarding the offence of torture and related crimes of attempting to commit, complicity and participation in torture. Reports shall include information on:

- Legal provisions, including any treaties, concerning mutual judicial assistance that apply in the case of the above-mentioned offences

- Cases involving the offence of torture in which mutual assistance was requested by or from the reporting State, including the result of the request

Article 10

19. By virtue of this article and related article 16, States are obliged to train, inter alia, medical and law enforcement personnel, judicial officials and other persons involved with custody,

interrogation or treatment of persons under State or official control on matters related to the prohibition of torture and cruel, inhuman or degrading treatment or punishment. The report should include information on:

- Training programmes on the above-mentioned subject for persons charged with the various functions enumerated in article 10 of the Convention
- Information on the training of medical personnel dealing with detainees or asylum-seekers to detect physical and psychological marks of torture and training of judicial and other officers
- The nature and frequency of the instruction and training
- Information on any training that ensures appropriate and respectful treatment of women, juveniles, and ethnic, religious or other divers groups, particularly regarding forms of torture that disproportionately affect these groups
- The effectiveness of the various programmes

Article 11

20. By virtue of this article and related article 16, States are obliged to keep under 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 with a view to preventing torture and other cruel, inhuman or degrading treatment or punishment. The report should include information on:

- Laws, regulations and instructions concerning the treatment of persons deprived of their liberty
- Information on measures requiring prompt notification of and access to lawyers, doctors, family members and, in the case of foreign nationals, consular notification
- The degree to which the following rules and principles are reflected in the domestic law and practice of the State: the Standard Minimum Rules for the Treatment of Prisoners; the Basic Principles for the Treatment of Prisoners; the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment; Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; and the Code of Conduct for Law Enforcement Officials
- Any independent bodies or mechanisms established to inspect prisons and other places of detention and to monitor all forms of violence against men and women, including all forms of sexual violence against both men and women and all forms of inter-prisoner violence, including authorization for international monitoring or NGO inspections

- Information on measures to ensure that all such places are officially recognized and that no incommunicado detention is permitted

- Mechanisms of review of the conduct of law enforcement personnel in charge of the interrogation and custody of persons held in detention and imprisonment and results of such reviews, along with any qualification or re-qualification procedures

- Information on any safeguards for the protection of individuals especially at risk

Article 12

21. On the basis of this article and related article 16, the State must ensure that its competent authorities proceed to a prompt and impartial investigation when there is reason to believe that under its jurisdiction an act of torture or cruel, inhuman or degrading treatment or punishment has been committed. The report should identify:

- The authorities competent to initiate and carry out the investigation, both at the criminal and disciplinary levels

- Applicable procedures, including whether there is access to immediate medical examinations and forensic expertise

- Whether the alleged perpetrator is suspended from his/her functions while the investigation is being conducted and/or prohibited from further contact with the alleged victim

- Information on the results of cases of prosecution and punishment

Article 13

22. By virtue of this article and related article 16, States parties must guarantee the right of any individual who alleges that he/she has been subjected to torture or cruel, inhuman or degrading treatment or punishment to complain and to have his/her case promptly and impartially investigated, as well as the protection of the complainant and witnesses against ill-treatment or intimidation. The report should include information on:

- Remedies available to individuals who claim to have been victims of acts of torture or other cruel, inhuman or degrading treatment or punishment

- Remedies available to the complainant in case the competent authorities refuse to investigate his/her case

- Mechanisms for the protection of the complainants and the witnesses against any kind of intimidation or ill-treatment

- Statistical data disaggregated, inter alia, by sex, age, crime and geographical location on the number of complaints of torture and cruel, inhuman or degrading treatment or

punishment submitted to the domestic authorities and the results of the investigations. An indication should also be provided of the services to which the persons accused of having committed torture and/or other forms of ill-treatment belong

- Information on the access of any complainant to independent and impartial judicial remedy, including information on any discriminatory barriers to the equal status of all persons before the law, and any rules or practices preventing harassment or retraumatization of victims

- Information on any officers within police forces and prosecutorial or other relevant offices specifically trained to handle cases of alleged torture or cruel, inhuman and degrading treatment or violence against women and ethnic, religious or other minorities

- Information on the effectiveness of any such measures

Article 14

23. This article deals with the right of victims of torture to redress, fair and adequate compensation and rehabilitation. The report should contain information on:

- The procedures in place for obtaining compensation for victims of torture and their families and whether these procedures are codified or in any way formalized

- Whether the State is legally responsible for the offender's conduct and, therefore, obliged to compensate the victim

- Statistical data or, at least, examples of decisions by the competent authorities ordering compensation and indications as to whether such decisions were implemented, including any information about the nature of the torture, the status and identification of the victim and the amount of compensation or other redress provided

- The rehabilitation programmes that exist in the country for victims of torture

- Information on any measures other than compensation to restore respect for the dignity of the victim, his/her right to security and the protection of his/her health, to prevent repetitions and to assist in the victim's rehabilitation and reintegration into the community

Article 15

24. Under this provision the State must ensure that statements made as a result of torture will not be used as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made. The report should contain information on:

- Legal provisions concerning the prohibition of using a statement obtained under torture as an element of proof

- Examples of cases in which such provisions were applied

- Information on whether derivative evidence is admissible, if applicable in the State party's legal system

Article 16

25. This article imposes upon States the obligation to prohibit acts of cruel, inhuman or degrading treatment or punishment. The report should contain information on:

- The extent to which acts of cruel, inhuman or degrading treatment or punishment have been outlawed by the State party; information on whether these acts are defined or otherwise dealt with in domestic law.

- Measures which may have been taken by the State party to prevent such acts.

- Living conditions in police detention centres and prisons, including those for women and minors, including whether they are kept separate from the rest of the male/adult population. Issues related to overcrowding, inter-prisoner violence, disciplinary measures against inmates, medical and sanitary conditions, most common illnesses and their treatment in prison, access to food and conditions of detention of minors should, in particular, be addressed.

B. Periodic reports*

Periodic reports by States parties should be presented in three parts, as follows:

PART II. INFORMATION ON NEW MEASURES AND NEW DEVELOPMENTS RELATING TO THE IMPLEMENTATION OF THE CONVENTION FOLLOWING THE ORDER OF ARTICLES 1 TO 16, AS APPROPRIATE

(a) This part should describe in detail:

(i) Any new measures taken by the State party to implement the Convention during the period extending from the date of submission of its previous report to the date of submission of the periodic report to be considered by the Committee;

(ii) Any new developments which have occurred during the same period and are relevant to implementation of the Convention;

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* Contained in CAT/C/14/Rev.1 entitled *General guidelines regarding the form and content of periodic reports to be submitted by States parties under article 19, paragraph 1, of the Convention*, which were adopted by the Committee against Torture at its 85th meeting (sixth session) on 30 April 1991 and revised at its 318th meeting (twentieth session) on 18 May 1998.

(b) The State party should provide, in particular, information concerning:

(i) Any change in the legislation and in institutions that affect the implementation of the Convention on any territory under its jurisdiction in particular on places of detention and on training given to law enforcement and medical personnel;

(ii) Any new case law of relevance for the implementation of the Convention;

(iii) Complaints, inquiries, indictments, proceedings, sentences, reparation and compensation for acts of torture and other cruel, inhuman or degrading treatment or punishment;

(iv) Any difficulty which would prevent the State party from fully discharging the obligations it has assumed under the Convention.

PART III. ADDITIONAL INFORMATION REQUESTED BY THE COMMITTEE

This part should contain any information requested by the Committee and not provided by the State party, during the Committee's consideration of the State party's preceding report. If the information has been provided by the State party, either in a subsequent communication or in an additional report submitted in accordance with rule 67, paragraph 2, of the Committee's rules of procedure, the State party does not need to repeat it.

PART IV. COMPLIANCE WITH THE COMMITTEE'S CONCLUSIONS AND RECOMMENDATIONS

This part should provide information on measures taken by the State party to comply with the conclusions and recommendations addressed to it by the Committee at the end of its consideration of the State party's initial and periodic reports.

Chapter VII

COMMITTEE ON THE RIGHTS OF THE CHILD

A. Initial reports*

Introduction

1. Article 44, paragraph 1, of the Convention on the Rights of the Child provides that "States parties undertake to submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have adopted which give effect to the rights recognized therein and on the progress made in the enjoyment of those rights:

(a) Within two years of the entry into force of the Convention for the State party concerned;

(b) Thereafter every five years."

2. Article 44 of the Convention further provides, in paragraph 2, that reports submitted to the Committee on the Rights of the Child shall indicate factors and difficulties, if any, affecting the fulfilment of the obligations under the Convention and shall also contain sufficient information to provide the Committee with a comprehensive understanding of the implementation of the Convention in the country concerned.

3. The Committee believes that the process of preparing a report for submission to the Committee offers an important occasion for conducting a comprehensive review of the various measures undertaken to harmonize national law and policy with the Convention and to monitor progress made in the enjoyment of the rights set forth in the Convention. Additionally, the process should be one that encourages and facilitates popular participation and public scrutiny of government policies.

4. The Committee considers that the reporting process entails an ongoing reaffirmation by States parties of their commitment to respect and ensure observance of the rights set forth in the Convention and serves as the essential vehicle for the establishment of a meaningful dialogue between the States parties and the Committee.

5. The general part of States parties' reports, relating to matters that are of interest to monitoring bodies under various international human rights instruments, should be prepared in accordance with the "Consolidated guidelines for the initial part of the reports of States parties". The present guidelines should be followed in the preparation of the initial reports of States parties relating to the implementation of the Convention on the Rights of the Child.

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* Contained in CRC/C/5 entitled *General guidelines regarding the form and content of initial reports to be submitted by States parties under article 44, paragraph 1 (a), of the Convention*, which were adopted by the Committee on the Rights of the Child at its 22nd meeting (first session) on 15 October 1991.

6. The Committee intends to formulate guidelines for the preparation of periodic reports that are to be submitted pursuant to article 44, paragraph 1 (b), of the Convention in due course.

7. Reports should be accompanied by copies of the principal legislative and other texts as well as detailed statistical information and indicators referred to therein, which will be made available to members of the Committee. It should be noted, however, that for reasons of economy they will not be translated or reproduced for general distribution. It is desirable, therefore, that when a text is not actually quoted in or annexed to the report itself, the report should contain sufficient information to be understood without reference to those texts.

8. The provisions of the Convention have been grouped under different sections, equal importance being attached to all the rights recognized by the Convention.

General measures of implementation

9. Under this section, States parties are requested to provide relevant information pursuant to article 4 of the Convention, including information on:

(a) The measures taken to harmonize national law and policy with the provisions of the Convention; and

(b) Existing or planned mechanisms at national or local level for coordinating policies relating to children and for monitoring the implementation of the Convention.

10. In addition, States parties are requested to describe the measures that have been taken or are foreseen, pursuant to article 42 of the Convention, to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.

11. States parties are also requested to describe those measures undertaken or foreseen, pursuant to article 44, paragraph 6, of the Convention, to make their reports widely available to the public at large in their own countries.

Definition of the child

12. Under this section, States parties are requested to provide relevant information, pursuant to article 1 of the Convention, concerning the definition of a child under their laws and regulations. In particular, States parties are requested to provide information on the age of attainment of majority and on the legal minimum ages established for various purposes, including, inter alia, legal or medical counselling without parental consent, end of compulsory education, part-time employment, full-time employment, hazardous employment, sexual consent, marriage, voluntary enlistment into the armed forces, conscription into the armed forces, voluntarily giving testimony in court, criminal liability, deprivation of liberty, imprisonment and consumption of alcohol or other controlled substances.

General principles

13. Relevant information, including the principal legislative, judicial, administrative or other measures in force or foreseen, factors and difficulties encountered and progress achieved in implementing the provisions of the Convention, and implementation priorities and specific goals for the future should be provided in respect of:

(a) Non-discrimination (art. 2);

(b) Best interests of the child (art. 3);

(c) The right to life, survival and development (art. 6);

(d) Respect for the views of the child (art. 12).

14. In addition, States parties are encouraged to provide relevant information on the application of these principles in the implementation of articles listed elsewhere in these guidelines.

Civil rights and freedoms

15. Under this section States parties are requested to provide relevant information, including the principal legislative, judicial, administrative or other measures in force; factors and difficulties encountered and progress achieved in implementing the relevant provisions of the Convention; and implementation priorities and specific goals for the future in respect of:

(a) Name and nationality (art. 7);

(b) Preservation of identity (art. 8);

(c) Freedom of expression (art. 13);

(d) Access to appropriate information (art. 17);

(e) Freedom of thought, conscience and religion (art. 14);

(f) Freedom of association and of peaceful assembly (art. 15);

(g) Protection of privacy (art. 16);

(h) The right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment (art. 37 (a)).

Family environment and alternative care

16. Under this section, States parties are requested to provide relevant information, including the principal legislative, judicial, administrative or other measures in force, particularly how the principles of the “best interests of the child” and “respect for the views of the child” are reflected

therein; factors and difficulties encountered and progress achieved in implementing the relevant provisions of the Convention; and implementation of priorities and specific goals for the future in respect of:

(a) Parental guidance (art. 5);

(b) Parental responsibilities (art. 18, paras. 1-2);

(c) Separation from parents (art. 9);

(d) Family reunification (art. 10);

(e) Recovery of maintenance for the child (art. 27, para. 4);

(f) Children deprived of a family environment (art. 20);

(g) Adoption (art. 21);

(h) Illicit transfer and non-return (art. 11);

(i) Abuse and neglect (art. 19), including physical and psychological recovery and social reintegration (art. 39);

(j) Periodic review of placement (art. 25).

17. In addition, States parties are requested to provide information on the numbers of children per year within the reporting period in each of the following groups, disaggregated by age group, sex, ethnic or national background and rural or urban environment: homeless children, abused or neglected children taken into protective custody, children placed in foster care, children place in institutional care, children placed through domestic adoption, children entering the country through intercountry adoption procedures and children leaving the country through intercountry adoption procedures.

18. States parties are encouraged to provide additional relevant statistical information and indicators relating to children covered in this section.

Basic health and welfare

19. Under this section States parties are requested to provide relevant information, including the principal legislative, judicial, administrative or other measures in force; the institutional infrastructure for implementing policy in this area, particularly monitoring strategies and mechanisms; and factors and difficulties encountered and progress achieved in implementing the relevant provisions of the Convention, in respect of:

(a) Survival and development (art. 6, para. 2);

(b) Disabled children (art. 23);

(c) Health and health services (art. 24);

(d) Social security and child care services and facilities (arts. 26 and 18, para. 3);

(e) Standard of living (art. 27, paras. 1-3).

20. In addition to information provided under paragraph 9 (b) of these guidelines, States parties are requested to specify the nature and extent of cooperation with local and national organizations of a governmental or non-governmental nature, such as institutions of social workers, concerning the implementation of this area of the Convention. States parties are encouraged to provide additional relevant statistical information and indicators relating to children covered in this section.

Education, leisure and cultural activities

21. Under this section States parties are requested to provide relevant information, including the principal legislative, judicial, administrative or other measures in force; the institutional infrastructure for implementing policy in this area, particularly monitoring strategies and mechanisms; and factors and difficulties encountered and progress achieved in implementing the relevant provisions of the Convention, in respect of:

(a) Education, including vocational training and guidance (art. 28);

(b) Aims of education (art. 29);

(c) Leisure, recreation and cultural activities (art. 31).

22. In addition to information provided under paragraph 9 (b) of these guidelines, States parties are requested to specify the nature and extent of cooperation with local and national organizations of a governmental or non-governmental nature, such as institutions of social workers, concerning the implementation of this area of the Convention. States parties are encouraged to provide additional relevant statistical information and indicators relating to children covered in this section.

Special protection measures

23. Under this section States parties are requested to provide relevant information, including the principal legislative, judicial, administrative or other measures in force; factors and difficulties encountered and progress achieved in implementing the relevant provisions of the Convention; and implementation priorities and specific goals for the future in respect of:

(a) Children in situations of emergency:

(i) Refugee children (art. 22);

(ii) Children in armed conflicts (art. 38), including physical and psychological recovery and social reintegration (art. 39);

(b) Children in conflict with the law:

(i) The administration of juvenile justice (art. 40);

(ii) Children deprived of their liberty, including any form of detention, imprisonment or placement in custodial settings (art. 37 (b), (c) and (d));

(iii) The sentencing of juveniles, in particular the prohibition of capital punishment and life imprisonment (art. 37 (a));

(iv) Physical and psychological recovery and social reintegration (art. 39);

(c) Children in situations of exploitation, including physical and psychological recovery and social reintegration (art. 39):

(i) Economic exploitation, including child labour (art. 32);

(ii) Drug abuse (art. 33);

(iii) Sexual exploitation and sexual abuse (art. 34);

(iv) Other forms of exploitation (art. 36);

(v) Sale, trafficking and abduction (art. 35);

(d) Children belonging to a minority or an indigenous group (art. 30).

24. Additionally, States parties are encouraged to provide specific statistical information and indicators relevant to the children covered by paragraph 23.

B. Periodic reports*

Introduction and purpose of reporting

1. These guidelines for periodic reports replace those adopted by the Committee at its thirteenth session on 11 October 1996 (CRC/C/58). The present guidelines do not affect any request the Committee may make under article 44, paragraph 4, of the Convention on the Rights of the Child for States parties to provide further information relevant to the implementation of the Convention.

2. These guidelines will cover all periodic reports submitted after 31 December 2005. The present guidelines include an overview of the purpose and organization of the report and the substantive information required under the Convention. Finally the annex provides more detail on the type of statistical data required by the Committee in accordance with the substantive provisions of the Convention.

* Contained in CRC/C/58/Rev.1 entitled *General guidelines regarding the form and content of periodic reports to be submitted by States parties under article 44, paragraph 1 (b), of the Convention*, which were adopted by the Committee at its thirty-ninth session on 3 June 2005.

3. The present guidelines group the articles of the Convention in clusters with a view to assisting States parties in the preparation of their reports. This approach reflects the holistic perspective on children's rights taken by the Convention: i.e. that they are indivisible and interrelated, and that equal importance should be attached to each and every right recognized therein.

4. The periodic report should provide the Committee with a basis for constructive dialogue with the State party about the implementation of the Convention and the enjoyment of human rights by children in the State party. Consequently, reports must strike a balance in describing the formal legal situation and the situation in practice. Therefore the Committee requests that for each cluster the State party provide information with regard to: follow-up, monitoring, resource allocation, statistical data and challenges to implementation, as stated in paragraph 5, below.

Section I: Organization of the report

5. According to article 44, paragraph 3, of the Convention, when a State party has submitted a comprehensive initial report to the Committee or has previously provided detailed information to the Committee, it need not repeat such information in its subsequent reports. It should, however, clearly make reference to the information previously transmitted and indicate any changes that have occurred during the reporting period.

6. Information provided in States parties' reports on each cluster identified by the Committee should follow the present guidelines and in particular the annex, with regard to form and content. In this regard States parties should provide information for each cluster, or where appropriate for individual articles where relevant, on:

(a) *Follow-up*: The first paragraph on each cluster should systematically include information on concrete measures taken with regard to the concluding observations adopted by the Committee in relation to the previous report;

(b) *Comprehensive national programmes - monitoring*: The subsequent paragraphs should contain sufficient information to provide the Committee with a comprehensive understanding of the implementation of the Convention in the country concerned as well as the mechanisms established within the Government to monitor progress. States parties shall provide relevant information, including on the principal legislative, judicial, administrative or other measures in force or foreseen. This section should not be confined to merely listing measures adopted in the country in recent years, but should provide clear information on the goals and timetables of those measures and how they have had an impact on the actual economic, political and social realities and general conditions existing in the country;

(c) *Allocation of budgetary and other resources*: States parties shall provide information on the amount and percentage of the national budget (at central and local levels) devoted annually to children, including, where appropriate, the percentage of external financing (through donors, international financial institutions and private banking) of the national budget, with respect to relevant programmes under each cluster. In this regard, where appropriate, States parties should provide information on poverty reduction strategies and programmes and other factors which impact or may impact on the implementation of the Convention;

(d) *Statistical data*: States parties should provide, where appropriate, annual statistical data disaggregated by age/age group, gender, urban/rural area, membership of a minority and/or indigenous group, ethnicity, disability, religion, or other category as appropriate;

(e) *Factors and difficulties*: The last paragraph should describe any factors and difficulties, if any, affecting the fulfilment of the obligations of States parties' obligations for the cluster concerned, as well as information on the targets set for the future.

7. Reports should be accompanied by copies of the principal legislative texts and judicial decisions, as well as detailed disaggregated data, statistical information, indicators referred to therein and relevant research. The data should be disaggregated as described above and changes that have occurred since the previous report should be indicated. This material will be made available to the members of the Committee. It should be noted, however, that for reasons of economy, these documents will not be translated or reproduced for general distribution. It is therefore desirable that when a text is not actually quoted in or annexed to the report itself, the report should contain sufficient information to be clearly understood without reference to those texts.

8. The Committee requests that the report include a table of contents and numbered sequentially through to the end and that it be printed on A4-sized paper, in order to facilitate distribution of the report and thus its availability for consideration by the Committee.

Section II: Substantive information to be contained in the report

I. GENERAL MEASURES OF IMPLEMENTATION (arts. 4, 42 and 44, para. 6, of the Convention)

9. Under this cluster, States parties are requested to follow the provisions in paragraphs 5 and 6 above, general comment No. 2 (2002) on the role of independent national human rights institutions and general comment No. 5 (2003) on general measures of implementation of the Convention on the Rights of the Child.

10. States parties that have entered reservations to the Convention should indicate whether they consider it necessary to maintain them. They should also indicate whether they have plans to limit the effects of reservations and ultimately to withdraw them, and, whenever possible, specify the timetable for doing so.

11. States parties are requested to provide relevant information pursuant to article 4 of the Convention, including information on the measures adopted to bring domestic legislation and practice into full conformity with the principles and provisions of the Convention.

12. (a) States parties that provide international assistance or development aid should provide information on human and financial resources allocated to programmes for children, in particular within bilateral assistance programmes;

(b) States parties receiving international assistance or development aid should provide information on the total resources received and the percentage allocated to programmes for children.

13. Recognizing that the Convention represents a minimum standard for children's rights, and in the light of article 41, States parties should describe any provisions of the domestic legislation that are more conducive to the realization of the rights of the child as enshrined in the Convention.

14. States parties should provide information on remedies available and their accessibility to children, in cases of violation of the rights recognized by the Convention, as well as information on existing mechanisms at national or local level for coordinating policies relating to children and for monitoring the implementation of the Convention.

15. States parties should indicate whether there is an independent national human rights institution and describe the process of appointing its members and explain its mandate and role with regard to the promotion and protection of children's rights as outlined in the Committee's general comment No. 2 (2002). Also indicate how this national human rights institution is financed.

16. States parties should describe the measures that have been taken or are foreseen, pursuant to article 42 of the Convention, to make the principles and provisions of the Convention widely known to adults and children alike.

17. States parties should also describe the measures undertaken or foreseen, pursuant to article 44, paragraph 6, to make their reports widely available to the public at large in their own countries. These measures should also include, when appropriate, the translation of the concluding observations of the Committee adopted after the consideration of the previous report into official and minority languages and their wide dissemination, including through the print and electronic media.

18. States parties should provide information on cooperation with civil society organizations, including non-governmental organizations and children's and youth groups, with regard to implementation of all aspects of the Convention. In addition, please describe the manner in which the present report was prepared and the extent to which non-governmental organizations (NGOs), youth groups and others were consulted.

II. DEFINITION OF THE CHILD (art. 1)

19. States parties are also requested to provide updated information with respect to article 1 of the Convention, concerning the definition of a child under their domestic laws and regulations, specifying any differences between girls and boys.

III. GENERAL PRINCIPLES (arts. 2, 3, 6 and 12)

20. Under this cluster, States parties are requested to follow the provisions in paragraphs 5 and 6, above.

21. States parties should provide relevant information in respect of:

(a) Non-discrimination (art. 2);

(b) Best interests of the child (art. 3);

(c) The right to life, survival and development (art. 6);

(d) Respect for the views of the child (art. 12).

22. Reference should also be made to the implementation of these rights in relation to children belonging to the most disadvantaged groups.

23. With regard to article 2, information should also be provided on the measures taken to protect children from xenophobia and other related forms of intolerance. With regard to article 6, information should also be provided on the measures taken to ensure that persons under 18 are not subject to the death penalty; that the deaths of children are registered, and, where appropriate, investigated and reported, as well as on the measures adopted to prevent suicide among children and to monitor its incidence; and to ensure the survival of children at all ages, in particular adolescents, and that maximum efforts are made to ensure the minimization of risks to which that group may be exposed particularly (for example, sexually transmitted diseases or street violence).

IV. CIVIL RIGHTS AND FREEDOMS (arts. 7, 8, 13-17 and 37 (a))

24. Under this cluster, States parties are requested to follow the provisions in paragraphs 5 and 6, above.

25. States parties should provide relevant information in respect of:

(a) Name and nationality (art. 7);

(b) Preservation of identity (art. 8);

(c) Freedom of expression (art. 13);

(d) Freedom of thought, conscience and religion (art. 14);

(e) Freedom of association and of peaceful assembly (art. 15);

(f) Protection of privacy (art. 16);

(g) Access to appropriate information (art. 17);

(h) The right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment, including corporal punishment (art. 37 (a)).

26. States parties should refer, inter alia, to children with disabilities, children living in poverty, children born out of wedlock, asylum-seeking and refugee children and children belonging to indigenous and/or minority groups.

V. FAMILY ENVIRONMENT AND ALTERNATIVE CARE (arts. 5, 9-11, 18, paras. 1 and 2; 19-21, 25, 27, para. 4 and 39)

27. Under this cluster, States parties are requested to follow the provisions in paragraphs 5 and 6, above.

28. States parties should provide relevant information, including the principal legislative, judicial, administrative or other measures in force, particularly on how the principles of the "best interests of the child" (art. 3) and "respect for the views of the child" (art. 12) are reflected in addressing the questions of:

(a) Parental guidance (art. 5);

(b) Parental responsibilities (art. 18, paras. 1 and 2);

(c) Separation from parents (art. 9);

(d) Family reunification (art. 10);

(e) Recovery of maintenance for the child (art. 27, para. 4);

(f) Children deprived of a family environment (art. 20);

(g) Adoption (art. 21);

(h) Illicit transfer and non-return (art. 11);

(i) Abuse and neglect (art. 19), including physical and psychological recovery and social reintegration (art. 39);

(j) Periodic review of placement (art. 25).

29. The report should also provide information on any relevant bilateral or multilateral agreements, treaties or conventions concluded by the State party or to which it may have acceded, particularly with regard to articles 11, 18 or 21, and their impact.

VI. BASIC HEALTH AND WELFARE (arts. 6, 18, para. 3, 23, 24, 26, and 27, paras. 1-3)

30. Under this cluster, States parties are requested to follow the provisions in paragraphs 5 and 6 above, and general comment No. 3 (2003) on HIV/AIDS and the rights of the child and general comment No. 4 (2003) on adolescent health and development in the context of the Convention on the Rights of the Child.

31. States parties should provide relevant information in respect of:

(a) Survival and development (art. 6, para. 2);

(b) Children with disabilities (art. 23);

(c) Health and health services (art. 24);

(d) Social security and childcare services and facilities (arts. 26 and 18, para. 3);

(e) Standard of living (art. 27, paras. 1-3).

32. With regard to article 24, the report should contain information on measures and policies for the implementation of the right to health, including efforts to combat diseases such as HIV/AIDS (see general comment No. 3 (2003)), malaria and tuberculosis particularly among special groups of children at high risk. In the light of general comment No. 4 (2003), information on the measures undertaken to promote and protect the rights of young people in the context of adolescent health should also be included. Further, the report should also indicate the legal measures promulgated to prohibit all forms of harmful traditional practices, including female genital mutilation, and to promote awareness-raising activities to sensitize all concerned parties, including community and religious leaders, on the harmful aspects of these practices.

VII. EDUCATION, LEISURE AND CULTURAL ACTIVITIES (arts. 28, 29 and 31)

33. Under this cluster, States parties are requested to follow the provisions in paragraphs 5 and 6 above, and general comment No. 1 (2001) on the aims of education.

34. States parties should provide relevant information in respect of:

(a) Education, including vocational training and guidance (art. 28);

(b) Aims of education (art. 29) with reference also to quality of education;

(c) Rest, leisure, recreation and cultural and artistic activities (art. 31).

35. With regard to article 28, reports should also provide information on any category or group of children who do not enjoy the right to education (either due to lack of access or because they have left or been excluded from school) and the circumstances in which children may be excluded from school temporarily or permanently (for example, disability, deprivation of liberty, pregnancy, or HIV/AIDS infection), including any arrangements made to address such situations and to provide alternative education.

36. States parties should specify the nature and extent of cooperation with local and national organizations of a governmental or non-governmental nature, such as teachers' associations, concerning the implementation of this part of the Convention.

VIII. SPECIAL PROTECTION MEASURES
(arts. 22, 30, 32-36, 37 (b)-(d), 38, 39 and 40)

37. Under this cluster, States parties are requested to follow the provisions in paragraphs 5 and 6 above, and general comment No. 6 (2005) on the treatment of unaccompanied and separated children outside their country of origin.

38. States parties are requested to provide relevant information on measures taken to protect:

(a) Children in situations of emergency:

(i) Refugee children (art. 22);

(ii) Children in armed conflicts (art. 38), including physical and psychological recovery and social reintegration (art. 39);

(b) Children in conflict with the law:

(i) The administration of juvenile justice (art. 40);

(ii) Children deprived of their liberty, including any form of detention, imprisonment or placement in custodial settings (art. 37 (b), (c) and (d));

(iii) The sentencing of juveniles, in particular the prohibition of capital punishment and life imprisonment (art. 37 (a));

(iv) Physical and psychological recovery and social reintegration (art. 39);

(c) Children in situations of exploitation, including physical and psychological recovery and social reintegration (art. 39):

(i) Economic exploitation, including child labour (art. 32);

(ii) Drug abuse (art. 33);

(iii) Sexual exploitation and sexual abuse (art. 34);

(iv) Other forms of exploitation (art. 36);

(v) Sale, trafficking and abduction (art. 35);

(d) Children belonging to a minority or an indigenous group (art. 30);

(e) Children living or working on the street.

39. In relation to article 22, reports should also provide information on the international conventions and other relevant instruments to which the State is party, including those relating to international refugee law, as well as relevant indicators identified and used; relevant programmes

of technical cooperation and international assistance, as well as information on infringements that have been observed by inspectors and sanctions applied.

40. Reports should further describe the training activities developed for all professionals involved with the system of juvenile justice, including judges and magistrates, prosecutors, lawyers, law enforcement officials, immigration officers and social workers, on the provisions of the Convention and other relevant international instruments in the field of juvenile justice, including the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) (General Assembly resolution 40/33), the United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines) (General Assembly resolution 45/112) and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (General Assembly resolution 45/113).

41. With regard to article 32, reports should also provide information on the international conventions and other relevant instruments to which the State is party, including in the framework of the International Labour Organization, as well as relevant indicators identified and used; relevant programmes of technical cooperation and international assistance developed, as well as information on infringements that have been observed by inspectors and sanctions applied.

IX. OPTIONAL PROTOCOLS TO THE CONVENTION ON THE RIGHTS OF THE CHILD

42. States parties that have ratified one or both Optional Protocols to the Convention on the Rights of the Child - Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography - should, after they have submitted their initial report for each of the two Optional Protocols (see respective guidelines, CRC/OP/AC/1 and CRC/OP/SA/1), provide detailed information about measures taken with regard to the recommendations made by the Committee in its concluding observations on the last report submitted to the Committee.

Annex

ANNEX TO THE GENERAL GUIDELINES REGARDING THE FORM AND CONTENTS OF PERIODIC REPORTS TO BE SUBMITTED BY STATES PARTIES UNDER ARTICLE 44, PARAGRAPH 1 (b), OF THE CONVENTION

Introduction

1. In preparing their periodic reports States parties should follow the General Guidelines regarding the form and content and include, as requested by the present annex, where appropriate, information and disaggregated statistical data and other indicators. In the present annex, references to disaggregated data include indicators such as age and/or age group, gender, location in rural/urban area, membership of minority and/or indigenous group, ethnicity, religion, disability or any other category considered appropriate.

2. Information and disaggregated data provided by States parties should cover the reporting period since the consideration of their last report. They should also explain or comment on significant changes that have taken place over the reporting period.

I. GENERAL MEASURES OF IMPLEMENTATION (arts. 4, 42 and 44, para. 6)

3. States parties should provide statistical data on training provided on the Convention for professionals working with and for children, including, but not limited to:

(a) Judicial personnel, including judges and magistrates;

(b) Law enforcement personnel;

(c) Teachers;

(d) Health-care personnel;

(e) Social workers.

II. DEFINITION OF THE CHILD (art. 1)

4. States parties should provide disaggregated data as described in paragraph 1 above, on the number and proportion of children under 18 living in the State party.

III. GENERAL PRINCIPLES (arts. 2, 3, 6 and 12)

Right to life, survival and development (art. 6)

5. It is recommended that States parties provide data disaggregated as described in paragraph 1 above, on the death of those under 18:

(a) As a result of extrajudicial, summary or arbitrary executions;

(b) As a result of capital punishment;

(c) Due to illnesses, including HIV/AIDS, malaria, tuberculosis, polio, hepatitis and acute respiratory infections;

(d) As a result of traffic or other accidents;

(e) As the result of crime and other forms of violence;

(f) Due to suicide.

Respect for the views of the child (art. 12)

6. States parties should provide data on the number of child and youth organizations or associations and the number of members that they represent.

7. States parties should provide data on the number of schools with independent student councils.

IV. CIVIL RIGHTS AND FREEDOMS (arts. 7, 8, 13-17 and 37 (a))

Birth registration (art. 7)

8. Information should be provided on the number and percentage of children who are registered after birth, and when such registration takes place.

Access to appropriate information (art. 17)

9. The report should contain statistics on the number of libraries accessible to children, including mobile libraries.

The right not to be subjected to torture or other cruel inhuman or degrading treatment or punishment (art. 37 (a))

10. States parties should provide data disaggregated as described in paragraph 1 above, and type of violation, on the:

(a) Number of children reported as victims of torture;

(b) Number of children reported as victims of other cruel, inhuman or degrading treatment or other forms of punishment, including forced marriage and female genital mutilation;

(c) Number and percentage of reported violations under both (a) and (b) which have resulted in either a court decision or other types of follow-up;

(d) Number and percentage of children who received special care in terms of recovery and social reintegration;

(e) Number of programmes implemented for the prevention of institutional violence and amount of training provided to staff of institutions on this issue.

V. FAMILY ENVIRONMENT AND ALTERNATIVE CARE

Family support (arts. 5 and 18, paras. 1 and 2)

11. States parties should provide data disaggregated as described in paragraph 1, above, on the:

(a) Number of services and programmes aimed at rendering appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and the number and percentage of children and families that benefit from these services and programmes;

(b) Number of available childcare services and facilities and the percentage of children and families that have access to these services.

Children without parental care (arts. 9, paras. 1-4, 21 and 25)

12. With reference to children separated from parents, States parties should provide data disaggregated as described in paragraph 1, above, on the:

(a) Number of children without parental care disaggregated by causes (i.e. due to armed conflict, poverty, abandonment as a result of discrimination, etc.);

(b) Number of children separated from their parents as a result of court decisions (inter alia, in relation to situations of detention, imprisonment, exile or deportation);

(c) Number of institutions for these children disaggregated by region, number of places available in these institutions, ratio of caregivers to children and number of foster homes;

(d) Number and percentage of children separated from their parents who are living in institutions or with foster families as well as the duration of placement and frequency of its review;

(e) Number and percentage of children reunited with their parents after a placement;

(f) Number of children in domestic (formal and informal) and intercountry adoption programmes disaggregated by age and with information on the country of origin and of adoption for the children concerned.

Family reunification (art. 10)

13. States parties should provide data disaggregated by gender, age, national and ethnic origin on the number of children who entered or left the country for the purpose of family reunification, including the number of unaccompanied refugee and asylum-seeking children.

Illicit transfer and non-return (art. 11)

14. States parties should provide data disaggregated as described in paragraph 1, above, as well as by national origin, place of residence, family status on the:

(a) Number of children abducted from and to the State party;

(b) Number of perpetrators arrested and percentage of those that were sanctioned in (criminal) courts.

Information on the relationship between the child and the perpetrator of the illicit transfer should also be included.

Abuse and neglect (art. 19), including physical and psychological recovery and social reintegration (art. 39)

15. States parties should provide data disaggregated as described in paragraph 1, above, on the:

(a) Number and percentage of children reported as victims of abuse and/or neglect by parents or other relatives/caregivers;

(b) Number and percentage of those cases reported that resulted in sanctions or other forms of follow-up for perpetrators;

(c) Number and percentage of children who received special care in terms of recovery and social reintegration.

VI. BASIC HEALTH AND WELFARE

Children with disabilities (art. 23)

16. States parties should specify the number and percentage of children with disabilities disaggregated as described in paragraph 1, above, as well as by nature of disability:

(a) Whose parents receive special material or other assistance;

(b) Who are living in institutions, including institutions for mental illnesses, or outside their families, such as in foster care;

(c) Who are attending regular schools;

(d) Who are attending special schools.

Health and health services (art. 24)

17. States parties should provide data disaggregated as described in paragraph 1, above, on the:

(a) Rates of infant and under-five child mortality;

(b) Proportion of children with low birth weight;

(c) Proportion of children with moderate and severe underweight, wasting and stunting;

(d) Percentage of households without access to hygienic sanitation facilities and access to safe drinking water;

(e) Percentage of one-year-olds fully immunized for tuberculosis, diphtheria, pertussis, tetanus, polio and measles;

(f) Rates of maternal mortality, including its main causes;

(g) Proportion of pregnant women who have access to, and benefit from, prenatal and post-natal health care;

(h) Proportion of children born in hospitals;

(i) Proportion of personnel trained in hospital care and delivery;

(j) Proportion of mothers who practice exclusive breastfeeding and for how long.

18. States parties should provide data disaggregated as described in paragraph 1, above, on the:

(a) Number/percentage of children infected by HIV/AIDS;

(b) Number/percentage of children who receive assistance including medical treatment, counselling, care and support;

(c) Number/percentage of these children living with relatives, in foster care, in institutions, or on the streets;

(d) Number of child-headed households as a result of HIV/AIDS.

19. Data should be provided with regard to adolescent health on:

(a) The number of adolescents affected by early pregnancy, sexually transmitted infections, mental health problems, drug and alcohol abuse, disaggregated as described in paragraph 1, above;

(b) Number of programmes and services aimed at the prevention and treatment of adolescent health concerns.

VII. EDUCATION, LEISURE AND CULTURAL ACTIVITIES

Education, including vocational training (art. 28)

20. Data disaggregated as described in paragraph 1, above, should be provided in respect of:

(a) Literacy rates of children and adults;

(b) Enrolment and attendance rates for primary and secondary schools and vocational training centres;

(c) Retention rates and percentage of dropout for primary and secondary schools and vocational training centres;

(d) Average teacher:pupil ratio, with an indication of any significant regional or rural/urban disparities;

(e) Percentage of children in the non-formal education system;

(f) Percentage of children who attend preschool education.

VIII. SPECIAL PROTECTION MEASURES

Refugee children (art. 22)

21. States parties should provide data disaggregated as described in paragraph 1, above, as well as country of origin, nationality and accompanied or unaccompanied status on the:

(a) Number of internally displaced, asylum-seeking, unaccompanied and refugee children;

(b) Number and percentage of such children attending school and covered by health services.

Children in armed conflicts (art. 38), including physical and psychological recovery and social reintegration (art. 39)

22. States parties should provide data disaggregated as described in paragraph 1, above, on the:

(a) Number and percentage of persons under 18 who are recruited or enlist voluntarily in the armed forces and proportion of those who participate in hostilities;

(b) Number and percentage of children who have been demobilized and reintegrated into their communities; with the proportion of those who have returned to school and been reunified with their families;

(c) Number and percentage of child casualties due to armed conflict;

(d) Number of children who receive humanitarian assistance;

(e) Number of children who receive medical and/or psychological treatment as a consequence of armed conflict.

The administration of juvenile justice (art. 40)

23. States parties should provide appropriate disaggregated data (as described in paragraph 1, above, including by type of crime) on the:

(a) Number of persons under 18 who have been arrested by the police due to an alleged conflict with the law;

(b) Percentage of cases where legal or other assistance has been provided;

(c) Number and percentage of persons under 18 who have been found guilty of an offence by a court and have received suspended sentences or have received punishment other than deprivation of liberty;

(d) Number of persons under 18 participating in probation programmes of special rehabilitation;

(e) Percentage of recidivism cases.

Children deprived of their liberty, including any form of detention, imprisonment or placement in custodial settings (art. 37 (b)-(d))

24. States parties should provide appropriate disaggregated data (as described in paragraph 1, above, including by social status, origin and type of crime) on children in conflict with the law in respect of the:

(a) Number of persons under 18 held in police stations or pretrial detention after having been accused of committing a crime reported to the police, and the average length of their detention;

(b) Number of institutions specifically for persons under 18 alleged as, accused of, or recognized as having infringed the penal law;

(c) Number of persons under 18 in these institutions and average length of stay;

(d) Number of persons under 18 detained in institutions that are not specifically for children;

(e) Number and percentage of persons under 18 who have been found guilty of an offence by a court and have been sentenced to detention and the average length of their detention;

(f) Number of reported cases of abuse and maltreatment of persons under 18 occurring during their arrest and detention/imprisonment.

Economic exploitation of children, including child labour (art. 32)

25. With reference to special protection measures, States parties should provide statistical disaggregated data as described in paragraph 1, above, on the:

(a) Number and percentage of children below the minimum age of employment who are involved in child labour as defined by the Minimum Age Convention, 1973 (No. 138) and the Worst Forms of Child Labour Convention, 1999 (No. 182) of the International Labour Organization disaggregated by type of employment;

(b) Number and percentage of those children with access to recovery and reintegration assistance, including free basic education and/or vocational training.

Drug and substance abuse (art. 33)

26. Information is to be provided on:

(a) The number of child victims of substance abuse;

(b) The number that are receiving treatment, assistance and recovery services.

Sexual exploitation, abuse and trafficking (art. 34)

27. States parties should provide data disaggregated as described in paragraph 1, above, as well as by types of violation reported on the:

(a) Number of children involved in sexual exploitation, including prostitution, pornography and trafficking;

(b) Number of children involved in sexual exploitation, including prostitution, pornography and trafficking, who were provided access to rehabilitation programmes;

(c) Number of cases of commercial sexual exploitation, sexual abuse, sale of children, abduction of children and violence against children reported during the reporting period;

(d) Number and percentage of those that have resulted in sanctions, with information on the country of origin of the perpetrator and the nature of the penalties imposed;

(e) Number of children trafficked for other purposes, including labour;

(f) Number of border and law enforcement officials who have received training, with a view to preventing trafficking of children and to respect their dignity.

Chapter VIII

OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE INVOLVEMENT OF CHILDREN IN ARMED CONFLICT*

Introduction

1. Pursuant to article 8, paragraph 1, of the Optional Protocol, States parties shall, within two years following the entry into force of the Protocol for the State party concerned, submit a report to the Committee on the Rights of the Child providing comprehensive information on the measures it has taken to implement the provisions of the Optional Protocol. Thereafter, pursuant to article 8, paragraph 2, of the Optional Protocol, States parties shall include in the reports they submit to the Committee on the Rights of the Child in accordance with article 44, paragraph 1 (b), of the Convention any further information with respect to the implementation of the Optional Protocol. States parties to the Optional Protocol who are not parties to the Convention shall submit a report every five years after the submission of the comprehensive report.

2. The Committee may, in the light of article 8, paragraph 3, of the Optional Protocol, request from States parties further information relevant to the implementation of the Optional Protocol.

3. Reports should provide information on the measures adopted by the State party to give effect to the rights set forth in the Optional Protocol and on the progress made in the enjoyment of those rights and should indicate the factors and difficulties, if any, affecting the degree of fulfilment of the obligations under the Optional Protocol.

4. Copies of the principal legislative texts and judicial decisions, administrative and other relevant instructions to the armed forces, both of a civil and a military character, as well as detailed statistical information, indicators referred to therein and relevant research should accompany reports. In reporting to the Committee, States parties should indicate how the implementation of the Optional Protocol is in line with the general principles of the Convention on the Rights of the Child, namely non-discrimination, best interests of the child, right to life, survival and development, and respect for the views of the child. Moreover, the process of preparation of the report should be described to the Committee, including the involvement of governmental and non-governmental organizations/bodies in its drafting and dissemination. Finally, reports should indicate the date of reference used when determining whether or not a person is within an age limit (for instance, the date of birth of the person concerned or the first day of the year during which the person concerned reaches that age).

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* Adopted by the Committee at its 736th meeting (twenty-eighth session) on 3 October 2001.

Article 1

5. Please provide information on all measures taken, including of a legislative, administrative or other nature, to ensure that members of the armed forces who have not attained the age of 18 years do not take a direct part in hostilities. In this respect, please provide information notably on:

(a) The meaning of "direct participation" in the legislation and practice of the State concerned;

(b) The measures taken to avoid a member of the armed forces who has not attained the age of 18 years being deployed or maintained in an area where hostilities are taking place and the obstacles encountered in applying these measures;

(c) When relevant, disaggregated data on members of the armed forces below the age of 18 years who were taken prisoner, despite not having participated directly in hostilities.

Article 2

6. Please indicate all the measures taken, including of a legislative, administrative or other nature, to ensure that persons who have not attained the age 18 years are not compulsorily recruited into the armed forces. In this regard, reports should provide, information on, inter alia:

(a) The process of compulsory recruitment (i.e. from registration up to the physical integration into the armed forces), indicating the minimum age linked to each step and at what point in that process recruits become members of the armed forces;

(b) The documents considered reliable which are required to verify age prior to acceptance into compulsory military service (birth certificate, affidavit, etc.);

(c) Any legal provision enabling the age of conscription to be lowered in exceptional circumstances (e.g. state of emergency). In this respect, please provide information on the age it can be lowered to and the process for and conditions of that change;

(d) For States parties where compulsory military service has been suspended but not abolished, the minimum age of recruitment set for compulsory military service and how, and under what conditions, compulsory service can be reactivated.

Article 3

Paragraph 1

7. Reports should contain the following:

(a) The minimum age set for voluntary recruitment into the armed forces, in accordance with the declaration submitted upon ratification or accession or any change thereafter;

(b) When relevant, disaggregated data (for example, by gender, age, region, rural/urban areas and social and ethnic origin, and military ranks) on children below the age of 18 years voluntarily recruited into the national armed forces;

(c) When relevant, the measures taken pursuant to article 38, paragraph 3, of the Convention on the Rights of the Child to ensure that in recruiting those persons who have attained the minimum age set for voluntary recruitment but who have not attained the age of 18 years, priority is given to those who are oldest. In this respect, provide information on the measures of special protection adopted for the recruits under 18 years old.

Paragraphs 2 and 4

8. Reports should provide information on:

(a) The debate which has taken place in the State party prior to the adoption of the binding declaration and the people involved in that debate;

(b) When relevant, the national (or regional, local, etc.) debates, initiatives, or any campaign aimed at strengthening the declaration if it set a minimum age lower than 18 years.

Paragraph 3

9. With regard to the minimum safeguards that States parties shall maintain concerning voluntary recruitment, reports should provide information on the implementation of these safeguards and indicate, among other things:

(a) A detailed description of the procedure used for such recruitment, from the expression of intention to volunteer through to the physical integration into the armed forces;

(b) Medical examinations foreseen before volunteers can be recruited;

(c) The documentation required to verify the age of the volunteers (birth certificate, affidavit, etc.);

(d) Information that is made available to the volunteers, and to their parents or legal guardians, allowing them to formulate their own opinion and to make them aware of the duties involved in the military service. A copy of any materials used for this purpose should be annexed to the report;

(e) The effective minimum service time and the conditions for early discharge; the application of military justice or discipline to recruits under 18 and disaggregated data on the number of such recruits being tried or in detention; the minimum and maximum sanctions foreseen in case of desertion;

(f) The incentives used by the national armed forces for encouraging volunteers (scholarships, advertising, meetings at schools, games, etc.).

Paragraph 5

10. Reports should provide information on:

(a) The minimum age of entry into schools operated by or under the control of the armed forces;

(b) Disaggregated data on schools operated by or under the control of the armed forces, including their number, the type of education provided and the proportions of academic education and military training in the curricula; length of the education; academic/military personnel involved, educational facilities, etc.;

(c) The inclusion in the school curricula of human rights and humanitarian principles, including in areas relevant to the realization of the rights of the child;

(d) Disaggregated data (for example, by gender, age, region, rural/urban areas and social and ethnic origin) on the students attending these schools; their status (members or not of the armed forces); their military status in the case of a mobilization or of an armed conflict, a genuine military need or any other emergency situation; their right to leave such schools at any time and not to pursue a military career;

(e) The measures taken to ensure that school discipline is administered in a manner consistent with the child's human dignity, and any complaint mechanisms available in this regard.

Article 4

11. Please provide information on, inter alia:

(a) The armed groups operating on/from the territory of the State party or with sanctuary on its territory;

(b) The status of any negotiations between the State party and armed groups;

(c) Disaggregated data (for example, by gender, age, region, rural/urban areas and social and ethnic origin, time spent in the armed groups, and time spent participating in hostilities) on children who have been recruited and used in hostilities by armed groups and on those who have been arrested by the State party;

(d) Any written or oral commitment made by armed groups not to recruit and use children below the age of 18 in hostilities;

(e) Measures adopted by the State party aimed at raising awareness amongst armed groups and within communities of the need to prevent the recruitment of children below the age of 18 and of their legal obligations with regard to the minimum age set in the Optional Protocol for recruitment and participation in hostilities;

(f) The adoption of legal measures which aim at prohibiting and criminalizing the recruitment and use in hostilities of children under the age of 18 by armed groups and relevant judicial decisions;

(g) The programmes (e.g. birth registration campaigns) to prevent children who are at highest risk of recruitment or use by armed groups, such as refugee and internally displaced children, street children, orphans, from being so recruited or used.

Article 5

12. Please indicate those provisions of the national legislation or of international instruments and international humanitarian law applicable in the State party, which are more conducive to the realization of the rights of the child. Reports should also provide information on the status of ratification by the State party of the main international instruments concerning children in armed conflict and on other commitments undertaken by the State party concerning this issue.

Article 6

Paragraphs 1 and 2

13. Indicate the measures adopted to ensure the effective implementation and enforcement of the provisions of the Optional Protocol within the jurisdiction of the State party, including information on:

(a) Any review of domestic legislation and amendments introduced;

(b) The legal status of the Optional Protocol in national law and its applicability before domestic jurisdictions, as well as, when relevant, the intention of the State party to withdraw existing reservations made to the Optional Protocol;

(c) The governmental departments or bodies responsible for the implementation of the Optional Protocol and their coordination with regional and local authorities, as well as with civil society;

(d) The mechanisms and means used for monitoring and periodically evaluating the implementation of the Optional Protocol;

(e) Measures adopted to ensure the training of peacekeeping personnel on the rights of the child, including the provisions of the Optional Protocol;

(f) The dissemination in all relevant languages of the Optional Protocol to all children and adults, notably those responsible for military recruitment, and the training offered to all professional groups working with and for children.

Paragraph 3

14. When relevant, please describe all measures adopted with regard to disarmament, demobilization (or release from service), and the provision of appropriate assistance for the physical and psychological recovery and social reintegration of children, taking due account of the specific situation of girls, including information on:

(a) The children involved in that procedure, on their participation in such programmes, and on their status with regard to the armed forces and armed groups (e.g. when do they stop being members of the armed forces or groups?); the data should be disaggregated by, e.g. age and sex;

(b) The budget allocated to these programmes, the personnel involved and their training, the organizations concerned, cooperation among them, and participation of civil society, local communities, families, etc.;

(c) The various measures adopted to ensure the social reintegration of children, e.g. interim care, access to education and vocational training, reintegration in the family and community and relevant judicial measures, taking into account the specific needs of the children concerned, depending notably on their age and sex;

(d) The measures adopted to ensure confidentiality and protection of children involved in such programmes from media exposure and exploitation;

(e) The legal provisions adopted to criminalize the recruitment of children and whether that crime comes within the competence of any specific justice-seeking mechanisms established in the context of conflict (e.g. war crimes tribunal, truth and reconciliation bodies); the safeguards adopted to ensure that the rights of the child as a victim and as a witness are respected in these mechanisms in light of the Convention on the Rights of the Child;

(f) The criminal liability of children for crimes they may have committed during their stay with armed forces or groups and the judicial procedure applicable, as well as safeguards to ensure that the rights of the child are respected;

(g) When relevant, the provisions of peace agreements dealing with the disarmament, demobilization, and/or physical and psychological recovery and social reintegration of child combatants.

Article 7

15. Reports should provide information on cooperation in the implementation of the Optional Protocol, including through technical cooperation and financial assistance. In this regard, reports should provide information, inter alia, on the extent of the technical cooperation or financial assistance which the State party has requested or offered. Please indicate if the State party is in a position to provide financial assistance and describe the multilateral, bilateral or other programmes that have been undertaken with that assistance.

Chapter IX

OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY*

Introduction

Pursuant to article 12, paragraph 1, of the Optional Protocol, each State party shall, within two years following the entry into force of the Protocol for that State party, submit a report to the Committee on the Rights of the Child ("the Committee") containing comprehensive information on the measures it has taken to implement the provisions of the Protocol. Thereafter, pursuant to article 12, paragraph 2, of the Protocol, States parties having submitted their initial report under this Protocol shall include in the reports they submit to the Committee in accordance with article 44, paragraph 1 (b), of the Convention any further information with respect to the implementation of the Optional Protocol. States parties to the Optional Protocol that are not parties to the Convention shall submit a report within two years following the entry into force of the Protocol and then every five years.

Guidelines regarding initial reports to be submitted by States parties under article 12, paragraph 1, of the Optional Protocol were adopted by the Committee at its 777th meeting, on 1 February 2002. The process of reviewing the reports received has led the Committee to adopt revised guidelines, in order to assist the States parties that have not yet reported to better understand the kind of information and data it considers necessary to understand and evaluate the progress made by States parties in implementing their obligations and to enable it to provide them with appropriate observations and recommendations.

The revised guidelines are divided into eight sections. Section I contains general guidelines about the reporting process, section II concerns data and section III concerns general measures of implementation relevant to this Protocol. Sections IV to VIII concern the substantive obligations recognized by the Protocol: section IV concerns the prevention of the sale of children, child prostitution and child pornography; section V concerns the criminalization of these practices and related matters; section VI concerns protection of the rights of child victims; section VII concerns international assistance and cooperation; and section VIII concerns other relevant provisions of national or international law.

The Committee particularly wants to draw attention of the States parties to the annex to these guidelines, which provides additional guidance on some issues and further indications as to the information needed for a comprehensive report of the States parties on the implementation of this Protocol.

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* Contained in CRC/C/OPSC/2 entitled *Guidelines regarding initial reports to be submitted by States parties under article 12 (1) of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography*, which were adopted by the Committee on the Rights of the Child at its forty-third session, on 29 September 2006.

I. GENERAL GUIDELINES

1. Reports submitted pursuant to article 12, paragraph 1, of the Protocol should contain a description of the process of preparation of the report, including the contributions made by governmental and non-governmental organizations/bodies in its drafting and dissemination. Reports of federal States and States having dependent territories or autonomous regional governments, should contain summarized and analytical information on how they contributed to the report.

2. Reports should indicate how the general principles of the Convention, namely non-discrimination, the primacy of best interests of the child, the rights to life, survival and development, and respect for the views of the child, have been taken into account in the design and implementation of the measures adopted by the State party under the Protocol (see annex).

3. Since the Protocol is intended to further implementation of the Convention on the Rights of the Child, in particular articles 1, 11, 21, 32, 34, 35 and 36, reports submitted pursuant to article 12 of the Protocol should indicate how and to what extent the measures taken in order to implement the Protocol have contributed to the implementation of the Convention, in particular the articles listed above.

4. Reports should contain information on the legal status of the Protocol in the internal law of the State party, and its applicability in all relevant domestic jurisdictions.

5. States parties also are invited to include in the reports, when relevant, information about the intention of the State party to withdraw any reservation(s) it has made to the Protocol.

6. Reports should include, in addition to information on the measures taken to implement the Protocol:

(a) Information, including relevant quantifiable data where available, on the progress made in eliminating the sale of children, child prostitution and child pornography and in ensuring the protection and enjoyment of the rights set forth in the Protocol;

(b) An analysis of the factors and difficulties, if any, affecting the degree of fulfilment of the obligations under the Protocol; and

(c) Information from all autonomous regions or territories in the State party in a summarized version (full texts of the information concerning such entities may be annexed to the report).

7. Reports should accurately describe the implementation of the Protocol with regard to all territories and persons over which the State party exercises jurisdiction, including all parts of federal States, dependent or autonomous territories, all military forces of the State party and all locations where such forces exercise de facto effective control.

8. States parties are invited to submit, together with their reports under article 12, copies of the principal legislative, administrative and other relevant texts, judicial decisions and relevant studies or reports.

II. DATA

9. Data included in the reports submitted pursuant to article 12 of the Protocol should be disaggregated, to the extent possible, by sex, region, age and by nationality and ethnicity, if relevant, and any other criteria that the State party considers relevant and that would help the Committee come to a more accurate understanding of the progress made in implementing the Protocol and any remaining gaps or challenges. The report should also contain information on the mechanisms and procedures used to collect these data.

10. Reports should summarize available data on the incidence of sale of children in the State party, including:

(a) The sale or transfer of children for purposes of sexual exploitation;

(b) The transfer of the organs of children for profit;

(c) The engagement of children in forced labour (see annex);

(d) The number of children adopted through the efforts of intermediaries using methods incompatible with article 21 of the Convention or other applicable international standards;

(e) Any other form of sale of children that occurs within the State party, including any traditional practices that involve the transfer of a child by any person or group of persons to another for any form of consideration, and any available indicators of the number of children affected by such practices;

(f) The number of child victims of trafficking - whether within the territory of the State party, from the territory of the State party to other States or from other States to the territory of the State party - including information as to the type of exploitation for which such children are trafficked (see annex); and

(g) The data provided should also show increase or decrease in these practices over time, when possible.

11. Reports should summarize available data concerning child prostitution, including:

(a) The number of persons under the age of 18 engaged in prostitution in the State party;

(b) The increase or decrease of child prostitution or any specific forms of child prostitution over time (see annex); and

(c) The extent to which child prostitution is linked to sex tourism within the territory of the State party, or the State party has detected within its territory efforts to promote sex tourism involving child prostitution in other countries.

12. Reports should summarize available information concerning the extent to which pornography featuring persons actually or apparently under the age of 18, is produced, imported,

distributed or consumed within the territory of the State party and any increases or decreases in the production, importation, distribution or consumption of child pornography that have been measured or detected, including:

(a) Photographs and other printed materials;

(b) Videos, motion pictures and electronically recorded materials;

(c) Internet sites containing photographs, videos, motion pictures or animated productions (e.g. cartoons) depicting, offering or advertising child pornography; and

(d) Live performances.

The report should contain any available data concerning the number of prosecutions and convictions for such offences, disaggregated by nature of offence (sale of children, child prostitution or child pornography).

III. GENERAL MEASURES OF IMPLEMENTATION

13. Reports submitted should contain information on:

(a) All laws, decrees and regulations adopted by the national, State or regional legislatures or other competent bodies of the State party in order to give effect to the Protocol (see annex);

(b) Any significant jurisprudence adopted by the courts of the State party with regard to the sale of children, child prostitution and child pornography, in particular jurisprudence that applies the Convention, the Protocol or related international instruments referred to by these guidelines;

(c) The governmental departments or bodies having primary responsibility for the implementation of this Protocol and the mechanism(s) that have been established or are used to ensure coordination between them and the relevant regional and local authorities, as well as with civil society, including the business sector, the media and academia;

(d) The dissemination of the Protocol and the appropriate training offered to all relevant professional and para-professional groups, including immigration and law enforcement officers, judges, social workers, teachers and legislators;

(e) The mechanisms and procedures used to collect and evaluate data and other information concerning implementation of this Protocol on a periodic or continuing basis;

(f) The budget allocated to the various activities of the State party related to implementation of the present Protocol;

(g) The overall strategy of the State party for the elimination of the sale of children, child prostitution and child pornography and the protection of victims, and any national or regional plans, or particularly significant local ones, that have been adopted in order to

strengthen efforts to implement this Protocol, or any components of plans for advancing the rights of the child, the rights of women or human rights that contain components aimed at the elimination of these practices or protection of victims;

(h) The contributions made by civil society to efforts to eliminate the sale of children, child prostitution and child pornography; and

(i) The role played by statutory ombudspersons for children or similar autonomous public institutions for the rights of children, if any, in implementing this Protocol or in monitoring its implementation (see annex).

IV. PREVENTION
(art. 9, paras. 1 and 2)

14. Bearing in mind that article 9, paragraph 1, of the Protocol requires States parties to pay "particular attention" to the protection of children who are "especially vulnerable" to the sale of children, child prostitution or pornography, reports should describe the methods used to identify children who are especially vulnerable to such practices, such as street children, girls, children living in remote areas and those living in poverty. In addition, they should describe the social programmes and policies that have been adopted or strengthened to protect children, in particular especially vulnerable children, from such practices (e.g. in the areas of health and education), as well as any administrative or legal measures (other than those described in response to the guidelines contained in section V) that have been taken to protect children from these practices, including civil registry practices aimed at preventing abuse. Reports also should summarize any available data as to the impact of such social and other measures.

15. Reports should describe any campaigns or other measures that have been taken to promote public awareness of the harmful consequences of the sale of children and child prostitution and pornography, as required by article 9, paragraph 2, of the Protocol, including:

(a) Measures specifically aimed at making children aware of the harmful consequences of such practices, and of resources and sources of assistance intended to prevent children from falling victim to them;

(b) Programmes targeting any specific groups other than children and the general public (e.g. tourists, transportation and hotel workers, adult sex workers, members of the armed forces, correctional personnel);

(c) The role played by NGOs, the media, the private sector and the community, in particular children, in the design and implementation of the awareness measures described above; and

(d) Any steps taken to measure and evaluate the effectiveness of the measures described above, and the results obtained.

V. PROHIBITION AND RELATED MATTERS (arts. 3; 4, paras. 2 and 3; 5; 6 and 7)

16. Reports should provide information on all criminal or penal laws in force covering and defining the acts and activities enumerated in article 3, paragraph 1, of the Protocol, including:

(a) The material elements of all such offences, including any reference to the age of the victim and the sex of the victim or perpetrator;

(b) The maximum and minimum penalties that can be imposed for each of these offences (see annex);

(c) Any defences and aggravating or attenuating circumstances applicable specifically to these offences;

(d) The statute of limitations for each of these offences;

(e) Any other offences recognized by the laws of the State party that it considers relevant to implementation of the present Protocol (see annex); and

(f) The sentences applicable under the law(s) of the State party for attempts to commit and complicity or participation in the offences described in response to this guideline.

17. Reports also should indicate any provisions of the law in force that the State party considers an obstacle to implementation of the present Protocol, and any plans it has to review them.

18. Reports should describe any law concerning the criminal liability of legal persons for the acts and activities enumerated in article 3, paragraph 1, of the Protocol, and comment on the effectiveness of such laws as a deterrent to the sale of children, child prostitution and child pornography; if the law of the State party does not recognize the criminal liability of legal persons for such offences, the report should explain why this is so and the position of the State party on the feasibility and desirability of modifying it (see annex).

19. Reports of States parties whose law permits adoption should indicate the bilateral and multilateral agreements, if any, that are applicable and the measures it has taken to ensure that all persons involved in the adoption of children act in conformity with such agreements and with the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children (General Assembly resolution 41/85 of 3 December 1986), including:

(a) The legal and other measures taken to prevent illegal adoptions, e.g. those that have not been authorized by the authorities competent for dealing with domestic and intercountry adoptions;

(b) The legal and other measures taken to prevent intermediaries from attempting to persuade mothers or pregnant women to give their children for adoption, and to prevent unauthorized persons or agencies from advertising services concerning adoption;

(c) The regulations and licensing of agencies and individuals acting as intermediaries in adoptions, as well as legal practices identified so far;

(d) The legal and administrative measures taken to prevent the theft of young children and to prevent fraudulent birth registration, including applicable criminal sanctions;

(e) The circumstances in which the consent of a parent for adoption can be waived and any safeguards in place that are designed to ensure that consent is informed and freely given; and

(f) Measures to regulate and limit the fees charged by agencies, services or individuals in connection with adoption and the sanctions applicable for non-compliance with them.

20. States parties to this Protocol that recognize adoption and that are not parties to the 1993 Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption are invited to indicate whether they have considered becoming parties to it and the reasons they have not yet done so.

21. Reports should indicate:

(a) The laws in force prohibiting the production and dissemination of material advertising any of the offences described in the Protocol;

(b) The applicable sanctions;

(c) Any available data or information concerning the number of prosecutions and convictions for such offences, disaggregated by nature of the offence (sale of children, child prostitution or child pornography); and

(d) Whether such laws are effective in preventing advertising for the sale of children, child prostitution and child pornography and, if not, the reasons why and any plans the State has for strengthening such laws and/or their enforcement.

22. Reports should indicate the legal provisions that establish jurisdiction over the offences referred to in article 3 of the Protocol, including information about the grounds for this jurisdiction (see article 4, paragraphs 1 and 3).

23. Reports also should indicate the legal provisions that establish extraterritorial jurisdiction over such offences on the grounds mentioned in article 4, paragraph 2, and/or on any other grounds of jurisdiction recognized by the law of the State party.

24. Reports should describe the law, policy and practice of the State party concerning the extradition of persons accused of having committed one or more of the offences referred to by article 3 of the Protocol, including:

(a) Whether extradition requires the existence of an extradition treaty with the requesting State and, if not, any conditions applied in considering requests for extradition (e.g. reciprocity);

(b) If extradition is conditional on the existence of an extradition treaty in force for the

State party and a requesting State, whether the competent authorities of the State party recognize article 5, paragraph 2, as sufficient basis for granting an extradition request made by another party to this Protocol, including in cases in which the extradition request concerns a national of the State receiving the request;

(c) Whether the State party has entered into any extradition treaties since becoming a party to this Protocol or is negotiating any extradition treaties and, if so, whether such treaties recognize the offences corresponding to those referred to in the Protocol as extraditable offences;

(d) Whether the State party, since the entry into force of the Protocol, has refused any request(s) for the extradition of a person subject to its jurisdiction who was accused by another State of any of the offences referred to in the present Protocol and, if so, the reason for the refusal(s) to extradite, and whether the person(s) concerned was referred to the competent authorities of the State party for prosecution;

(e) The number of requests for extradition for any of the offences referred to the Protocol that have been granted by the State party since the entry into force of the Protocol or since its most recent report on implementation of the Protocol, disaggregated by the nature of the offences;

(f) Whether the State party has, since the entry into force of the Protocol, requested the extradition of any person accused of any of the offences referred to in this Protocol and, if so, whether such request(s) have been honoured by the requested State(s); and

(g) Whether any new legislation, regulations or judicial rules concerning extradition have been proposed, drafted or adopted and, if so, their consequences, if any, for the extradition of persons accused of offences corresponding to the conduct described in article 3 of this Protocol.

25. Reports should describe the legal basis, including international agreements, for cooperation with other States parties with regard to investigations and criminal and extradition proceedings brought with regard to the offences referred to by the Protocol, and the policy and practice of the State party with regard to such cooperation, including examples of cases in which it has cooperated with other States parties and any significant difficulties it has experienced in obtaining the cooperation of other States parties.

26. Reports should describe the law, policy and practice of the State party with regard to:

(a) The seizure and confiscation of materials, assets and or other goods used to commit or facilitate any of the offences set forth in the Protocol;

(b) The seizure and confiscation of proceeds derived from the commission of such offences; and

(c) The closure of premises used to commit such offences, including the execution of requests made by other States parties for the seizure and confiscation of any materials, assets, instrumentalities or proceeds described in article 7 (a) of the Protocol; the State party's experience concerning the response of other parties to its requests for the seizure and

confiscation of goods and proceeds; any legislation concerning these matters that has been proposed, drafted or enacted since the entry into force of the Protocol, and any judicial decisions concerning these matters of particular significance.

VI. PROTECTION OF THE RIGHTS OF VICTIMS (arts. 8 and 9, paras. 3 and 4)

27. Reports should contain information on the measures adopted by the State party to implement article 8 of the Protocol with a view to ensure that the rights and best interests of children who have been the victims of the practices prohibited under the present Protocol are fully recognized, respected and protected at all stages of criminal investigations and proceedings which concern them. States also may wish to describe any efforts made to implement the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime adopted by the Economic and Social Council in 2005 (see annex).

28. Reports should describe the law, policy and practice throughout the territory of the State party regarding the investigation of the offences referred to by the Protocol, in cases in which the victim appears to be below the age of 18 but his or her actual age is unknown (see annex).

29. Reports should describe any rules, regulations, guidelines or instructions that have been adopted by relevant authorities in order to ensure that the best interests of the child are a primary consideration in the treatment afforded by the criminal justice system to children who are victims of any of the offences described in the present Protocol (see annex).

30. Reports also should indicate which provisions of the existing laws, procedures and policies are meant to ensure that the best interests of child victims of such offences are adequately identified and taken into account in criminal investigations and proceedings and, if not, what steps it considers necessary or plans to take to improve compliance with article 8, paragraph 3, of the Protocol (see annex).

31. Reports should indicate what measures are taken to ensure legal, psychological or other training for those who work with victims of the offences prohibited in this Protocol (see annex).

32. Reports should indicate the measures in place that provide the agencies, organizations, networks and individuals with the conditions necessary to carry out their work without fear of interference or reprisals and, if not, what measures are planned or considered necessary to ensure compliance with article 8, paragraph 5, of the Protocol (see annex).

33. Reports should describe any special safeguards or compensatory measures that have been introduced or strengthened in order to ensure that measures designed to protect the rights of child victims of the offences referred to by this Protocol do not have any undue impact on the rights of accused persons to a fair and impartial trial (see annex).

34. Reports should describe existing public and private programmes that provide child victims of sale, prostitution and pornography with assistance in social reintegration, paying special attention to family reunification, and physical and psychological recovery (see annex).

35. Reports should also describe the measures taken by the State party to help the child recover his or her identity, when the exploitation to which the child has been exposed has adversely affected any elements of his or her identity, such as name, nationality and family ties (see annex).

36. Information contained in reports concerning assistance in social reintegration, physical and psychological recovery and the recovery of identity should indicate any differences between the assistance provided to children who are nationals or presumed to be nationals of the State party and those who are not nationals, or whose nationality is unknown (see annex).

37. Reports should contain information on existing remedies and procedures that may be used by child victims of sale, prostitution or pornography to seek compensation for damages from those legally responsible (see annex).

VII. INTERNATIONAL ASSISTANCE AND COOPERATION (art. 10)

38. Reports should describe:

(a) Any multilateral, regional and bilateral arrangements for the prevention, detection, investigation, prosecution and punishment of those responsible for any of the offences referred to by this Protocol that the State party has helped draft, or has negotiated, signed or become a party to;

(b) The steps that have been taken to put in place procedures and mechanisms to coordinate the implementation of such arrangements; and

(c) The results obtained through such arrangements, any significant difficulties encountered in implementing them and any efforts made or considered necessary to improve the implementation of such arrangements.

39. Reports also should describe any other steps taken by the State party to promote international cooperation and coordination concerning the prevention, detection, investigation, prosecution and punishment of the offences referred to by the Protocol between their authorities and relevant regional or international organizations, as well as between the authorities and national and international non-governmental organizations.

40. Reports should describe any steps taken by the State party to support international cooperation to assist the physical and psychological recovery, social reintegration and repatriation of the victims of the offences referred to by this Protocol, including bilateral aid and technical assistance, and support for the activities of international agencies or organizations, international conferences and international research or training programmes, including support for the relevant activities and programmes of national or international non-governmental organizations.

41. Reports should describe the contributions of the State party to international cooperation designed to address root causes that contribute to children's vulnerability to sale, prostitution, pornography and sex tourism, in particular poverty and underdevelopment.

VIII. OTHER LEGAL PROVISIONS
(art. 11)

42. Reports should describe:

(a) Any provisions of domestic legislation in force in the State party that it considers more conducive to the realization of the rights of the child than the provisions of this Protocol;

(b) Any provisions of international law binding on the State party that it considers more conducive to the realization of the rights of the child than the provisions of this Protocol, or that it takes into account in applying the present Protocol; and

(c) The status of ratification by the State party of the main international instruments concerning sale of children, child prostitution, child pornography, trafficking of children and sex tourism, as well as any other international or regional commitments undertaken by that State concerning these issues, and any influence their implementation has had on implementation of the Protocol.

Annex

The link between the Optional Protocol and the implementation of the Convention referred to in **Guideline 2*** is recognized by the first paragraph of the preamble to the Protocol.

The term forced labour, referred to in **Guideline 10 (c)**, includes any substantial work or services that a person is obliged to perform, by a public official, authority or institution under threat of penalty; work or services performed for private parties under coercion (e.g. the deprivation of liberty, withholding of wages, confiscation of identity documents or threat of punishment) and slavery-like practices such as debt bondage and the marriage or betrothal of a child in exchange for consideration (see International Labour Organization Convention No. 29 (1930) on Forced Labour (arts. 2 and 11), and the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (art. 1).

Trafficking of children, as referred to in **Guideline 10 (f)**, means the recruitment, transportation, transfer, harbouring or receipt of persons under the age of 18 for the purpose of any form of exploitation, including sexual exploitation, the exploitation of child labour or adoption in violation of the relevant international standards, regardless of whether the children or their parents or guardian have expressed consent thereto (see the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (art. 3 (a), (b) and (c)).

Forms of prostitution that, according to **Guideline 11 (b)**, should be distinguished, if possible, include heterosexual and homosexual prostitution, and commercial or other forms of prostitution, such as the delivery of children to temples or religious leaders for the purpose of providing sexual services, sexual slavery, the solicitation by teachers of sexual favours from students and sexual exploitation of child domestic workers.

States may wish to present the information referred to in **Guideline 13 (a)** in the form of a table of relevant laws and their most relevant provisions.

The important role of children's ombudsmen and similar institutions, mentioned in **Guideline 13 (i)**, is described by the Committee in general comment No. 2 on "The role of independent national human rights institutions in the promotion and protection of the rights of the child", adopted at its thirty-first session in 2002.

Information provided in response to the guidelines contained in section IV above, in particular in reports made by federal States, States having dependent territories and/or autonomous regions, and States whose legal order recognizes religious, tribal or indigenous law, should include information about the relevant law of all jurisdictions having competence over these matters, including the law applicable to the armed forces.

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* See paragraph 2 above; guidelines correspond to paragraph numbers.

The reply to **Guideline 16**, especially its subparagraph (b), should distinguish between the penalties applicable to adults convicted of such offences and juveniles who have committed them. Article 3, paragraph 1, of the Protocol provides that States parties shall "as a minimum" ensure that the acts listed are covered by its criminal or penal law; the broader, generic obligation set forth in article 1 is to "prohibit the sale of children, child prostitution and child pornography". Hence **Guideline 16 (e)** indicates that reports should indicate any other forms of sale, or any other acts or omissions concerning child prostitution or child pornography, that are covered by its criminal or penal law. In addition, in some countries certain crimes may be used to prosecute the sale of children, child prostitution or child pornography even though they do not expressly prohibit those offences as such. Reports also should describe such offences and explain their application to the sale of children, child prostitution and/or child pornography.

Legal persons, referred to in **Guideline 18**, are entities other than physical persons that have legal personality, such as corporations and other businesses, local or regional governments and legally recognized foundations, organizations and associations.

The applicable international legal instruments in **Guideline 19** include articles 20 and 21 of the Convention, read together with the general principles recognized by articles 2, 3, 6 and 12 of the Convention; the 1993 Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption, which the Committee considers an appropriate instrument for meeting the obligation contained in article 21 (e), of the Convention; the 1967 European Convention on the Adoption of Children (CETS No. 58); the 1990 African Charter on the Rights and Welfare of the Child; the Declaration on Social and Legal Principles Relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally, adopted by the General Assembly in 1986; and bilateral treaties on adoption. The Declaration on Social and Legal Principles, which is mentioned in the Preamble to the Convention on the Rights of the Child, is applicable to all States, including those that are not party to any of the treaties mentioned above.

The information referred to in **Guideline 27** should include, in particular:

(a) Any laws and other legal standards providing that the best interests of the child victim or child witness shall be a primary consideration in criminal justice matters concerning the sale of children, child prostitution and child pornography;

(b) Any laws or other legal standards, procedures and practices concerning the placement of children considered to be victims of sale, child prostitution or child pornography in protective custody in police or correctional facilities, or public child welfare facilities, during the duration of investigations or legal proceedings against the perpetrators of such acts, and information on the number of children placed in such custody for the duration of such investigations or proceedings, disaggregated if possible according to the age, sex and place of origin of the child, the nature of the facility and the average duration of placement;

(c) The principle that children shall not be deprived of liberty except as a last resort (see article 37 (b) of the Convention) means that child victims or witnesses should not be kept in police or correctional facilities nor, except in extreme circumstances, closed child welfare facilities, in order to ensure their protection and availability in criminal proceedings;

(d) Any laws, procedures and practices allowing the placement of children considered to be victims of sale, child prostitution or child pornography in the temporary care of relatives, foster parents, temporary guardians or community-based organizations during the investigations or legal proceedings against the perpetrators of such acts, and information on the number of children so placed, disaggregated if possible according to the age, sex and place of origin of the child, the type of care provider and the average duration of placement;

(e) Any legal standards that have been adopted recognizing the right of child victims of sale, child prostitution or child pornography to be informed about their legal rights and their potential role in criminal proceedings concerning such exploitation and the scope, timing and progress and outcome of such proceedings, and the practices and procedures that have been established in order to provide children with such information;

(f) Any legal standards that have been adopted that recognize the right of child victims of sale, child prostitution or child pornography to express or convey their views, needs and concerns about criminal proceedings concerning their exploitation and the duty of investigators, prosecutors and other relevant authorities to take their views and concerns into account; the methods and procedures used to ascertain the views, needs and concerns of child victims of different ages and backgrounds and to communicate them to the relevant authorities; and information regarding the progress made and difficulties encountered, if any, in implementation of such standards and procedures;

(g) Any programmes and services that provide support to child victims during criminal proceedings against those responsible for their exploitation, the geographical location and nature of the agencies or organizations responsible (public, subsidized or non-governmental), the nature of the support services provided and the coverage; any available data concerning the age, sex, place of origin and other relevant characteristics of the beneficiaries; the results of any evaluations of the support provided; and the views of the State party as to the adequacy of the coverage, scope and quality of the services available and any plans to expand them;

(h) Any laws or regulations designed to protect the right to privacy and prevent the disclosure of the identity of victims of any of the offences referred to in the Protocol, and any other measures taken by the State party to protect their privacy and prevent the disclosure of their identity, as well as the views of the State party on whether such laws, regulations and other measures are effective and, if not, the reasons why they are not and any plans it has to enhance the protection of their right to privacy and prevent the disclosure of their identity;

(i) The policies, procedures, programmes, protocols or other measures that have been put in place in order to ensure the safety of child victims of sale, prostitution or pornography who may be at risk of retaliation or intimidation and to ensure the safety of their families and of witnesses vulnerable to such risks, as well as the views of the State party on whether such measures have been effective and, if not, the reasons why they have not been and any plans it has to reinforce them, modify them or to adopt new safeguards; and

(j) Any laws, rules, regulations, guidelines or policies that have been adopted by the competent legislative, administrative or judicial authorities in order to avoid unnecessary delay in the disposition of cases involving the offences referred to by this Protocol and in the execution

of orders or decrees granting compensation to child victims, as well as any jurisprudence that may have been adopted by the courts of the State party concerning the timely resolution of such matters.

The information referred to in **Guideline 28** should include, in particular:

(a) The measures used to estimate the age of the victim when documentary proof is not available;

(b) The standard of proof for the age of the victim and the legal presumptions, if any, that apply; and

(c) The agency or bodies that are responsible for carrying out investigations with a view to determining the age of the child and the methods used to this end.

The information provided in response to Guideline 28 also should indicate whether difficulties in determining the age of presumed victims of the offences referred to by the Protocol to be a substantial obstacle to law enforcement and effective protection of children against such practices and, if so, why it does, and what plans, if any, the State party has to overcome them or what action it considers necessary to address such difficulties. Information provided also should differentiate, when relevant, between offences that have been committed within the territory of a State party against a child who is a national, and offences in which the victim may not be a national of the State party or the act may have taken place in the territory of another State.

The information provided in response to **Guidelines 29 and 30** should:

(a) Indicate whether the legislation of all relevant jurisdictions of the State party recognizes the requirement that the best interests of the child shall be a primary consideration in the treatment afforded by the criminal justice system to children who are victims of any of the offences described in the Protocol and, if not, what steps, if any, the State party has taken or plans to take to incorporate this principle into the relevant legislation;

(b) Describe any rules, guidelines, policies or jurisprudence concerning how the best interests of children are defined in this context and the methods that are used to determine the best interests of individual child victims;

(c) Describe, in particular, any rules, regulations, guidelines, policies or jurisprudence concerning the methods used to determine the child's views and the weight given to such views in establishing what the best interests of the child are in this context;

(d) Describe, in addition, what steps have been taken and what mechanisms and procedures have been established to provide child victims with objective information, in language adapted to their age and background, about criminal investigations and proceedings regarding offences affecting them, their rights with regard to such investigations and proceedings, and any options or alternative courses of action they may have;

(e) Describe any legislation, regulations, procedures, policies and jurisprudence regarding the legal standing of children with regard to decisions that must be made regarding

criminal proceedings concerning offences against them, including any age limit concerning the child's decision whether to testify or otherwise participate in proceedings; the authority of parents or guardians to take such decisions for the child, and the appointment of temporary guardians to ensure that the best interests of the child are identified and respected in the absence of any parent or guardian or in the event of a possible conflict of interest between the child victim and her or his parent(s) or legal guardian; and

(f) Describe the role, if any, of child protection agencies or child rights bodies in criminal proceedings concerning the offences referred to by the Protocol, in particular any role they may play in defending the best interests of the child victim or child witness in such proceedings.

Information requested under **Guideline 31** should provide details as to the agency or agencies that are competent to investigate and/or prosecute the offences referred to by the Protocol and the courts competent over these offences throughout the territory or territories of the State party, and whether contact with child victims and witnesses by the staff of such agencies is limited to officials assigned especially to cases concerning children; any specific requirements regarding education on the rights of children and child psychology or development applicable to the recruitment or appointment of staff having contact with children; any entry-level or in-service training programmes that provide staff having contact with children and their supervisors with legal, psychological and other relevant training designed to ensure that child victims receive treatment that is sensitive to their age, sex, background and experiences and respectful of their rights, and a brief description of the content and methodology of such training programmes; and the agencies or organizations, public or private, that provide care, shelter and psychosocial services to the victims of the offences referred to by this Protocol, and any applicable regulations concerning the qualifications and training of private service providers.

The information provided in response to **Guideline 32** should indicate the public or private agencies, organizations and networks most involved in efforts to prevent the sale of children, child prostitution and pornography and related practices, as well as those most involved in providing protection, rehabilitation and similar services to the victims of such practices; and describe any significant attacks or threats to the safety, security and integrity of the above-mentioned bodies and their members or staff, as well as the types of measures the State party has adopted to protect the persons or bodies that have been the target of attacks and threats of the kind mentioned above, and the measures or policies that have been adopted as a precaution against such threats or attacks.

For purposes of **Guideline 33**, the rights of accused persons to a fair and impartial trial should be considered to be the rights set forth in articles 14 and 15 of the International Covenant on Civil and Political Rights, in particular the right to be presumed innocent until proved guilty according to law, to have adequate facilities for the preparation of a defence and to examine, or have examined, the witnesses against him.

Information provided in response to **Guideline 34** should include: identification of programmes or services and the agencies or organizations that operate them, their geographical location and a description of the type of services provided; data on the number of children who receive such assistance, disaggregated according to the age and sex of the beneficiaries, the type of abuse suffered and whether the assistance is provided in a residential or non-residential setting; the results of any evaluation(s) that have been made of the assistance provided by existing programmes and information regarding the unmet demand for such services, if any; and any plans the State party has for increasing the capacity of existing programmes or expanding the type of services provided, as well as any other information that it considers relevant.

The right to assistance in social reintegration and psychological recovery referred to by **Guideline 35** and article 9, paragraph 3, of the Protocol includes the right of children deprived of any element of their identity to assistance in speedily re-establishing their identify, a right also recognized by article 8, paragraph 2, of the Convention on the Rights of the Child.

Information provided in response to **Guideline 36** should include:

(a) The number of children who are not nationals or whose nationality is unknown who are identified annually as victims of sale, child prostitution and child pornography, disaggregated to the extent possible by age, sex, type of exploitation and country of origin;

(b) The policy of the State party regarding the repatriation of child victims and reintegration with their families and community, including the way such policies address issues such as the best interests of the child, the right of the child to have his or her views taken into account, the child's participation in criminal proceedings against those responsible for his or her exploitation and the right of the child to protection against the risk of reprisals and to assistance in physical and psychological rehabilitation;

(c) Any existing legal or administrative agreements with other countries concerning the repatriation of children who have been victims of these forms of exploitation, mutual assistance in re-establishing their identity or relocating their families and for evaluating the appropriateness of return of the child to his or her family or community, as opposed to other forms of social reintegration; and

(d) Information on the progress made and difficulties encountered in safeguarding the right to social reintegration, identity and physical and psychological recovery of children who have been victims of these forms of exploitation and who are not nationals, or whose nationality is unknown, as well as any plans it may have for overcoming the difficulties encountered, if any.

The information provided in response to **Guideline 37** should include:

(a) Whether the child's right to compensation is subordinated to or conditioned by a prior finding of criminal responsibility on the part of those responsible for his or her exploitation;

(b) Procedures and standards regarding the appointment of a guardian or representative for the child for purposes of legal procedures of this kind, when there is an actual, possible or potential conflict between the interests of the child and those of his or her parents;

(c) Standards and procedures concerning the voluntary settlement of cases or complaints involving the sale of children, child prostitution or pornography;

(d) Whether there are any differences between the procedures applicable to cases involving children and those involving adults, insofar as the admissibility of evidence or the way evidence concerning the child victim is presented;

(e) Whether rules and guidelines concerning the management of cases recognize the importance of the need to avoid undue delay in the resolution of cases involving children, in accordance with article 8, paragraph 1 (g), of the Protocol;

(f) Whether there is any difference in the statute of limitations applicable to claims of compensation for these forms of exploitation, when the victim is a child;

(g) Any special features of the law that concern the use, disposition and safeguarding of damages awarded to children until such time as they reach the age of majority;

(h) Any other special features of existing procedures that may be used by children to seek compensation in the type of cases referred to above that are designed to make them more sensitive to the special needs, rights and vulnerabilities of children;

(i) Whether the information given in reply to the preceding paragraphs of this guideline is applicable to victims who may not be nationals of the State party, and any special measure that may exist to ensure that victims who are not or may not be nationals have equal access to remedies designed to obtain compensation for damages due to the forms of exploitation referred to above;

(j) Any information concerning the number and amount of awards made to children for abuses of this kind, as a result of legal or administrative proceedings or settlements supervised by official bodies, that would help the Committee understand how existing remedies and procedures work in practice;

(k) Whether the State party considers that existing remedies and procedures provide adequate protection to the right of children who have been victims of the above forms of exploitation to obtain adequate compensation for damages and, if not, what improvements or changes it considers would enhance effective protection of this right.

Damages include physical or mental injury, emotional suffering, prejudice to moral interests (e.g. honour, reputation, family ties, moral integrity), denial of one's rights, loss of property, income or other economic loss and expenses incurred in treating any injury and making whole any damage to the victim's rights (see principles 19 and 20 of 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).

Chapter X

COMMITTEE ON MIGRANT WORKERS

GUIDELINES FOR INITIAL REPORTS TO BE SUBMITTED BY STATES PARTIES UNDER ARTICLE 73 OF THE CONVENTION

Introduction

1. Article 73 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families provides that States parties undertake to submit to the Secretary-General of the United Nations for consideration by the Committee a report on the measures they have taken to give effect to the provisions of the Convention. The Committee has agreed to the following guidelines in order to give indications to States parties on the form and contents of their initial reports.

2. Those States parties whose initial reports are already in preparation at the time of transmittal of these guidelines can complete and submit their report to the Committee even if the report has not been prepared in conformity with the present guidelines.

A. Part I. Information of a general nature

3. This part should:

(a) Describe the constitutional, legislative, judicial and administrative framework governing the implementation of the Convention, and any bilateral, regional or multilateral agreements in the field of migration entered into by the reporting State party;

(b) Provide quantitative and qualitative information, as disaggregated as possible, on the characteristics and nature of the migration flows (immigration, transit and emigration) in which the State party concerned is involved;

(c) Describe the actual situation as regards the practical implementation of the Convention in the reporting State and indicate the circumstances affecting the fulfilment of the obligations of the reporting State under the Convention;

(d) Include information on the measures taken by the State party for the dissemination and promotion of the Convention and on the cooperation with civil society in order to promote and respect the rights contained in the Convention.

B. Part II. Information in relation to each of the articles of the Convention

4. This part should provide specific information relating to the implementation by the reporting State of the Convention, in accordance with the sequences of the articles and their respective provisions. In order to facilitate the reporting procedure for the States parties, the information may be provided per clusters of articles as follows:

(a) General principles:

- Articles 1 (1), 7: Non-discrimination
- Article 83: Right to an effective remedy
- Article 84: Duty to implement the Convention

(b) Part III of the Convention: Human rights of all migrant workers and members of their families:

- Article 8:
  Right to leave any country including own and to return
- Articles 9, 10:
  Right to life; prohibition of torture; prohibition of inhuman or degrading treatment
- Article 11:
  Prohibition of slavery and forced labour
- Articles 12, 13 and 26:
  Freedom of opinion and expression; freedom of thought conscience and religion; right to join a trade union
- Articles 14, 15:
  Prohibition of arbitrary or unlawful interference with privacy, home, correspondence and other communications; prohibition of arbitrary deprivation of property
- Article 16 (§ 1-4), 17 and 24:
  Right to liberty and security of persons; safeguards against arbitrary arrest and detention; recognition as a person before the law
- Articles 16 (§ 5-9), 18, 19:
  Right to procedural guarantees
- Article 20:
  Prohibition of imprisonment, deprivation of authorization of residence and/or work permit and expulsion merely on the ground of failure to fulfil a contractual obligation
- Articles 21, 22, 23:
  Protection from confiscation and/or destruction of ID and other documents; protection against collective expulsion; right to recourse to consular or diplomatic protection
- Articles 25, 27, 28:
  Principle of equality of treatment in respect of: remuneration and other conditions of work and terms of employment; social security; and right to receive urgent medical care

- Articles 29, 30, 31:
  Right of a child of a migrant worker to a name, registration of birth and nationality; access to education on the basis of equality of treatment; respect for the cultural identity of migrant workers and members of their families

- Articles 32, 33:
  Right to transfer in the State of origin their earnings, savings and personal belongings; right to be informed on the rights arising from the Convention and dissemination of information

(c) Part IV of the Convention: Other rights of migrant workers and their families who are documented or in a regular situation:

- Article 37:
  Right to be informed before departure of the conditions of admission to the State of employment and of their remunerated activity

- Articles 38, 39:
  Right to be temporarily absent without effect upon authorization to stay or work; right to liberty of movement and to choose the residence in the territory of the State of employment

- Articles 40, 41, 42:
  Right to form associations and trade unions; right to participate in public affairs of their State of origin and to vote and be elected at election of that State; procedure and institutions taking care of the needs of migrant workers and possible enjoyment of political rights in the State of employment

- Articles 43, 54, 55:
  Principle of equality of treatment with nationals of the State of employment in relation to the issues indicated; equality of treatment as to protection against dismissal, unemployment benefits and access to public work schemes and alternative employment; equality of treatment in the exercise of a remunerated activity

- Articles 44 and 50:
  Protection of the unity of the families of migrant workers and reunification of migrant workers; consequences of death or dissolution of marriage

- Articles 45 and 53:
  Enjoyment of equality of treatment for members of the families of migrant workers in the indicated aspects and measures taken to guarantee integration of children of migrant workers in the local school system; right to freely choose a remunerated activity for members of a migrant worker's family

- Articles 46, 47, 48:
  Exemption from import and export duties and taxes in respect of particular belongings;

right to transfer earnings and savings from the State of employment to the State of origin or any other State; imposition of taxes and avoidance of double taxation principle

- Articles 51, 52:
  Right to seek alternative employment in case of termination of the remunerated activity for migrant workers not authorized to freely choose their remunerated activity; conditions and restrictions for migrant workers who can freely choose their remunerated activity

- Articles 49 and 56:
  Authorization of residence and authorization to engage in a remunerated activity; general prohibition and conditions of expulsion

(d) Part V of the Convention: Provisions applicable to particular categories of migrant workers and members of their families.

The State party should indicate the provisions or measures adopted for the particular categories of migrants indicated in articles 57 to 63 of the Convention, if any.

(e) Part VI of the Convention: Promotion of sound, equitable, humane and lawful conditions in connection with international migration of workers and members of their families.

The State party should indicate the measures taken to ensure promotion of sound, equitable, humane and lawful conditions in connection with international migration of workers and members of their families. In particular:

- Article 65:
  Establishment of appropriate services to deal with questions concerning international migration of workers and members of their families

- Article 66:
  Authorized operations and bodies for the recruitment of workers for employment in another State

- Article 67:
  Measures regarding the orderly return of migrant workers and members of their families to the State of origin, their resettlement and cultural reintegration

- Article 68:
  Measures aimed at the prevention and elimination of illegal or clandestine movements and employment of migrant workers in an irregular situation

- Article 69:
  Measures taken to ensure that migrant workers in an irregular situation do not persist in this condition within the territory of a State party and circumstances to take into account in case of regularization procedures

- Article 70:
  Measures taken to ensure that living conditions of migrant workers and members of their families in a regular situation are in keeping with the standards of fitness, safety, health and principles of human dignity

- Article 71:
  Repatriation of the bodies of deceased migrant workers or members of their families and compensation matters relating to the death

Presentation of the report

5. The report should be accompanied by sufficient copies (if possible in English, French or Spanish) of the principal legislative and other texts referred to in the report. These will be made available to members of the Committee. It should be noted, however, that they will not be reproduced for general distribution with the report. It is desirable therefore that, when a text is not actually quoted in or annexed to the report itself, the report should contain sufficient information to be understood without reference to it.

6. States parties may wish to present their initial report under article 73 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families in conjunction with the Common Core Document referred to in document HRI/MC/2004/3 which contains draft guidelines for its preparation. This option has been encouraged by the third inter-committee meeting held in Geneva on 21-22 June 2004 (see document A/59/254, Report of the Sixteenth Meeting of the Chairpersons of the Human Rights Treaty Bodies).

7. Initial reports under article 73 of the Convention should be submitted in electronic form (on diskette, CD-rom or by electronic mail), accompanied by a printed paper copy. The report should not exceed 120 pages (A4-size paper, with 1.5 line spacing; and text of 12 points in the font Times New Roman).

GUIDELINES FOR THE PERIODIC REPORTS TO BE SUBMITTED BY STATES PARTIES UNDER ARTICLE 73 OF THE CONVENTION

Introduction

1. Article 73 (1) (a) of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families provides that States parties undertake to submit to the Secretary-General of the United Nations, for consideration by the Committee, a report on the measures they have taken to give effect to the provisions of the Convention. Thereafter, the States parties shall submit periodic reports every five years and whenever the Committee so requests, according to article 73 (1) (b). The Committee has agreed to the following guidelines in addition to its guidelines for initial reports, in order to give indications to States parties on the form and contents of their periodic reports.

2. State reports under the reporting system will consist of two parts: the common core document and the treaty-specific document. The common core document should include general information about the reporting State, the general framework for the protection and promotion of human rights as well as general information on non-discrimination and equality and effective remedies in accordance with the harmonized guidelines (HRI/GEN/2/Rev.4).

A. The CMW-specific document

3. Under the CMW-specific document, States parties should provide information relating to:

(a) The implementation of the Convention taking into account the issues raised by the Committee in its concluding observations on the State party's previous report;

(b) Recent developments in law and practice affecting the enjoyment of the rights of migrant workers. The CMW-specific document should not merely list or describe the legislation of the State party but elaborate on its practical implementation;

(c) The measures taken by the State party for the dissemination and promotion of the Convention and on the cooperation with civil society in order to promote and respect the rights contained in the Convention and in the preparation of the State party's CMW-specific document.

4. The CMW-specific document should be divided in two sections, a general information part and a specific provisions part, according to the following indications.

B. General information

5. In this part of the periodic report, the State party should provide updated information related to the current reporting period in accordance with the following categories; if there is nothing new to report under a category, it should be so stated:

(a) Disaggregated data on the characteristics and nature of migratory flows (immigration, transit and emigration) affecting the State party. If no exact data are available, please provide estimated figures on the dynamics of migration flows in the State party;

(b) Data and statistics on the number of unaccompanied or separated migrant children within the territory of the State party;

(c) Steps that have been taken to harmonize the national migration laws with the Convention, including whether the State party has plans to withdraw its reservations to the Convention, if any;

(d) Any signature, accession or ratification of human rights treaties or international instruments relevant for the implementation of the present Convention; in particular, any steps taken towards ratification of ILO Conventions Nos. 97 (1949) on Migration for Employment and No. 143 (1975) on Migrant Workers;

(e) Any court decisions related to the enjoyment by migrants and members of their families of the rights contained in the Convention;

(f) Any change in the legislation affecting the implementation of the Convention;

(g) Specific procedures that have been put in place in order to deal with mixed migratory flows, in particular to establish the special protection needs of asylum-seekers and victims of trafficking; in this context, please indicate whether national legislation provides for the application of the Convention to refugees and/or stateless persons, according to article 3 (d) of the Convention;

(h) Steps taken to ensure that migrant children who are detained including for violations of provisions relating to migration, are held separately from other adults and whether specific procedures are in place to determine the age of juvenile migrants; data on the number of migrant children detained;

(i) Special programmes to address the special interests of migrant children, including unaccompanied and separated children;

(j) Legislation and practice providing for mechanisms to monitor the situation of migrant women, including those employed as domestic workers, and safeguards and guarantees to protect them from exploitation and violence;

(k) Procedures assisting victims of trafficking, especially women and children;

(l) Measures taken to provide assistance given by the State party to its migrants abroad;

(m) Measures taken to facilitate migrants' reintegration in case of return to the State party;

(n) Multilateral or bilateral agreements relating to migration the State party has entered into, including regional agreements;

(o) Efforts made, also in cooperation with other States, in order to prevent migrants' loss of life at the land and maritime border areas;

(p) Measures to prevent clandestine movements and employment of migrants in an irregular situation.

C. Specific provisions

6. The information provided in this part should be per cluster of articles as indicated in the initial report guidelines (HRI/GEN/2/Rev.2/Add.1) and should clearly make reference to any progress made towards the enjoyment of the Convention rights by migrant workers and members of their families during the reporting period. If there is nothing new to report under any article, it should be so stated.

7. On each cluster of articles, the State party should also include information on concrete measures taken with regard to the concluding observations adopted by the Committee in relation to the previous report.

D. References to other treaty-specific documents and ILO Convention reports

8. If a State party refers in its CMW-specific document to information contained either in the common core document, or in any other treaty-specific documents, it should indicate precisely the relevant paragraphs in which such information is contained.

9. Similarly, if a State party is party to any of the ILO Conventions listed in appendix 2 of the harmonized guidelines and has already submitted reports to the supervisory committee concerned that are relevant to any of the rights recognized in the Convention, it may wish to refer and to attach the respective parts of those reports rather than repeat the information.

E. Format of the CMW-specific document

10. As required in paragraph 19 of the harmonized guidelines, subsequent periodic documents should be limited to 40 pages. Pages should be formatted for A4-size paper, with 1.5 line spacing, and text set in 12 point Times New Roman type. Reports should be submitted in electronic form (on diskette, CD-ROM or by electronic mail), accompanied by a printed paper copy.

11. The report should be accompanied by sufficient copies (if possible in English, French or Spanish) of the principal legislative and other texts referred to in the report. These will be made available to members of the Committee. It should be noted, however, that they will not be reproduced for general distribution with the report. Reports should also contain a full explanation of all abbreviations used in the text, especially when referring to national institutions, organizations, laws, etc., that are not likely to be readily understood outside of the State party.

附件十八

Guidelines on the Form and Content of Initial Reports under Articles 19 to be Submitted by States Parties to The Convention Against Torture

1. Under article 19 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment each State party undertakes to submit a report on the measures taken to give effect to its undertakings under the Convention. The initial report is due within one year after the entry into force of the Convention for that State party and thereafter every four years unless the Committee requests other reports.

2. In order to assist States parties in fulfilling their obligations under article 19, the Committee has adopted the following general guidelines as to the form and content of initial reports. The present Guidelines replace the earlier version adopted by the Committee at its 82nd meeting (sixth session) in April 1991.

PART I. GENERAL INFORMATION

A. Introduction

3. In the introductory part of the report, cross-references to the expanded core document should be made regarding information of a general nature, such as the general political structure, general legal framework within which human rights are protected, etc. It is not necessary to repeat that information in the initial report.

4. Information on the process of preparing the report should be included in this section. The Committee considers that drafting of reports would benefit from broad-based consultations. It therefore welcomes information on any such consultations within Government, with national institutions for the promotion and protection of human rights, non-governmental organizations and other organizations that might have taken place.

B. General Legal Framework under which torture and other cruel, inhuman or degrading treatment or punishment is prohibited

5. In this section the Committee envisages receiving specific information related to the implementation of the Convention to the extent that it is not covered by the core document, in particular the following:

- A brief reference to constitutional, criminal and administrative provisions regarding the prohibition of torture and other cruel, inhuman or degrading treatment or punishment;

- International treaties dealing with torture and other cruel, inhuman or degrading treatment or punishment to which the reporting State is a party;

- The status of the Convention in the domestic legal order, i.e. with respect to the Constitution and the ordinary legislation;

- How domestic laws ensure the non-derogability of the prohibition of any cruel, inhuman or degrading treatment or punishment;

- Whether the provisions of the Convention can be invoked before and are directly enforced by the courts or administrative authorities or whether they have to be transformed into internal laws or administrative regulations to be enforced by the authorities concerned. Should the latter be a requirement, the report should provide information on the legislative act incorporating the Convention into the domestic legal order;

- Judicial, administrative or other competent authorities with jurisdiction/a mandate covering matters dealt with in the Convention, such as the Constitutional Court, the Supreme Court, the ordinary and military courts, the public prosecutors, disciplinary bodies, administrative authorities in charge of police and prison administration, national institutions for the promotion and protection of human rights, etc. Provide an overview of the practical implementation of the Convention at the federal, central, regional and local levels of the State, and indicate any factors and difficulties that may affect the fulfilment of the obligations of the reporting State under the Convention. The report should include specific information related to the implementation of the Convention in such circumstances. Relevant documentation collected by the authorities or other private or public institutions is welcome.

II. INFORMATION IN RELATION TO EACH SUBSTANTIVE ARTICLE OF THE CONVENTION

6. As a general rule the report should include, in connection with each article, the following information:

- The legislative, judicial, administrative or other measures giving effect to the provisions;
- Concrete cases and situations where measures giving effect to the provisions have been enforced, including any relevant statistical data;
- Cases or situations of violation of the Convention, the reasons for such violations and the measures taken to remedy the situation. It is important for the Committee to obtain a clear picture not only of the legal situation, but also of the de facto situation.

Article 1

7. This article contains the definition of torture for the purposes of the Convention. Under this provision the report should include:

- Information on the definition of torture in domestic law, including indications as to whether such a definition is in full conformity with the definition of the Convention;
- In the absence of a definition of torture in domestic law in conformity with the Convention, information on criminal or legislative provisions that cover all cases of torture;
- Information on any international instruments or national legislation that contains or may contain provisions of wider application.

Article 2, paragraph 1

8. This provision introduces the obligation of the States parties to take effective measures to prevent acts of torture. The report should contain information on:

- Pertinent information on effective measures taken to prevent all acts of torture, inter alia with respect to: duration of police custody; incommunicado detention; rules governing the rights of arrested persons to a lawyer, a medical examination, contact with their family, etc.; emergency or anti-terrorist legislation that could restrict the guarantees of the detained person.

9. The Committee would welcome an assessment by the reporting State of the effectiveness of the measures taken to prevent torture, including measures to ensure that those responsible are brought to justice.

Article 2, paragraph 2

10. The report should contain information on effective measures to ensure that no exceptional circumstances are invoked, in particular:

- Whether legal and administrative measures exist to guarantee that the right not to be tortured is not subject to derogation during a state of war, a threat of war, internal political instability or any other public emergency.

Article 2, paragraph 3

11. The report should indicate:

- Whether legislation and jurisprudence exist with regard to the prohibition on invoking superior orders, including orders from military authorities, as a justification of torture; if these exist, information should be provided on their practical implementation;

- Whether there are any circumstances in which a subordinate is permitted lawfully to oppose an order to commit acts of torture, the recourse procedures available to him/her and information on any such cases that may have occurred;

- Whether the position of public authorities with respect to the concept of "due obedience" as a criminal law defence has any impact on the effective implementation of this prohibition.

Article 3

12. This article prohibits the expulsion, return or extradition of a person to a State where he/she might be tortured. The report should contain information on:

- Domestic legislation with regard to such prohibition;
- Whether legislation and practices concerning terrorism, emergency situations, national security or other grounds that the State may have adopted have had any impact on the effective implementation of this prohibition;
- Which authority determines the extradition, expulsion, removal or refoulement of a person and on the basis of what criteria;
- Whether a decision on the subject can be reviewed and, if so, before which authority, what are the applicable procedures and whether such procedures have suspensive effects;
- Decisions taken on cases relevant to article 3 and the criteria used in those decisions, the information on which the decisions are based and the source of this information;
- The kind of training provided to officials dealing with the expulsion, return or extradition of foreigners.

Article 4

13. It is implicit in the reporting obligations imposed by this article that each State shall enact legislation criminalizing torture in terms that are consistent with the definition in article 1. The Committee has consistently expressed the view that the crime of torture is qualitatively distinguishable from the various forms of homicide and assault that exist and therefore should be separately defined as a crime. The report should contain information on:

- Civil and military criminal provisions regarding these offences and the penalties related to them;
- Whether statutes of limitations apply to such offences;

- The number and the nature of the cases in which those legal provisions were applied and the outcome of such cases, in particular, the penalties imposed upon conviction and the reasons for acquittal;

- Examples of judgements relevant to the implementation of article 4;

- Existing legislation on disciplinary measures during the investigation of an alleged case of torture to be taken against law enforcement personnel responsible for acts of torture (e.g. suspension);

- Information on how established penalties take into account the grave nature of torture.

Article 5

14. Article 5 deals with the States parties' legal duty to establish jurisdiction over the crimes mentioned in article 4. The report should include information on:

- Measures taken to establish jurisdiction in the cases covered under (a), (b) and (c) of paragraph 1. Examples of cases where (b) and (c) were applied should also be included;

- Measures taken to establish jurisdiction in cases where the alleged offender is present in the territory of the reporting State and the latter does not extradite him/her to a State with jurisdiction over the offence in question. Examples of cases where (a) extradition was granted and (b) extradition was denied should be provided.

Article 6

15. Article 6 deals with the exercise of jurisdiction by the State party, particularly the issues concerning the investigation of a person who is in the territory and is alleged to have committed any offence referred to in article 4. The report should provide information on:

- The domestic legal provisions concerning, in particular, the custody of that person or other measures to ensure his/her presence; his/her right to consular assistance; the obligation of the reporting State to notify other States that might also have jurisdiction that such a person is in custody; the

circumstances of the detention and whether the State party intends to exercise jurisdiction;

- The authorities in charge of the implementation of the various aspects of article 6;

- Any cases in which the above domestic provisions were applied.

Article 7

16. This article contains the obligation of the State to initiate prosecutions relating to acts of torture whenever it has jurisdiction, unless it extradites the alleged offender. The report should provide information on:

- Measures to ensure the fair treatment of the alleged offender at all stages of the proceedings, including the right to legal counsel, the right to be presumed innocent until proved guilty, the right to equality before courts, etc.;

- Measures to ensure that the standards of evidence required for prosecution and conviction apply equally in cases where the alleged offender is a foreigner who committed acts of torture abroad;

- Examples of practical implementation of the measures referred to above.

Article 8

17. By virtue of article 8 of the Convention, the States parties undertake to recognize torture as an extraditable offence for purposes of facilitating the extradition of persons suspected of having committed acts of torture and/or the related crimes of attempting to commit and complicity and participation in torture. The report should include information on:

- Whether torture and related crimes are considered by the reporting State as extraditable offences;

- Whether the reporting State makes extradition conditional on the existence of a treaty;

- Whether the reporting State considers the Convention as the legal basis for extradition in respect of the offences referred to above;

- Extradition treaties between the reporting State and other States parties to the Convention that include torture as an extraditable offence;

- Cases where the reporting State granted the extradition of persons alleged to have committed any of the offences referred to above.

Article 9

18. By virtue of this article the States parties undertake to provide mutual judicial assistance in all matters of criminal procedure regarding the offence of torture and related crimes of attempting to commit, complicity and participation in torture. Reports shall include information on:

- Legal provisions, including any treaties, concerning mutual judicial assistance that apply in the case of the above-mentioned offences;

- Cases involving the offence of torture in which mutual assistance was requested by or from the reporting State, including the result of the request.

Article 10

19. By virtue of this article and related article 16, States are obliged to train, inter alia, medical and law enforcement personnel, judicial officials and other persons involved with custody, interrogation or treatment of persons under State or official control on matters related to the prohibition of torture and cruel, inhuman or degrading treatment or punishment. The report should include information on:

- Training programmes on the above-mentioned subject for persons charged with the various functions enumerated in article 10 of the Convention;

- Information on the training of medical personnel dealing with detainees or asylum-seekers to detect physical and psychological marks of torture and training of judicial and other officers;

- The nature and frequency of the instruction and training;

- Information on any training that ensures appropriate and respectful treatment of women, juveniles, and ethnic, religious or other divers groups, particularly regarding forms of torture that disproportionately affect these groups;

- The effectiveness of the various programmes.

Article 11

20. By virtue of this article and related article 16, States are obliged to keep under 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 with a view to preventing torture and other cruel, inhuman or degrading treatment or punishment. The report should include information on:

- Laws, regulations and instructions concerning the treatment of persons deprived of their liberty;

- Information on measures requiring prompt notification of and access to lawyers, doctors, family members and, in the case of foreign nationals, consular notification;

- The degree to which the following rules and principles are reflected in the domestic law and practice of the State: the Standard Minimum Rules for the Treatment of Prisoners; the Basic Principles for the Treatment of Prisoners; the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment; Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; and the Code of Conduct for Law Enforcement Officials;

- Any independent bodies or mechanisms established to inspect prisons and other places of detention and to monitor all forms of violence against men and women, including all forms of sexual violence against both men and women and all forms of inter-prisoner violence, including authorization for international monitoring or NGO inspections;

- Information on measures to ensure that all such places are officially recognized and that no incommunicado detention is permitted;

- Mechanisms of review of the conduct of law enforcement personnel in charge of the interrogation and custody of persons held in detention and imprisonment and results of such reviews, along with any qualification or re-qualification procedures;

- Information on any safeguards for the protection of individuals especially at risk.

Article 12

21. On the basis of this article and related article 16, the State must ensure that its competent authorities proceed to a prompt and impartial investigation when there is reason to believe that under its jurisdiction an act of torture or cruel, inhuman or degrading treatment or punishment has been committed. The report should identify:

- The authorities competent to initiate and carry out the investigation, both at the criminal and disciplinary levels;

- Applicable procedures, including whether there is access to immediate medical examinations and forensic expertise;

- Whether the alleged perpetrator is suspended from his/her functions while the investigation is being conducted and/or prohibited from further contact with the alleged victim;

- Information on the results of cases of prosecution and punishment.

Article 13

22. By virtue of this article and related article 16, States parties must guarantee the right of any individual who alleges that he/she has been subjected to torture or cruel, inhuman or degrading treatment or punishment to complain and to have his/her case promptly and impartially investigated, as well as the protection of the complainant and witnesses against ill-treatment or intimidation. The report should include information on:

- Remedies available to individuals who claim to have been victims of acts of torture or other cruel, inhuman or degrading treatment or punishment;

- Remedies available to the complainant in case the competent authorities refuse to investigate his/her case;

- Mechanisms for the protection of the complainants and the witnesses against any kind of intimidation or ill-treatment;

- Statistical data disaggregated, inter alia, by sex, age, crime and geographical location on the number of complaints of torture and cruel, inhuman or degrading treatment or punishment submitted to the domestic authorities and the results of the investigations. An indication should also be provided of the services to which the persons accused of having committed torture and/or other forms of ill-treatment belong;

- Information on the access of any complainant to independent and impartial judicial remedy, including information on any discriminatory barriers to the equal status of all persons before the law, and any rules or practices preventing harassment or retraumatization of victims;

- Information on any officers within police forces and prosecutorial or other relevant offices specifically trained to handle cases of alleged torture or cruel, inhuman and degrading treatment or violence against women and ethnic, religious or other minorities;

- Information on the effectiveness of any such measures.

Article 14

23. This article deals with the right of victims of torture to redress, fair and adequate compensation and rehabilitation. The report should contain information on:

- The procedures in place for obtaining compensation for victims of torture and their families and whether these procedures are codified or in any way formalized;

- Whether the State is legally responsible for the offender's conduct and, therefore, obliged to compensate the victim;

- Statistical data or, at least, examples of decisions by the competent authorities ordering compensation and indications as to whether such decisions were implemented, including any information about the nature of the torture, the status and identification of the victim and the amount of compensation or other redress provided;

- The rehabilitation programmes that exist in the country for victims of torture;

- Information on any measures other than compensation to restore respect for the dignity of the victim, his/her right to security and the protection of his/her health, to prevent repetitions and to assist in the victim's rehabilitation and reintegration into the community.

Article 15

24. Under this provision the State must ensure that statements made as a result of torture will not be used as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made. The report should contain information on:

- Legal provisions concerning the prohibition of using a statement obtained under torture as an element of proof;

- Examples of cases in which such provisions were applied;

- Information on whether derivative evidence is admissible, if applicable in the State party's legal system.

Article 16

25. This article imposes upon States the obligation to prohibit acts of cruel, inhuman or degrading treatment or punishment. The report should contain information on:

- The extent to which acts of cruel, inhuman or degrading treatment or punishment have been outlawed by the State party; information on whether these acts are defined or otherwise dealt with in domestic law;

- Measures which may have been taken by the State party to prevent such acts;

- Living conditions in police detention centres and prisons, including those for women and minors, including whether they are kept separate from the rest of the male/adult population. Issues related to overcrowding, inter-prisoner violence, disciplinary measures against inmates, medical and sanitary conditions, most common illnesses and their treatment in prison, access to food and conditions of detention of minors should, in particular, be addressed.