

禁止酷刑和其他殘忍不人道或有辱人格的待遇 或處罰公約（中文版）

《禁止酷刑和其他殘忍不人道或有辱人格的待遇或處罰公約》

本公約締約各國，

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

認識到上述權利起源於人的固有尊嚴，

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

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

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

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

茲協議如下：

第一部分

第 1 條

1、為本公約的目的，「酷刑」是指為了向某人或第三者取得情資或供詞 (confession)，為了他或第三者所作或涉嫌的行為對他加以懲罰，或為了恐嚇或威脅他或第三者，或為了基於任何一種歧視的任何理由，蓄意使某人在肉體或精神上遭受劇烈疼痛或痛苦的任何行為。而這種疼痛或痛苦是由公職人員或以官方身分行使職權的其他人所造成，或在其唆使、同意或默許下造成的。純粹因法律制裁而引起或法律制裁所固有或附帶之疼痛或痛苦不包括在內。

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

第 2 條

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

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

3. 上級官員或公務機關的命令不得援引為施行酷刑的理由。

第 3 條

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

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

第 4 條

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

2.每一締約國應根據上述罪行的嚴重程度，規定適當懲罰。

第 5 條

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

(a) 罪行發生在其管轄之任何領土內，或在該國註冊之船舶或飛機上。

(b) 被控罪犯為該國國民。

(c) 受害人為該國國民，而該國認為應予管轄。

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

3、本公約不排除締約國依照該國國內法行使之任何刑事管轄權。

第 6 條

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

2、該締約國應立即對事實進行初步調查。

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

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

第 7 條

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

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

3、任何人因第 4 條規定之任何罪行而被起訴時，應確保他在訴訟的所有階

段皆可得到公平的待遇。

第 8 條

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

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

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罪行為可引渡罪行，但引渡須符合被請求國法律規定的各種條件。

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

第 9 條

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

2、締約各國應依照她們之間關於提供司法互助之條約，履行本條第 1 項規定之義務。

第 10 條

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

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

第 11 條

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

第 12 條

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

第 13 條

每一締約國應確保凡聲稱在其管轄之任何領土內遭到酷刑的個人有權向該

國主管機關申訴，並由該國主管機關對其案件進行迅速而公正的調查。主管機關應採取步驟確保申訴人與證人不因提出申訴或提供證據而遭受任何虐待或恐嚇。

第 14 條

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

2、本條任何規定不應影響受害者或其他人依據國家法律可能獲得賠償的任何權利。

第 15 條

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

第 16 條

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

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

第二部分

第 17 條

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

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

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

4、委員會的第一次選舉應在本公約生效之日起六個月以內進行。聯合國秘

書長至遲在每屆委員會選舉之日的四個月前，應以書面邀請本公約締約國於三個月內提出委員會成員候選人名單。秘書長應將所有被提名者按字母順序開列名單，注明提名的締約國，並將名單送交本公約締約國。

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

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

7、締約各國應負擔委員會成員履行委員會職責時之費用。

第 18 條

1、委員會應選舉其主席團，任期兩年。連選得連任之。

2、委員會應自行制定其議事規則，該規則應特別規定事項：

(a) 六名成員構成法定人數；

(b) 委員會之決議應以出席成員之多數決為之。

3、聯合國秘書長應提供必要的人員和設施，供委員會有效履行本公約規定的職責。

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

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

第 19 條

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

2、聯合國秘書長應將這些報告送交所有締約國。

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

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

第 20 條

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

2、委員會考慮到有關締約國可能提出的任何說明以及可能得到的其他有關情資，如果認為有正當理由，可以指派一名或幾名成員進行秘密調查並立即向委員會提出報告。

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

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

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

第 21 條

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

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

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

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

(d) 委員會依據本條審查來文時，應舉行非公開會議；

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

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

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

(h)委員會應在收到(b)款規定的通知之日起十二個月內提出報告：

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

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

關於上述每種事項之報告均應送交有關締約國。

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

第22條

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

2、依據本條提出的任何來文如採用匿名方式或經委員會認為濫用提出此類文書的權利或與本公約規定不符，委員會應視為不受理。

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

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

5、委員會除非已查明下述情況，否則不應審議個人根據本條提交的來文：

(a)同一事項於過去和現在均未受到另一國際調查程序或解決辦法的審查；

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

6、委員會根據本條審查來文時，應舉行非公開會議。

7、委員會應將其意見告知有關締約國和個人。

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

第 23 條

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

第 24 條

委員會應依據本公約向締約國和聯合國大會提交一份關於其活動的年度報告。

第三部分

第 25 條

- 1、本公約對所有國家開放簽字。
- 2、本公約需經批准。批准書應交存於聯合國秘書長。

第 26 條

本公約對所有國家開放加入。一旦加入書交存於聯合國秘書長，加入即行生效。

第 27 條

- 1、本公約在第二十份批准書或加入書交存於聯合國秘書長之日起第三十天開始生效。
- 2、在第二十份批准書或加入書交存後批准或加入本公約的國家，本公約在其批准書或加入書交存之日起第三十天對該國開始生效。

第 28 條

- 1、各國在簽署或批准本公約或在加入本公約時，可聲明不承認第 20 條所規定之委員會的職權。
- 2、按照本條第 1 項作出保留的任何締約國，可隨時通知聯合國秘書長撤銷其保留。

第 29 條

- 1、本公約任何締約國均可提出修正案，並送交聯合國秘書長。然後由秘書長將這一提議的修正案轉交締約各國，並要求她們通知秘書長是否同意舉行一次締約國會議以審理和議決這一提案。如在來文發出之日起四個月內有至少三分之一的締約國同意召開這樣一次會議，秘書長應以聯合國協助名義召開這次會議。由出席會議並參加表決的締約國過半數通過的任何修正案應由秘書長提請所有締約國同意。
- 2、當本公約三分之二的締約國通知聯合國秘書長，她們已依照本國的憲法程序同意這一修正案時，按照本條第 1 項通過的修正案即行生效。

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

第 30 條

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

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

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

第 31 條

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

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

3、自一個締約國退約生效之日起，委員會不得開始審議有關該國的任何新問題。

第 32 條

聯合國秘書長應將下列事項通知聯合國所有會員國和本公約所有簽署國或加入國：

- (a) 根據第 25 條和第 26 條進行的簽署、批准和加入情況；
- (b) 本公約根據第 27 條生效日期；任何修正案根據第 29 條生效日期；
- (c) 根據第 31 條退約情況。

第 33 條

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

2、聯合國秘書長應將本公約之認證副本轉送給所有國家。

**禁止酷刑和其他殘忍不人道或有辱人格的待遇
或處罰公約（英文版）**

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

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

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

The States Parties to this Convention,

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

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

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

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

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

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

Have agreed as follows:

PART I

Article 1

1. For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such

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

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

Article 2

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

2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.

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

Article 3

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

2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.

Article 4

1. Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture.

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

Article 5

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

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

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

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

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

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

Article 6

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

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

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

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

Article 7

1. The State Party in the territory under whose jurisdiction a person alleged to have committed any offence referred to in article 4 is found shall in the cases contemplated in article 5, if it does not extradite him, submit the case to its competent authorities for the purpose of prosecution.
2. These authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State. In the cases referred to in article 5, paragraph 2, the standards of evidence required for prosecution and conviction shall in no way be less stringent than those which apply in the cases referred to in article 5, paragraph 1.
3. Any person regarding whom proceedings are brought in connection with any of the offences referred to in article 4 shall be guaranteed fair treatment at all stages of the proceedings.

Article 8

1. The offences referred to in article 4 shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.
2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention as the legal basis for extradition in respect of such offences. Extradition shall be subject to the other conditions provided by the law of the requested State.
3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize such offences as extraditable offences between themselves subject to the conditions provided by the law of the requested State.
4. Such offences shall be treated, for the purpose of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territories of the States required to establish their jurisdiction in accordance with article 5, paragraph 1.

Article 9

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

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

Article 10

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

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

Article 11

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

Article 12

Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.

Article 13

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

Article 14

1. Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a

result of an act of torture, his dependants shall be entitled to compensation.

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

Article 15

Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.

Article 16

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

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

PART II

Article 17

1. There shall be established a Committee against Torture (hereinafter referred to as the Committee) which shall carry out the functions hereinafter provided. The Committee shall consist of ten experts of high moral standing and recognized competence in the field of human rights, who shall serve in their personal capacity. The experts shall be elected by the States Parties, consideration being given to equitable geographical distribution and to the usefulness of the participation of some persons having legal experience.

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

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

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

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

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

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

Article 18

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

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

(a) Six members shall constitute a quorum;

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

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

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

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

Article 19

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

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

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

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

Article 20

1. If the Committee receives reliable information which appears to it to contain well-founded indications that torture is being systematically practised in the territory of a State

Party, the Committee shall invite that State Party to co-operate in the examination of the information and to this end to submit observations with regard to the information concerned.

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

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

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

5. All the proceedings of the Committee referred to in paragraphs 1 to 4 of this article shall be confidential, and at all stages of the proceedings the co-operation of the State Party shall be sought. After such proceedings have been completed with regard to an inquiry made in accordance with paragraph 2, the Committee may, after consultations with the State Party concerned, decide to include a summary account of the results of the proceedings in its annual report made in accordance with article 24.

Article 21

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

(a) If a State Party considers that another State Party is not giving effect to the provisions of this Convention, it may, by written communication, bring the matter to the attention of that State Party. Within three months after the receipt of the communication the receiving State shall afford the State which sent the communication an explanation or any other

statement in writing clarifying the matter, which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending or available in the matter;

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

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

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

(e), the Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of respect for the obligations provided for in this Convention. For this purpose, the Committee may, when appropriate, set up an ad hoc conciliation commission;

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

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

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

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

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

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

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

Article 22

1. A State Party to this Convention may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of a violation by a State Party of the provisions of the Convention. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration.

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

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

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

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

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

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

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

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

Article 23

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

Article 24

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

PART III

Article 25

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

Article 26

This Convention is open to accession by all States. Accession shall be effected by the

deposit of an instrument of accession with the Secretary General of the United Nations.

Article 27

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

2. For each State ratifying this Convention or acceding to it after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or accession.

Article 28

1. Each State may, at the time of signature or ratification of this Convention or accession thereto, declare that it does not recognize the competence of the Committee provided for in article 20.

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

Article 29

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

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

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

Convention and any earlier amendments which they have accepted.

Article 30

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

2. Each State may, at the time of signature or ratification of this Convention or accession thereto, declare that it does not consider itself bound by paragraph I of this article. The other States Parties shall not be bound by paragraph I of this article with respect to any State Party having made such a reservation.

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

Article 31

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

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

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

Article 32

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

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

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

into force of any amendments under article 29;

(c) Denunciations under article 31.

Article 33

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

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

禁止酷刑和其他殘忍不人道或有辱人格的待遇 或處罰公約任擇議定書（中文版）

《禁止酷刑和其他殘忍不人道或有辱人格的待遇或處罰公約》 任擇議定書

序言

本議定書締約國，

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

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

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

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

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

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

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

達成協定如下，

第一部分：一般原則

第1條

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

第2條

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

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

3. 防範小組委員會應遵守保密、公正、非選擇性、普遍性和客觀性原則。

4. 防範小組委員會和締約國應合作執行本議定書。

第3條

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

第4條

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

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

第二部分：防範小組委員會

第5條

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

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

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

4. 防範小組委員會的組成還應根據平等和不歧視原則考慮性別人數均衡問題。

5. 防範小組委員會中不得有任何二名成員為同一國家的國民。

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

第6條

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

2. (a) 被提名人應具有本議定書締約國之國籍；

(b) 二名候選人中至少應有一名具有提名締約國的國籍；

(c) 任何締約國獲得提名的國民不得超過二名；

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

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

名單，同時標明提名的締約國。

第7條

1. 防範小組委員會成員應以下列方式選出：
 - (a) 首要考慮應符合本議定書第5條之要求和標準；
 - (b) 初次選舉最遲應在本議定書生效後六個月內進行；
 - (c) 締約國應以無記名投票方式選舉防範小組委員會成員；
 - (d) 防範小組委員會成員的選舉應由聯合國秘書長在每兩年召開一次的締約國會議中進行。締約國會議的法定開會人數是三分之二的締約國，得票最多而且獲得出席並參加表決的締約國代表絕對多數票者人當選為防範小組委員會成員。
2. 如果在選舉過程中有一個締約國的二名國民取得擔任委員會成員的資格，得票較多的候選人應成為防範小組委員會成員。在二名國民所得票數相等的情況下，適用以下程序：
 - (a) 二名候選人中只有一名是由締約國本國提名情況下，該名國民應成為防範小組委員會成員；
 - (b) 二名候選人均為締約國本國提名時，應進行另一次無記名投票決定何人成為小組委員會成員；
 - (c) 在這二名候選人均不是由締約國本國提名時，應進行另一次無記名投票以決定哪位候選人成為小組委員會成員。

第8條

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

第9條

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

第10條

1. 防範小組委員會應選出主席團成員，任期二年，連選得連任之。
2. 防範小組委員會應自行制定議事規則。該規則中應特別規定事項：
 - (a) 半數加一名成員為法定人數；
 - (b) 防範小組委員會決議由出席成員以多數決方式作成；
 - (c) 防範小組委員會會議不公開。

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

第三部分：防範小組委員會的職權

第11條

防範小組委員會應：

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

(b) 對於國家防範機制：

(一) 必要時就這些機制的設立向締約國提供諮詢意見和協助；

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

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

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

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

第12條

為使防範小組委員會能夠行使第11條所列職權，締約國承諾：

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

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

(c) 鼓勵和提供防範小組委員會與國家防範機制聯繫的便利；

(d) 研究防範小組委員會的建議並就可能的執行措施與防範小組委員會進行對話。

第13條

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

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

3. 查訪應由防範小組委員會至少二名成員負責進行。必要時，可由經證明具備本議定書所涉領域專業經驗和知識的專家陪同成員進行查訪，這些專家應從依據締約國、聯合國人權事務高級專員辦事處以及聯合國國際預防犯罪中心提出的建議專家

名冊中選出。在編制專家名冊時，相關締約國最多可提出五名本國專家。有關締約國可反對某一專家參加查訪，在這種情況下，防範小組委員會應提議另派專家。

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

第14條

1. 為使防範小組委員會能夠履行職權，本議定書締約國承諾准許小組委員會：

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

(b) 不受限制地取得關於這些人的處遇和拘留條件的一切資料；

(c) 在下列第2項的限制下，不受限制地查看所有拘留地點及其裝置和設施；

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

(e) 自由選擇所欲查訪地點和會見對象。

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

第15條

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

第16條

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

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

3. 防範小組委員會應向禁止酷刑委員會提交公開的年度活動報告。

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

第四部分：國家防範機制

第17條

每一締約國最遲於本議定書生效或其批准或加入一年後，應維持、指定或設立一個或多個獨立的國家防範機制，負責在國家層級防範酷刑。為本議定書的目的，在

符合議定書規定的前提下，可將地方層級單位所設機制指定為國家防範機制。

第18條

1. 締約國應保證國家防範機制職能的獨立性及其工作人員的獨立性。
2. 締約國應採取必要措施確保國家防範機制的專家具備必要的能力和專業知識。締約國應致力於實現性別均衡並使國內族裔群體及少數人群體得到適當代表。
3. 締約國承諾為國家防範機制的運作提供必要資源。
4. 締約國在設立國家防範機制時應適當考慮到《有關促進和保護人權的國家機構的地位的原則》(巴黎原則)。

第19條

國家防範機制應具備以下基本權力：

- (a) 定期檢查第4條所界定地點內被剝奪自由者的待遇，以期必要時加強保護，使其免受酷刑和其他殘忍、不人道或侮辱之處遇或懲罰；
- (b) 考慮到聯合國的相關準則，向有關機關提出建議，以期改善被剝奪自由者的待遇和條件，防範酷刑和其他殘忍、不人道或侮辱之處遇或懲罰；
- (c) 就現行立法或立法草案提出建議或意見。

第20條

為了使國家防範機制能夠履行任務，本議定書締約國承諾准予這些機制：

- (a) 取得關於第4條所界定的拘留地點內被剝奪自由者人數及拘留地點數目和所在位置的一切資料；
- (b) 取得關於被拘禁者之待遇與拘留條件的一切資料；
- (c) 查看所有拘留地點及其裝置和設施；
- (d) 有機會個別或在認為必要時由譯員協助下，於無旁人在場時單獨詢問被剝奪自由者以及國家防範機制認為可提供相關資料之任何其他人；
- (e) 自由選擇所欲查訪的地點與會見的人；
- (f) 有權與防範小組委員會接觸、通報情況和會晤。

第21條

1. 對於向國家防範機制提供任何資料的人或組織，不論其資料的真偽，任何機關或官員均不得因此行為而下令、准許或容忍對該人或該組織執行任何制裁或實施制裁，也不得以任何其他方式損害該人或該組織。
2. 國家防範機制蒐集的機密資料應予保密。個人資料非經有關個人明示同意不得公布。

第22條

締約國主管機關應研究國家防範機制提供之建議，並就可能採取之執行措施與該

機關進行對話。

第23條

本議定書締約國承諾公布並散發國家防範機制的年度報告。

第五部分：聲明

第24條

1. 締約國在批准本議定書時，可聲明推遲履行第三部分或第四部分規定的義務。
2. 推遲期不得超過三年。在締約國作出適當陳述並與防範小組委員會磋商之後，禁止酷刑委員會可將推遲期再延長二年。

第六部分：財務條款

第25條

1. 防範小組委員會在執行本議定書之開支由聯合國承擔。
2. 聯合國秘書長應為防範小組委員會依照本議定書有效行使職能之故提供必要的工作人員和便利。

第26條

1. 應根據大會有關程序設立一個特別基金，依照聯合國財務條例和細則加以管理，以提供資助，落實防範小組委員會在查訪後向締約國提供的建議，及開展國家防範機制的教育方案。
2. 特別基金的經費可來自各國政府、政府間組織和非政府組織及其他公私法律實體的自願捐款。

第七部分：最後條款

第27條

1. 本議定書開放供所有已簽署《公約》之國家簽字。
2. 本議定書須經已批准或加入《公約》之所有國家批准。批准書應交存聯合國秘書長。
3. 本議定書開放供已批准或加入《公約》之所有國家加入。
4. 加入於加入書交存聯合國秘書長時生效。
5. 聯合國秘書長應將每一交存之批准書或加入書，通知所有已簽署或加入本議定書的國家。

第28條

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

第29條

本議定書各項規定適用於聯邦國家之全部領土，無任何限制或例外。

第30條

締約國不得對本議定書作出保留。

第31條

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

第32條

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

第33條

1. 任何締約國得隨時以書面通知聯合國秘書長退出本議定書；秘書長隨後應通知本議定書和《公約》的其他締約國。退約在秘書長收到通知書之日起一年後生效。
2. 退約並不免除締約國依據本議定書在以下方面所承擔之義務：在退約生效之日前可能發生的任何行為或情況；防範小組委員會已經決定或可能決定對有關締約國採取的行動；退約絕不影響防範小組委員會繼續審理退約生效之日前已審議的任何問題。
3. 在締約國退約生效之日後，防範小組委員會不應進行審議有關該國家的任何新事項。

第34條

1. 本議定書的任何締約國均可提出修正案並將其提交聯合國秘書長。秘書長應立即將修正案通知本議定書各締約國，請締約國通知秘書長，表明是否贊成召開締約國會議以審議此項提案並對之進行表決。發出通告之日起四個月內若有三分之一以上締約國贊成召開這一會議，秘書長應在聯合國主持下召開會議。修正案在取得出席並參加表決的三分之二多數之與會締約國通過之後，應由秘書長提交所有締約國供其接受。
2. 根據本條第1項通過的修正案經本議定書三分之二多數締約國依據本國憲法程序予以接受後即行生效。
3. 修正案一旦生效，即對接受修正案的締約國具有約束力，其他締約國則仍受本議定書各項規定和本國以前接受之任何修正案的約束。

第35條

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

第36條

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

- (a) 應遵守被查訪國家的法律、規章；
- (b) 應避免任何不符合其任務之公正和國際性質的行為或活動。

第37條

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

2. 聯合國秘書長應將本議定書的核證副本轉發給所有國家。

**禁止酷刑和其他殘忍不人道或有辱人格的待遇
或處罰公約任擇議定書（英文版）**

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

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

PREAMBLE

The States Parties to the present Protocol,

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

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

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

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

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

Recalling also that the World Conference on Human Rights firmly declared that efforts to eradicate torture should first and foremost be concentrated on prevention and called for the

adoption of an optional protocol to the Convention, intended to establish a preventive system of regular visits to places of detention,

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

PART I: General principles

Article 1

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

Article 2

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

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

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

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

Article 3

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

Article 4

1. Each State Party shall allow visits, in accordance with the present Protocol, by the

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

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

PART II: Subcommittee on Prevention

Article 5

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

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

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

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

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

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

Article 6

1. Each State Party may nominate, in accordance with paragraph 2 of the present article, up to two candidates possessing the qualifications and meeting the requirements set out in

article 5, and in doing so shall provide detailed information on the qualifications of the nominees.

2.

- (a) The nominees shall have the nationality of a State Party to the present Protocol;
- (b) At least one of the two candidates shall have the nationality of the nominating State Party;
- (c) No more than two nationals of a State Party shall be nominated;
- (d) Before a State Party nominates a national of another State Party, it shall seek and obtain the consent of that State Party.

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

Article 7

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

- (a) Primary consideration shall be given to the fulfilment of the requirements and criteria of article 5 of the present Protocol;
- (b) The initial election shall be held no later than six months after the entry into force of the present Protocol;
- (c) The States Parties shall elect the members of the Subcommittee on Prevention by secret ballot;
- (d) Elections of the members of the Subcommittee on Prevention shall be held at biennial meetings of the States Parties convened by the Secretary-General of the United Nations. At those meetings, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Subcommittee on Prevention shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of the States Parties present and voting.

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

- (a) Where only one has been nominated by the State Party of which he or she is a national,

that national shall serve as the member of the Subcommittee on Prevention;

(b) Where both candidates have been nominated by the State Party of which they are nationals, a separate vote by secret ballot shall be held to determine which national shall become the member;

(c) Where neither candidate has been nominated by the State Party of which he or she is a national, a separate vote by secret ballot shall be held to determine which candidate shall be the member.

Article 8

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

Article 9

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

Article 10

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

2. The Subcommittee on Prevention shall establish its own rules of procedure. These rules shall provide, inter alia, that:

(a) Half the members plus one shall constitute a quorum;

(b) Decisions of the Subcommittee on Prevention shall be made by a majority vote of the members present;

(c) The Subcommittee on Prevention shall meet in camera.

3. The Secretary-General of the United Nations shall convene the initial meeting of the Subcommittee on Prevention. After its initial meeting, the Subcommittee on Prevention shall meet at such times as shall be provided by its rules of procedure. The Subcommittee

on Prevention and the Committee against Torture shall hold their sessions simultaneously at least once a year.

PART III: Mandate of the Subcommittee on Prevention

Article 11

1. The Subcommittee on Prevention shall:

(a) Visit the places referred to in article 4 and make recommendations to States Parties concerning the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment;

(b) In regard to the national preventive mechanisms:

(i) Advise and assist States Parties, when necessary, in their establishment;

(ii) Maintain direct, and if necessary confidential, contact with the national preventive mechanisms and offer them training and technical assistance with a view to strengthening their capacities;

(iii) Advise and assist them in the evaluation of the needs and the means necessary to strengthen the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment;

(iv) Make recommendations and observations to the States Parties with a view to strengthening the capacity and the mandate of the national preventive mechanisms for the prevention of torture and other cruel, inhuman or degrading treatment or punishment;

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

Article 12

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

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

(b) To provide all relevant information the Subcommittee on Prevention may request to evaluate the needs and measures that should be adopted to strengthen the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment;

(c) To encourage and facilitate contacts between the Subcommittee on Prevention and the national preventive mechanisms;

(d) To examine the recommendations of the Subcommittee on Prevention and enter into

dialogue with it on possible implementation measures.

Article 13

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

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

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

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

Article 14

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

(a) Unrestricted access to all information concerning the number of persons deprived of their liberty in places of detention as defined in article 4, as well as the number of places and their location;

(b) Unrestricted access to all information referring to the treatment of those persons as well as their conditions of detention;

(c) Subject to paragraph 2 below, unrestricted access to all places of detention and their installations and facilities;

(d) The opportunity to have private interviews with the persons deprived of their liberty without witnesses, either personally or with a translator if deemed necessary, as well as with any other person who the Subcommittee on Prevention believes may supply relevant information;

(e) The liberty to choose the places it wants to visit and the persons it wants to interview.

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

Article 15

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

Article 16

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

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

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

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

PART IV: National preventive mechanisms

Article 17

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

preventive mechanisms for the purposes of the present Protocol if they are in conformity with its provisions.

Article 18

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

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

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

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

Article 19

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

(a) To regularly examine the treatment of the persons deprived of their liberty in places of detention as defined in article 4, with a view to strengthening, if necessary, their protection against torture and other cruel, inhuman or degrading treatment or punishment;

(b) To make recommendations to the relevant authorities with the aim of improving the treatment and the conditions of the persons deprived of their liberty and to prevent torture and other cruel, inhuman or degrading treatment or punishment, taking into consideration the relevant norms of the United Nations;

(c) To submit proposals and observations concerning existing or draft legislation.

Article 20

In order to enable the national preventive mechanisms to fulfil their mandate, the States Parties to the present Protocol undertake to grant them:

(a) Access to all information concerning the number of persons deprived of their liberty in places of detention as defined in article 4, as well as the number of places and their location;

(b) Access to all information referring to the treatment of those persons as well as their conditions of detention;

- (c) Access to all places of detention and their installations and facilities;
- (d) The opportunity to have private interviews with the persons deprived of their liberty without witnesses, either personally or with a translator if deemed necessary, as well as with any other person who the national preventive mechanism believes may supply relevant information;
- (e) The liberty to choose the places they want to visit and the persons they want to interview;
- (f) The right to have contacts with the Subcommittee on Prevention, to send it information and to meet with it.

Article 21

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

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

Article 22

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

Article 23

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

PART V: Declaration

Article 24

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

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

PART VI: Financial provisions

Article 25

1. The expenditure incurred by the Subcommittee on Prevention in the implementation of the present Protocol shall be borne by the United Nations.
2. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Subcommittee on Prevention under the present Protocol.

Article 26

1. A Special Fund shall be set up in accordance with the relevant procedures of the General Assembly, to be administered in accordance with the financial regulations and rules of the United Nations, to help finance the implementation of the recommendations made by the Subcommittee on Prevention after a visit to a State Party, as well as education programmes of the national preventive mechanisms.
2. The Special Fund may be financed through voluntary contributions made by Governments, intergovernmental and non-governmental organizations and other private or public entities.

PART VII: Final provisions

Article 27

1. The present Protocol is open for signature by any State that has signed the Convention.
2. The present Protocol is subject to ratification by any State that has ratified or acceded to the Convention. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
3. The present Protocol shall be open to accession by any State that has ratified or acceded to the Convention.
4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.
5. The Secretary-General of the United Nations shall inform all States that have signed the present Protocol or acceded to it of the deposit of each instrument of ratification or accession.

Article 28

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

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

Article 29

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

Article 30

No reservations shall be made to the present Protocol.

Article 31

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

Article 32

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

Article 33

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

2. Such a denunciation shall not have the effect of releasing the State 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.