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院總第 1374 號 政府提案第 16608 號

案由：行政院函請審議「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及其任擇議定書施行法草案」、「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」及其任擇議定書案。

行政院函

受文者：立法院

發文日期：中華民國 107 年 12 月 7 日

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速別：速件

密等及解密條件或保密期限：

附件：如文,attach1 attach2 attach3 attach4 attach5

主旨：函送「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及其任擇議定書施行法」草案、「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」及其任擇議定書中英文版，請查照審議。

說明：

- 一、本案經提本（107）年 12 月 6 日本院第 3629 次會議決議：通過，函請立法院審議。
- 二、檢送「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及其任擇議定書施行法」草案（含總說明）、「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」及其任擇議定書中英文版各 1 份。

正本：立法院

副本：內政部（含附件）

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(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 1 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 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 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.
2. The Secretary-General of the United Nations shall transmit certified copies of this Convention to all States.

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(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.

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)

《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

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。

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及其任擇議定書施行法草案總說明

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 (Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment) (以下簡稱本公約) 係聯合國於一九八四年十二月十日經由第四十六屆大會第三十九號決議通過，並於一九八七年六月二十六日正式生效。其目的為進一步落實世界人權宣言第五條及公民與政治權利國際公約第七條之規定，有效杜絕各種形式、手段之酷刑，防止在世界各地有酷刑及其他殘忍、不人道或有辱人格之待遇或處罰之情事發生，要求締約國在其管轄領域內，必須採取各種有效方法防制酷刑與其他殘忍、不人道或有辱人格之待遇或處罰之存在及發生，更期盼各國合作，有效開展防制酷刑及其他殘忍、不人道或有辱人格之待遇或處罰之各項行動，本公約迄二〇一七年六月三十日止已有一百六十一個國家批准。另聯合國二〇〇二年十二月十八日第五十七屆大會第一九九號決議通過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 (Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment) (以下簡稱議定書)，並於二〇〇六年六月二十二日正式生效，議定書迄二〇一七年六月三十日止已有八十三個國家完成批准或加入。

任何人在任何情況及任何地方，均有免受酷刑及其他殘忍、不人道或有辱人格之待遇或處罰之權利，係源於「人之尊嚴與人之完整性不受侵害及貶損」原則。確保生命之神聖不可侵犯、維護個人身心健全及基本自由，乃中華民國憲法及國際人權法制之目標，更是世界和平及人類福祉之基礎。據此，禁止酷刑及其他殘忍、不人道或有辱人格之待遇或處罰不只為本公約及議定書所明確承認，且已被視為具有強行法 (Jus Cogens) 性質之習慣國際法 (customary international law) 規範。即使處於戰爭或危及國家安全之緊急情況，國家亦不得延宕、擱置或減損履行本公約之義務。

鑑於本公約相較於其他人權公約不同之處，在於其規定多為保障人民免受酷刑與其他殘忍、不人道或有辱人格之待遇或處罰之程序規定及預防機制，基於議定書第十七條規定，每一締約國應維持、指定或設立一個或

多個獨立的國家防制機制 (National Preventive Mechanism)，以負責在國家層級防制酷刑，依據統計，目前八十三個已批准或加入議定書的國家中，陸續有六十四個國家建立國家防制機制，其中有四十八個國家是指定既有機關負責，占百分之七十五；該四十八個國家中有三十五個國家是指定監察機關 (ombudsman institution) 承擔，另有八個國家是指定國家人權委員會 (national human rights commission) 負責。大部分之締約國指定既有之監察機關承擔國家防制機制之主要原因為監察機關具備獨立性與保護人權之功能，符合巴黎原則所指「國家人權機構」之性質與功能，由其承擔國家防制酷刑機制，亦符合議定書之要求。爰依據本公約與議定書內涵，參酌國際慣例，由監察院執行本公約有關受理人民陳情與進行調查等工作及議定書第四部分所規定國家防制機制，負責訪查因公務機關之命令、教唆或在其同意、放任或默許下，致個人被剝奪自由或有被剝奪自由之虞之處所，並參照聯合國相關準則，向有關機關提出改善待遇條件及立法建議，撰寫酷刑防制年度報告等事項。

一百零四年七月一日公布施行條約締結法，依該法第十一條第一項第一款但書規定，條約有無法互換或存放之情況，應由主辦機關報請行政院轉呈總統逕行公布；又依同條第二項規定，前述條約自總統公布之生效日期起具國內法效力。條約締結法規定國際條約國內法化有關程序與國內法化之效力，卻未規定是否具有如司法院釋字第三二九號宣示之「憲法所稱之條約係指其內容直接涉及人民之權利義務且具有法律上效力」意旨。鑑於本公約與人民之人權保障具有高度關係，有必要於施行法明定本公約與議定書具有國內法律效力，以符釋字第三二九號之規範意旨。

鑑於議定書第十七條要求各締約國應建立國家防制機制以落實本公約義務，我國有必要另行制定我國國家防制機制及相關制度之法律依據，另為明確賦予政府提出國家報告、促進國際合作、落實政策及法案之影響評估、發展人權指標、推動人權教育、編列預算及落實法規檢視等義務，爰擬具「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及其任擇議定書施行法」(以下簡稱本法)草案，其要點如下：

一、 揭蘗本法立法目的及明定本公約及議定書之規定具有國內法律之效力。(草案第一條及第二條)

- 二、 酷刑與其他殘忍、不人道或有辱人格之待遇或處罰之認定基準應符合本公約及議定書之目的及宗旨，並應參照聯合國禁止酷刑委員會及所屬委員會所為之一般性意見及決議、國家報告之審查意見、個人申訴案件之決定及國際法律文件認定。(草案第三條)
- 三、 各級政府機關應依業務職掌籌劃、推動及執行本公約規定事項，落實監督及考核，並健全申訴制度。(草案第四條)
- 四、 監察院設酷刑及其他殘忍、不人道或有辱人格之待遇或處罰防制相關委員會。(草案第五條)
- 五、 任何人依本公約及議定書應受保障之權利，遭受侵害或有受侵害之虞時，得向監察院提出陳情，監察院於接獲陳情後，應依職權進行調查。(草案第六條)
- 六、 政府應依本公約規定，於本法施行後提出初次國家報告及定期國家報告之期間；國家報告應依聯合國相關規定及報告準則撰寫。(草案第七條)
- 七、 政府應確實籌劃、推動及執行本公約規定事項，並與國際間共同合作。(草案第八條)
- 八、 執行本公約及議定書所需經費，應優先編列。(草案第九條)
- 九、 各級政府機關應就主管之法令及行政措施依限提出檢視清單，並完成法令之制（訂）定、修正或廢止及行政措施之改進。(草案第十條)
- 十、 本法之施行日期。(草案第十一條)

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及其任擇議定書施行法草案

條文	說明
<p>第一條 為實施聯合國一九八四年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（Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984，以下簡稱本公約）及二〇〇二年其任擇議定書（Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, 2002，以下簡稱議定書），以落實人權保障意旨，特制定本法。</p>	<p>為有效杜絕各種形式及手段之酷刑及其他殘忍、不人道或有辱人格之待遇或處罰，落實已具國內法律效力之公民與政治權利國際公約第七條所明文之「禁止酷刑或不人道之處遇或懲罰」，並具體回應公民與政治權利國際公約及經濟社會文化權利國際公約國際審查之意見（結論性意見及建議第十一點），爰制定本法。</p>
<p>第二條 本公約及議定書所揭示之規定，具有國內法律之效力。</p>	<p>一、依條約締結法第十一條第一項第一款但書規定，條約有無法互換或存放之情況，應由主辦機關報請行政院轉呈總統逕行公布；又依同條第二項規定，前述條約自總統公布之生效日期起具國內法效力。</p> <p>二、條約締結法規定國際條約國內法化有關程序與國內法化之效力，卻未規定是否具有如司法院釋字第三二九號宣示之「憲法所稱之條約係指其內容直接涉及人民之權利義務且具有法律上效力」意旨。鑑於本公約與人權保障具有高度關係，有必要於施行法明定本公約與議定書具有國內法律效力，以符司法院釋字第三二九號之規範意旨，且如此使機關之各項作為可直接適用本公約，俾明確其在我國法律體系中之定位。</p> <p>三、另因議定書係有關建立獨立國家防制酷刑機制之規範依據，茲為具體落實本公約國內法化之規範義務，爰將議定書納入本條規定。</p>
<p>第三條 本法所定酷刑及其他殘忍、不人道或有辱人格之待遇或處罰，應依本公約與議定書之目的及宗旨，並參照聯合國禁止酷刑委員會與所屬委員會所為之一般性意見與決議、國家報告之審查意見、個人申訴案件之決定及國際法律</p>	<p>一、酷刑及其他殘忍、不人道或有辱人格之待遇或處罰認定基準，本公約並無詳細定義，應依本公約與議定書之目的及宗旨，並參照聯合國禁止酷刑委員會與所屬委員會所為之一般性意見與決議、國家報告之審查意見、個</p>

<p>文件認定。但國內法律有優於本公約及議定書之規定者，從其規定。</p>	<p>人申訴案件之決定及國際法律文件認定，並隨時間進展不斷擴大及提高，爰規定酷刑及其他殘忍不人道或有辱人格之待遇或處罰認定基準。又所稱個人申訴案件之決定，指聯合國禁止酷刑委員會審查個案後所為之決定，另國際法律文件，指由國際間政府組織或其機構(例如聯合國、條約機構、歐洲理事會、歐洲人權法院等)所做成，具有國際法效力之法律文件(例如聯合國之決議、歐洲理事會通過之條約、歐洲人權法院之判決、聯合國禁止酷刑特別報告員之特別報告等)。</p> <p>二、為避免我國對於人權之標準有倒退情形，並落實本公約第一條第二項之意旨，如國內法律有較能保障人權之規定時，應予優先適用，爰於但書明定就酷刑及其他殘忍、不人道或有辱人格之待遇或處罰認定基準有優於本公約及議定書規定之國內法律，應優先適用。</p>
<p>第四條 各級政府機關應確實依法規規定之業務職掌，負責籌劃、推動及執行本公約規定事項，落實監督及考核，並健全申訴制度。</p>	<p>本公約對保護人民免受酷刑及其他殘忍、不人道或有辱人格之待遇或處罰定有周延之規定，其實現有賴各級政府機關依法規規定之業務職掌，負責積極籌劃、推動及執行，另為強化各級政府機關對內部之督導責任，爰規定應落實監督及考核，並健全申訴制度。</p>
<p>第五條 監察院設酷刑及其他殘忍、不人道或有辱人格之待遇或處罰防制相關委員會，辦理下列事項：</p> <p>一、定期訪查因公務機關之命令、教唆或在其同意、放任或默許下，致個人被剝奪自由或有被剝奪自由之虞之處所。</p> <p>二、參照聯合國相關規範，向有關機關提出建議，以期改善被剝奪自由者之待遇與條件，並防制酷刑及其他殘忍、不人道或有辱人格之待遇或處罰。</p> <p>三、受理人民陳情及調查各級政府機關涉及違反本公約之情事。</p> <p>四、就現行立法及立法草案提出建議或</p>	<p>一、依議定書第三條及第十七條規定，每一締約國最遲於議定書生效或經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，於國家層級負責酷刑及其他殘忍、不人道或有辱人格之待遇或處罰之防制。另依議定書第十八條規定，建立國家防制機制時，要考慮之條件包括職能獨立性及其工作人員獨立性，以及應適當考慮到「巴黎原則」(Principles relating to the Status of National Institutions, The Paris Principles)。又依據本公約第十二條及第十三條規定，酷刑行為發生時或有遭到酷刑之申訴</p>

<p>意見。</p> <p>五、研擬、撰寫並公布酷刑防制年度報告。</p>	<p>時，應由主管機關立即進行公正之調查。我國目前雖未設有符合聯合國「巴黎原則」之國家人權委員會，惟考量監察機關（ombudsman institution）在國際間被認定為「國家人權機構」之一種態樣，大部分締約國係指定既有之監察機關承擔國家防制機制，且在我國五權分立憲政體制下，監察院依據憲法、監察法、監察法施行細則、監察院收受人民書狀及處理辦法、監察院辦理調查案件注意事項、監察院巡迴監察辦法等法規行使職權，包括受理人民陳情、進行調查、提出報告、建議改善、提案糾正、彈劾及糾舉、追蹤後續改善成效等；監察院依據監察院各委員會組織法，設有「司法及獄政委員會」、「內政及少數民族委員會」、「國防及情報委員會」及「人權保障委員會」等相關委員會，本得依監察法第三條及監察院巡迴監察辦法規定，就法務部管轄之矯正機關、內政部管轄之拘留所與移民收容處所、衛生福利部管轄之安置與療護機構、國防部管轄之軍事單位懲罰設施，乃至其他政府機關之公權力管轄與控制下可能剝奪人身自由之任何地點及設施，進行定期或不定期之巡察，以為預防性監督；一旦發動有關調查，監察委員亦得就上開地點進行現場履勘，以發掘事實真相，爰規定應由監察院設防制酷刑及其他殘忍、不人道或有辱人格之待遇或處罰相關委員會，以承擔議定書第四部分規定國家層級防制酷刑機制權責。</p> <p>二、本公約依據本法第二條規定具有國內法律之效力，監察院除原有彈劾、糾舉、糾正及調查職權外，並執行議定書第四部分所定國家防制機制相關工作，負責訪查、提出相關立法及行政措施之建議、受理陳情及進行調查、監督政府機關履行本公約所定義務，並依議定書第二十三條規定，撰寫酷刑防制年度報告等。</p>
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<p>第六條 任何人於本公約及議定書所保障之權利遭受侵害或有受侵害之虞時，得向監察院提出陳情。</p> <p>任何人知悉他人有前項情事者，得向監察院提出陳情。</p> <p>監察院於受理陳情後應依職權調查及公布調查結果，並依法作必要處置。</p>	<p>一、任何人於本公約及議定書下所應受保障之權利倘遭受侵害或有受侵害之虞時，應有權向監察院提出陳情或檢舉，以落實本公約及議定書對於相關權利之保障，爰為第一項規定。</p> <p>二、任何受害人皆有提出陳情之權利，惟若受害人不明確或懼於提出陳情時，第二項規定任何人（包含法人或團體等）提出陳情或檢舉。</p> <p>三、監察院於受理陳情後應依職權進行調查及依相關規定公布調查結果，並作必要處置，爰為第三項規定，如涉及刑事責任，則依憲法第九十七條第二項及監察法第十五條規定，移送司法機關依法訴追，以確實履行本法所賦予之任務，併予敘明。</p>
<p>第七條 政府應依本公約規定於本法施行後一年內提出初次國家報告，其後應每四年提出定期國家報告。</p> <p>國家報告應依聯合國相關規定及報告準則撰寫。</p> <p>國家報告應邀請曾任或現任聯合國禁止酷刑委員會委員、禁止酷刑特別報告員或國際獨立專家審閱，政府並應依審閱意見檢討及研擬後續施政措施。</p>	<p>一、為落實本公約第十九條規定，於第一項明定應於本法施行後一年內提出初次國家報告，其後應每四年提出定期國家報告。</p> <p>二、第二項規定國家報告應依聯合國相關規定及報告準則撰寫。</p> <p>三、為落實國家報告制度，於第三項規定應邀請曾任或現任聯合國禁止酷刑委員會委員、禁止酷刑特別報告員 (Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment) 或國際獨立專家審閱，且政府應依審閱意見檢討及研擬後續施政措施。</p>
<p>第八條 政府應與各國政府、國內外非政府組織及人權機構共同合作，以保護及促進本公約所保障人權之實現。</p> <p>政府應落實執行政策及法案之影響評估，並發展相關人權指標及推動人權教育。</p>	<p>一、本公約規定之落實，除應就本公約規定事項協調聯繫辦理外，更有必要與外國政府、國際間之非政府組織及人權機構合作，以保護及促進其所保障各項人權之實現，爰為第一項規定。</p> <p>二、為落實本公約，於第二項規定政府應落實執行相關政策及法案之影響評估，並發展相關人權指標及推動人權教育。</p>
<p>第九條 各級政府機關執行本公約及議定書規定所需經費，應優先編列。</p>	<p>因本公約所規定有關禁止酷刑之相關規定對於人權保障具有特殊性與重要性，其保障範圍及內容不可削減，縱使國家處於內亂、外患等緊急狀態，亦不可減損對於</p>

立法院第 9 屆第 6 會期第 14 次會議議案關係文書

	本公約之履行義務，也不得以國家財政困難等理由減緩實施，爰明定執行本公約及議定書規定所需經費應優先編列，以確保本公約及議定書之有效執行。
第十條 各級政府機關應依本公約及議定書規定之內容，就主管之法令及行政措施，於本法施行後一年內提出檢視清單，有不符本公約及議定書規定者，應於本法施行後三年內，完成法令之制（訂）定、修正或廢止及行政措施之改進。	本公約及議定書所揭示之規定，係國際上最重要之禁止酷刑及其他殘忍、不人道或有辱人格之待遇或處罰之規範，爰明定各級政府機關應依限檢討主管之法令及行政措施，並依限完成法令之制（訂）定、修正或廢止及行政措施之改進。
第十一條 本法施行日期，由行政院定之。	考量本公約規定於本法施行前需就相關教育訓練、宣導、網站架設、法規檢視及國家防制機制之運作等，妥為籌備規劃，爰規定本法施行日期由行政院定之，俾充足整備工作，以利推行之順遂。

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)

《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》

本公約締約各國，

鑑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，

鑑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 條及公民及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及政治權利國際公

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.鑑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敘述事實及解決辦法；

(ii) 如不能按(e)款規定解決，委員會之報告應限於簡要敘述事實；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。