

# Crimes of Torture Amendment Bill

Government Bill

## Explanatory note

### General policy statement

This Bill implements the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the **Optional Protocol**) which was adopted by a vote in the United Nations General Assembly on 18 December 2002 and signed by New Zealand on 24 September 2003.

The Optional Protocol provides further measures to achieve the purposes of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Its objective is to establish a system of regular visits by 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.

### *Summary of key measures*

#### **Subcommittee on Prevention**

The Optional Protocol establishes a Subcommittee of the existing Committee against Torture to regularly visit places where people are deprived of their liberty, and to make recommendations to State Parties concerning the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment.

The Bill enables the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the **Subcommittee**) to exercise in New Zealand its functions and powers set out in the Optional Protocol. The Subcommittee is permitted

to visit any place under the Crown's jurisdiction or control where persons are deprived of their liberty, to have unrestricted access to such information as is necessary for the proper performance of its functions, and to conduct private interviews with detained persons.

The Bill also provides that, in accordance with the provisions of the Optional Protocol, members of the Subcommittee may be accompanied by one or more experts when visiting a place of detention.

After visiting places of detention, the Subcommittee makes its recommendations and observations confidentially to State Parties and may publish its report, together with any comments of the State Party concerned, if requested to do so by the State Party.

### **National Preventive Mechanisms**

The Optional Protocol requires each State Party to have at the domestic level at least 1 visiting body for the prevention of torture and other cruel, inhuman or degrading punishment or treatment (a **National Preventive Mechanism**).

The Bill authorises the Minister of Justice to designate by notice in the *Gazette* 1 or more National Preventive Mechanisms, which are functionally independent.

The functions of a National Preventive Mechanism are to examine at regular intervals the conditions of detention applying to detainees and the treatment of those detainees in those places of detention for which it is designated, and to make any recommendations for improving the conditions of detention and the treatment of detainees. A National Preventive Mechanism is also required to provide at least 1 written report to the Minister of Justice each year on the exercise of its functions under the Bill.

### **Central National Preventive Mechanism**

The Bill also authorises the Minister of Justice to designate a national body (the **Central National Preventive Mechanism**) to coordinate the activities of the National Preventive Mechanisms and to maintain effective liaison with the Subcommittee. This is important given the range of places of detention in New Zealand and the likelihood that several institutions may contribute to the role of monitoring these places for the prevention of torture.

In carrying out its functions the Central Preventive Mechanism must consult and liaise with the National Preventive Mechanisms, review

the reports prepared by the National Preventive Mechanisms, and coordinate the submission of those reports to the Subcommittee. Flowing from these tasks, the Central National Preventive Mechanism is responsible for advising National Preventive Mechanisms of any systematic issues arising from those reports and making any recommendations to the Government it considers appropriate on any matter relating to the prevention of torture and other cruel, inhuman or degrading treatment or punishment in places of detention in New Zealand.

### Clause by clause analysis

*Clause 1* is the Title clause. The Bill amends the Crimes of Torture Act 1989, which is called “the principal Act” in the Bill and in this clause by clause analysis.

*Clause 2* provides that the Bill comes into force on the day after the date on which it receives the Royal assent.

### Part 1 Amendments to principal Act

*Clause 3* repeals the Title of the principal Act (because it is to be replaced by a new section 2A, inserted by *clause 5*).

*Clause 4* amends the definition of **The Convention** in section 2(1) of the principal Act.

*Clause 5* inserts in the principal Act a new Part heading, and a new section 2A. The new Part heading ensures all existing sections of the principal Act (which relate to the prosecution of crimes of torture) appear in a new Part 1 of the principal Act.

*New section 2A* (which appears under the heading: “Prosecution of Crimes of Torture”) provides that the purpose of Part 1 of the principal Act is to enable New Zealand to meet its international obligations under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (**the Convention**).

*Clause 6* inserts in the principal Act a new Part 2 (*new sections 15 to 34*) which is about prevention of crimes of torture.

#### *Preliminary provisions*

*New section 15* sets out the purpose of Part 2. Its purpose is to enable New Zealand to meet its international obligations under the Optional Protocol.

*New section 16* is the interpretation section for this new Part. The definition of **deprived of liberty** is based on Article 4(2) of the Optional Protocol.

### *Visits by Subcommittee*

*New section 17* states that the purpose of sections 18 to 20 is to enable the Subcommittee to fulfil its mandate set out in Article 11 of the Optional Protocol.

*New section 18* implements Article 14(1)(a) and (b) of the Optional Protocol. It provides that, in relation to places of detention in New Zealand, the Subcommittee is to have unrestricted access to information about—

- the number of places of detention:
- the location of places of detention:
- the number of detainees:
- the treatment of detainees:
- the conditions of detention applying to detainees.

*New section 19* implements Article 14(1)(c) and (e) of the Optional Protocol. It provides that the Subcommittee is to have unrestricted access to—

- any place of detention in New Zealand, and to every part of that place; and
- any person in a place of detention.

*New section 20* implements Articles 14(1)(d) and 15 of the Optional Protocol. It provides that the Subcommittee may interview—

- any person in a place of detention:
- any other person who it believes may be able to provide relevant information.

*New clause 21* implements Article 13(3) of the Optional Protocol. It states that 1 or more experts may accompany the Subcommittee on any visit to a place of detention.

*New clause 22* implements Article 14(2) of the Optional Protocol. It provides that the Minister may object to the Subcommittee having access to any place of detention if there is an urgent or compelling reason on the grounds of national defence, public safety, natural disaster, or serious disorder in the place of detention that temporarily prevents access to the place of detention.

*New section 23* authorises the Minister to appoint 1 or more persons to accompany or assist the Subcommittee during its visits to places of detention in New Zealand.

*New section 24* authorises the Minister to issue identification certificates to members of the Subcommittee, and experts or other persons accompanying the Subcommittee during visits to places of detention in New Zealand.

*New section 25* authorises the Minister for the time being responsible for the administration of this Act to issue directions to any person in charge of a place of detention for the purpose of facilitating a visit by the Subcommittee.

### *National Preventive Mechanisms*

*New section 26* implements Articles 17 and 18 of the Optional Protocol. It requires the Minister for the time being responsible for the administration of this Act, not later than 1 year after the Optional Protocol comes into force, to designate 1 or more National Preventive Mechanisms. A National Preventive Mechanism may be designated in respect of 1 or more places of detention and on specified terms and conditions. A designation, or the terms and conditions of a designation, may be varied or revoked by the Minister at any time.

*New section 27* implements Article 19 of the Optional Protocol and sets out the functions of a National Preventive Mechanism.

*New section 28* implements Article 20(a) and (b) of the Optional Protocol. It provides that in relation to the places of detention for which it is designated a National Preventive Mechanism is to have unrestricted access to information about—

- the number of detainees in the places of detention;
- the treatment of detainees in those places of detention;
- the conditions of detention applying to detainees in those places of detention.

*New section 29* implements Article 20(c) and (e) of the Optional Protocol. It provides that a National Preventive Mechanism is to have unrestricted access to—

- any place of detention for which it has been designated, and to every part of that place;
- any person in a place of detention for which it has been designated.

*New section 30* implements Article 20(d) of the Optional Protocol. It provides that a National Preventive Mechanism may interview—

- any person in a place of detention for which it is designated;
- any other person who it believes may be able to provide relevant information.

*New section 31* provides for reports prepared by a National Preventive Mechanism to be made publicly available.

### *Central National Preventive Mechanism*

*New section 32* authorises the Minister for the time being responsible for the administration of this Act to designate a Central National Preventive Mechanism.

*New section 33* sets out the functions of the Central National Preventive Mechanism. These are—

- to coordinate the activities of the National Preventive Mechanisms; and
- to maintain effective liaison with the Subcommittee.

### *Miscellaneous provisions*

*New section 34* requires that every person keep confidential any information given to him or her in the exercise of that person's functions under the Act, except to the extent that disclosure of the information is necessary to enable New Zealand to fulfil its obligations under the Optional Protocol or to give effect to the Act.

*Clause 7* adds 2 schedules to the Act.

## **Part 2 Amendments to other Acts**

*Clauses 8 to 13* amend the following Acts to provide that nothing in those Acts limits or affects the operation of Part 2 of the Crimes of Torture Act 1989:

- Corrections Act 2004;
- Health and Disability Services (Safety) Act 2001;
- Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003;
- Mental Health (Compulsory Assessment and Treatment) Act 1992;
- Ombudsman Act 1975;
- Police Complaints Authority Act 1988.

*Schedule*

The Schedule sets out the 2 schedules to be added to the principal Act.

*Schedule 1* is the English text of the Convention.

*Schedule 2* is the English text of the Optional Protocol.

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*Hon Mark Burton*

# **Crimes of Torture Amendment Bill**

Government Bill

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## Crimes of Torture Amendment

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**The Parliament of New Zealand enacts as follows:**

<b>1</b>	<b>Title</b>	
(1)	This Act is the Crimes of Torture Amendment Act <b>2005</b> .	
(2)	In this Act, the Crimes of Torture Act 1989 is called “the principal Act”.	
<b>2</b>	<b>Commencement</b>	5
	This Act comes into force on the day after the date on which it receives the Royal assent.	
<b>Part 1</b>		
<b>Amendments to principal Act</b>		
<b>3</b>	<b>Title repealed</b>	10
	The Title of the principal Act is repealed.	
<b>4</b>	<b>Interpretation</b>	
	Section 2(1) of the principal Act is amended by adding to the definition of <b>The Convention</b> the words “, a copy of the English text of which is set out in <b>Schedule 1</b> ”.	15
<b>5</b>	<b>New Part heading and section 2A inserted</b>	
	The principal Act is amended by inserting, immediately before section 3, the following Part heading and section:	
<b>“Part 1</b>		
<b>“Prosecution of Crimes of Torture</b>		
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<b>“2A</b>	<b>Purpose of this Part</b>	
	The purpose of this Part is to enable New Zealand to meet its international obligations under the Convention.”	
<b>6</b>	<b>New Part 2 inserted</b>	
	The principal Act is amended by inserting, after section 14, the following Part:	25
<b>“Part 2</b>		
<b>“Prevention of Crimes of Torture</b>		
<i>“Preliminary provisions</i>		
<b>“15</b>	<b>Purpose of this Part</b>	30
	The purpose of this Part is to enable New Zealand to meet its international obligations under the Optional Protocol.	

**“16 Interpretation**

In this Part, unless the context otherwise requires,—

“**Central National Preventive Mechanism** means any person, body, or agency for the time being designated under **section 32** as the Central National Preventive Mechanism

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“**deprived 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 or agreement of any judicial, administrative, or other authority

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“**detainee** means a person in a place of detention who is deprived of his or her liberty

“**Minister** means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Act

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“**National Preventive Mechanism** means 1 or more of the following that may, for the time being, be designated under **section 26** as a National Preventive Mechanism:

“(a) an Ombudsman holding office under the Ombudsmen Act 1975 including, for the purposes of this Act, any person holding office under an Ombudsman to whom any of the powers of an Ombudsman have been delegated under section 28 of the Ombudsmen Act 1975:

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“(b) the Police Complaints Authority:

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“(c) the Children’s Commissioner:

“(d) persons designated by the Director-General under section 32 of the Health and Disability Services (Safety) Act 2001 to audit the provision of health care services:

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“(e) visiting officers appointed in accordance with relevant Defence Force Orders issued pursuant to sections 175 and 206 of the Armed Forces Discipline Act 1971:

“(f) any other person, body or agency that is designated a National Preventive Mechanism

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“**Optional Protocol** means the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly of the United Nations on 18 December 2002, a copy of the English text of which is set out in **Schedule 2**

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“**place of detention** means any place under the jurisdiction and control of the Crown where persons are or may be deprived of liberty, including, for example, detention or custody in—

- “(a) a prison: 5
- “(b) a police cell:
- “(c) a court cell:
- “(d) a hospital:
- “(e) a secure facility as defined in section 9(2) of the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003: 10
- “(f) a residence established under section 364 of the Children, Young Persons, and Their Families Act 1989:
- “(g) premises approved under the Immigration Act 1987:
- “(h) a service penal establishment as defined in section 2 of the Armed Forces Discipline Act 1971 15

“**Subcommittee** means the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the Committee against Torture, established in accordance with Part II of the Optional Protocol. 20

#### *“Visits by Subcommittee*

#### “17 **Purpose of sections 18 to 20**

The purpose of **sections 18 to 20** is to enable the Subcommittee to fulfil its mandate set out in Article 11 of the Optional Protocol. 25

#### “18 **Subcommittee’s access to information**

Every person must permit the Subcommittee to have unrestricted access to the following information in relation to places of detention in New Zealand:

- “(a) the number of places of detention: 30
- “(b) the location of places of detention:
- “(c) the number of detainees:
- “(d) the treatment of detainees:
- “(e) the conditions of detention applying to detainees.

#### “19 **Subcommittee’s access to places of detention and persons detained** 35

Every person must permit the Subcommittee to have unrestricted access to—

- “(a) any place of detention in New Zealand and to every part of that place:
- “(b) any person in a place of detention.
- “20 Subcommittee may conduct interviews** 5
- “(1) Every person must permit the Subcommittee to interview, without witnesses, either personally or through an interpreter,—
- “(a) any person in a place of detention:
- “(b) any other person who the Subcommittee believes may be able to provide relevant information. 10
- “(2) No person or agency who has provided information in good faith to the Subcommittee may, in respect of the provision of that information, be subject to any—
- “(a) criminal liability:
- “(b) civil liability: 15
- “(c) disciplinary process:
- “(d) change in detention conditions:
- “(e) other disadvantage or prejudice of any kind.
- “(3) **Subsection (2)** applies regardless of whether the information provided to the Subcommittee was true. 20
- “(4) If requested by the Subcommittee, the person in charge of a place of detention must provide a safe and secure environment for the Subcommittee to conduct an interview with any detainee who is considered likely to behave in a manner that is— 25
- “(a) offensive, threatening, abusive, or intimidating to any person; or
- “(b) threatening or disruptive to the security and order of the place of detention.
- “21 Experts may accompany Subcommittee** 30
- If the Subcommittee requires it, 1 or more experts selected in accordance with paragraph 3 of Article 13 of the Optional Protocol may accompany the Subcommittee on any visit to a place of detention.
- “22 Objection to visit by Subcommittee** 35
- “(1) The Minister may, by notice in writing to the Subcommittee, object to the Subcommittee having access to any place of detention for a temporary period if the Minister believes—

- “(a) there is an urgent and compelling reason on 1 of the following grounds:
- “(i) national defence; or
  - “(ii) public safety; or
  - “(iii) natural disaster; or 5
  - “(iv) serious disorder in the place of detention; and
- “(b) that ground temporarily prevents access to the place of detention.
- “(2) On receiving a notice under **subsection (1)**, the Subcommittee must delay its visit to the place of detention to a later date. 10
- “23 Appointment of New Zealand officials**
- The Minister may appoint 1 or more persons to accompany or assist the Subcommittee during visits to places of detention in New Zealand.
- “24 Identification certificates** 15
- The Minister may issue a certificate identifying—
- “(a) any member of the Subcommittee:
  - “(b) any expert accompanying the Subcommittee:
  - “(c) other persons appointed under section 23 to accompany or assist the Subcommittee during visits to places of detention in New Zealand. 20
- “25 Ministerial directions**
- “(1) The Minister may, by notice in writing, issue directions to any person in charge of a place of detention for the purpose of facilitating any visit to a place of detention in New Zealand by the Subcommittee. 25
- “(2) A person in charge of a place of detention must comply with any directions given by the Minister under this section.
- “National Preventive Mechanisms*
- “26 Designation of National Preventive Mechanisms** 30
- “(1) In accordance with Article 17 of the Optional Protocol, the Minister must, not later than 1 year after the Optional Protocol comes into force, designate by notice in the *Gazette* the number of National Preventive Mechanisms the Minister considers necessary. 35

- “(2) In designating a National Preventive Mechanism the Minister must have regard to the matters set out in Article 18 of the Optional Protocol.
- “(3) A National Preventive Mechanism may be designated—
- “(a) in respect of such places of detention as may be specified in the notice; and
  - “(b) on any terms and conditions specified in the notice.
- “(4) After designating 1 or more National Preventive Mechanisms under **subsection (1)**, the Minister may, at any time, by notice in the *Gazette*—
- “(a) revoke the designation of a National Preventive Mechanism:
  - “(b) designate 1 or more other National Preventive Mechanisms:
  - “(c) vary the designation of a National Preventive Mechanism to include or exclude such other places of detention as may be specified in the notice:
  - “(d) vary or revoke the terms or conditions to which the designation of a National Preventive Mechanism is subject, or revoke those terms and conditions and impose new terms and conditions.

**“27 Functions of National Preventive Mechanism**

- A National Preventive Mechanism has the following functions under this Act in respect of the places of detention for which it is designated:
- “(a) to examine, at regular intervals,—
    - “(i) the conditions of detention applying to detainees; and
    - “(ii) the treatment of detainees:
  - “(b) to make any recommendations it considers appropriate to the person in charge of a place of detention—
    - “(i) for improving the conditions of detention applying to detainees:
    - “(ii) for improving the treatment of detainees:
    - “(iii) for preventing torture and other cruel, inhuman or degrading treatment or punishment in places of detention:
  - “(c) to provide at least 1 written report to the Minister each year on the exercise of its functions under this Act

during the year to which the report relates, and to provide a copy of each report to the Central National Preventive Mechanism (if designated).

- “28 National Preventive Mechanism’s access to information** 5  
 For the purposes of this Act, every person must permit a National Preventive Mechanism to have unrestricted access to the following information:
- “(a) the number of detainees in the places of detention for which it is designated:
  - “(b) the treatment of detainees in those places of detention: 10
  - “(c) the conditions of detention applying to detainees in those places of detention.
- “29 National Preventive Mechanism’s access to places of detention and persons detained** 15  
 For the purposes of this Act, every person must permit a National Preventive Mechanism to have unrestricted access to—
- “(a) any place of detention for which it is designated, and to every part of that place:
  - “(b) any person in a place of detention for which it is designated. 20
- “30 National Preventive Mechanism may conduct interviews**
- “(1) For the purposes of this Act, every person must permit a National Preventive Mechanism to interview, without witnesses, either personally or through an interpreter,— 25
- “(a) any person in a place of detention for which it is designated:
  - “(b) any other person who the National Preventive Mechanism believes may be able to provide relevant information. 30
- “(2) No person or agency who has provided information in good faith to a National Preventive Mechanism may, in respect of the provision of that information, be subject to any—
- “(a) criminal liability:
  - “(b) civil liability: 35
  - “(c) disciplinary process:
  - “(d) change in detention conditions:
  - “(e) other disadvantage or prejudice of any kind.



- “(3) **Subsection (2)** applies regardless of whether the information provided to the National Preventive Mechanism was true.
- “(4) If requested by the National Preventive Mechanism, the person in charge of a place of detention must provide a safe and secure environment for the National Preventive Mechanism to conduct an interview with any detainee who is considered likely to behave in a manner that is—
- “(a) offensive, threatening, abusive, or intimidating to any person; or
  - “(b) threatening or disruptive to the security and order of the place of detention.
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- “(31) **National Preventive Mechanism to publish reports**  
As soon as practicable after giving a report to the Minister under **section 27(c)**, the National Preventative Mechanism must—
- “(a) publicly notify that the report has been given to the Minister and where copies of the report may be inspected and purchased; and
  - “(b) make copies of the report available to the public at the place set out in the public notification, on request, for inspection free of charge and for purchase at a reasonable cost.
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- “Central National Preventive Mechanism*
- “(32) **Designation of Central National Preventive Mechanism**  
The Minister may, at any time, by notice in the *Gazette*, designate a Central National Preventive Mechanism.
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- “(33) **Functions of Central National Preventive Mechanism**
- “(1) The functions of the Central National Preventive Mechanism, in relation to this Act, are to—
- “(a) coordinate the activities of the National Preventive Mechanisms; and
  - “(b) maintain effective liaison with the Subcommittee.
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- “(2) In carrying out its functions, the Central National Preventive Mechanism is to—
- “(a) consult and liaise with the National Preventive Mechanisms;
  - “(b) review the reports prepared by the National Preventive Mechanisms under **section 27(c)** and advise the National
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Preventive Mechanisms of any systemic issues arising from those reports:

- “(c) coordinate the submission of the reports prepared by the National Preventive Mechanisms under **section 27(c)** to the Subcommittee: 5
- “(d) make, in consultation with all relevant National Preventive Mechanisms, any recommendations to the Government that it considers appropriate on any matter relating to the prevention of torture and other cruel, inhuman or degrading treatment or punishment in places of detention in New Zealand. 10

*“Miscellaneous provisions*

**“34 Confidentiality of information**

- “(1) Every person must keep confidential any information that is given to him or her in the exercise of that person’s functions or duties under this Act. 15
- “(2) Despite anything in **subsection (1)**, such information may be disclosed for the purpose of—
  - “(a) enabling New Zealand to fulfil its obligations under the Optional Protocol: 20
  - “(b) giving effect to this Act.
- “(3) Nothing in this Act prevents a National Preventive Mechanism or the Central National Preventive Mechanism from making public statements in relation to any matter contained in a report published under **section 31** that the National Preventive Mechanism or the Central National Preventive Mechanism considers is in the public interest.” 25

**7 New schedules added**

The principal Act is amended by adding Schedules 1 and 2 set out in the Schedule. 30

**Part 2**

**Amendments to other Acts**

**8 Corrections Act 2004 amended**

The Corrections Act 2004 is amended by inserting, after section 162, the following section: 35

- “162A Crimes of Torture Act 1989 not limited**  
Nothing in this Act limits or affects the operation of **Part 2** of the Crimes of Torture Act 1989.”
- 9 Health and Disability Services (Safety) Act 2001 amended** 5  
The Health and Disability Services (Safety) Act 2001 is amended by inserting, after section 47, the following section:
- “47A Crimes of Torture Act 1989 not limited**  
Nothing in this Act limits or affects the operation of **Part 2** of the Crimes of Torture Act 1989.” 10
- 10 Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003 amended**  
The Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003 is amended by inserting, after section 147, the following section: 15
- “147A Crimes of Torture Act 1989 not limited**  
Nothing in this Act limits or affects the operation of **Part 2** of the Crimes of Torture Act 1989.”
- 11 Mental Health (Compulsory Assessment and Treatment) Act 1992 amended** 20  
The Mental Health (Compulsory Assessment and Treatment) Act 1992 is amended by inserting, after section 99B, the following section:
- “99C Crimes of Torture Act 1989 not limited**  
Nothing in this Act limits or affects the operation of **Part 2** of the Crimes of Torture Act 1989.” 25
- 12 Ombudsmen Act 1975 amended**  
The Ombudsmen Act 1975 is amended by inserting, after section 32, the following section:
- “32A Crimes of Torture Act 1989 not limited** 30  
“(1) Nothing in this Act limits or affects the operation of **Part 2** of the Crimes of Torture Act 1989.  
“(2) However, if an Ombudsman is designated as a National Preventive Mechanism under the Crimes of Torture Act 1989 and exercises powers or functions under that Act then, in relation to those powers and functions, the Ombudsman has the same 35

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protections, privileges, and immunities as if the powers and functions were lawfully directed by this Act.”

**13 Police Complaints Authority Act 1988 amended**

The Police Complaints Authority Act 1988 is amended by inserting, after section 38, the following section:

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**“38A Crimes of Torture Act 1989 not limited**

“(1) Nothing in this Act limits or affects the operation of **Part 2** of the Crimes of Torture Act 1989.

“(2) However, if the Police Complaints Authority is designated as a National Preventive Mechanism under the Crimes of Torture Act 1989 and exercises powers or functions under that Act then, in relation to those powers and functions, the Police Complaints Authority has the same protections, privileges, and immunities as if the powers and functions were lawfully directed by this Act.”

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s 7

**Schedule**  
**New Schedules added to principal Act**

s 2

**Schedule 1**  
**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.

**Schedule 1—continued**

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

**Schedule 1—continued**

territory under its jurisdiction and it does not extradite him pursuant to article 8 to any of the States mentioned in paragraph 1 of this article.

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 1 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.

**Schedule 1—continued****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.



**Schedule 1**—*continued***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 1, 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.

**Schedule 1**—*continued***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.

**Schedule 1—continued****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 1 of this article.

**Schedule 1—continued****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;

**Schedule 1**—*continued*

(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 (c), 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

**Schedule 1—continued**

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 1 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.

**Schedule 1—continued**

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 1 (c), 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.

**Schedule 1—continued**

2. Any State Party having made a reservation in accordance with paragraph 1 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 1 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 1 of this article. The other States Parties shall not be bound by paragraph 1 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.



**Schedule 1—continued**

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.

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**Schedule 2**

**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.**

**Protocol is available for signature, ratification and accession as from 4 February  
2003 (i.e. the date upon which the original of the Protocol was established) at  
United Nations Headquarters in New York.**

**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:

**Schedule 2—continued****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.

**Schedule 2**—*continued***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

**Schedule 2**—*continued*

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

**Schedule 2—continued**

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:

**Schedule 2—continued**

(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.

**Schedule 2**—*continued*

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.



**Schedule 2—continued****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

**Schedule 2—continued**

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;

**Schedule 2—continued**

(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.

**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.

**Schedule 2—continued****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.

**Schedule 2—continued****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

**Schedule 2**—*continued*

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.