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Crimes of Torture Act 1989

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Note

The Parliamentary Counsel Office has made editorial and format changes to this version using the powers under subpart 2 of Part 3 of the Legislation Act 2019.

Note 4 at the end of this version provides a list of the amendments included in it.

This Act is administered by the Ministry of Justice.

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Title *[Repealed]*

1 Short Title

This Act may be cited as the Crimes of Torture Act 1989.

2 Interpretation

(1) In this Act, unless the context otherwise requires,—

act of torture means any act or omission by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person—

(a) for such purposes as—

(i) obtaining from that person or some other person information or a confession; or

(ii) punishing that person for any act or omission for which that person or some other person is responsible or is suspected of being responsible; or

(iii) intimidating or coercing that person or some other person; or

(b) for any reason based on discrimination of any kind;—

but does not include any act or omission arising only from, or inherent in, or incidental to, any lawful sanctions that are not inconsistent with the Articles of the International Covenant on Civil and Political Rights

the Convention means the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, adopted by the General Assembly of the United Nations on 10 December 1984, a copy of the English text of which is set out in Schedule 1

New Zealand includes all waters within the outer limits of the territorial sea of New Zealand (as defined by section 3 of the Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977)

public official means—

(a) any person in the service of the Sovereign in right of New Zealand, including—

(i) a member of any of the Armed Forces of New Zealand; and

(ii) a judicial officer and a law enforcement officer within the meaning of Part 6 of the Crimes Act 1961; and

(iii) an officer within the meaning of the Corrections Act 2004; and

(iiia) a security officer within the meaning of the Corrections Act 2004; and

(iv) a member and an employee of any local authority or public body; and

(b) any person who may exercise any power, pursuant to any law in force in a foreign state, that would be exercised in New Zealand by any person described in paragraph (a).

(2) Unless the context otherwise requires, an expression that is used both in this Act and in the Convention has, in this Act, the same meaning as it has in the Convention.

Section 2(1) **the Convention**: amended, on 5 December 2006, by section 5 of the Crimes of Torture Amendment Act 2006 (2006 No 68).

Section 2(1) **conviction on indictment**: repealed, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 2(1) **Fugitive Offenders Act 1881**: repealed, on 1 September 1999, by section 111 of the Extradition Act 1999 (1999 No 55).

Section 2(1) **New Zealand**: amended, on 1 August 1996, pursuant to section 5(4) of the Territorial Sea and Exclusive Economic Zone Amendment Act 1996 (1996 No 74).

Section 2(1) **public official** paragraph (a): editorial change, made by the PCO, on 31 July 2024, under sections 86(1) and 87(a) of the Legislation Act 2019 (2019 No 58).

Section 2(1) **public official** paragraph (a)(iii): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 2(1) **public official** paragraph (a)(iiia): inserted, on 1 March 1995, by section 31 of the Penal Institutions Amendment Act 1994 (1994 No 120).

Section 2(1) **public official** paragraph (a)(iiia): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Part 1
Prosecution of crimes of torture

Part 1 heading: inserted, on 5 December 2006, by section 6 of the Crimes of Torture Amendment Act 2006 (2006 No 68).

2A Purpose of this Part

The purpose of this Part is to enable New Zealand to meet its international obligations under the Convention.

Section 2A: inserted, on 5 December 2006, by section 6 of the Crimes of Torture Amendment Act 2006 (2006 No 68).

3 Acts of torture

(1) Every person is liable upon conviction to imprisonment for a term not exceeding 14 years who, being a person to whom this section applies or acting at the instigation or with the consent or acquiescence of such a person, whether in or outside New Zealand,—

(a) commits an act of torture; or

(b) does or omits an act for the purpose of aiding any person to commit an act of torture; or

(c) abets any person in the commission of an act of torture; or

(d) incites, counsels, or procures any person to commit an act of torture.

(2) Every person is liable upon conviction to imprisonment for a term not exceeding 10 years who, being a person to whom this section applies or acting at the instigation or with the consent or acquiescence of such a person, whether in or outside New Zealand,—

(a) attempts to commit an act of torture; or

(b) conspires with any other person to commit an act of torture; or

(c) is an accessory after the fact to an act of torture.

(3) This section applies to any person who is a public official or who is acting in an official capacity.

Section 3(1): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 3(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

4 Jurisdiction in respect of acts of torture

No proceedings for an offence against any of the provisions of section 3 shall be brought unless—

(a) the person to be charged is a New Zealand citizen; or

(b) the person to be charged is present in New Zealand; or

(c) the act or omission constituting the offence charged is alleged to have occurred in New Zealand or on board a ship or an aircraft that is registered in New Zealand.

5 Attorney-General to consider question of compensation

(1) Where any person is convicted of an offence against section 3, the Attorney-General shall consider whether it would be appropriate in all the circumstances for the Crown to pay compensation to the person against whom the offence was committed or (if that person dies as a result of the offence) to that person's family.

(2) Nothing in subsection (1) shall limit or affect any right to compensation that any such person may have under any other enactment.

6 Extradition Act 1965 amended

[Repealed]

Section 6: repealed, on 1 September 1999, by section 111 of the Extradition Act 1999 (1999 No 55).

7 Fugitive Offenders Act 1881 amended

[Repealed]

Section 7: repealed, on 1 September 1999, by section 111 of the Extradition Act 1999 (1999 No 55).

8 Crimes deemed to be included in extradition treaties

(1) For the purposes of the Extradition Act 1999 and any Order in Council in force under section 15 or section 104 of that Act, each crime described in subsection (1) or subsection (2) of section 3, if not already described in the treaty, is deemed to be an offence described in any extradition treaty concluded before 13 November 1989 and for the time being in force between New Zealand and any country that is a party to the Convention.

(2) If under subsection (1) a crime is deemed to be an offence described in an extradition treaty, no person may be surrendered for that crime in accordance with the provisions of the Extradition Act 1999 if the alleged act or omission occurred before 13 November 1989.

(3) For the purposes of this section, **country** includes any territory for whose international relations the government of a country is responsible and to which the extradition treaty and the Convention extend.

Section 8: substituted, on 1 September 1999, by section 111 of the Extradition Act 1999 (1999 No 55).

9 Surrender of offenders

[Repealed]

Section 9: repealed, on 1 September 1999, by section 111 of the Extradition Act 1999 (1999 No 55).

10 Restrictions on surrender of offenders

[Repealed]

Section 10: repealed, on 1 September 1999, by section 111 of the Extradition Act 1999 (1999 No 55).

11 Restrictions on surrender

(1) Without limiting the grounds on which surrender must or may be refused under the Extradition Act 1999, a court in New Zealand must not order the surrender, or the detention for the purposes of surrender, of a person to another country in respect of an act or omission that amounts to a crime against subsection (1) or subsection (2) of section 3 if the Attorney-General certifies that the case is being or is about to be considered to determine whether or not proceedings should be brought in New Zealand against that person in respect of the act or omission.

(2) If, in any case to which subsection (2) applies, it is subsequently determined that proceedings should not be brought in New Zealand against the person in respect of the act or omission, the Attorney-General must advise the court accordingly, and the court must proceed with the matter as if the Attorney-General's certificate had never been given.

Section 11: substituted, on 1 September 1999, by section 111 of the Extradition Act 1999 (1999 No 55).

12 Attorney-General's consent required to prosecutions

(1) Subject to subsection (2), no proceedings for the trial and punishment of any person charged with a crime described in subsection (1) or subsection (2) of section 3 shall be instituted in any court except with the consent of the Attorney-General.

(2) A person charged with a crime against any of those provisions may be arrested, or a warrant for his or her arrest may be issued and executed, and that person may be remanded in custody or on bail, notwithstanding that the consent of the Attorney-General to the institution of a prosecution for the crime has not been obtained, but no further proceedings shall be taken until that consent has been obtained.

13 Evidence

For any purpose in connection with this Act, a certificate, given by the Secretary of Foreign Affairs and Trade or any Deputy Secretary of Foreign Affairs and Trade, certifying—

(a) that any country is or is not, or was or was not at any material time, a party to the Convention; or

(b) that the Government of any country is or is not, or was or was not at any material time, responsible for the international relations of any territory,—

shall be sufficient evidence of that fact.

Section 13: amended, on 1 July 1993, pursuant to section 9(4) of the Foreign Affairs Amendment Act 1993 (1993 No 48).

14 Application of certain provisions of Crimes Act 1961

(1) Nothing in section 8 of the Crimes Act 1961 (which relates to jurisdiction in respect of crimes on ships or aircraft beyond New Zealand) or in section 400 of that Act (which requires the consent of the Attorney-General to proceedings in certain cases for offences on ships or aircraft) shall apply with respect to any proceedings brought under section 3 of this Act.

(2) Except as provided in subsection (1), nothing in this Act shall limit or affect any of the provisions of the Crimes Act 1961.

Part 2
Prevention of crimes of torture

Part 2: added, on 5 December 2006, by section 7 of the Crimes of Torture Amendment Act 2006 (2006 No 68).

Preliminary provisions

Heading: added, on 5 December 2006, by section 7 of the Crimes of Torture Amendment Act 2006 (2006 No 68).

15 Purpose of this Part

The purpose of this Part is to enable New Zealand to meet its international obligations under the Optional Protocol.

Section 15: added, on 5 December 2006, by section 7 of the Crimes of Torture Amendment Act 2006 (2006 No 68).

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 31 as the Central National Preventive Mechanism

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

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

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:

(b) the Independent Police Conduct Authority:

(c) the Children's Commissioner:

(d) the Registrar of the Court Martial of New Zealand appointed under section 79 of the Court Martial Act 2007:

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

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

place of detention means any place in New Zealand where persons are or may be deprived of liberty, including, for example, detention or custody in—

(a) a prison:

(b) a Police cell:

(c) a court cell:

(d) a hospital:

(da) a treatment centre as defined in section 4 of the Substance Addiction (Compulsory Assessment and Treatment) Act 2017:

(e) a secure facility as defined in section 9(2) of the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003:

(f) a residence established under section 364 of the Oranga Tamariki Act 1989:

(fa) a residence established under section 114 of the Public Safety (Public Protection Orders) Act 2014:

(g) premises approved under the Immigration Act 2009:

(h) a service penal establishment as defined in section 2 of the Armed Forces Discipline Act 1971

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.

Section 16: added, on 5 December 2006, by section 7 of the Crimes of Torture Amendment Act 2006 (2006 No 68).

Section 16 **National Preventive Mechanism** paragraph (b): amended, on 29 November 2007, by section 26 of the Independent Police Conduct Authority Amendment Act 2007 (2007 No 38).

Section 16 **National Preventive Mechanism** paragraph (c): amended, on 1 August 2025, by section 25 of the Oversight of Oranga Tamariki System Legislation Amendment Act 2025 (2025 No 34).

Section 16 **National Preventive Mechanism** paragraph (d): substituted, on 1 July 2009, by section 87 of the Court Martial Act 2007 (2007 No 101).

Section 16 **place of detention** paragraph (da): inserted, on 21 February 2018, by section 122(1) of the Substance Addiction (Compulsory Assessment and Treatment) Act 2017 (2017 No 4).

Section 16 **place of detention** paragraph (f): amended, on 14 July 2017, by section 149 of the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017 (2017 No 31).

Section 16 **place of detention** paragraph (fa): inserted, on 12 December 2014, by section 144 of the Public Safety (Public Protection Orders) Act 2014 (2014 No 68).

Section 16 **place of detention** paragraph (g): amended, at 2 am on 29 November 2010, by section 406(1) of the Immigration Act 2009 (2009 No 51).

Visits by Subcommittee

Heading: added, on 5 December 2006, by section 7 of the Crimes of Torture Amendment Act 2006 (2006 No 68).

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.

Section 17: added, on 5 December 2006, by section 7 of the Crimes of Torture Amendment Act 2006 (2006 No 68).

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:

(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.

Section 18: added, on 5 December 2006, by section 7 of the Crimes of Torture Amendment Act 2006 (2006 No 68).

19 Subcommittee's access to places of detention and persons detained

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.

Section 19: added, on 5 December 2006, by section 7 of the Crimes of Torture Amendment Act 2006 (2006 No 68).

20 Subcommittee may conduct interviews

(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.

(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:

(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.

(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—

(a) offensive, threatening, abusive, or intimidating to any person; or

(b) threatening or disruptive to the security and order of the place of detention.

Section 20: added, on 5 December 2006, by section 7 of the Crimes of Torture Amendment Act 2006 (2006 No 68).

21 Experts may accompany Subcommittee

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.

Section 21: added, on 5 December 2006, by section 7 of the Crimes of Torture Amendment Act 2006 (2006 No 68).

22 Objection to visit by Subcommittee

(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 one of the following grounds:

(i) national defence; or

(ii) public safety; or

(iii) natural disaster; or

(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.

Section 22: added, on 5 December 2006, by section 7 of the Crimes of Torture Amendment Act 2006 (2006 No 68).

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.

Section 23: added, on 5 December 2006, by section 7 of the Crimes of Torture Amendment Act 2006 (2006 No 68).

24 Identification certificates

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.

Section 24: added, on 5 December 2006, by section 7 of the Crimes of Torture Amendment Act 2006 (2006 No 68).

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.

(2) A person in charge of a place of detention must comply with any directions given by the Minister under this section.

Section 25: added, on 5 December 2006, by section 7 of the Crimes of Torture Amendment Act 2006 (2006 No 68).

National Preventive Mechanisms

Heading: added, on 5 December 2006, by section 7 of the Crimes of Torture Amendment Act 2006 (2006 No 68).

26 Designation of National Preventive Mechanisms

(1) In accordance with Article 17 of the Optional Protocol, the Minister must, not later than 1 year after the Optional Protocol is ratified by New Zealand, designate by notice in the *Gazette* the number of National Preventive Mechanisms the Minister considers necessary.

(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.

Section 26: added, on 5 December 2006, by section 7 of the Crimes of Torture Amendment Act 2006 (2006 No 68).

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 and at any other times the National Preventive Mechanism may decide,—

(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 prepare at least 1 written report each year on the exercise of its functions under the Act during the year to which the report relates and provide that report to—

(i) the House of Representatives, if the National Preventive Mechanism is an Officer of Parliament; or

(ii) the Minister, if the National Preventive Mechanism is not an Officer of Parliament:

(d) to provide a copy of each report referred to in paragraph (c) to the Central National Preventive Mechanism (if designated).

Section 27: added, on 5 December 2006, by section 7 of the Crimes of Torture Amendment Act 2006 (2006 No 68).

28 National Preventive Mechanism's access to information

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:

(c) the conditions of detention applying to detainees in those places of detention.

Section 28: added, on 5 December 2006, by section 7 of the Crimes of Torture Amendment Act 2006 (2006 No 68).

29 National Preventive Mechanism's access to places of detention and persons detained

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.

Section 29: added, on 5 December 2006, by section 7 of the Crimes of Torture Amendment Act 2006 (2006 No 68).

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,—

(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.

(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:

(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.

Section 30: added, on 5 December 2006, by section 7 of the Crimes of Torture Amendment Act 2006 (2006 No 68).

Central National Preventive Mechanism

Heading: added, on 5 December 2006, by section 7 of the Crimes of Torture Amendment Act 2006 (2006 No 68).

31 Designation of Central National Preventive Mechanism

The Minister may, at any time, by notice in the *Gazette*, designate a Central National Preventive Mechanism.

Section 31: added, on 5 December 2006, by section 7 of the Crimes of Torture Amendment Act 2006 (2006 No 68).

32 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.

(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 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:

(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.

Section 32: added, on 5 December 2006, by section 7 of the Crimes of Torture Amendment Act 2006 (2006 No 68).

Miscellaneous provisions

Heading: added, on 5 December 2006, by section 7 of the Crimes of Torture Amendment Act 2006 (2006 No 68).

33 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.

(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:

(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 presented to the House of Representatives under section 27(c)(i) or section 36(1) that the National Preventive Mechanism or the Central National Preventive Mechanism considers is in the public interest.

(4) No information disclosed under subsection (2) or public statement made under subsection (3) may include information about an identifiable individual without that individual's consent.

Section 33: added, on 5 December 2006, by section 7 of the Crimes of Torture Amendment Act 2006 (2006 No 68).

34 Powers of National Preventive Mechanism

Where a National Preventive Mechanism has powers in relation to the exercise of any functions under any other Act, the National Preventive Mechanism has, in relation to the exercise of its functions under this Part, the same powers.

Section 34: added, on 5 December 2006, by section 7 of the Crimes of Torture Amendment Act 2006 (2006 No 68).

35 Protections, privileges, and immunities

Where a National Preventive Mechanism has protections, privileges, and immunities in relation to the exercise of any powers and functions under any other Act, the National Preventive Mechanism has, in relation to the exercise of its functions under this Part, the same protections, privileges, and immunities.

Section 35: added, on 5 December 2006, by section 7 of the Crimes of Torture Amendment Act 2006 (2006 No 68).

36 Publication of National Preventive Mechanism report

(1) As soon as practicable after receiving a report under section 27(c)(ii) the Minister must present a copy of that report to the House of Representatives.

(2) As soon as practicable after a report of a National Preventive Mechanism has been presented to the House of Representatives under subsection (1) or section 27(c)(i), the National Preventive Mechanism must—

(a) publicly notify 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.

Section 36: added, on 5 December 2006, by section 7 of the Crimes of Torture Amendment Act 2006 (2006 No 68).

37 This Part not limited by other Acts

Where an agency or person (including a National Preventive Mechanism) has investigative functions under any other Act not amended by Part 2 of the Crimes of Torture Amendment Act 2006, that other Act does not limit the operation of this Part.

Section 37: added, on 5 December 2006, by section 7 of the Crimes of Torture Amendment Act 2006 (2006 No 68).

Schedule 1
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

s 2

Schedule 1: added, on 5 December 2006, by section 8 of the Crimes of Torture Amendment Act 2006 (2006 No 68).

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

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

The States Parties to this Convention,

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

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

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

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

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

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

Have agreed as follows:

Part I

Article 1

1. For the purposes of this Convention, the term “torture” means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official

capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

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

Article 2

1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.
2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.
3. An order from a superior officer or a public authority may not be invoked as a justification of torture.

Article 3

1. No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.
2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.

Article 4

1. Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture.
2. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature.

Article 5

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 4 in the following cases:
   (a) When the offences are committed in any territory under its jurisdiction or on board a ship or aircraft registered in that State;
   (b) When the alleged offender is a national of that State;
   (c) When the victim is a national of that State if that State considers it appropriate.
2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over such offences in cases where the alleged offender is present in any territory under its jurisdiction and it does not extradite him

pursuant to article 8 to any of the States mentioned in paragraph 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.

Article 8

1. The offences referred to in article 4 shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties. States

Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.

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

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

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

Article 9

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

2. States Parties shall carry out their obligations under paragraph 1 of this article in conformity with any treaties on mutual judicial assistance that may exist between them.

Article 10

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

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

Article 11

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

Article 12

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

Article 13

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

Article 14

1. Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation.
2. Nothing in this article shall affect any right of the victim or other persons to compensation which may exist under national law.

Article 15

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

Article 16

1. Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 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.

Part II

Article 17

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

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

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

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

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

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

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

Article 18

1. The Committee shall elect its officers for a term of two years. They may be re-elected.
2. The Committee shall establish its own rules of procedure, but these rules shall provide, inter alia, that:
   (a) Six members shall constitute a quorum;
   (b) Decisions of the Committee shall be made by a majority vote of the members present.
3. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under this Convention.
4. The Secretary-General of the United Nations shall convene the initial meeting of the Committee. After its initial meeting, the Committee shall meet at such times as shall be provided in its rules of procedure.
5. The States Parties shall be responsible for expenses incurred in connection with the holding of meetings of the States Parties and of the Committee, including reimbursement to the United Nations for any expenses, such as the cost of staff and facilities, incurred by the United Nations pursuant to paragraph 3 of this article.

Article 19

1. The States Parties shall submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have taken to give effect to their undertakings under this Convention, within one year after the entry into force of the Convention for the State Party concerned. Thereafter the States Parties shall submit supplementary reports every four years on any new measures taken and such other reports as the Committee may request.
2. The Secretary-General of the United Nations shall transmit the reports to all States Parties.
3. Each report shall be considered by the Committee which may make such general comments on the report as it may consider appropriate and shall forward these to the State Party concerned. That State Party may respond with any observations it chooses to the Committee.
4. The Committee may, at its discretion, decide to include any comments made by it in accordance with paragraph 3 of this article, together with the observations thereon received from the State Party concerned, in its annual report made in accordance with article 24. If so requested by the State Party concerned, the

Committee may also include a copy of the report submitted under paragraph 1 of this article.

Article 20

1. If the Committee receives reliable information which appears to it to contain well-founded indications that torture is being systematically practised in the territory of a State Party, the Committee shall invite that State Party to co-operate in the examination of the information and to this end to submit observations with regard to the information concerned.
2. Taking into account any observations which may have been submitted by the State Party concerned, as well as any other relevant information available to it, the Committee may, if it decides that this is warranted, designate one or more of its members to make a confidential inquiry and to report to the Committee urgently.
3. If an inquiry is made in accordance with paragraph 2 of this article, the Committee shall seek the co-operation of the State Party concerned. In agreement with that State Party, such an inquiry may include a visit to its territory.
4. After examining the findings of its member or members submitted in accordance with paragraph 2 of this article, the Commission shall transmit these findings to the State Party concerned together with any comments or suggestions which seem appropriate in view of the situation.
5. All the proceedings of the Committee referred to in paragraphs 1 to 4 of this article shall be confidential, and at all stages of the proceedings the co-operation of the State Party shall be sought. After such proceedings have been completed with regard to an inquiry made in accordance with paragraph 2, the Committee may, after consultations with the State Party concerned, decide to include a summary account of the results of the proceedings in its annual report made in accordance with article 24.

Article 21

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

after the receipt of the communication the receiving State shall afford the State which sent the communication an explanation or any other statement in writing clarifying the matter, which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending or available in the matter;

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

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

(d) The Committee shall hold closed meetings when examining communications under this article;

(e) Subject to the provisions of subparagraph (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 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. 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(e), shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

Article 24

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

Part III

Article 25

1. This Convention is open for signature by all States.

2. This Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 26

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

Article 27

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

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

Article 28

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

2. Any State Party having made a reservation in accordance with paragraph 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.

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.

Schedule 2
Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

s 16

Schedule 2: added, on 5 December 2006, by section 8 of the Crimes of Torture Amendment Act 2006 (2006 No 68).

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:

Part I
General principles

Article 1

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

Article 2

1. A Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the Committee against Torture (hereinafter referred to as the Subcommittee on Prevention) shall be established and shall carry out the functions laid down in the present Protocol.
2. The Subcommittee on Prevention shall carry out its work within the framework of the Charter of the United Nations and shall be guided by the purposes and principles thereof, as well as the norms of the United Nations concerning the treatment of people deprived of their liberty.
3. Equally, the Subcommittee on Prevention shall be guided by the principles of confidentiality, impartiality, non-selectivity, universality and objectivity.
4. The Subcommittee on Prevention and the States Parties shall cooperate in the implementation of the present Protocol.

Article 3

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

Article 4

1. Each State Party shall allow visits, in accordance with the present Protocol, by the mechanisms referred to in articles 2 and 3 to any place under its jurisdiction and control where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence (hereinafter referred to as places of detention). These visits shall be undertaken with a view to strengthening, if necessary, the protection of these persons against torture and other cruel, inhuman or degrading treatment or punishment.
2. For the purposes of the present Protocol, deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority.

Part II
Subcommittee on Prevention

Article 5

1. The Subcommittee on Prevention shall consist of ten members. After the fiftieth ratification of or accession to the present Protocol, the number of the members of the Subcommittee on Prevention shall increase to twenty-five.
2. The members of the Subcommittee on Prevention shall be chosen from among persons of high moral character, having proven professional experience in the field of the administration of justice, in particular criminal law, prison or police administration, or in the various fields relevant to the treatment of persons deprived of their liberty.
3. In the composition of the Subcommittee on Prevention due consideration shall be given to equitable geographic distribution and to the representation of different forms of civilization and legal systems of the States Parties.
4. In this composition consideration shall also be given to balanced gender representation on the basis of the principles of equality and non-discrimination.
5. No two members of the Subcommittee on Prevention may be nationals of the same State.
6. The members of the Subcommittee on Prevention shall serve in their individual capacity, shall be independent and impartial and shall be available to serve the Subcommittee on Prevention efficiently.

Article 6

1. Each State Party may nominate, in accordance with paragraph 2 of the present article, up to two candidates possessing the qualifications and meeting the requirements set out in article 5, and in doing so shall provide detailed information on the qualifications of the nominees.
2. (a) The nominees shall have the nationality of a State Party to the present Protocol;
   (b) At least one of the two candidates shall have the nationality of the nominating State Party;
   (c) No more than two nationals of a State Party shall be nominated;
   (d) Before a State Party nominates a national of another State Party, it shall seek and obtain the consent of that State Party.
3. At least five months before the date of the meeting of the States Parties during which the elections will be held, the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within three months. The Secretary-General shall submit a list, in alphabetical order, of all persons thus nominated, indicating the States Parties that have nominated them.

Article 7

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

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

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

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

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

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

   (a) Where only one has been nominated by the State Party of which he or she is a national, that national shall serve as the member of the Subcommittee on Prevention;

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

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

Article 8

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

Article 9

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

Article 10

1. The Subcommittee on Prevention shall elect its officers for a term of two years. They may be re-elected.
2. The Subcommittee on Prevention shall establish its own rules of procedure. These rules shall provide, inter alia, that:
   (a) Half the members plus one shall constitute a quorum;
   (b) Decisions of the Subcommittee on Prevention shall be made by a majority vote of the members present;
   (c) The Subcommittee on Prevention shall meet in camera.
3. The Secretary-General of the United Nations shall convene the initial meeting of the Subcommittee on Prevention. After its initial meeting, the Subcommittee on Prevention shall meet at such times as shall be provided by its rules of procedure. The Subcommittee on Prevention and the Committee against Torture shall hold their sessions simultaneously at least once a year.

Part III
Mandate of the Subcommittee on Prevention

Article 11

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

of their liberty against torture and other cruel, inhuman or degrading treatment or punishment;

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

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

Article 12

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

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

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

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

(d) To examine the recommendations of the Subcommittee on Prevention and enter into dialogue with it on possible implementation measures.

Article 13

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

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

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

concerned may oppose the inclusion of a specific expert in the visit, whereupon the Subcommittee on Prevention shall propose another expert.

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

Article 14

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

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

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

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

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

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

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

Article 15

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

Article 16

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

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

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

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

Part IV
National preventive mechanisms

Article 17

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

Article 18

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

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

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

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

Article 19

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

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

(b) To make recommendations to the relevant authorities with the aim of improving the treatment and the conditions of the persons deprived of their liberty

and to prevent torture and other cruel, inhuman or degrading treatment or punishment, taking into consideration the relevant norms of the United Nations;

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

Article 20

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

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

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

(c) Access to all places of detention and their installations and facilities;

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

(e) The liberty to choose the places they want to visit and the persons they want to interview;

(f) The right to have contacts with the Subcommittee on Prevention, to send it information and to meet with it.

Article 21

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

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

Article 22

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

Article 23

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

Article 24

1. Upon ratification, States Parties may make a declaration postponing the implementation of their obligations under either part III or part IV of the present Protocol.
2. This postponement shall be valid for a maximum of three years. After due representations made by the State Party and after consultation with the Subcommittee on Prevention, the Committee against Torture may extend that period for an additional two years.

Part VI
Financial provisions

Article 25

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

Article 26

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

Part VII
Final provisions

Article 27

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

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

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

Article 28

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

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

Article 29

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

Article 30

No reservations shall be made to the present Protocol.

Article 31

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

Article 32

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

Article 33

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

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

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

Article 34

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

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

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

Article 35

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

Article 36

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

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

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

Article 37

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

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

Notes

1 General

This is a consolidation of the Crimes of Torture Act 1989 that incorporates the amendments made to the legislation so that it shows the law as at its stated date.

2 Legal status

A consolidation is taken to correctly state, as at its stated date, the law enacted or made by the legislation consolidated and by the amendments. This presumption applies unless the contrary is shown.

Section 78 of the Legislation Act 2019 provides that this consolidation, published as an electronic version, is an official version. A printed version of legislation that is produced directly from this official electronic version is also an official version.

3 Editorial and format changes

The Parliamentary Counsel Office makes editorial and format changes to consolidations using the powers under subpart 2 of Part 3 of the Legislation Act 2019. See also PCO editorial conventions for consolidations.

4 Amendments incorporated in this consolidation

Oversight of Oranga Tamariki System Legislation Amendment Act 2025 (2025 No 34): section 25

Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017 (2017 No 31): section 149

Substance Addiction (Compulsory Assessment and Treatment) Act 2017 (2017 No 4): section 122(1)

Public Safety (Public Protection Orders) Act 2014 (2014 No 68): section 144

Criminal Procedure Act 2011 (2011 No 81): section 413

Immigration Act 2009 (2009 No 51): section 406(1)

Court Martial Act 2007 (2007 No 101): section 87

Independent Police Conduct Authority Amendment Act 2007 (2007 No 38): section 26

Crimes of Torture Amendment Act 2006 (2006 No 68)

Corrections Act 2004 (2004 No 50): section 206

Extradition Act 1999 (1999 No 55): section 111

Territorial Sea and Exclusive Economic Zone Amendment Act 1996 (1996 No 74): section 5(4)

Penal Institutions Amendment Act 1994 (1994 No 120): section 31

Foreign Affairs Amendment Act 1993 (1993 No 48): section 9(4)

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