

인권정보자료실
CPk1.26

고문방지 관련 자료모음

민주사회를 위한 변호사모임

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2. The Secretary General of the Organization of African Unity shall convene the first meeting of the Commission at the Headquarters of the Organization within three months of the constitution of the Commission. Thereafter, the Commission shall be convened by its Chairman whenever necessary but at least once a year.

Article 65

For each of the States that will ratify or adhere to the present Charter after its coming into force, the Charter shall take effect three months after the date of the deposit by that State of its instrument of ratification or adherence.

Article 66

Special protocols or agreements may, if necessary, supplement the provisions of the present Charter.

Article 67

The Secretary General of the Organization of African Unity shall inform member states of the Organization of the deposit of each instrument of ratification or adherence.

Article 68

The present Charter may be amended if a State party makes a written request to that effect to the Secretary General of the Organization of African Unity. The Assembly of Heads of State and Government may only consider the draft amendment after all the States parties have been duly informed of it and the Commission has given its opinion on it at the request of the sponsoring State. The amendment shall be approved by a simple majority of the States parties. It shall come into force for each State which has accepted it in accordance with its constitutional procedure three months after the Secretary General has received notice of the acceptance.

CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT OF DECEMBER 10, 1984*

General Assembly Resolution 39/46/Annex of Dec. 10, 1984.
U.N. Gen. Ass. Off. Rec. 39 Sess., Supp. No. 51 (A/39/51), p. 197.

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.

*The convention entered into force on June 26, 1987. As of Jan. 1, 1994, there were 79 parties to the convention. The United States Senate gave its advice and consent, with reservations on October 29, 1990.

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 persons.

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 dependents 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. 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 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.

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 Committee 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;

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

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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 the 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

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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.

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(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;

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(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.

pain or suffering;

(B) the administration or application, or threatened administration or application, of mind altering substances or other procedures calculated to disrupt profoundly the senses or the personality;

(C) the threat of imminent death; or

(D) the threat that another individual will imminently be subjected to death, severe physical pain or suffering, or the administration or application of mind altering substances or other procedures calculated to disrupt profoundly the senses or personality.

proved March 12, 1992.

STATUTES OF THE INTERNATIONAL COMMITTEE OF THE RED CROSS

(Adopted on 21 June 1973, revised on 6 December 1973,
1 May 1974, 14 September 1977 and 29 April 1982)

Article 1

International Committee of the Red Cross

1. The International Committee of the Red Cross *ICRC*, founded in Geneva in 1863 and formally recognized in the Geneva Conventions and by International Conferences of the Red Cross, shall be an independent organization having its own Statutes.
2. It shall be a constituent part of the International Red Cross.

Article 2

Legal Status

As an association governed by Article 60 and following of the Swiss Civil Code, the *ICRC* shall have legal personality.

Article 3

Headquarters and Emblem

The headquarters of the *ICRC* shall be in Geneva.

Article 4

Role

1. The special role of the *ICRC* shall be:
 - a) to maintain the Fundamental Principles of the Red Cross as proclaimed by the XXth International Conference of the Red Cross;
 - b) to recognize any newly established or reconstituted National Red Cross Society which fulfills the conditions for recognition in force, and to notify other National Societies of such recognition;
 - c) to undertake the tasks incumbent on it under the Geneva Conventions, to work for the faithful application of these Conventions and to take cognizance of any complaints regarding alleged breaches of the humanitarian Conventions;
 - d) to take action in its capacity as a neutral institution, especially in case of war, civil war or internal strife; to endeavour to ensure at all times that the military

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.

TORTURE VICTIM PROTECTION ACT OF
1991

106 Stat. 73

An Act to carry out obligations of the United States under the United Nations Charter and other international agreements pertaining to the protection of human rights by establishing a civil action for recovery of damages from an individual who engages in torture or extrajudicial killing.

Sec. 2. Establishment of Civil Action.

(a) LIABILITY. — An individual who, under actual or apparent authority, or color of law, of any foreign nation —

(1) subjects an individual to torture shall, in a civil action, be liable damages for damages to that individual; or

(2) subjects an individual to extrajudicial killing shall, in a civil action, be liable for damages to the individual's legal representative, or to any person who may be a claimant in an action for wrongful death.

(b) EXHAUSTION OF REMEDIES. — A court shall decline to hear a claim under this section if the claimant has not exhausted adequate and available remedies in the place in which the conduct giving rise to the claim occurred.

(c) STATUTE OF LIMITATIONS. — No action shall be maintained under this section unless it is commenced within 10 years after the cause of action arose.

Sec. 3. Definitions.

(a) EXTRAJUDICIAL KILLING. — For the purposes of this Act, the term "extrajudicial killing" means a deliberated killing not authorized by a previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples. Such term, however, does not include any such killing that, under international law, is lawfully carried out under the authority of a foreign nation.

(b) TORTURE. — For the purposes of this Act —

(1) the term "torture" means any act, directed against an individual in the offender's custody or physical control, by which severe pain or suffering (other than pain or suffering arising only from or inherent in, or incidental to, lawful sanctions), whether physical or mental, is intentionally inflicted on that individual for such purposes as obtaining from that individual or a third person information or a confession, punishing that individual for an act that individual or a third person has committed or is suspected of having committed, intimidating or coercing that individual or a third person, or for any reason based on discrimination of any kind; and

(2) mental pain or suffering refers to prolonged mental harm caused by or resulting from —

(A) the intentional infliction or threatened infliction of severe physical

고문 및 기타 잔혹한, 비인도적 또는 굴욕적 처우나 형벌금지협약

전문

본 협약 당사국들은,
국제연합헌장에 선언된 제 원칙에 따라 인류사회의 모든 구성원의 평등하고 양도할 수 없는 제권리를 인정하는 것이 세계의 자유, 정의 및 평화의 기초가 됨을 고려하고,
이러한 제 권리가 인간의 고유한 존엄성으로부터 유래함을 인정하며,
인권 및 기본적 자유에 대한 보편적 존중과 준수를 증진하기 위한 국제연합헌장, 특히 제55조에 따른 국가의 의무를 고려하고,
어느 누구도 고문 또는 잔혹한, 비인도적 또는 굴욕적 처우나 형벌을 받아서는 아니된다고 규정한 세계인권선언 제5조와 시민적 및 정치적 권리에 관한 국제규약 제7조에 유의하며,
1975년 12월 9일 국제연합총회에서 채택되었던 고문 및 기타 잔혹한, 비인도적 또는 굴욕적 처우나 형벌로부터의 모든 사람의 보호에 관한 선언에도 유의하고,
고문 및 기타 잔혹한, 비인도적 또는 굴욕적 처우나 형벌의 금지를 위한 범세계적인 노력이 더욱 효과적이 되기를 희망하여,
다음과 같이 합의하였다.

제 1 부

제 1 조

1. 본 협약의 목적상 "고문"이라는 용어는 개인 또는 제3자로부터 정보 또는 자백을 얻어내고 그 개인 또는 제3자가 행하였거나 행하였다는 혐의가 있는 행위에 대하여 그 개인을 처벌하거나 그 개인 또는 제3자를 협박하거나 강요하기 위한 목적으로, 또는 모든 종류의 차별에 근거한 여하한 이유로 인하여, 공무원 또는 공적 자격으로 임무를 수행하는 다른 사람이 또는 이러한 사람의 교사에 의하거나 동의 또는 묵인하에 그 개인에게 고의적으로 육체적 또는 정신적으로 극심한 고통 및 피해를 가하는 행위를 의미한다. 이것은 합법적인 제재조치로부터 야기되고 이에 고유한 또는 이에 부수적인 고통 또는 피해를 포함하지 않는다.
2. 본 조항은 적용범위가 더 광범위하거나 광범위할 수 있는 여하한 국제법규 또는 국내입법을 침해하지 않는다.

제 2 조

1. 각 당사국은 자국의 관할권하에 있는 영토내에서 고문행위를 방지하기 위하여 효과적인 입법적, 행정적, 사법적 또는 여타 조치를 취한다.
2. 전쟁상태 또는 전쟁의 위협, 국내적인 정치적 불안정 또는 여타 공공의 비상상태와 같은 여하한 예외적인

상황도 고문을 정당화하기 위하여 원용할 수 없다.

3. 상급관리 또는 공적인 기관으로부터의 명령은 고문을 정당화하기 위하여 원용될 수 없다.

제 3 조

1. 어느 당사국도 개인을 그가 고문을 받을 위험이 있다고 믿을만한 충분한 근거가 있는 다른 국가로 추방, 송환 또는 인도하지 아니한다.
2. 그러한 근거의 존재여부를 결정하기 위하여 소관기관은 적절하다면 관련 국가에서의 심한, 극악한 또는 대량의 인권위반의 고질적인 존재를 포함한 모든 관련사항을 고려한다.

제 4 조

1. 각 당사국은 모든 고문행위가 자국형법에 의하여 범죄가 됨을 보장한다. 고문의 미수 및 고문에의 공모 또는 가담을 구성하는 행위도 마찬가지로 범죄가 된다.
2. 각 당사국은 이러한 범죄들이 그 심각성을 고려한 적절한 형벌에 의하여 차별되도록 한다.

제 5 조

1. 각 당사국은 아래의 경우에 제4조에서 언급된 범죄에 대한 자국의 관할권을 확립하는데 필요한 조치를 취한다.
 - 가. 범죄가 자국의 관할권하에 있는 영토 또는 자국에 등록된 선박이나 항공기상에서 발생한 경우
 - 나. 범죄혐의자가 자국민인 경우
 - 다. 피해자가 자국민이며 자국의 관할권 행사가 적절하다고 간주할 경우
2. 각 당사국은 범죄혐의자가 자국의 관할권하에 있는 영토내에 있거나 본조 1항에 언급된 어느 국가에도 동인을 제8조에 따라 인도하지 않을 경우에는 그러한 범죄에 대한 관할권을 확립하기 위하여 마찬가지로 필요한 조치를 취한다.
3. 본 협약은 국제법에 따라 행사된 어떠한 형사관할권도 배제하지 않는다.

제 6 조

1. 자국 영토내에 제4조에서 언급된 범죄혐의자가 소재하는 당사국은 입수 가능한 정보의 검토후 상황이 정당한 근거를 제시한다고 납득되면 즉시 그를 구금하거나 그 사람의 신병을 확보하기 위한 다른 법적조치를 취한다. 구금이나 다른 법적조치는 그 국가의 법에 의하여 취하여지며 형사 또는 인도절차가 시작되는데 필요한 최소한의 기간동안만 계속될 수 있다.
2. 그러한 국가는 즉시 사실에 대한 예비조사를 실시한다.
3. 본조 1항에 따라 구금중인 사람은 가장 가까이 있는 동인의 국적국의 적절한 대표와 또는 무국적자일 경우 그가 일상적으로 체재하는 국가의 대표와 즉각적인 연락을 취함에 있어 도움을 받는다.
4. 일 국가가 본 조에 따라 개인을 구금하였을 때에는 동인의 구금사실 및 동인의 역류를 정당화하는 상황을 제5조 1항에 언급된 국가들에게 즉시 통보한다. 본 조 2항에 규정된 예비조사를 실시한 국가는 그 결과를 즉각 상기국가들에게 통보하고 관할권을 행사할 것인지 여부도 표명한다.

제 7 조

1. 자국의 관할권하에 있는 영토내에 제4조에 언급된 범죄의 혐의자가 소재하는 당사국은 제5조에 규정된 경우에 있어 동인을 인도하지 않는다면 기소를 위하여 이 사건을 소관기관에 회부한다.
2. 이 기관은 자국법하에서 중대한 성격의 일반적인 범죄의 경우에 있어서와 같은 방법으로 결정을 내린다. 제5조 2항에서 언급된 경우에 기소 또는 선고를 위하여 요구되는 증거의 기준은 어떤 경우에도 제5조 1항

에서 언급된 경우에 적용되는 기준보다 덜 엄격한 것은 아니어야 한다.

- 3. 제4조에 언급된 범죄와 관련하여 소송절차중에 있는 모든 사람은 소송절차의 모든 과정에서 공정한 처우를 보장받는다.

제 8 조

- 1. 제4조에 언급된 범죄는 당사국들간에 존재하는 모든 범죄인 인도조약상에 인도 가능한 범죄로서 포함된 것으로 간주된다. 당사국들은 상호간에 체결되는 모든 범죄인 인도조약에 그러한 범죄들을 인도 가능한 범죄로서 포함시키도록 조치한다.
- 2. 조약의 존재를 조건으로 범죄인을 인도하는 일 당사국이 자국과 범죄인 인도조약을 체결하고 있지 않은 타 당사국으로부터 인도 요청을 받을 경우, 동협약을 그러한 범죄들에 관한 범죄인 인도의 법적근거로서 간주할 수 있다. 범죄인 인도는 요청받은 국가의 법이 제시하는 여타 조건에 따라야 한다.
- 3. 조약의 존재를 조건으로 범죄인을 인도하는 국가들이 아닌 당사국들간에는 요청받은 국가의 법이 제시하는 조건에 따라 그러한 범죄들을 인도 가능한 범죄로서 인정한다.
- 4. 그러한 범죄들은 당사국들간의 인도목적에 위하여 범죄가 발생한 장소에서는 물론 제5조 1항에 따라 관할권을 확립할 필요가 있는 영토에서 행하여진 것으로 취급된다.

제 9 조

- 1. 당사국들은 제4조에서 언급된 범죄에 관한 형사행 절차와 관련, 동 절차를 위하여 필요한 재량하에 있는 모든 증거의 제공을 포함하여 최대한의 지원을 상호간에 제공한다.
- 2. 당사국들은 상호간에 존재할 수 있는 사법공조에 관한 모든 조약에 따라서 본 조 1항의 의무를 수행한다.

제 10 조

- 1. 각 당사국은 모든 형태의 체포, 억류 또는 수감의 대상이 되는 개인의 구금, 심문 또는 처우에 관련될 수 있는 민간 또는 군의 법집행 인사, 의학계 인사, 공무원 및 기타 인사들의 훈련에 고문 금지에 관한 교육 및 정보를 포함시킬 것을 보장한다.
- 2. 각 당사국은 이러한 인사들의 임무 및 직능에 관하여 발하여진 규정 또는 지침에 고문의 금지를 포함시킨다.

제 11 조

각 당사국은 여하한 경우의 고문도 방지하기 위하여 자국의 고나할권하에 있는 영토내에서의 여하한 형태의 체포, 억류 또는 수감의 대상이 되는 개인의 구금 및 처우에 관한 제도와 아울러 심문규칙, 지침, 방법 및 관행을 체계적으로 검토한다.

제 12 조

각 당사국은 자국의 관할권하에 있는 영토내에서 고문이 행하여졌다고 믿을만한 합리적 근거가 있는 모든 경우에 소관기관이 즉각적으로 공평한 조사에 착수할 것을 보장한다.

제 13 조

각 당사국은 자국의 관할권하에 있는 영토내에서 고문을 받았다고 주장하는 모든 개인이 소관기관에 고소할 수 있고, 소관기관에 의해 즉각적으로 그리고 공평하게 등 사건에 대하여 조사받을 수 있는 권리를 향유하도록 보장한다. 고소인 및 증인들이 고소 또는 증거제시의 결과로 인하여 받을 수 있는 모든 부당한 처우 또는 협박으로부터 보호될 수 있도록 보장하는 조치가 취하여져야 한다

제 14 조

- 1. 각 당사국은 고문행위의 피해자가 구제조치를 받으며, 가능한 한 충분한 원상회복의 수단으로 포함한 정당하고 적절한 보상을 요구할 수 있는 권리를 향유하도록 자국의 법체계내에서 보장한다. 고문행위의 결과로 인해 피해자가 사망한 경우, 피해자의 부양가족이 보상을 요구할 권리를 갖는다.
- 2. 본 조항의 어떠한 규정도 국내법하에서 인정되는 피해자 또는 여타 사람들의 보상요구 권리에 영향을 미치지 않는다.

제 15 조

각 당사국은 고문의 결과로서 이루어진 것이 명백한 여하한 진술도 고문 혐의자에 대한 소송에서 그 진술이 행하여졌다는 증거로서 인용되는 경우를 제외하고는 여하한 소송절차에 있어서도 증거로서 인용되지 않을 것임을 보장한다.

제 16 조

- 1. 각 당사국은 제1조에 규정된 고문에 미치지 않는 기타 잔혹한, 비인도적 또는 굴욕적 처우나 형벌이 공무원 또는 공적 자격으로 임무를 수행하는 다른 사람에 의하거나 또는 이러한 사람의 교사에 의하거나 또는 그들의 동의 또는 묵인하에 행하여질 때에는 자국의 관할권하에 있는 영토내에서 그러한 행위를 예방하기 위한 조치를 취한다. 특히 제10조, 제11조, 제12조 및 제13조에 포함된 의무는 고문에 관하여서와 마찬가지로 다른 형태의 잔혹한, 비인도적 또는 굴욕적 처우나 형벌에 관하여서도 적용된다.
- 2. 본 협약의 규정은 잔혹한, 비인도적 또는 굴욕적 처우나 형벌을 금지하거나 범죄인 인도 또는 추방에 관련되는 여타 국제법규 또는 국내법의 규정을 침해하지 않는다.

제 2 부

제 17 조

- 1. 고문방지위원회(이하 "위원회"라 칭함)가 설립되어 아래에 규정된 기능을 수행한다. 위원회는 높은 도덕적 지위를 가지고 인권분야에서 능력이 인정된 10인의 전문가로 구성되며 동인들은 개인자격으로 근무한다. 전문가는 공평한 지역적 배분 및 법적 경험 소유 인사들의 참여 유용성을 고려하여 당사국들에 의하여 선출된다.
- 2. 위원회의 위원은 당사국들에 의하여 지명된 자의 명단 중에서 비밀투표로 선출된다. 각 당사국은 자국민중에서 1인을 지명할 수 있다. 당사국들은 시민적 및 정치적 권리에 관한 국제규약에 따라 설립된 인권이사회회의 위원이면서 고문방지위원회에 봉사하기를 원하는 인사들의 지명 유용성에 유의한다.
- 3. 위원회의 위원선출은 국제연합사무총장에 의하여 개최되는 격년주기의 회의에서 이루어진다. 이 회의는 당사국의 3분의 2를 의사정족수로 하고, 출석하여 투표하는 당사국 대표의 최대다수표 및 절대과반수표를 획득하는 후보가 위원으로 선출된다.
- 4. 최초의 선거는 본 협약의 발효일로부터 6개월 이내에 실시된다. 국제연합사무총장은 각 선거일 최소 4개월 전에 당사국에 서한을 발송하여 3개월 이내에 후보를 지명하도록 요청한다. 국제연합사무총장은 이렇게 지명된 후보자의 명단을 지명국가표시와 함께 알파벳순으로 준비하여 당사국에 제출한다.
- 5. 위원회의 위원은 4년 임기로 선출된다. 모든 위원은 재지명된 경우에 재선될 수 있다. 다만, 최초의 선거에서 선출된 위원중 5인의 임기는 2년후에 종료된다. 이들 5인 위원의 명단은 최초 선거후 즉시 본 조 3항에

언급된 회의의 의장에 의하여 추첨으로 선정된다.

- 위원회의 위원이 사망 또는 사임하거나 여타 이유로 인하여 위원회의 임무를 수행할 수 없는 경우, 동 위원을 임명한 당사국을 동인의 잔여 임기동안 근무할 수 있는 다른 전문가를 전 당사국 과반수의 동의를 조건으로 지명한다. 국제연합사무총장이 동 지명내용을 각 당사국에 통보한 후 전 당사국의 과반수가 6개월 이내에 부정적으로 답변하지 않으면 이에 동의한 것으로 간주된다.

- 전 당사국은 위원회 위원들이 위원회 임무를 수행하는 동안 소요되는 비용에 대하여 책임을 진다.

제 18 조

- 위원회는 임기 2년의 임원을 선출한다. 임원은 재선될 수 있다.
- 위원회는 자체 절차규칙을 제정하며 이 규칙은 특히 다음 사항을 규정한다.
 - 의사정족수는 위원 6인으로 한다.
 - 위원회의 의결을 출석위원 과반수의 투표로 한다.
- 국제연합사무총장은 본 협약상 위원회 기능의 효과적 수행을 위하여 필요한 직원 및 시설을 제공한다.
- 국제연합사무총장은 최초의 위원회 회의를 개최한다. 위원회는 최초의 이후 위원회의 절차규칙에 규정된 시기에 회의를 개최한다.
- 전 당사국은 본 조 3항에 따라 직원 및 시설을 위한 경비 등 국제연합이 부담한 비용을 국제연합에 변상하는 것을 포함하여 전 당사국 및 위원회 회의와 관련되어 소요되는 비용에 대하여 책임을 진다.

제 19 조

- 전 당사국은 본 협약이 자국에 대하여 발효한 후 1년 내에 본 협약에 따른 의무이행을 위하여 취하여 온 조치에 관한 보고서를 위원회에 제출한다. 그 이후 전 당사국은 자국이 취한 모든 새로운 조치에 관한 추가 보고서 및 위원회가 요청하는 여타 보고서를 매 4년마다 제출한다.
- 국제연합사무총장은 동 보고서들을 전 당사국에 송부한다.
- 각 보고서는 위원회에 의하여 검토되며, 위원회는 보고서에 대하여 적절하다고 생각하는 일반적인 의견을 제시하며 이러한 의견들을 관련 당사국에 전달한다. 관련 당사국은 이에 대한 견해를 위원회에 제출할 수 있다.
- 위원회는 제24조에 따라 작성된 연례보고서에 관련 당사국으로부터 접수한 의견과 함께 본 조 3항에 따라 위원회가 제시한 견해를 포함시킬 것을 재량에 의하여 결정할 수 있다. 관련 당사국이 요청하는 경우, 위원회는 본 조 1항에 따라 제출된 보고서의 사본을 포함시킬 수도 있다.

제 20 조

- 위원회가 어느 당사국의 영토내에서 고문이 조직적으로 행하여지고 있다는 충분한 근거를 가진 것으로 보이는 믿을 만한 정보를 접수한 경우, 위원회는 그 당사국으로 하여금 이 정보를 조사하는데 협조하도록 하며 이를 위하여 관련 정보에 관한 견해를 제시한다.
- 위원회는 관련 당사국에 의하여 제출된 견해와 아울러 여타 입수 가능한 관련 정보를 고려하여 정당한 근거가 있다고 결정하는 경우, 비밀조사를 실시하여 그 결과를 즉각 위원회에 보고할 1인 또는 그 이상의 위원을 지명할 수 있다.
- 본 조 2항에 따라 조사가 이루어지는 경우, 위원회는 관련 당사국의 협력을 구한다. 그러한 조사는 관련 당사국과의 합의에 의하여 관련국 영토에 대한 방문을 포함할 수 있다.
- 위원회는 본 조 2항에 따라 제출된 위원 또는 위원들의 조사결과를 검토한 후 동 조사결과 및 현황상 적절

하다고 판단되는 의견 또는 제안을 관련 당사국에 송부한다.

- 본 조 1항4항에 언급된 위원회의 모든 절차는 비밀로 이루어지며 동 절차의 모든 단계에서 당사국의 협력을 구한다. 제 2항에 따라 이루어진 조사에 관한 절차가 완결된 후 위원회는 관련 당사국과의 협의를 거쳐 제24조에 따른 연례보고서에 동 절차의 결과에 대한 요약보고서를 포함시킬 것을 결정할 수 있다.

제 21 조

본 협약의 당사국은 타 당사국이 동 협약에 따른 의무를 이행하지 아니하고 있다고 주장하는 일 당사국의 통보를 위원회가 접수 및 심리할 권한을 인정한다는 것을 본 조에 의하여 언제든지 선언할 수 있다. 이러한 통보는 자국에 대한 위원회에 관한 인정을 선언한 당사국에 의하여 제출될 경우에만 본조에 규정된 절차에 따라 접수, 심리될 수 있다. 위원회는 그러한 선언을 행하지 아니한 당사국에 관한 통보는 접수하지 아니한다. 본 조에 접수된 통보는 다음 절차에 따라 처리된다.

가. 일 당사국은 타 당사국이 본 협약의 규정을 이행하고 있지 아니하다고 판단하는 경우, 서면통보로써 동 문제에 관하여 그 당사국의 주의를 환기시킬 수 있다. 통보를 접수한 국가는 통보 접수 후 3개월 이내에 당해 문제를 해명하는 서면 설명서 또는 기타 진술서를 통보한 국가에 송부한다. 그러한 해명서에는 가능하고 적절한 범위내에서, 동 국가가 당해 문제와 관련하여 이미 취하였거나, 현재 취하고 있는 또는 취할 수 있는 국내절차와 구제수단에 관한 언급이 포함된다.

나. 통보를 접수한 국가가 최초 통보 접수후 6개월 이내에 당해 문제가 관련 당사국 쌍방에 만족스럽게 조정하지 아니할 경우, 일 당사국은 위원회와 타 당사국에 대한 통고로써 당해 문제를 위원회에 회부할 권리를 가진다.

다. 위원회는 위원회에 회부된 문제의 처리에 있어서, 일반적으로 승인된 국제법의 원칙에 따라 모든 가능한 국내적 구제절차가 원용되고 완료되었음을 확인한 후에만 당해 문제를 처리한다. 다만, 구제수단의 적용이 부당하게 지연되거나, 본 협약 규정 위반의 피해자에 대한 효과적인 구제를 기대할 수 없는 경우에 본 규정은 적용되지 않는다.

라. 위원회는 본 조에 의한 통보를 심사할 경우는 비공개 회의를 개최한다.

마. "다"항의 규정에 따를 것을 조건으로, 위원회는 이 협약에 규정된 의무에 대한 존중을 기초로 당해 문제를 우호적으로 해결하기 위하여 관련 당사국에게 주선을 제공한다. 이를 위하여 위원회는 적절한 경우 특별조정위원회를 설치할 수 있다.

바. 위원회는 위원회에 회부된 여타 문제에 관하여도 "나"항에 언급된 관련 당사국들에게 모든 관련정보를 제출할 것을 요청할 수 있다.

사. "나"항에서 언급된 관련 당사국은 당해 문제가 위원회에서 심의되고 있는 동안 자국의 대표를 참석시키고 구두 또는 서면으로 의견을 제출할 권리를 가진다.

아. 위원회는 "나"항에 의한 통보 접수일로부터 12개월 이내에 보고서를 제출한다.

자. "마"항의 규정에 따른 해결에 도달한 경우, 위원회는 사실 관계와 동 해결에 관한 간략한 설명에만 국한하여 보고서를 작성한다.

차. "마"항의 규정에 따른 해결에 도달하지 못한 경우, 위원회는 사실 관계에 관한 간략한 설명에만 국한하여 보고서를 작성하고, 관련 당사국이 제출한 서면 의견과 구두 의견의 기록을 동 보고서에 첨부시킨다. 모든 경우에 보고서는 관련 당사국에 통보한다.

2 본 조의 제규정은 본 협약의 5개 당사국이 본 조 1항에 따른 선언을 하였을 때 발효한다. 당사국은 동 선

언문을 국제연합사무총장에게 기탁하며, 국제연합사무총장은 선언문의 사본을 타 당사국에 송부한다. 이와 같은 선언은 국제연합사무총장에 대한 통고에 의하여 언제든지 철회될 수 있다. 이러한 철회는 본 조에 의하여 이미 송부된 통보에 따른 여하한 문제의 심의도 방해하지 아니한다. 일 당사국에 의한 추가 통보는 국제연합사무총장이 선언 철회의 통고를 접수한 후에는 관련 당사국이 새로운 선언을 하지 아니하는 한 접수되지 아니한다.

제 22 조

1. 본 협약 당사국은 일 당사국에 의한 협약 규정 위반의 피해자라고 주장하는 자국 관할권하의 개인들로부터의 또는 개인들을 대신한 통보를 위원회가 접수 및 심리할 권한을 인정한다는 것을 본 조에 의하여 언제든지 선언할 수 있다. 위원회는 그러한 선언을 행하지 아니한 당사국에 관한 통보는 접수하지 아니한다.
2. 위원회는 익명이거나 그러한 통보 제출권리의 남용 또는 본 협약의 규정과 양립할 수 없는 것으로 간주되는 여하한 통보도 본 조에 의해서 인정될 수 없는 것으로 간주한다.
3. 제 2항의 규정에 따를 것을 조건으로, 위원회는 본 조에 따라 제출된 통보에 관해 제 1항에 의해 선언을 하였으며, 동 협약 규정을 위반하고 있는 것으로 알려진 당사국의 주의를 환기시킨다. 동 당사국은 통보 접수 6개월내에 그 사건의 내용 및 구제조치를 취한 경우 그 구제조치를 해명하는 서면 설명서 또는 진술서를 위원회에 제출한다.
4. 위원회는 개인으로부터 또는 개인을 대신하여 그리고 관련 당사국으로부터 입수 가능한 모든 정보를 고려하여 본 조에 의하여 접수된 통보를 심의한다.
5. 위원회는 아래 사항을 확인하지 않고서는 본 조에 의한 개인의 어떠한 통보도 심의하지 않는다.
가. 같은 문제가 어떤 다른 국제적인 조사 또는 해결절차에 의하여 심사되지 않았거나 또는 심사되고 있지 않을 것
나. 개인이 모든 가능한 국내 구제조치를 취하였을 것. 다만, 구제조치의 적용이 부당하게 지연되거나 동 협약 위반의 피해자에 대한 효과적인 구제를 기대할 수 없는 경우, 본 규정은 적용되지 않는다.
6. 위원회는 본 조에 의해 통보를 심사할 때는 비공개회의를 개최한다.
7. 위원회는 위원회의 견해를 관련 당사국 및 개인에게 제출한다.
8. 본 조의 제규정은 본 협약의 5개 당사국이 본 조 1항에 의해 선언을 하였을 때에 발효한다. 동 선언은 당사국에 의하여 국제연합사무총장에게 기탁되며, 국제연합사무총장은 그 사본을 타 당사국들에게 송부한다. 동 선언은 국제연합사무총장에 대한 통고에 의하여 언제든지 철회될 수 있다. 동 철회는 본 조에 의하여 이미 송부된 통보에 따른 여하한 문제의 심의도 방해하지 아니한다. 개인에 의한 또는 개인을 대신한 추가 통보는 국제연합사무총장이 선언 철회의 통고를 접수한 후에는 관련 당사국이 새로운 선언을 하지 아니하는 한 접수되지 아니한다.

제 23 조

위원회의 위원과 제 21 조에 의해 임명되는 특별위원회의 위원은 국제연합의 특권 및 면제에 관한 협약의 관계조항에 규정된 바에 따라 국제연합을 위한 직무를 행하는 전문가로서의 편의, 특권 및 면제를 향유한다.

제 3 부

제 25 조

1. 본 협약은 모든 국가의 서명을 위하여 개방된다.
2. 본 협약은 비준되어야 한다. 비준서는 국제연합사무총장에게 기탁된다.

제 26 조

본 협약은 모든 국가들의 가입을 위하여 개방된다. 가입은 가입서를 국제연합사무총장에게 기탁함으로써 이루어진다.

제 27 조

1. 본 협약은 국제연합사무총장에게 20번째 비준서 또는 가입서가 기탁되는 날로부터 30일째 되는 날 발효한다.
2. 20번째의 비준서 또는 가입서의 기탁 후 본 협약을 비준하거나 가입하는 국가에 대하여는, 본 협약은 비준서 또는 가입서가 기탁된 날로부터 30일째 되는 날 발효한다.

제 28 조

1. 각 당사국은 본 협약의 서명, 비준 또는 가입시에 제 20조에 따라 부여된 위원회의 권한을 인정하지 않음을 선언할 수 있다.
2. 본 조 1 항에 따라 유보를 행한 당사국은 국제연합사무총장에 통고함으로써 언제든지 동 유보를 철회할 수 있다.

제 29 조

1. 본 협약의 당사국은 개정안을 제안하고 이를 국제연합사무총장에게 제출할 수 있다. 국제연합사무총장은 개정안을 접수하는대로, 각 당사국에게 동 제안을 심의하고 표결에 회부하기 위한 당사국 회의 개최 찬성 여부에 관한 의견을 국제연합사무총장에게 통고하여 줄 것을 요청하는 것과 함께 개정안을 본 협약의 각 당사국에게 통보한다.
동 통보접수후 4개월 이내에 당사국의 3분의 1 이상이 당사국 회의 개최에 찬성하는 경우, 국제연합사무총장은 국제연합 주관하에 동 회의를 소집한다. 동 회의에 출석하고 표결한 당사국의 과반수에 의하여 채택된 개정안은 국제연합사무총장에 의하여 그 승인을 위하여 모든 당사국에 송부한다.
2. 본 조 1항에 따라 채택된 개정안은 본 협약 당사국의 3분의 2가 각 당사국의 헌법상 절차에 따라 이를 수락하였음을 국제연합사무총장에게 통보하였을 때 발효한다.
3. 개정안은 발효시 이를 수락한 당사국을 구속한다. 여타 당사국은 계속하여 본 협약의 규정 및 이미 수락한 그 이전의 모든 개정안에 의하여 구속된다.

제 30 조

1. 2개 또는 그 이상의 당사국간의 직접 교섭에 의하여 해결될 수 없는 본 협약의 해석 또는 적용에 관한 분쟁은 그들 중 1개국의 요청이 있으면 중재재판에 회부되어야 한다. 중재재판 요구일로 부터 6개월내에 당사국이 중재재판의 구성에 합의하지 못하면 동 당사국중 일방은 국제사법재판소 규정에 따른 요청으로 동 분쟁을 국제사법재판소에 회부할 수 있다.
2. 각 당사국은 본 협약의 서명, 비준 또는 가입시에 자국이 본 조 1항에 구속되는 것으로 보지 않는다고 선언할 수 있다. 타 당사국은 그러한 유보를 행한 당사국과의 관계에서는 본 조 1항의 구속을 받지 아니한다.
3. 본 조 2항에 따라 유보를 행한 당사국은 국제연합사무총장에 통고함으로써 언제든지 동 유보를 철회할 수 있다.

제 31 조

1. 일 당사국은 국제연합사무총장에 대한 서면통고로써 본 협약을 폐기할 수 있다. 폐기는 국제연합사무총장이 통고를 접수한지 1년 후에 유효하게 된다.
2. 동 폐기는 그것이 유효하기 전에 발생한 어떠한 작위 또는 부작위에 관한 협약상의 의무로부터 당사국을 면제시키는 효과를 가지지 아니하며, 또한 동 폐기가 유효하기 전에 이미 위원회에 의하여 심사되고 있는 여하한 문제의 계속적인 심사를 방해하지 아니한다.
3. 위원회는 일 당사국의 폐기가 유효하게 된 날 이후에는 그 국가에 대한 여하한 새로운 문제의 심사도 개시하지 않는다.

제 32 조

국제연합사무총장은 모든 국제연합회원국과 본 협약에 서명 또는 가입한 모든 국가에 다음을 통보한다.

- 가. 제 25 조 및 제 26 조에 의한 서명, 비준 및 가입
- 나. 제 27 조에 의한 본 협약의 발효일자 및 제 29 조에 의한 개정안의 발효일자
- 다. 제 31 조에 의한 폐기

제 33 조

1. 본 협약은 아랍어, 중국어, 영어, 불어, 러시아어 및 서반아어 본이 동등히 정본이며, 국제연합사무총장에게 기탁된다.
2. 국제연합사무총장은 본 협약의 인증등본을 모든 국가들에게 송부한다.

Appendix 1

PACE Codes of Practice

C CODE OF PRACTICE FOR THE DETENTION, TREATMENT AND QUESTIONING OF PERSONS BY POLICE OFFICERS

1 General

- 1.1 All persons in custody must be dealt with expeditiously, and released as soon as the need for detention has ceased to apply.
- 1.2 This code of practice must be readily available at all police stations for consultation by police officers, detained persons and members of the public.
- 1.3 The notes for guidance included are not provisions of this code, but are guidance to police officers and others about its application and interpretation. Provisions in the annexes to this code are provisions of this code.
- 1.4 If an officer has any suspicion, or is told in good faith, that a person of any age may be mentally ill or mentally handicapped, or mentally incapable of understanding the significance of questions put to him or his replies, then that person shall be treated as a mentally ill or mentally handicapped person for the purposes of this code.
- 1.5 If anyone appears to be under the age of 17 then he shall be treated as a juvenile for the purposes of this code in the absence of clear evidence to show that he is older.
- 1.6 If a person appears to be blind or seriously visually handicapped, deaf, unable to read or unable to communicate orally with the officer dealing with him at the time, he should be treated as such for the purposes of this code in the absence of clear evidence to the contrary.
- 1.7 In this code "the appropriate adult" means:
 - (a) in the case of a juvenile:
 - (i) his parent or guardian (or, if he is in care, the care authority or organisation);
 - (ii) a social worker; or
 - (iii) failing either of the above, another responsible adult who is not a police officer or employed by the police.
 - (b) in the case of a person who is mentally ill or mentally handicapped:
 - (i) a relative, guardian or other person responsible for his care or custody;
 - (ii) someone who has experience of dealing with mentally ill or mentally

(iii) failing either of the above, some other responsible adult who is not a police officer or employed by the police.

[See Note IC]

1.8 Whenever this code requires a person to be given certain information he does not have to be given it if he is incapable at the time of understanding what is said to him or is violent or likely to become violent or is in urgent need of medical attention, but he must be given it as soon as practicable.

1.9 Any reference to a custody officer in this code includes an officer who is performing the functions of a custody officer.

1.10 In its application to persons who are in custody at police stations, this code applies whether or not they have been arrested for an offence, except section 16 which applies solely to persons in police detention.

Notes for Guidance

IA Although certain sections of this code (eg section 9 — Treatment of detained persons) apply specifically to persons in custody at police stations, those there voluntarily to assist with an investigation should be treated with no less consideration (e.g. offered refreshments at appropriate times) and enjoy an absolute right to obtain legal advice or communicate with anyone outside the police station.

IB This code does not affect the principle that all citizens have a duty to help police officers to prevent crime and discover offenders. This is a civic rather than a legal duty; but when a police officer is trying to discover whether, or by whom, an offence has been committed, he is entitled to question any person from whom he thinks useful information can be obtained, subject to the restrictions imposed by this code. A person's declaration that he is unwilling to reply does not alter this entitlement.

IC In the case of persons who are mentally ill or mentally handicapped, it may in certain circumstances be more satisfactory for all concerned if the appropriate adult is someone who has experience or training in their care rather than a relative lacking such qualifications. But if the person himself prefers a relative to a better qualified stranger his wishes should if practicable be respected.

2 Custody records

2.1 A separate custody record must be opened as soon as practicable for each person who is brought to a police station under arrest or is arrested at the police station having attended there voluntarily. All information which has to be recorded under this code must be recorded as soon as practicable, in the custody record unless otherwise specified.

2.2 In the case of any action requiring the authority of an officer of a specified rank, his name and rank must be noted in the custody record.

2.3 The custody officer is responsible for the accuracy and completeness of the custody record and for ensuring that the record or a copy of the record accompanies a detained person if he is transferred to another police station. The record shall show the time of and reason for transfer and the time a person is released from detention.

2.4 When a person leaves police detention he or his legal representative shall be supplied on request with a copy of the custody record as soon as practicable. This entitlement lasts for twelve months after his release. [See Note 2.4]

2.5 All entries in custody and written interview records must be timed and signed by the maker.

2.6 Any refusal by a person to sign either a custody or an interview record when asked to do so in accordance with the provisions of this code must itself be recorded.

Note for Guidance

2A The person who has been detained, the appropriate adult, or legal representative who gives reasonable notice of a request to inspect the original custody record after the person has left police detention, shall be allowed to do so.

3 Initial action

(a) Detained persons: normal procedure

3.1 When a person is brought to a police station under arrest or is arrested at the police station having attended there voluntarily, the custody officer must inform him of the following rights and of the fact that they need not be exercised immediately:

- (i) the right to have someone informed of his arrest in accordance with section 5 below;
- (ii) the right to consult a solicitor in accordance with section 6 below; and
- (iii) the right to consult this and the other codes of practice. [See Note 3D]

3.2 The custody officer must also give the person a written notice setting out the above three rights, the right to a copy of the custody record in accordance with paragraph 2.4 above and the caution in the terms prescribed in section 10 below. The custody officer shall ask the person to sign the custody record to acknowledge receipt of this notice. [See Note 3E]

3.3 If the custody officer authorises a person's detention he must inform him of the grounds as soon as practicable and in any case before that person is then questioned about any offence.

3.4 The person shall be asked to sign on the custody record to signify whether or not he wants legal advice at this point.

(b) Detained persons: special groups

3.5 If the person does not understand English or appears to be deaf and the custody officer cannot communicate with him then the custody officer must as soon as practicable call an interpreter, and ask him to provide the information required above.

3.6 If the person is a juvenile, is mentally handicapped or is suffering from mental illness then the custody officer must as soon as practicable inform the appropriate adult of the grounds for his detention and his whereabouts, and ask the adult to come to the police station to see the person. If the appropriate adult is already at the police station when information is given to the person as required in paragraphs 3.1 to 3.3 above then the information must be given to the detained person in his presence. If the appropriate adult is not at the police station when the information is given then the information must be given to the detained person again in the presence of the appropriate adult once that person arrives.

3.7 If the person is blind or seriously visually handicapped or is unable to read, the custody officer should ensure that his solicitor, relative, the appropriate adult or some other person likely to take an interest in him is available to help in checking any documentation. Where this code requires written consent or signification, then the person who is assisting may be asked to sign instead if the detained person so wishes. [See Note 3F]

steps must also be taken to notify the person supervising him.

(c) Persons attending a police station voluntarily

3.9 Any person attending a police station voluntarily for the purpose of assisting with an investigation may leave at will unless placed under arrest. If it is decided that he would not be allowed to do so then he must be informed at once that he is under arrest and brought before the custody officer. If he is not placed under arrest but is cautioned in accordance with section 10 below, the officer who gives the caution must at the same time inform him that he is not under arrest, that he is not obliged to remain at the police station but that if he remains at the police station he may obtain legal advice if he wishes. [See Note 3G]

(d) Documentation

3.10 The grounds for a person's detention shall be recorded, in his presence if practicable.

3.11 Action taken under paragraphs 3.5 to 3.8 shall be recorded.

Notes for Guidance

3A If the juvenile is in the care of a local authority or voluntary organisation but is living with his parents or other adults responsible for his welfare then, although there is no legal obligation on the police to inform them, they as well as the authority or organisation should normally be contacted unless suspected of involvement in the offence concerned. Even if a juvenile in care is not living with his parents, consideration should be given to informing them as well.

3B Section 7 of this code contains special additional provisions for Commonwealth citizens and foreign nationals.

3C Most local authority Social Services Departments can supply a list of interpreters who have the necessary skills and experience to interpret for the deaf at police interviews.

3D The right to consult the code of practice under paragraph 3.1 above does not entitle the person concerned to delay unreasonably, necessary investigative or administrative action while he does so.

3E When the custody officer gives the person a copy of the notice referred to in paragraph 3.2, he should also give him a copy of a notice explaining the arrangements for obtaining legal advice.

3F Blind or seriously visually handicapped persons may be unwilling to sign police documents. The alternative of their representative signing on their behalf seeks to protect the interests of both police and suspects.

3G If a person who is attending a police station voluntarily (in accordance with paragraph 3.9) asks about his entitlement to legal advice, he should be given a copy of a notice explaining the arrangements for obtaining legal advice.

4 Detained persons' property

(a) Action

4.1 The custody officer is responsible for:

(a) ascertaining:

- (i) what property a detained person has with him when he comes to the police station (whether on arrest, re-detention on answering to bail, commitment to prison custody on the order or sentence of a court, on lodgement at the police station with a view

from detention at another station or from hospital);

- (ii) what property he might have acquired for an unlawful or harmful purpose while in custody.

(b) the safekeeping of any property which is taken from him and which remains at the police station.

To these ends the custody officer may search him or authorise his being searched to the extent that he considers necessary (provided that a search of intimate parts of the body or involving the removal of more than outer clothing may only be made in accordance with Annex A to this code). A search may only be carried out by an officer of the same sex as the person searched. [See Note 4A]

4.2 A detained person may retain clothing and personal effects at his own risk unless the custody officer considers that he may use them to cause harm to himself or others, interfere with evidence, damage property or effect an escape or they are needed as evidence. In this event the custody officer can withhold such articles as he considers necessary. If he does so he must tell the person why.

4.3 Personal effects are those items which a person may lawfully need to use or refer to while in detention but do not include cash and other items of value.

(b) Documentation

4.4 The custody officer is responsible for recording all property brought to the police station that a detained person had with him, or had taken from him on arrest. The detained person shall be allowed to check and sign the record of property as correct.

4.5 If a detained person is not allowed to keep any article of clothing or personal effects the reason must be recorded.

Notes for Guidance

4A Paragraph 4.1 is not to be taken as requiring each detained person to be searched. Where for example a person is to be detained for only a short period and is not to be placed in a cell, the custody officer may at his discretion decide not to search the person. In such a case the custody record will be endorsed 'not searched', paragraph 4.4 will not apply, and the person will be invited to sign the entry. Where the person detained refuses to sign, the custody officer will be obliged to ascertain what property he has on him in accordance with paragraph 4.1.

4B Paragraph 4.4 does not require the custody officer to record on the custody record, property in the possession of a person on arrest, if by virtue of its nature, quantity or size, it is not practicable to remove it to the police station.

4C Paragraph 4.1 above is not to be taken as requiring that items of clothing worn by the person be recorded unless withheld by the custody officer in accordance with paragraph 4.2.

5 Right not to be held incommunicado

(a) Action

5.1 Any person to whom paragraphs 2.1 and 3.9 apply may on request have one person known to him or who is likely to take an interest in his welfare informed at public expense as soon as practicable of his whereabouts. If the person cannot be contacted the person who has made the request may choose up to two alternatives. If they too cannot be contacted

the custody officer has discretion to convey. [See Notes 5C and 5D]

5.2 The exercise of the above right in respect of each of the persons nominated may be delayed only in accordance with Annex B to this code.

5.3 The above right may be exercised on each occasion that a person is taken to another police station.

5.4 The person may receive visits at the custody officer's discretion. [See Note 5B]

5.5 Where an enquiry as to the whereabouts of the person is made by a friend, relative or person with an interest in his welfare, this information shall be given, if he agrees and if Annex B does not apply. [See Note 5D]

5.6 The person shall be supplied on request with writing materials. Any letter or other message shall be sent as soon as practicable unless Annex B applies.

5.7 He may also speak on the telephone for a reasonable time to one person unless Annex B applies. [See Note 5E]

5.8 Before any letter or message is sent, or telephone call made, the person shall be informed that what he says in any letter, call or message (other than in the case of a communication to a solicitor) may be read or listened to as appropriate and may be given in evidence. A telephone call may be terminated if it is being abused. The costs can be at public expense at the discretion of the custody officer.

(b) Documentation

5.9 A record must be kept of:

- (a) any request made under this section and the action taken on it;
- (b) any letters or messages sent, calls made or visits received; and
- (c) any refusal on the part of a person to have information about himself or his whereabouts given to an outside enquirer.

Notes for Guidance

5A An interpreter may make a telephone call or write a letter on a person's behalf.

5B In the exercise of his discretion the custody officer should allow visits where possible in the light of the availability of sufficient manpower to supervise a visit and any possible hindrance to the investigation.

5C If the person does not know of anyone to contact for advice or support or cannot contact a friend or relative, the custody officer should bear in mind any local voluntary bodies or other organisations who might be able to offer help in such cases. But if it is specifically legal advice that is wanted, then paragraph 6.1 below will apply.

5D In some circumstances it may not be appropriate to use the telephone to disclose information under paragraph 5.1 and 5.5 above.

5E The telephone call at paragraph 5.7 is in addition to any communication under paragraphs 5.1 and 6.1.

6 Right to legal advice

(a) Action

6.1 Subject to paragraph 6.2, any person may at any time consult and communicate privately, whether in person, in writing or on the telephone with a solicitor. [See Note 6B]

6.2 The exercise of the above right may be delayed only in accordance with Annex B to this code.

6.3 A person who asks for legal advice may not be interviewed or continue to be interviewed until he has received it unless:

- (a) Annex B applies; or
- (b) an officer of the rank of superintendent or above has reasonable grounds for believing that:
 - (i) delay will involve an immediate risk of harm to persons or serious loss of, or damage to, property; or
 - (ii) where a solicitor, including a duty solicitor, has been contacted and has agreed to attend, awaiting his arrival would cause unreasonable delay to the processes of investigation; or
- (c) the solicitor nominated by the person, or selected by him from a list:
 - (i) cannot be contacted;
 - (ii) has previously indicated that he does not wish to be contacted; or
 - (iii) having been contacted, has declined to attend;and the person has been advised of the Duty Solicitor Scheme (where one is in operation) but has declined to ask for the duty solicitor, or the duty solicitor is unavailable; or
- (d) the person has given his agreement in writing or on tape that the interview may be started at once.

[See Notes 6A and 6B]

6.4 Where sub-paragraph 6.3(b)(i) applies, once sufficient information to avert the risk has been obtained, questioning must cease until the person has received legal advice or sub-paragraphs 6.3(a), (b)(ii), (c) or (d) apply.

6.5 Where a person has been permitted to consult a solicitor and the solicitor is available at the time the interview begins or is in progress, he must be allowed to have his solicitor present while he is interviewed.

6.6 The solicitor may only be required to leave the interview if his conduct is such that the investigating officer is unable properly to put questions to the suspect. [See Note 6D]

6.7 If the investigating officer considers that a solicitor is acting in such a way, he will stop the interview and consult an officer not below the rank of superintendent, if one is readily available, and otherwise an officer not below the rank of inspector who is not connected with the investigation. After speaking to the solicitor, the officer who has been consulted will decide whether or not the interview should continue in the presence of that solicitor. If he decides that it should not, the suspect will be given the opportunity to consult another solicitor before the interview continues and that solicitor will be given an opportunity to be present at the interview.

6.8 The removal of a solicitor from an interview is a serious step and if it occurs, the officer of superintendent rank or above who took the decision will consider whether the incident should be reported to The Law Society. If the decision to remove the solicitor has been taken by an officer below the rank of superintendent, the facts must be reported to an officer of superintendent rank or above who will similarly consider whether a report to The Law Society would be appropriate.

6.9 In this code "solicitor" means a solicitor qualified to practise in accordance with the Solicitors Act 1974. If a solicitor wishes to send a clerk or legal executive to provide advice on his behalf, then the clerk or legal executive shall be admitted to the police station

for this purpose, unless an officer is satisfied that a visit will hinder the investigation of crime and directs otherwise. Once admitted to the police station, the provisions of paragraphs 6.3 to 6.7 apply.

6.10 If the inspector refuses access to a clerk or legal executive or a decision is taken that such a person should not be permitted to remain at an interview, he must forthwith notify the solicitor on whose behalf the clerk or legal executive was to have acted or was acting, and give him an opportunity of making alternative arrangements.

(b) Documentation

6.11 Any request for legal advice and the action taken on it shall be recorded.

6.12 If a person has asked for legal advice and an interview is commenced in the absence of a solicitor or his representative (or the solicitor or his representative has been required to leave an interview) a record shall be made in the interview record.

Notes for Guidance

6A In considering whether sub-paragraphs 6.3(b)(i) and (ii) apply, the officer should where practicable ask the solicitor for an estimate of the time that he is likely to take in coming to the station, and relate this information to the time for which detention is permitted, the time of day (i.e. whether the period of rest required by paragraph 12.2 is imminent) and the requirements of other investigations in progress. If it appears that it will be necessary to begin an interview before the solicitor's arrival he should be given an indication of how long police would be able to wait before sub-paragraphs 6.3(b)(i) and (ii) apply so that he has an opportunity to make arrangements for legal advice to be provided by someone else.

6B A person who asks for legal advice should be given an opportunity to consult a specific solicitor (for example, his own solicitor or one known to him) or the duty solicitor where a Duty Solicitor Scheme is in operation. If advice is not available by these means, or he does not wish to consult the duty solicitor, the person should be given an opportunity to choose a solicitor from a list of those willing to provide legal advice. If this solicitor is unavailable, he may choose up to two alternatives. If these attempts to secure legal advice are unsuccessful, the custody officer has discretion to allow further attempts until a solicitor has been contacted who agrees to provide legal advice.

6C Procedures undertaken under section 8 of the Road Traffic Act 1972 do not constitute interviewing for the purposes of this code.

6D In considering whether paragraph 6.6 applies, a solicitor is not guilty of misconduct if he seeks to challenge an improper question to his client or the manner in which it is put or he wishes to give his client further legal advice, and should not be required to leave an interview unless his interference with its conduct clearly goes beyond this.

6E In a case where an officer takes the decision to exclude a solicitor, he must be in a position to satisfy the court that the decision was properly made. In order to do this he may need to witness what is happening himself.

7 Citizens of independent Commonwealth countries or foreign nationals

(a) Action

7.1 A citizen of an independent Commonwealth country or a national of a foreign country (including the Republic of Ireland) may communicate at any time with his High Commission, Embassy or Consulate.

than 24 hours he must be asked if he wishes the police to inform his High Commission of his whereabouts and the grounds for his detention. If so, the custody officer is responsible for ensuring that the High Commission is informed by telephone.

7.3 If a national of a foreign country with which a consular convention is in force is detained, the appropriate Consulate shall be informed as soon as practicable, subject to paragraph 7.6 below.

7.4 Any other foreign national who is detained must be informed as soon as practicable of his right to communicate with his consul if he so wishes. He must also be informed that the police will notify his consul of his arrest if he wishes.

7.5 Consular officers may visit one of their nationals who is in police detention to talk to him and, if required, to arrange for legal advice. Such visits shall take place out of the hearing of a police officer.

7.6 Notwithstanding the provisions of consular conventions, where the person is a political refugee (whether for reasons of race, nationality, political opinion or religion) or is seeking political asylum, a consular officer shall not be informed of the arrest of one of his nationals or given access to or information about him except at the person's express request.

(b) Documentation

7.7 A record shall be made when a person is informed of his rights under this section and of any communications with a High Commission, Embassy or Consulate.

Notes for Guidance

7A The exercise of the rights in this section may not be interfered with even though Annex B applies.

7B A list of countries with which a consular convention is in force is set out in the Home Office Consolidated Circular to the Police on Crime and Kindred Matters.

8 Conditions of detention

(a) Action

8.1 So far as is practicable, not more than one person shall be detained in each cell.

8.2 Cells in use must be adequately heated, cleaned and ventilated. They must be adequately lit, subject to such dimming as is compatible with safety and security to allow persons detained overnight to sleep. No additional restraints should be used within a locked cell unless absolutely necessary, and then only approved handcuffs.

8.3 Blankets, mattresses, pillows and other bedding supplied should be of a reasonable standard and in a clean and sanitary condition. [See Note 8B]

8.4 Access to toilet and washing facilities must be provided.

8.5 If it is necessary to remove a person's clothes for the purpose of investigation, for hygiene or health reasons or for cleaning, replacement clothing of a reasonable standard of comfort and cleanliness shall be provided. A person may not be interviewed unless adequate clothing has been offered to him.

8.6 At least two light meals and one main meal shall be offered in any period of 24 hours. Whenever necessary, advice shall be sought from the police surgeon on medical or dietary matters. As far as practicable, meals provided shall offer a varied diet and meet any special

~~dietary needs or religious beliefs that the person may have, he may also have special requirements which may be met by his family or friends at his or their own expense. [See Note 8B]~~

- 8.7 Brief outdoors exercise shall be offered daily if practicable.
- 8.8 A juvenile shall not be placed in a police cell unless no other secure accommodation is available and the custody officer considers that it is not practicable to supervise him if he is not placed in a cell. He may not be placed in a cell with a detained adult.
- 8.9 Reasonable force may be used if necessary for the following purposes:
- (i) to secure compliance with reasonable instructions, including instructions given in pursuance of the provisions of a code of practice; or
 - (ii) to prevent escape, injury, damage to property or the destruction of evidence.
- 8.10 Persons detained should be visited every hour, and those who are drunk, every half hour. [See Note 8A]

(b) Documentation

- 8.11 A record must be kept of replacement clothing and meals offered.
- 8.12 If a juvenile is placed in a cell, the reason must be recorded.

Notes for Guidance

8A *Whenever possible juveniles and other persons at risk should be visited more regularly.*

8B *The provisions in paragraphs 8.3 and 8.6 respectively regarding bedding and a varied diet are of particular importance in the case of a person detained under the Prevention of Terrorism (Temporary Provisions) Act 1984. This is because such a person may well remain in police custody for some time.*

9 Treatment of detained persons

(a) General

9.1 If a complaint is made by or on behalf of a detained person about his treatment since his arrest, or it comes to the notice of any officer that he may have been treated improperly, a report must be made as soon as practicable to an officer of the rank of inspector or above who is not connected with the investigation. If the matter concerns a possible assault or the possibility of the unnecessary or unreasonable use of force then the police surgeon must also be called as soon as practicable.

(b) Medical treatment

9.2 The custody officer must immediately call the police surgeon (or, in urgent cases, send the person to hospital or call the nearest available medical practitioner) if a person brought to a police station or already detained there:

- (a) appears to be suffering from physical or mental illness; or
- (b) is injured; or
- (c) does not show signs of sensibility and awareness or fails to respond normally to questions or conversation (other than through drunkenness alone); or
- (d) otherwise appears to need medical attention.

This applies even if the person makes no request for medical attention and whether or not he has recently had medical treatment elsewhere (unless brought to the police station direct from hospital). [See Note 9A]

9.3 If it appears to the custody officer, or he is told, that a person brought to the police station under arrest may be suffering from an infectious disease of any significance he

~~must take steps to isolate the person and his property, until he has obtained medical directions as to where the person should be taken, whether fumigation should take place and what precautions should be taken by officers who have been or will be in contact with him.~~

9.4 If a detained person requests a medical examination the police surgeon must be called as soon as possible. He may in addition be examined by a medical practitioner of his own choice at his own expense.

9.5 If a person is required to take or apply any medication in compliance with medical directions, the custody officer is responsible for its safe keeping and for ensuring that he is given the opportunity to take or apply it at the appropriate times. No police officer may administer controlled drugs subject to the Misuse of Drugs Act 1971 for this purpose. A person may administer such drugs to himself only under the personal supervision of the police surgeon.

9.6 If a detained person has in his possession or claims to need medication relating to a heart condition, diabetes, epilepsy or a condition of comparable potential seriousness then, even though paragraph 9.2 may not apply, the advice of the police surgeon must be obtained.

(c) Documentation

9.7 A record must be made of any arrangements made for an examination by a police surgeon under paragraph 9.1 above and of any complaint reported under that paragraph together with any relevant remarks by the custody officer.

9.8 A record must be kept of any request for a medical examination under paragraph 9.4, of the arrangements for any examination made, and of any medical directions to the police.

9.9 Subject to the requirements of section 4 above, the custody record shall include not only a record of all medication that a detained person has in his possession on arrival at the police station but also a note of any such medication he claims he needs but does not have with him.

Notes for Guidance

9A *The need to call a police surgeon need not apply to minor ailments.*

9B *It is important to remember that a person who appears to be drunk or behaving abnormally may be suffering from illness or the effect of drugs or may have sustained injury (particularly head injury) which is not apparent, and that someone needing or addicted to certain drugs may experience harmful effects within a short time of being deprived of their supply. Police should therefore always call the police surgeon when in any doubt, and act with all due speed.*

9C *If a medical practitioner does not record his clinical findings in the custody record, the record must show where they are recorded.*

9D *All officers dealing with detained persons are of course under a duty to observe not only the above provisions but also those set out in the Police Discipline Code.*

10 Cautions

(a) When a caution must be given

10.1 A person whom there are grounds to suspect of an offence must be cautioned before any questions about it (or further questions if it is his answers to previous questions that

provide grounds for suspicion) are put to him, for the purpose of obtaining information, may be given to a court in a prosecution. He therefore need not be cautioned if questions are put for other purposes, for example, to establish his identity, his ownership of, or responsibility for, any vehicle or the need to search him in the exercise of powers of stop and search.

10.2 When a person who is not under arrest is initially cautioned before or during an interview at a police station or other premises he must at the same time be told that he is not under arrest, is not obliged to remain with the officer but that if he does, may obtain legal advice if he wishes.

10.3 A person must be cautioned upon arrest for an offence unless:

- (a) it is impracticable to do so by reason of his condition or behaviour at the time; or
- (b) he has already been cautioned immediately prior to arrest in accordance with paragraph 10.1 above.

(b) *Action: general*

10.4 The caution shall be in the following terms:

"You do not have to say anything unless you wish to do so, but what you say may be given in evidence."

Minor deviations do not constitute a breach of this requirement provided that the sense of the caution is preserved. [See *Notes 10C* and *10D*]

10.5 When there is a break in questioning under caution the interviewing officer must ensure that the person being questioned is aware that he remains under caution. If there is any doubt the caution should be given again in full when the interview resumes. [See *Note 10A*]

(c) *Documentation*

10.6 A record shall be made when a caution is given under this section, either in the officer's pocket book or in the interview record as appropriate.

Notes for Guidance

10A In considering whether or not to caution again after a break, the officer should bear in mind that he may have to satisfy a court that the person understood that he was still under caution when the interview resumed.

10B It is not necessary to give or repeat a caution when informing a person who is not under arrest that he may be prosecuted for an offence.

10C If it appears that a person does not understand what the caution means, the officer who has given it should go on to explain it in his own words.

10D In case anyone who is given a caution is unclear about its significance, the officer concerned should explain that the caution is given in pursuance of the general principle of English law that a person need not answer any questions or provide any information which might tend to incriminate him, and that no adverse inferences from this silence may be drawn at any trial that takes place. The person should not, however, be left with a false impression that non co-operation will have no effect on his immediate treatment as, for example, his refusal to provide his name and address when charged with an offence may render him liable to detention.

(a) *Action*

11.1 No police officer may try to obtain answers to questions or to elicit a statement by the use of oppression, or shall indicate, except in answer to a direct question, what action will be taken on the part of the police if the person being interviewed answers questions, makes a statement or refuses to do either. If the person asks the officer directly what action will be taken in the event of his answering questions, making a statement or refusing to do either, then the officer may inform the person what action the police propose to take in that event provided that that action is itself proper and warranted.

11.2 As soon as a police officer who is making enquiries of any person about an offence believes that a prosecution should be brought against him and that there is sufficient evidence for it to succeed, he shall without delay cease to question him.

(b) *Interview records*

11.3 (a) An accurate record must be made of each interview with a person suspected of an offence, whether or not the interview takes place at a police station.

(b) If the interview takes place in the police station or other premises:

- (i) the record must state the place of the interview, the time it begins and ends, the time the record is made (if different), any breaks in the interview and the names of all those present; and must be made on the forms provided for this purpose or in the officer's pocket book or in accordance with the code of practice for the tape recording of police interviews with suspects;
- (ii) the record must be made during the course of the interview, unless in the investigating officer's view this would not be practicable or would interfere with the conduct of the interview, and must constitute either a verbatim record of what has been said or, failing this, an account of the interview which adequately and accurately summarises it.

11.4 If an interview record is not made during the course of the interview it must be made as soon as practicable after its completion.

11.5 Written interview records must be timed and signed by the maker.

11.6 If an interview record is not completed in the course of the interview the reason must be recorded in the officer's pocket book.

11.7 Any refusal by a person to sign an interview record when asked to do so in accordance with the provisions of this code must itself be recorded.

12 Interviews in police stations

(a) *Action*

12.1 If a police officer wishes to interview, or conduct enquiries which require the presence of, a detained person the custody officer is responsible for deciding whether to deliver him into his custody.

12.2 In any period of 24 hours a detained person must be allowed a continuous period of at least 8 hours for rest, free from questioning, travel or any interruption arising out of the investigation concerned. This period should normally be at night. The period of rest may not be interrupted or delayed unless there are reasonable grounds for believing that it would:

- (i) involve a risk of harm to persons or serious loss of, or damage to, property;

(iii) otherwise prejudice the outcome of the investigation.

If a person is arrested at a police station after going there voluntarily, the period of 24 hours runs from the time of arrival at the police station and not the time of his arrest.

12.3 A detained person may not be supplied with intoxicating liquor except on medical directions. No person who is unfit through drink or drugs to the extent that he is unable to appreciate the significance of questions put to him and his answers may be questioned about an alleged offence in that condition except in accordance with Annex C. [See Note 12C]

12.4 As far as practicable interviews shall take place in interview rooms which must be adequately heated, lit and ventilated.

12.5 Persons being questioned or making statements shall not be required to stand.

12.6 Before the commencement of an interview each interviewing officer shall identify himself and any other officers present by name and rank to the person being interviewed.

12.7 Breaks from interviewing shall be made at recognised meal times. Short breaks for refreshment shall also be provided at intervals of approximately two hours, subject to the interviewing officer's discretion to delay a break if there are reasonable grounds for believing that it would:

- (i) involve a risk of harm to persons or serious loss of, or damage to, property;
- (ii) delay unnecessarily the person's release from custody; or
- (iii) otherwise prejudice the outcome of the investigation.

12.8 If in the course of the interview a complaint is made by the person being questioned or on his behalf, concerning the provisions of this code then the interviewing officer shall:

- (i) record it in the interview record; and
- (ii) inform the custody officer, who is then responsible for dealing with it in accordance with section 9 of this code.

(b) Documentation

12.9 A record must be made of the times at which a detained person is not in the custody of the custody officer, and why; and of the reason for any refusal to deliver him out of that custody.

12.10 A record must be made of any intoxicating liquor supplied to a detained person, in accordance with paragraph 12.3 above.

12.11 Any decision to delay a break in an interview must be recorded, with grounds, in the interview record.

12.12 Where the person interviewed is in the police station at the time that a written record of the interview is made, he shall be given the opportunity to read it and to sign it as correct or to indicate the respects in which he considers it inaccurate, but no person shall be kept in custody for this sole purpose. If the interview is tape recorded the arrangements set out in the relevant code of practice apply. [See Note 12B]

12.13 All written statements made at a police station under caution shall be written on the forms provided for the purpose.

12.14 All written statements made under caution shall be taken in accordance with Annex D to this code.

12.15 Where the appropriate adult or another third party is present at an interview and is still in the police station at the time that a written record of the interview is made, he

shall be asked to read it, or may be asked to sign it as correct or to indicate the respects in which he considers it inaccurate. If the person refuses to read or sign the record as accurate or to indicate the respects in which he considers it inaccurate, the senior officer present shall record on the record itself, in the presence of the person concerned, what has happened. If the interview is tape recorded the arrangements set out in the relevant code of practice apply.

Notes for Guidance

12A The purpose of any interview is to obtain from the person concerned his explanation of the facts, and not necessarily to obtain an admission.

12B If the interview has been contemporaneously recorded and the record signed by the person interviewed in accordance with paragraph 12.12 above, or has been tape recorded, it is normally unnecessary to ask for a written statement. Statements under caution should normally be taken in these circumstances only at the person's express wish. An officer may, however, ask him whether or not he wants to make such a statement.

12C The police surgeon can give advice about whether or not a person is fit to be interviewed in accordance with paragraph 12.3 above.

13 Persons at risk: juveniles, and those who are mentally ill or mentally handicapped

13.1 A juvenile or a person who is mentally ill or mentally handicapped, whether suspected or not, must not be interviewed or asked to provide or sign a written statement in the absence of the appropriate adult unless Annex C applies. If he is cautioned in accordance with section 10 above in the absence of the appropriate adult, the caution must be repeated in the adult's presence (unless the interview has by then already finished).

13.2 If, having been informed of the right to legal advice under paragraph 3.6 above, the appropriate adult considers that legal advice should be taken, then the provisions of section 6 of this code apply.

13.3 Juveniles may only be interviewed at their places of education in exceptional circumstances and then only where the principal or his nominee agrees and is present.

Notes for Guidance

13A Where the parents or guardians of a person at risk are themselves suspected of involvement in the offence concerned, or are the victims of it, it may be desirable for the appropriate adult to be some other person.

13B It is important to bear in mind that, although juveniles or persons who are mentally ill or mentally handicapped are often capable of providing reliable evidence, they may, without knowing or wishing to do so, be particularly prone in certain circumstances to provide information which is unreliable, misleading or self-incriminating. Special care should therefore always be exercised in questioning such a person, and the appropriate adult involved, if there is any doubt about a person's age, mental state or capacity. Because of the risk of unreliable evidence it is also important to obtain corroboration of any facts admitted whenever possible.

13C The appropriate adult should be informed that he is not expected to act simply as an observer. The purposes of his presence are, first, to advise the person being questioned and to observe whether or not the interview is being conducted properly and fairly; and, secondly, to facilitate communication with the person being interviewed.

~~13D A juvenile should not be arrested unless the person is informed that the principal or his nominee must be informed.~~

14 Interpreters

(a) Foreign languages

14.1 Unless Annex C applies, a person must not be interviewed in the absence of a person capable of acting as interpreter if:

- (a) he has difficulty in understanding English;
- (b) the interviewing officer cannot himself speak the person's own language; and
- (c) the person wishes an interpreter to be present.

14.2 The interviewing officer shall ensure that the interpreter makes a note of the interview at the time in the language of the person being interviewed for use in the event of his being called to give evidence, and certifies its accuracy. The person shall be given an opportunity to read it or have it read to him and sign it as correct or to indicate the respects in which he considers it inaccurate. If the interview is tape recorded the arrangements set out in the relevant code of practice apply.

14.3 In the case of a person making a statement in a language other than English:

- (a) the interpreter shall take down the statement in the language in which it is made;
- (b) the person making the statement shall be invited to sign it; and
- (c) an official English translation shall be made in due course.

(b) The deaf

14.4 If a person is deaf or there is doubt about his hearing ability, he must not be interviewed in the absence of an interpreter unless he agrees in writing to be interviewed without one or Annex C applies. (Information on obtaining the services of a suitably qualified interpreter for the deaf is given in *Note for Guidance 3C*.)

14.5 The interviewing officer shall ensure that the interpreter makes a note of the interview at the time for use in the event of his being called to give evidence and certifies its accuracy. The person shall be given an opportunity to read it and sign it as correct or to indicate the respects in which he considers it inaccurate.

(c) Additional rules for detained persons

14.6 All reasonable attempts should be made to make clear to the detained person that interpreters will be provided at public expense.

14.7 Where paragraph 6.1 applies and the person concerned cannot communicate with the solicitor, whether because of language or hearing difficulties, an interpreter must be called. The interpreter may not be a police officer when interpretation is needed for the purposes of obtaining legal advice. In all other cases a police officer may only interpret if he first obtains the detained person's (or the appropriate adult's) agreement in writing or if the interview is tape recorded in accordance with the relevant code of practice.

14.8 When a person who has difficulty in understanding English is charged with an offence, and the custody officer cannot himself speak the person's language, arrangements must also be made for an interpreter to explain as soon as practicable the offence concerned and any other information given by the custody officer.

(d) Documentation

14.9 Action taken to call an interpreter under this section and any agreement to be interviewed in the absence of an interpreter must be recorded.

~~14A If the interpreter is needed as a prosecution witness at the person's trial, a second interpreter must act as the court interpreter.~~

15 Questioning: special restrictions

15.1 If a person has been arrested by one police force on behalf of another and the lawful period of detention in respect of that offence has not yet commenced in accordance with section 41 of the Police and Criminal Evidence Act 1984, no questions may be put to him about the offence while he is in transit between the forces except in order to clarify any voluntary statement made by him.

15.2 If a person is in police detention at a hospital he may not be questioned without the agreement of a responsible doctor. [See *Note 15A*]

Note for Guidance

15A If questioning takes place at a hospital under paragraph 15.2 (or on the way to or from a hospital) the period concerned counts towards the total period of detention permitted.

16 Reviews and extensions of detention

(a) Action

16.1 The review officer is responsible under section 40 of the Police and Criminal Evidence Act 1984 for determining whether or not a person's detention continues to be necessary. In reaching a decision he shall provide an opportunity to the detained person himself to make representations (unless he is unfit to do so because of his condition or behaviour) and to his solicitor or the appropriate adult if available at the time. Other persons having an interest in the person's welfare may make representations at the review officer's discretion.

16.2 The same persons may make representations to the officer determining whether further detention should be authorised under section 42 of the Act.

(b) Documentation

16.3 The grounds for and extent of any delay in conducting a review shall be recorded.

16.4 Any written representations shall be retained.

16.5 A record shall be made as soon as practicable of the outcome of each review and application for a warrant of further detention or its extension.

Notes for Guidance

16A An application for a warrant of further detention or its extension should be made between 10am and 9pm, and if possible during normal court hours. It will not be practicable to arrange for a court to sit specially outside the hours of 10am to 9pm. If it appears possible that a special sitting may be needed (either at a weekend, Bank/Public Holiday or on a weekday outside normal court hours but between 10am and 9pm) then the clerk to the justices should be given notice and informed of this possibility, while the court is sitting if possible.

16B If in the circumstances the only practicable way of conducting a review is over the telephone then this is permissible, provided that the requirements of section 40 of the Police and Criminal Evidence Act 1984 are observed.

(a) Action

17.1 When an officer considers that there is sufficient evidence to prosecute a detained person he should without delay bring him before the custody officer who shall then be responsible for considering whether or not he should be charged. Any resulting action should be taken in the presence of the appropriate adult if the person is a juvenile or mentally ill or mentally handicapped.

17.2 When a detained person is charged with or informed that he may be prosecuted for an offence he shall be cautioned in the terms of paragraph 10.4 above.

17.3 At the time a person is charged he shall be given a written notice showing particulars of the offence with which he is charged and including the name of the officer in the case, his police station and the reference number of the case. So far as possible the particulars of the charge shall be stated in simple terms, but they shall also show the precise offence in law with which he is charged. The notice shall begin with the following words:

"You are charged with the offence(s) shown below. You do not have to say anything unless you wish to do so, but what you say may be given in evidence."

If the person is a juvenile or is mentally ill or mentally handicapped the notice shall be given to the appropriate adult.

17.4 If at any time after a person has been charged with or informed he may be prosecuted for an offence a police officer wishes to bring to the notice of that person any written statement made by another person or the content of an interview with another person, he shall hand to that person a true copy of any such written statement or bring to his attention the content of the interview record, but shall say or do nothing to invite any reply or comment save to caution him in the terms of paragraph 10.4 above. If the person cannot read then the officer may read it to him. If the person is a juvenile or mentally ill or mentally handicapped the copy shall also be given to, or the interview record brought to the attention of, the appropriate adult.

17.5 Questions relating to an offence may not be put to a person after he has been charged with that offence, or informed that he may be prosecuted for it, unless they are necessary for the purpose of preventing or minimising harm or loss to some other person or to the public or for clearing up an ambiguity in a previous answer or statement, or where it is in the interests of justice that the person should have put to him and have an opportunity to comment on information concerning the offence which has come to light since he was charged or informed that he might be prosecuted. Before any such questions are put he shall be cautioned in the terms of paragraph 10.4 above.

17.6 Where a juvenile is charged with an offence and the custody officer authorises his continuing detention he must try to make arrangements for the juvenile to be taken into the care of a local authority to be detained pending appearance in court unless he certifies that it is impracticable to do so in accordance with section 38(6) of the Police and Criminal Evidence Act 1984. [See Note 17A]

(b) Documentation

17.7 A record shall be made of anything a detained person says when charged.

contemporaneously recorded in full on the forms provided and the record signed by that person or, if he refuses, by the interviewing officer and any third parties present. If the questions are tape recorded the arrangements set out in the relevant code of practice apply.

17.9 If it is not practicable to make arrangements for the transfer of a juvenile into local authority care in accordance with paragraph 17.6 above the custody officer must record the reasons and make out a certificate to be produced before the court together with the juvenile.

Note for Guidance

17A Neither a juvenile's unruliness nor the nature of the offence with which he is charged provides grounds for the custody officer to retain him in police custody rather than seek to arrange for his transfer to the care of the local authority.

ANNEX A

Intimate and strip searches [4.1]

(a) Action

1 Body orifices may be searched only if an officer of the rank of superintendent or above has reasonable grounds for believing:

- (a) that an article which could cause physical injury to a detained person or others at the police station has been concealed; or
- (b) that the person has concealed a Class A drug which he intended to supply to others or to export; and
- (c) that in either case an intimate search is the only practicable means of removing it. The reasons why an intimate search is considered necessary shall be explained to the person before the search takes place.

2 An intimate search may only be carried out by a registered medical practitioner, State Registered Nurse, or State Enrolled Nurse, unless an officer of at least the rank of superintendent considers that this is not practicable and the search is to take place under sub-paragraph 1(a) above.

3 An intimate search under the sub-paragraph 1(a) above may take place only at a hospital, surgery, other medical premises or police station. A search under sub-paragraph 1(b) may take place only at a hospital, surgery or other medical premises.

4 An intimate search at a police station of a juvenile or a mentally ill or mentally handicapped person may take place only in the presence of the appropriate adult of the same sex. In the case of a juvenile, the search may take place in the absence of the appropriate adult only if the juvenile signifies in the presence of the appropriate adult that he prefers the search to be done in his absence and the appropriate adult agrees.

5 A strip search (that is a search involving the removal of more than outer clothing) may take place only if the custody officer considers it to be necessary to remove an article which the detained person would not be allowed to keep.

6 Where an intimate search under sub-paragraph 1(a) above or a strip search is carried out by a police officer, the officer must be of the same sex as the person searched. No person of the opposite sex who is not a medical practitioner or nurse shall be present, nor shall anyone whose presence is unnecessary.

7 In the case of an intimate search the custody officer shall as soon as practicable record which parts of the person's body were searched, who carried out the search, who was present, the reasons for the search and its result.

8 In the case of a strip search he shall record the reasons for the search and its result.

9 If an intimate search is carried out by a police officer, the reason why it is impracticable for a suitably qualified person to conduct it must be recorded.

ANNEX B

Delay in notifying arrest or allowing access to legal advice

(A) Persons detained under the Police and Criminal Evidence Act 1984

(a) Action

1 The rights set out in sections 5 or 6 of the code (or both) may be delayed if the person is in police detention in connection with a serious arrestable offence, has not yet been charged with an offence and an officer of the rank of superintendent or above has reasonable grounds for believing that the exercise of each right:

- (i) will lead to interference with or harm to evidence connected with a serious arrestable offence or interference with or physical harm to other persons;
- (ii) will lead to the alerting of other persons suspected of having committed such an offence but not yet arrested for it; or
- (iii) will hinder the recovery of property obtained in consequence of the commission of such an offence.

[See Note B3]

2 Access to a solicitor may not be delayed on the grounds that he might advise the person not to answer any questions or that the solicitor was initially asked to attend the police station by someone else, provided that the person himself then wishes to see the solicitor.

3 These rights may be delayed only for as long as is necessary and, subject to paragraph 6 below, in no case beyond 36 hours after the relevant time as defined in section 41 of the Police and Criminal Evidence Act 1984. If the above grounds cease to apply within this time, the person must as soon as practicable be asked if he wishes to exercise either right and action must be taken in accordance with the relevant section of the code.

4 A detained person must be permitted to consult a solicitor for a reasonable time before any court hearing.

(b) Documentation

5 The grounds for action under this Annex shall be recorded and the person informed of them as soon as practicable.

(B) Persons detained under the Prevention of Terrorism (Temporary Provisions) Act 1984

(a) Action

6 The rights set out in sections 5 or 6 of this code (or both) may be delayed if paragraph 1 above applies or if an officer of the rank of superintendent or above has reasonable grounds for believing that the exercise of either right:

(a) will lead to interference with the gathering of information about the preparation or instigation of acts of terrorism; or

(b) by alerting any person, will make it more difficult to prevent an act of terrorism or to secure the apprehension, prosecution or conviction of any person in connection with the commission, preparation or instigation of an act of terrorism.

7 These rights may be delayed only for as long as is necessary and in no case beyond 48 hours from the time of arrest. If the above grounds cease to apply within this time, the person must as soon as practicable be asked if he wishes to exercise either right and action must be taken in accordance with the relevant section of this code.

(b) Documentation

8 Paragraph 5 above applies.

9 Any reply given by a person under paragraph 7 above must be recorded and the person asked to endorse the record in relation to whether he wishes to receive legal advice at this point.

Notes for Guidance

B1 Even if Annex B applies in the case of a juvenile, or a person who is mentally ill or mentally handicapped, action to inform the appropriate adult must nevertheless be taken in accordance with paragraph 3.6 of the code.

B2 In the case of Commonwealth citizens and foreign nationals, see Note 7A.

B3 Police detention is defined in section 118(2) of the Police and Criminal Evidence Act 1984.

ANNEX C

Urgent interviews

1 If, and only if, an officer of the rank of superintendent or above considers that delay will involve an immediate risk of harm to persons or serious loss of or serious damage to property;

- (a) a person heavily under the influence of drink or drugs may be interviewed in that state; or
- (b) an arrested juvenile or a person who is mentally ill or mentally handicapped may be interviewed in the absence of the appropriate adult; or
- (c) a person who has difficulty in understanding English or who has a hearing disability may be interviewed in the absence of an interpreter.

2 Questioning in these circumstances may not continue once sufficient information to avert the immediate risk has been obtained.

3 A record shall be made of the grounds for any decision to interview a person under paragraph 1 above.

Note for Guidance

C1 The special groups referred to in Annex C are all particularly vulnerable. The provisions of the Annex, which override safeguards designed to protect them and to minimise the risk of interviews producing unreliable evidence, should be applied only in exceptional cases of need.

Written statements under caution [12.14]

(a) *Written by a person under caution*

- 1 A person shall always be invited to write down himself what he wants to say.
- 2 Where the person wishes to write it himself, he shall be asked to write out and sign before writing what he wants to say, the following:
"I make this statement of my own free will. I understand that I need not say anything unless I wish to do so and that what I say may be given in evidence."
- 3 Any person writing his own statement shall be allowed to do so without any prompting except that a police officer may indicate to him which matters are material or question any ambiguity in the statement.

(b) *Written by a police officer*

- 4 If a person says that he would like someone to write it for him, a police officer shall write the statement, but, before starting, he must ask him to sign, or make his mark, to the following:
"I, wish to make a statement. I want someone to write down what I say. I understand that I need not say anything unless I wish to do so and that what I say may be given in evidence."
- 5 Where a police officer writes the statement, he must taken down the exact words spoken by the person making it and he must not edit or paraphrase it. Any questions that are necessary (e.g. to make it more intelligible) and the answers given must be recorded contemporaneously on the statement form.
- 6 When the writing of a statement by a police officer is finished the person making it shall be asked to read it and to make any corrections, alterations or additions he wishes. When he has finished reading it he shall be asked to write and sign or make his mark on the following certificate at the end of the statement:
"I have read the above statement, and I have been able to correct, alter or add anything I wish. This statement is true. I have made it of my own free will."
- 7 If the person making the statement cannot read, or refuses to read it, or to write the above mentioned certificate at the end of it or to sign it, the senior police officer present shall read it over to him and ask him whether he would like to correct, alter or add anything and to put his signature or make his mark at the end. The police officer shall then certify on the statement itself what has occurred.

ANNEX E

Summary of provisions relating to mentally ill and mentally handicapped persons

- 1 If an officer has any suspicion or is told in good faith that a person of any age, whether or not in custody, may be mentally ill or mentally handicapped, or cannot understand the significance of questions put to him or his replies, then he shall be treated as a mentally ill or mentally handicapped person. [1.4]
- 2 In the case of a person who is mentally ill or mentally handicapped, "the appropriate

- (a) a relative; guardian or some other person responsible for his care or custody;
- (b) someone who has experience of dealing with mentally ill or mentally handicapped persons but is not a police officer or employed by the police; or
- (c) failing either of the above, some other responsible adult who is not a police officer or employed by the police.

[1.7(b)]

- 3 If the custody officer authorises the detention of a person who is mentally handicapped or is suffering from mental illness he must as soon as practicable inform the appropriate adult of the grounds for the person's detention and his whereabouts, and ask the adult to come to the police station to see the person. If the appropriate adult is already at the police station when information is given as required in paragraphs 3.1 to 3.3 the information must be given to the detained person in his presence. If the appropriate adult is not at the police station when the information is given then the information must be given to the detained person again in the presence of the appropriate adult once that person arrives. [3.6]
- 4 If a person brought to a police station appears to be suffering from mental illness, or is incoherent other than through drunkenness alone, or if a detained person subsequently appears to be mentally ill, the custody officer must immediately call the police surgeon or, in urgent cases, send the person to hospital or call the nearest available medical practitioner. [9.2]
- 5 A mentally ill or mentally handicapped person must not be interviewed or asked to provide or sign a written statement in the absence of the appropriate adult unless an officer of the rank of superintendent or above considers that delay will involve an immediate risk of harm to persons or serious loss or serious damage to property. Questioning in these circumstances may not continue in the absence of the appropriate adult once sufficient information to avert the risk has been obtained. A record shall be made of the grounds for any decision to begin an interview in these circumstances. [13.1 and Annex C]
- 6 If the appropriate adult, having been informed of the right to legal advice, considers that legal advice should be taken, the provisions of section 6 of the code apply as if the mentally ill or mentally handicapped person had requested access to legal advice. [13.2]
- 7 If the detention of a mentally ill or mentally handicapped person is reviewed by a review officer or a superintendent, the appropriate adult must, if available at the time, be given an opportunity to make representations to the officer about the need for continuing detention. [16.1 to 16.2]
- 8 If the custody officer charges a mentally ill or mentally handicapped person with an offence or takes such other action as is appropriate when there is sufficient evidence for a prosecution this must be done in the presence of the appropriate adult. The written notice embodying any charge must be given to the appropriate adult. [17.1 to 17.3]
- 9 An intimate search of a mentally ill or mentally handicapped person may take place only in the presence of the appropriate adult of the same sex. [Annex A, paragraph 4]

Notes for Guidance

E1 It is important to bear in mind that although persons who are mentally ill or mentally handicapped are often capable of providing reliable evidence, they may, without knowing or wishing to do so, be particularly prone in certain circumstances to provide information which is unreliable, misleading or self-incriminating. Special care should therefore always

be exercised in questioning such a person and the appropriate adult involved. If there is any doubt about a person's mental state or capacity. Because of the risk of unreliable evidence, it is important to obtain corroboration of any facts admitted whenever possible. [Note 13B]

E2 Because of the risks referred to in Note E1, which the presence of the appropriate adult is intended to minimise, officers of superintendent rank or above should exercise their discretion to authorise the commencement of an interview in the adult's absence only in exceptional cases, where it is necessary to avert an immediate risk of serious harm. [Annex C, sub-paragraph 1(b) and Note C1]

E3 The appropriate adult should be informed that he is not expected to act simply as an observer. The purposes of his presence are, first, to advise the person being interviewed and to observe whether or not the interview is being conducted properly and fairly; and, secondly, to facilitate communication with the person being interviewed. [Note 13C]

E4 In the case of persons who are mentally ill or mentally handicapped, it may in certain circumstances be more satisfactory for all concerned if the appropriate adult is someone who has experience or training in their care rather than a relative lacking such qualifications. But if the person himself prefers a relative to a better qualified stranger his wishes should if practicable be respected. [Note 1C]

D. CODE OF PRACTICE FOR THE IDENTIFICATION OF PERSONS BY POLICE OFFICERS

1 General

1.1 This code of practice must be readily available at all police stations for consultation by police officers, detained persons and members of the public.

1.2 The notes for guidance included are not provisions of this code, but are guidance to police officers and others about its application and interpretation. Provisions in the annexes to the code are provisions of this code.

1.3 If an officer has any suspicion, or is told in good faith, that a person of any age may be mentally ill or mentally handicapped, or mentally incapable of understanding the significance of questions put to him or his replies, then that person shall be treated as a mentally ill or mentally handicapped person for the purposes of this code.

1.4 If anyone appears to be under the age of 17 then he shall be treated as a juvenile for the purposes of this code in the absence of clear evidence to show that he is older.

1.5 In this code "the appropriate adult" means:

- (a) in the case of a juvenile:
 - (i) his parent or guardian (or, if he is in care, the care authority or organisation);
 - (ii) a social worker; or
 - (iii) failing either of the above, another responsible adult who is not a police officer or employed by the police.
- (b) in the case of a person who is mentally ill or mentally handicapped:
 - (i) a relative, guardian or some other person responsible for his care or custody;
 - (ii) someone who has experience of dealing with mentally ill or mentally handicapped persons but is not a police officer or employed by the police; or
 - (iii) failing either of the above, some other responsible adult who is not a police officer or employed by the police.

1.6 Any reference to a custody officer in this code includes an officer who is performing the functions of a custody officer. Any reference to a solicitor in this code includes a clerk or legal executive except in Annex C, paragraph 7.

1.7 Where a record is made under this code of any action requiring the authority of an officer of specified rank, his name and rank must be included in the record.

1.8 All records must be timed and signed by the maker.

1.9 In the case of a detained person records are to be made in his custody record unless otherwise specified.

1.10 In the case of any procedure requiring a suspect's consent, the consent of a person who is mentally ill or mentally handicapped is only valid if given in the presence of the appropriate adult; and in the case of a juvenile the consent of his parent or guardian is required as well as his own (unless he is under 14, in which case the consent of his parent or guardian is sufficient in its own right). [See Note 1A]

1.11 In the case of any procedure requiring information to be given to a suspect, it must be given in the presence of the appropriate adult if the suspect is mentally ill, mentally handicapped or a juvenile. If the suspect is deaf or there is doubt about his hearing ability or ability to understand English, and the officer cannot himself speak the person's language, the information must be given through an interpreter.

witness) who is mentally ill, mentally handicapped or a juvenile must take place in the presence of the appropriate adult; but the adult must not be allowed to prompt any identification of a suspect by a witness.

- 1.13 Nothing in this code affects any procedure under:
- (i) sections 5 to 12 of the Road Traffic Act 1972, as amended;
 - (ii) paragraph 18 of Schedule 2 to the Immigration Act 1971; or
 - (iii) paragraph 5 of Schedule 3 to the Prevention of Terrorism (Temporary Provisions) Act 1984.
- 1.14 In this code references to photographs include optical disc computer printouts.

Note for Guidance

1A For the purposes of paragraph 1.10 above consent may be given, in the case of a juvenile in the care of a local authority or voluntary organisation, by that authority or organisation.

2 Identification by witnesses

(a) *Suspect at the police station: the decision as to the method of identification.*

2.1 In a case which involves disputed identification evidence a parade must be held if the suspect asks for one and it is practicable to hold one. A parade may also be held if the officer in charge of the investigation considers that it would be useful.

2.2 Arrangements for the parade and its conduct shall be the responsibility of an officer in uniform not below the rank of inspector who is not involved with the investigation ("the identification officer"). No officer involved with the investigation of the case against the suspect may take any part in the arrangements for, or the conduct of, the parade.

2.3 A parade need not be held if the identification officer considers that, whether by reason of the unusual appearance of the suspect or for some other reason, it would not be practicable to assemble sufficient people who resembled him to make a parade fair.

2.4 If a suspect refuses or, having agreed, fails to attend an identification parade or the holding of a parade is impracticable, arrangements must if practicable be made to allow the witness an opportunity of seeing him in a group of people. Such a group identification may also be arranged if the officer in charge of the investigation considers, whether because of fear on the part of the witness or for some other reason, that it is, in the circumstances, more satisfactory than a parade.

2.5 If neither a parade nor a group identification procedure is arranged, the suspect may be confronted by the witness. Such a confrontation does not require the suspect's consent, but may not take place unless either a parade or a group identification is practicable, whether because the suspect has withheld his consent to them or his co-operation, or for some other reason.

2.6 A witness must not be shown photographs or photofit, identikit or similar pictures for identification purposes if there is a suspect already available to be asked to stand on a parade or participate in a group identification.

(b) *Notice to suspect*

2.7 Before (a) a parade takes place or (b) a group identification is arranged, the identification officer shall explain to the suspect:

- (i) the purpose of the parade or group identification;
- (ii) the procedures for holding it (including his right to have a solicitor or friend present);

(iii) where appropriate the special arrangements for mentally ill and mentally handicapped persons;

- (v) the fact that he does not have to take part in either procedure and, if it is proposed to hold a group identification, his entitlement to a parade if this can practicably be arranged; and
- (vi) the fact that, if he does not consent to take part in a parade or other group identification, he may be confronted by a witness and his refusal may be given in evidence in any subsequent trial, where a witness might be given an opportunity of identifying him in court.

2.8 This information must also be contained in a written notice which must be handed to the suspect. The identification officer shall give the suspect a reasonable opportunity to read the notice, after which he shall be asked to sign a second copy of the notice to indicate whether or not he is willing to attend the parade or participate in the group identification. The signed copy shall be retained by the identification officer.

(c) *Conduct of a parade or other group identification*

2.9 Any parade or other group identification must be carried out in accordance with Annex A.

(d) *Confrontation by a witness*

2.10 Any confrontation must be carried out in accordance with Annex B.

(e) *Street identification*

2.11 A police officer may take a witness to a particular neighbourhood or place to observe the persons there to see whether he can identify the person whom he said he saw on the relevant occasion. Care should be taken however not to direct the witness's attention to any individual. Where the suspect is at a police station, the provisions of paragraphs 2.1 to 2.10 must apply.

(f) *Showing of photographs etc*

2.12 If photographs or photofit, identikit or similar pictures are shown to a witness for identification purposes this must be done in accordance with Annex C.

(g) *Documentation*

2.13 The identification officer will make a record of the parade or group identification on the forms provided.

2.14 If the identification officer considers that it is not practicable to hold a parade he shall tell the suspect why and record the reason.

2.15 A record shall be made of a person's refusal to take part in a parade or other group identification.

3 Identification by fingerprints

(a) *Action*

3.1 A person's fingerprints may be taken only with his consent or if paragraph 3.2 applies. If he is at a police station consent must be in writing. In either case the person must be informed of the reason before they are taken and that they will be destroyed if paragraph 3.4 applies. He must be told that he may witness their destruction if he asks to do so within

~~one month of being cleared or informed that he will not be prosecuted.~~
3.2 Powers to take fingerprints without consent from any person over the age of ten years are provided by section 61 of the Police and Criminal Evidence Act 1984. Reasonable force may be used if necessary.

3.3 Section 27 of the Police and Criminal Evidence Act 1984 describes the circumstances in which a constable may require a person convicted of a recordable offence to attend at a police station in order that his fingerprints may be taken. [See Note 3A]

3.4 The fingerprints of a person and all copies of them taken in that case must be destroyed if:

- (a) he is prosecuted for the offence concerned and cleared; or
 - (b) he is not prosecuted (unless he admits the offence and is cautioned for it).
- An opportunity of witnessing the destruction must be given to him if he wishes and if, in accordance with paragraph 3.1, he applies within one month of being cleared or informed that he will not be prosecuted.

3.5 References to fingerprints include palm prints.

(b) Documentation

3.6 A record must be made as soon as possible of the reason for taking a person's fingerprints without consent and of their destruction. If force is used a record shall be made of the circumstances and those present.

Note for Guidance

3A References to recordable offences in this code relate to those offences for which convictions are recorded in national police records. (See section 27(4) of the Police and Criminal Evidence Act 1984.)

4 Identification by photographs

(a) Action

4.1 The photograph of a person who has been arrested may be taken at a police station only with his written consent or if paragraph 4.2 applies. In either case he must be informed of the reason for taking it and that the photograph will be destroyed if paragraph 4.4 applies. He must be told that he may witness the destruction of the photograph if he asks to do so within one month of being cleared or informed that he will not be prosecuted.

4.2 The photograph of a person who has been arrested may be taken without consent if:

- (i) he is arrested at the same time as other persons, or at a time when it is likely that other persons will be arrested, and a photograph is necessary to establish who was arrested, at what time and at what place;
- (ii) he has been charged with or reported for a recordable offence and has not yet been released or brought before a court [See Note 3A]; or
- (iii) he is convicted of such an offence and his photograph is not already on record as a result of (i) or (ii). There is no power of arrest to take a photograph in pursuance of this provision which applies only where the person is in custody as a result of the exercise of another power (e.g. arrest for fingerprinting under section 27 of the Police and Criminal Evidence Act 1984).

4.3 Force may not be used to take a photograph.

4.4 Where a person's photograph has been taken in accordance with this section, the

~~photograph, negatives and all copies taken in that particular case must be destroyed if:~~

- (a) he is prosecuted for the offence and cleared; or
 - (b) he is not prosecuted (unless he admits the offence and is cautioned for it).
- An opportunity of witnessing the destruction must be given to him if he so requests provided, in accordance with paragraph 4.1, he applies within one month of being cleared or informed that he will not be prosecuted.

(b) Documentation

4.5 A record must be made as soon as possible of the reason for taking a person's photograph under this section without consent and of the destruction of any photographs.

5 Identification by body samples, swabs and impressions

(a) Action

5.1 Dental impressions and intimate samples may be taken from a person in police detention only:

- (i) with his written consent;
- (ii) if an officer of the rank of superintendent or above considers that the offence concerned is a serious arrestable offence; and
- (iii) there are reasonable grounds for suspecting that such an impression, sample or swab will tend to confirm or disprove the suspect's involvement in it.

Before the impression, sample or swab is taken, the person must be informed of the grounds on which the required authority has been given, including the nature of the suspected offence.

5.2 Before a person is asked to provide an intimate sample or swab he must be warned that a refusal may be treated, in any proceedings against him, as corroborating relevant prosecution evidence. [See Note 5A]

5.3 Except for samples of urine or saliva, the above samples and swabs may be taken only by a registered medical or dental practitioner as appropriate.

5.4 A non-intimate sample, as defined in paragraph 5.11 or a body impression other than fingerprints, may be taken from a detained person only with his written consent or if paragraph 5.5 below applies. Even if he consents, an officer of the rank of inspector or above must have reasonable grounds for believing that such a sample or impression will tend to confirm or disprove the suspect's involvement in a particular offence.

5.5 A non-intimate sample or a body impression may be taken without consent if the offence in connection with which the suspect is detained is a serious arrestable offence and an officer of the rank of superintendent or above has reasonable grounds for believing that the sample or impression will tend to confirm or disprove his involvement in it.

5.6 The suspect must be informed, before the sample or impression is taken, of the grounds on which the relevant authority has been given, including the nature of the suspected offence, and that the sample or impression will be destroyed if paragraph 5.8 applies.

5.7 Where paragraph 5.5 applies, reasonable force may be used if necessary to take non-intimate samples and body impressions.

5.8 Where a sample or impression has been taken in accordance with this section, it and all copies of it taken in that particular case must be destroyed:

- (a) if he is prosecuted for the offence concerned and cleared; or
- (b) if he is not prosecuted (unless he admits the offence and is cautioned for it).

(b) Documentation

5.9 A record must be made as soon as practicable of the reason for taking a sample or impression and of its destruction. If force is used a record shall be made of the circumstances and those present. Consent to the taking of a sample or impression must be recorded in writing.

5.10 A record must be made of the giving of a warning required by paragraph 5.2 above.

(c) General

5.11 The following terms are defined in section 65 of the Police and Criminal Evidence Act 1984 as follows:

(a) "intimate sample" means a sample of blood, semen or any other tissue fluid, urine, saliva or pubic hair, or a swab taken from a person's body orifice;

(b) "non-intimate sample" means:

(i) a sample of hair other than pubic hair;

(ii) a sample taken from a nail or from under a nail;

(iii) a swab taken from any part of a person's body other than a body orifice;

(iv) a footprint or a similar impression of any part of a person's body other than a part of his hand.

5.12 Where clothing needs to be removed in circumstances likely to cause embarrassment to the person, no person of the opposite sex, who is not a medical practitioner or nurse, shall be present, nor shall anyone whose presence is unnecessary.

Note for Guidance

5A In warning a person who refuses to provide an intimate sample or swab in accordance with paragraph 5.2, the following form of words may be helpful:

"You do not have to [provide this sample][allow this swab to be taken], but I must warn you that if you do not do so, a court may treat such a refusal as supporting any relevant evidence against you."

ANNEX A

Identification parades and group identifications [2.9]

(a) General

1 A suspect must be given a reasonable opportunity to have a solicitor or friend present, and the identification officer shall ask him to indicate on a second copy of the notice to suspect whether or not he so wishes.

2 A parade may take place either in a normal room or in one equipped with a screen permitting witnesses to see members of the parade without being seen. The procedures for the composition and conduct of the parade are the same in both cases, subject to paragraph 7 below (except that a parade involving a screen may take place only when the suspect's solicitor, friend or appropriate adult is present or the parade is recorded on video).

(b) Parades involving prison inmates

3 If an inmate is required for identification, and there are no security problems about his leaving the establishment, he may be asked to participate in a parade. (Group identification, however, may not be arranged other than in the establishment or inside a police station.)

A parade may be held in a Prison, Department establishment, but shall be conducted as far as practicable under normal parade rules. Members of the public shall make up the parade unless there are serious security or control objections to their admission to the establishment. In such cases, or if a group identification is arranged within the establishment, other inmates may participate.

(c) Conduct of a parade

5 Immediately before the parade, the identification officer must remind the suspect of the procedures governing its conduct and caution him in the terms of paragraph 10.4 of the code of practice for the detention, treatment and questioning of persons by police officers.

6 All unauthorised persons must be strictly excluded from the place where the parade is held.

7 Once the parade has been formed, everything afterwards in respect of it shall take place in the presence and hearing of the suspect and of any interpreter, solicitor, friend or appropriate adult who is present (unless the parade involves a screen, in which case everything said to or by any witness at the place where the parade is held must be said in the hearing and presence of the suspect's solicitor, friend or appropriate adult or be recorded on video).

8 The parade shall consist of at least eight persons (in addition to the suspect) who so far as possible resemble the suspect in age, height, general appearance and position in life. One suspect only shall be included in a parade unless there are two suspects of roughly similar appearance in which case they may be paraded together with at least twelve other persons. In no circumstances shall more than two suspects be included in one parade and where there are separate parades they shall be made up of different persons.

9 Where all members of a similar group are possible suspects, separate parades shall be held for each member of the group unless there are two suspects of similar appearance when they may appear on the same parade with at least twelve other members of the group who are not suspects. Where police officers in uniform form an identification parade, any numerals or other identifying badge shall be concealed.

10 When the suspect is brought to the place where the parade is to be held, he shall be asked by the identification officer whether he has any objection to the arrangements for the parade or to any of the other participants in it. The suspect may obtain advice from his solicitor or friend, if present, before the parade proceeds. Where practicable, steps shall be taken to remove the grounds for objection. Where it is not practicable to do so, the officer shall explain to the suspect why his objections cannot be met.

11 The suspect may select his own position in the line. Where there is more than one witness, the identification officer must tell the suspect, after each witness has left the room, that he can if he wishes change position in the line. Each position in the line must be clearly numbered, whether by means of a number laid on the floor in front of each parade member or by other means.

12 The identification officer is responsible for ensuring that, before they attend the parade, witnesses are not able to:

- (i) communicate with each other about the case or overhear a witness who has already seen the parade;
- (ii) see any member of the parade;
- (iii) on that occasion see or be reminded of any photograph or description of the suspect or be given any other indication of his identity; or
- (iv) see the suspect either before (or after) the parade.

13 The officer conducting a witness to a parade must not discuss with him the composition of the parade, and in particular he must not disclose whether a previous witness has made any identification.

14 Witnesses shall be brought in one at a time. Immediately before the witness inspects the parade, the identification officer shall tell him that the person he saw may or may not be on the parade and if he cannot make a positive identification he should say so. The officer shall then ask him to walk along the parade at least twice, taking as much care and time as he wishes. When he has done so the officer shall ask him whether the person he saw in person on an earlier relevant occasion is on the parade.

15 The witness should make an identification by indicating the number of the person concerned.

16 If the witness makes an identification after the parade has ended the suspect and, if present, his solicitor, interpreter, or friend shall be informed. Where this occurs, consideration should be given to allowing the witness a second opportunity to identify the suspect.

17 If a witness wishes to hear any parade member speak, adopt any specified posture or see him move, the identification officer shall first ask whether he can identify any persons on the parade on the basis of appearance only. When the request is to hear members of the parade speak, the witness shall be reminded that the participants in the parade have been chosen on the basis of physical appearance only. Members of the parade may then be asked to comply with the witness's request to hear them speak, to see them move or to adopt any specified posture.

18 When the last witness has left, the suspect shall be asked by the identification officer whether he wishes to make any comments on the conduct of the parade.

(d) Conduct of a group identification

19 The arrangements for a group identification are the sole responsibility of the identification officer and must as far as practicable satisfy the requirements of (c) above.

(e) Documentation

20 If a parade is held without a solicitor or a friend of the suspect being present, a colour photograph of the parade shall be taken unless any of the parade members objects. A copy of the photograph shall be supplied on request to the suspect or his solicitor within a reasonable time.

21 Where a photograph is taken in accordance with paragraph 20, at the conclusion of the proceedings the negative will be destroyed.

22 If the identification officer asks any person to leave a parade because he is interfering with its conduct the circumstances shall be recorded.

23 A record must be made of all those present at a parade or group identification whose names are known to the police.

24 If prison inmates make up a parade the circumstances must be recorded.

25 A record of the conduct of any parade or group identification must be made on the forms provided.

ANNEX B

Confrontation by a witness [2.5 and 2.10]

1 The identification officer is responsible for the conduct of any confrontation of a suspect by a witness.

2 The suspect shall be confronted independently by each witness, who shall be asked "Is this the person?". Confrontation must take place in the presence of the suspect's solicitor, interpreter or friend, where he has one, unless this would cause unreasonable delay.

3 Confrontation may take place either in a normal room or one equipped with a screen permitting a witness to see the suspect without being seen. In both cases the procedures are the same except that a room equipped with a screen may be used only when the suspect's solicitor, friend or appropriate adult is present or the confrontation is recorded on video.

ANNEX C

Showing of photographs [2.12]

(a) Action

1 An officer of the rank of sergeant or above shall be responsible for supervising and directing the showing of photographs. The actual showing may be done by a constable.

2 Only one witness shall be shown photographs at any one time. He shall be given as much privacy as practicable and shall not be allowed to communicate with or overhear any other witness in the case.

3 The witness shall be shown not less than twelve photographs at a time. These photographs shall either be in an album or loose photographs mounted in a frame and shall, as far as possible, all be of a similar type. If the photographs include that of a person suspected by the police of the offence concerned, the other photographs shall resemble the suspect as closely as possible.

4 When the witness is shown the photographs, he shall be told that the photograph of the person he saw may or may not be amongst them. He shall not be prompted or guided in any way but shall be left to make any selection without help.

5 If a witness makes a positive identification from photographs, then, unless the person identified is otherwise eliminated from enquiries, other witnesses shall not be shown photographs. But both they and the witness who has made the identification shall be asked to attend an identification parade or group identification if practicable unless there is no dispute about the identification of the suspect.

6 Where the use of a photofit, identikit or similar picture has led to there being a suspect available who can be asked to appear on a parade, or participate in a group identification the picture shall not be shown to other potential witnesses.

7 Where a witness attending an identification parade has previously been shown photographs or photofit, identikit or similar pictures then the suspect and his solicitor must be informed of this fact before any committal proceedings or summary trial.

8 Any photographs used shall be retained for production in court if necessary, whether or not an identification is made.

(b) Documentation

9 Whether or not an identification is made, a record shall be kept of the showing of photographs and of any comment made by the witness.

E CODE OF PRACTICE ON TAPE RECORDING OF POLICE INTERVIEWS WITH SUSPECTS

1 General

1.1 This code of practice must be readily available for consultation by police officers, detained persons and members of the public at every police station to which an order made under section 60(1)(b) of the Police and Criminal Evidence Act 1984 applies.

1.2 The notes for guidance included are not provisions of this code. They form guidance to police officers and others about its application and interpretation.

1.3 Nothing in this code shall be taken as detracting in any way from the requirements of the Code of Practice for the Detention, Treatment and Questioning of Persons by Police Officers (Code C). [See Notes 1A and 1B]

Notes for Guidance

1A The Code of Practice for the Detention, Treatment and Questioning of Persons by Police Officers is contained in the booklet "Police and Criminal Evidence Act 1984 (s.66): Codes of Practice" published by Her Majesty's Stationery Office, 1985.

1B As in Code C, references to custody officers include those carrying out the function of a custody officer.

2 Recording and the sealing of master tapes

2.1 Tape recording of interviews shall be carried out openly to instil confidence in its reliability as an impartial and accurate record of the interview. [See Note 2A]

2.2 One tape, referred to in this code as the master tape, will be sealed before it leaves the presence of the suspect. A second tape will be used as a working copy. The master tape is either one of the two tapes used in a twin deck machine or the only tape used in a single deck machine. The working copy is either the second tape used in a twin deck machine or a copy of the master tape made by a single deck machine. [See Notes 2B and 2C]

Notes for Guidance

2A Police Officers will wish to arrange that, as far as possible, tape recording arrangements are unobtrusive. It must be clear to the suspect, however, that there is no opportunity to interfere with the tape recording equipment or the tapes.

2B The purpose of sealing the master tape before it leaves the presence of the suspect is to establish his confidence that the integrity of the tape is preserved. Where a single deck machine is used the working copy of the master tape must be made in the presence of the suspect and without the master tape having left his sight. The working copy shall be used for making further copies where the need arises. The recorder will normally be capable of recording voices and have a time coding or other security device.

2C Throughout this code any reference to "tapes" shall be constructed as "tape", as appropriate, where a single deck machine is used.

3 Interviews to be tape recorded

3.1 Subject to paragraph 3.2 below, tape recording shall be used at police stations for

- ~~For any interview with a person who has been cautioned in accordance with section 10 of Code C in respect of an indictable offence (including an offence triable either way) [see Notes 3A and 3B];~~
- (a) with a person who has been cautioned in accordance with section 10 of Code C in respect of an indictable offence (including an offence triable either way) [see Notes 3A and 3B];
 - (b) which takes place as a result of a police officer exceptionally putting further questions to a suspect about an offence described in sub-paragraph (a) above after he has been charged with, or informed he may be prosecuted for, that offence [see Note 3C]; or
 - (c) in which a police officer wishes to bring to the notice of a person, after he has been charged with, or informed he may be prosecuted for an offence described in sub-paragraph (a) above, any written statement made by another person, or the content of an interview with another person [see Note 3D].

3.2 Tape recording is not required in respect of the following:

- (a) an interview with a person arrested under section 12(1)(a) of the Prevention of Terrorism (Temporary Provisions) Act 1984 or an interview with a person being questioned in respect of an offence where there are reasonable grounds for suspecting that it is connected to terrorism or was committed in furtherance of the objectives of an organisation engaged in terrorism. This sub-paragraph applies only where the terrorism is connected with the affairs of Northern Ireland or is terrorism of any other description except terrorism connected solely with the affairs of the United Kingdom or any part of the United Kingdom other than Northern Ireland. "Terrorism" has the meaning given by section 14(1) of the Prevention of Terrorism (Temporary Provisions) Act 1984 [see Notes 3E, 3F, 3G and 3H];
- (b) an interview with a person suspected on reasonable grounds of an offence under section 1 of the Official Secrets Act 1911 [see Note 3H].

3.3 The custody officer may authorise the interviewing officer not to tape record the interview:

- (a) where it is not reasonably practicable to do so because of failure of the equipment or the non-availability of a suitable interview room or recorder and the authorising officer considers on reasonable grounds that the interview should not be delayed until the failure has been rectified or a suitable room or recorder becomes available [see Note 3]; or
- (b) where it is clear from the outset that no prosecution will ensue.

In all cases the custody officer shall make a note in specific terms of the reasons for not tape recording. [See Note 3K]

3.4 Where an interview takes place with a person voluntarily attending the police station and the police officer has grounds to believe that person has become a suspect (ie the point at which he should be cautioned in accordance with paragraph 10.1 of Code C) the continuation of the interview shall be tape recorded, unless the custody officer gives authority in accordance with the provisions of paragraph 3.3 above for the continuation of the interview not to be recorded.

3.5 The whole of each interview shall be tape recorded, including the taking and reading back of any statement.

Notes for Guidance

3A Nothing in this code is intended to preclude tape recording at police discretion of interviews at police stations with persons cautioned in respect of offences not covered by

paragraph 3.1, or responses made by interviewees after they have been charged with, or informed they may be prosecuted for, an offence, provided that this code is complied with.

3B Attention is drawn to the restrictions in paragraph 12.3 of Code C on the questioning of persons unfit through drink or drugs to the extent that they are unable to appreciate the significance of questions put to them or of their answers.

3C Circumstances in which a suspect may be questioned about an offence after being charged with it are set out in paragraph 17.5 of Code C.

3D Procedures to be followed when a person's attention is drawn after charge to a statement made by another person are set out in paragraph 17.4 of Code C. One method of bringing the content of an interview with another person to the notice of a suspect may be to play him a tape recording of that interview.

3E Section 12(1)(a) of the Prevention of Terrorism (Temporary Provisions) Act 1984, permits the arrest without warrant of a person reasonably suspected to be guilty of an offence under section 1, 9 or 10 of the Act.

3F Section 14(1) of the Prevention of Terrorism (Temporary Provisions) Act 1984 says "terrorism means the use of violence for political ends and includes any use of violence for the purpose of putting the public or any section of the public in fear."

3G It should be noted that the provisions of paragraph 3.2 apply only to those suspected of offences connected with terrorism connected with Northern Ireland, or with terrorism of any other description other than terrorism connected solely with the affairs of the United Kingdom or any part of the United Kingdom other than Northern Ireland, or offences committed in furtherance of such terrorism. Any interviews with those suspected of offences connected with terrorism of any other description or in furtherance of the objectives of an organisation engaged in such terrorism should be carried out in compliance with the rest of this code.

3H When it only becomes clear during the course of an interview which is being tape recorded that the interviewee may have committed an offence to which paragraph 3.2 applies the interviewing officer should turn off the tape recorder.

3J Where practicable, priority should be given to tape recording interviews with persons who are suspected of more serious offences.

3K A decision not to tape record an interview for any reason may be the subject of comment in court. The authorising officer should therefore be prepared to justify his decision in each case.

4 The interview

(a) Commencement of interviews

4.1 When the suspect is brought into the interview room the police officer shall without delay, but in the sight of the suspect, load the tape recorder with previously unused tapes and set it to record. The tapes must be unwrapped or otherwise opened in the presence of the suspect. [See Note 4A]

4.2 The police officer shall then tell the suspect formally about the tape recording. He shall say:

(a) that the interview is being tape recorded;

(b) his name and rank and the name and rank of any other police officer present;

(c) the name of the suspect and any other party present (eg a solicitor);

(d) the date, time of commencement and place of the interview; and

(e) that the suspect will be given a notice about what will happen to the tapes.

[See Note 4B]

4.3 The police officer shall then caution the suspect in the following terms:

"You do not have to say anything unless you wish to do so, but what you say may be given in evidence."

Minor deviations do not constitute a breach of this requirement provided that the sense of the caution is preserved. [See Notes 4C and 4D]

(b) Interviews with the deaf

4.4 If the suspect is deaf or there is doubt about his hearing ability, the police officer shall take a contemporaneous note of the interview in accordance with the requirements of Code C, as well as tape record it in accordance with the provisions of this code. [See Notes 4E and 4F]

(c) Objections and complaints by the suspect

4.5 If the suspect raises objections to the interview being tape recorded either at the outset or during the interview or during a break in the interview, the police officer shall explain the fact that the interview is being tape recorded and that the provisions of this code require that the suspect's objections should be recorded on tape. When any objections have been recorded on tape or the suspect has refused to have his objections recorded, the police officer may turn off the recorder. In this eventuality he shall say that he is turning off the recorder and give his reasons for doing so and then turn it off. The police officer shall then make a written record of the interview in accordance with section 11 of Code C. If, however, the police officer reasonably considers that he may proceed to put questions to the suspect with the tape recorder still on, he may do so. [See Note 4G]

4.6 If in the course of an interview a complaint is made by the person being questioned, or on his behalf, concerning the provisions of this code or of Code C, then the officer shall act in accordance with paragraph 12.8 of Code C. [See Notes 4H and 4J]

4.7 If the suspect indicates that he wishes to tell the police officer about matters not directly connected with the offence of which he is suspected and that he is unwilling for these matters to be recorded on tape, he shall be given the opportunity to tell the police officer about these matters after the conclusion of the formal interview.

(d) Changing tapes

4.8 When the recorder indicates that the tapes have only a short time left to run, the police officer shall tell the suspect that the tapes are coming to an end and round off that part of the interview. If the police officer wishes to continue the interview but does not already have a second set of tapes, he shall obtain a set. The suspect shall not be left unattended in the interview room. The police officer will remove the tapes from the tape recorder and insert the new tapes which shall be unwrapped or otherwise opened in the suspect's presence. The tape recorder shall then be set to record on the new tapes. Care must be taken, particularly when a number of sets of tapes have been used, to ensure that there is no confusion between the tapes. This may be done by marking the tapes with an identification number immediately they are removed from the tape recorder.

(e) Taking a break during interview

4.9 When a break is to be taken during the course of an interview and the interview

room is to be vacated by the suspect, the fact that a break is to be taken, the reason for it and the time shall be recorded on tape. The tapes shall then be removed from the tape recorder and the procedures for the conclusion of an interview set out in paragraph 4.15 below followed.

4.10 When a break is to be a short one and both the suspect and a police officer are to remain in the interview room the fact that a break is to be taken, the reasons for it and the time shall be recorded on tape. The tape recorder may be turned off; there is, however, no need to remove the tapes and when the interview is recommenced the tape recording shall be continued on the same tapes. The time at which the interview recommences shall be recorded on tape.

4.11 When there is a break in questioning under caution the interviewing officer must ensure that the person being questioned is aware that he remains under caution. If there is any doubt the caution must be given again in full when the interview resumes. [See Notes 4K and 4L]

(f) Failure of recording equipment

4.12 If there is a failure of equipment which can be rectified quickly, for example by inserting new tapes, the appropriate procedures set out in paragraph 4.8 shall be followed, and when the recording is resumed the officer shall explain what has happened and record the time the interview recommences. If, however, it will not be possible to continue recording on that particular tape recorder and no replacement recorder or recorder in another interview room is readily available, the interview may continue without being tape recorded. In such circumstances the procedures in paragraph 3.3 above for seeking the authority of the custody officer will be followed. [See Note 4M]

(g) Removing tapes from the recorder

4.13 Where tapes are removed from the recorder in the course of an interview, they shall be retained and the procedures set out in paragraph 4.15 below followed.

(h) Conclusion of interview

4.14 At the conclusion of the interview, the suspect shall be offered the opportunity to clarify anything he has said and to add anything he may wish.

4.15 At the conclusion of the interview, including the taking and reading back of any written statement, the time shall be recorded and the tape recorder switched off. The master tape shall be sealed with a master tape label and treated as an exhibit in accordance with the force standing orders. The police officer shall sign the label and ask the suspect and any third party present to sign it also. If the suspect or third party refuses to sign the label, an officer of at least the rank of inspector, or if one is not available the custody officer, shall be called into the interview room and asked to sign it.

4.16 The suspect shall be handed a notice which explains the use which will be made of the tape recording and the arrangements for access to it.

Notes for Guidance

4A The police officer should attempt to estimate the likely length of the interview and ensure that the appropriate number of unused tapes and labels with which to seal the master copies are available in the interview room.

4B It will be helpful for the purpose of voice identification if the officer asks the suspect and any other persons present to identify themselves.

4C If it appears that a person does not understand what the caution means, the officer who has given it should go on to explain it in his own words.

4D In case anyone who is given a caution is unclear about its significance, the officer concerned should explain that the caution is given in pursuance of the general principle of English law that a person need not answer any questions or provide any information which might tend to incriminate him, and that no adverse inferences from this silence may be drawn at any trial that takes place. The person should not, however, be left with a false impression that non co-operation will have no effect on his immediate treatment as, for example, his refusal to provide his name and address may render him liable to detention.

4E This provision is intended to give the deaf equivalent rights of first hand access to the full interview record as other suspects.

4F The provisions of paragraphs 14.1, 14.4, and 14.7 of Code C on interpreters for the deaf or for interviews with suspects who have difficulty in understanding English continue to apply. In a tape recorded interview there is no requirement on the interviewing officer to ensure that the interpreter makes a separate note of interview as prescribed in section 14 of Code C.

4G The officer should bear in mind that a decision to continue recording against the wishes of the suspect may be the subject of comment in court.

4H Where the custody officer is called immediately to deal with the complaint, wherever possible the tape recorder should be left to run until the custody officer has entered the interview room and spoken to the person being interviewed. Continuation or termination of the interview should be at the discretion of the interviewing officer pending action by an inspector under paragraph 9.1 of Code C.

4J Where the complaint is about a matter not connected with this code of practice or Code C, the decision to continue with the interview is at the discretion of the interviewing officer. Where the interviewing officer decides to continue with the interview the person being interviewed shall be told that the complaint will be brought to the attention of the custody officer at the conclusion of the interview. When the interview is concluded the interviewing officer must, as soon as practicable, inform the custody officer of the existence and nature of the complaint made.

4K In considering whether to caution again after a break, the officer should bear in mind that he may have to satisfy a court that the person understood that he was still under caution when the interview resumed.

4L The officer should bear in mind that it may be necessary to show to the court that nothing occurred during a break in an interview or between interviews which influenced the suspect's recorded evidence. The officer should consider, therefore, after a break in an interview or at the beginning of a subsequent interview summarising on tape the reason for the break and confirming this with the suspect.

4M If one of the tapes breaks during the interview it should be sealed as a master tape in the presence of the suspect and the interview resumed where it left off. The unbroken tape should be copied and the original sealed as a master tape in the suspect's presence, if necessary after the interview. If the tape breaks when a single deck machine is being used and the machine is one where a broken tape cannot be copied on available equipment, the tape should be sealed as a master tape in the suspect's presence and the interview begun again.

5.1 The police officer shall make a note in his notebook of the fact that the interview has taken place and has been recorded on tape, its time, duration and date and the identification number of the master tape.

5.2 Where no proceedings follow in respect of the person whose interview was recorded the tapes must nevertheless be kept securely in accordance with paragraph 6.1 and *Note 6A*.

5.3 Where such proceedings do follow the officer shall prepare a written record of the interview which will be signed by the officer. The interview record shall be exhibited to any written statement prepared by the officer. [See *Notes 5A and 5B*]

5.4 Where the police officer's evidence of the interview is accepted by the defence the evidence shall refer to the fact that the interview was tape recorded and may be presented to the court in the form of the interview record. Where the police officer's evidence of the interview is not accepted by the defence the police officer shall refer to the fact that the interview was tape recorded and shall produce the master tape as an exhibit. The officer shall inform the court of any transcription which has been made of which he is aware. [See *Note 5C*]

Notes for Guidance

5A Prior to preparing the record of the interview, the officer may refresh his memory by listening to the working copy of the tape. The purpose of using the tape will be to act as a check on the accuracy of the interview record.

5B The interview record shall be prepared on the basis that it shall be used first to enable the prosecutor to make informed decisions about the case on the basis of what was said at the interview; secondly, to be exhibited to the officer's witness statement and used pursuant to section 9 of the Criminal Justice Act 1967 and section 102 of the Magistrates' Courts Act 1980; thirdly, to enable the prosecutor to comply with the rules of advance disclosure; and fourthly, where the record is accepted by the defence, to be used for the conduct of the case by the prosecution, the defence, and the court. The record shall, therefore, comprise a balanced account of the interview including points in mitigation and/or defence made by the suspect. Where an admission is made, the question as well as the answer containing the admission shall be recorded verbatim in the record. Care should be taken to bring to the attention of the prosecutor, by means of a covering report, any material on the tape which might be regarded by a court as prejudicial or inadmissible.

5C Production of the tape as an exhibit will have the effect in court proceedings of producing the content of the whole interview (subject to any decision on editing carried out on the direction of the crown prosecutor).

6 Tape security

6.1 The officer in charge of each police station at which interviews with suspects are recorded shall make arrangements for master tapes to be kept securely and their movements accounted for on the same basis as other material which may be used for evidential purposes, in accordance with force standing orders. [See *Note 6A*]

6.2 A police officer has no authority to break the seal on a master tape which is required for criminal proceedings. If it is necessary to gain access to the master tape, the police officer shall arrange for its seal to be broken in the presence of a representative of the Crown Prosecution Service. The defendant or his legal adviser shall be informed and given

~~a reasonable opportunity to be present. If the defendant or his legal representative is present he shall be invited to re-seal and sign the master tape. If either refuses or neither is present this shall be done by the representative of the Crown Prosecution Service. [See *Notes 6B and 6C*]~~

6.3 Where no criminal proceedings result it is the responsibility of the chief officer of police to establish arrangements for the breaking of the seal on the master tape, where this becomes necessary.

Notes for Guidance

6A This section is concerned with the security of the master tape which will have been sealed at the conclusion of the interview. Care should, however, be taken of working copies of tapes since their loss or destruction may lead unnecessarily to the need to have access to master tapes.

6B If the tape has been delivered to the crown court for their keeping after committal for trial the crown prosecutor will apply to the chief clerk of the crown court centre for the release of the tape for unsealing by the crown prosecutor.

6C Reference to the Crown Prosecution Service or to the crown prosecutor in this part of the code shall be taken to mean any other body or person with a statutory responsibility for prosecution for whom the police conduct any tape recorded interviews.

Sec. 2340. Definitions

As used in this chapter –

- (1) "torture" means an act committed by a person acting under the color of law specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control;
- (2) "severe mental pain or suffering" means the prolonged mental harm caused by or resulting from –
 - (A) the intentional infliction or threatened infliction of severe physical pain or suffering;
 - (B) the administration or application, or threatened administration or application, of mind-altering substances or other procedures calculated to disrupt profoundly the senses or the personality;
 - (C) the threat of imminent death; or
 - (D) the threat that another person will imminently be subjected to death, severe physical pain or suffering, or the administration or application of mind-altering substances or other procedures calculated to disrupt profoundly the senses or personality; and
- (3) "United States" includes all areas under the jurisdiction of the United States including any of the places described in sections 5 and 7 of this title and section 46501(2) of title 49.

Sec. 2340A. Torture

- (a) Offense. – Whoever outside the United States commits or attempts to commit torture shall be fined under this title or imprisoned not more than 20 years, or both, and if death results to any person from conduct prohibited by this subsection, shall be punished by death or imprisoned for any term of years or for life.
- (b) Jurisdiction. – There is jurisdiction over the activity prohibited in subsection (a) if –
 - (1) the alleged offender is a national of the United States; or
 - (2) the alleged offender is present in the United States, irrespective of the nationality of the victim or alleged offender.

Sec. 3282. Offenses not capital

Except as otherwise expressly provided by law, no person shall be prosecuted, tried, or punished for any offense, not capital, unless the indictment is found or the information is instituted within five years next after such offense shall have been committed.

Sec. 3281. Capital offenses

An indictment for any offense punishable by death may be found at any time without limitation.