



Republic of the Philippines
Department of the Interior and Local Government
National Police Commission

NATIONAL HEADQUARTERS, PHILIPPINE NATIONAL POLICE
DIRECTORATE FOR INVESTIGATION AND DETECTIVE MANAGEMENT
Camp Crame, Quezon City



MEMORANDUM

TO : See Distribution

FROM : TADIDM/ Task Force USIG Commander

SUBJECT : **Salient Provisions of the Operational Guidelines of Administrative Order No. 35 Series of 2012**

DATE : JUN 10 2013

1. References:
 - a. Administrative Order No. 35 series of 2012 entitled Creating the Inter-Agency Committee on Extra Judicial Killings (ELKs), Enforced Disappearances (EDs), Torture and other Grave Violation of the Right to Life, Liberty and Security of Persons; and
 - b. Operational Guidelines of Administrative Order No. 35.
2. In connection with the above references, attached herewith is the Operational Guidelines of Administrative Order No. 35 for implementation.
3. Further, please take note of the following corrections on the said Operational Guidelines:
 - a. Article IIIB Section 22 which reads, "to determine whether the offense for which the person was arrested falls in any of the circumstances enumerated under **Section 1 of Article IIIB**" is corrected to **Section 10 of Article IIIB**;
 - b. Article IIIB Section which reads, "pursuant to **Section 3 and 4** of this Article" is corrected to **Sections 12 and 13**.
4. For widest dissemination.

FRANCISCO DON C. MONTENEGRO, Ph.D.
Police Chief Superintendent

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SUBJECT: Client Provisions of the Operational
Guidelines of Administrative Order No. 35 Series
OF 2012

DATE: JUN 11 2013

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Wm

Salient Provisions of the Operational Guidelines of AO 35 series of 2012

1. Definition of Terms (Article I)

1. **Extra-Legal Killings (ELK) or Extra-Judicial Killings (EJK)** – refer to killings wherein:

- a. The victim was either:
 - i. A member of, or affiliated with an organization, to include political, environmental, agrarian, labor, or similar causes; or
 - ii. An advocate of above-named causes; or
 - iii. A media practitioner; or
 - iv. Person(s) apparently mistaken or identified to be so.
- b. The victim was targeted and killed because of his/her actual or perceived membership, advocacy, or profession;
- c. The person/s responsible for the killing is a state agent or non-state agent;
- d. The method and circumstances of the attack reveal a deliberate intent to kill.

Killings related to common criminals and/or the perpetration of their crimes shall be addressed by other appropriate mechanisms within the justice system.

2. **State Agent** – a person who, by direct provision of law, popular election or appointment by competent authority, takes part in the performance of public functions in the government, or who performs in the government or in any of its branches, public duties as an employee, agent or subordinate official, of any rank or class.

Any other person who does not fall under the above-definition shall be deemed as a Non-State Agent.

6. **AO 35 Cases** – refer to cases of extra-legal killings, enforced disappearance or involuntary disappearances, torture, and other grave human rights violation cases, involving right to life, liberty and security of persons.

7. **Special Investigation Teams for New Cases (SITN)** – refers to composite teams of prosecutors and investigators designated by the Inter Agency Committee (IAC) purposely to investigate, prosecute and monitor new cases or incidents that occurred after the effectivity of AO No. 35 on November 22, 2012.

8. **Special Investigation Teams for Existing/Current Cases (SITEC)** – refers to composite teams of prosecutors and investigators designated by the IAC purposely to investigate, prosecute and monitor existing or current cases that are actively being investigated or prosecuted in court and those that have been archived by the court, where such cases or incidents occurred prior to the effectivity of AO No. 35 on November 22, 2012.

9. **Special Investigation Teams for Unsolved Cases (SITU)** – refers to composite teams of prosecutors and investigators designated by the IAC tasked to conduct further investigation of unsolved AO 35 cases for the purpose of identifying and arresting the persons responsible for the crime and ensuring the successful prosecution of the cases.

10. **Special Oversight Team (SOT) for unsolved cases** – is a composite team of investigators and prosecutors created by the IAC tasked to evaluate and oversee the reinvestigation by the SITUs, supervise the management of unsolved AO 35 cases, and to regularly report and submit recommendations to the IAC regarding these cases.

11. **Special Oversight Team (SOT) for existing and new cases** – is a composite team of investigators and prosecutors created by the IAC tasked to evaluate, to monitor and supervise the investigation and prosecution of new and existing cases, and to regularly report and submit recommendations to the IAC regarding these AO 35 cases.

12. **Inter-Agency Committee (IAC)** – is a body created under AO No. 35 tasked to monitor and ensure the speedy resolution of EJKs, EDs, torture and other grave violations of the right to life, liberty and security of persons.

13. **Technical Working Group (TWG)** - a body composed of the representatives of the member-agencies and observers/resource persons of the IAC which shall serve as the central support system to the Committee in monitoring and handling of AO 35 cases.

16. **Unsolved Cases** – are incidents that were previously investigated by the Philippine National Police (PNP), the National Bureau of Investigation (NBI) or the Commission on Human Rights (CHR) prior to November 22, 2012 that would have been treated as AO 35 cases but where no complaint for preliminary investigation was filed with the National Prosecution Service (NPS) or the Office of the Ombudsman due to lack of sufficient evidence, or unwillingness of eyewitnesses to cooperate in the investigation, or to give information, or for total lack of witnesses.

17. **Closed Cases** – AO 35 cases which, upon thorough review and final determination of the IAC, are denominated as “closed” because vital witnesses are no longer available and can no longer testify, or have already died, or for total lack of evidence, or where all possible suspects have already died.

24. **AO 35 Prosecutors** – refers to the prosecutors designated by the IAC to lead Special Investigation Teams (SIT) in the investigation and build-up of AO 35 Cases.

25. **Investigating Prosecutor** – refers to the prosecutor who is tasked to conduct a preliminary investigation in an AO 35 Case.

26. **Trial Prosecutor** – refers to the prosecutor who actively handles the trial of an AO 35 case in court.

27. **Law Enforcement Agency** – refers to the Philippine National Police (PNP) to the National Bureau of Investigation (NBI), or any of its offices or sub-offices or other law enforcement agencies of the government ordered by competent authorities to investigate AO 35 cases and/or arrest those responsible therefor.

28. **Law Enforcement Investigator/AO 35 Investigator** – refers to the investigator from a law enforcement agency as defined in the preceding paragraph designated by the IAC as part of the composite team led by the AO 35 prosecutor in the investigation and build-up of AO 35 cases.

2. System of Cooperation (Article III)

A. Unsolved Cases (See Annex “B” for the flowchart)

Section 1. Reinvestigation by Special Investigation Teams (SITU). Unsolved cases identified by the IAC, especially those that transpired between 2001 up to November 22, 2012 shall be re-evaluated and re-investigated by Special Investigation Teams for Unsolved Cases (SITU) that shall be created by the IAC.

Section 3. Investigation Report. Upon completion of reinvestigation, the SITU shall submit a Final Investigation Report to the IAC secretariat containing the following:

- (a) Summary of the Incident (which shall include name and affiliation of the victim/s and the suspect/s);
- (b) Brief narrative on the previous investigative efforts and their results;
- (c) Detailed narrative on the SITU's reinvestigation efforts and their results;
- (d) Enumeration and evaluation of the evidence;
- (e) Findings;
- (f) Conclusions;
- (g) Recommendations; and
- (h) Annexes of pertinent documents.

B. New Cases (See Annex “C” for the flowchart)

Section 10. Initial Assessment and Report. When a killing (which shall be deemed to include an attempted or frustrated killing) or a deprivation of liberty or a suspected case of torture or other suspected AO 35 violations occurs or are reported, the local law enforcement agency, office or unit concerned, shall make an initial assessment within forty-eight (48) hours from deployment, whether or not the incident may be treated as a possible AO 35 case, guided by the following:

- (a) For an EJK case, the presence of any of two of the elements of Article I(1) of these Guidelines is present;
- (b) For an enforced or involuntary disappearance, when the deprivation of liberty is suspected to have been committed by agents of the State or by persons of group of persons suspected to have acted with the authorization, support or acquiescence of agents of the State; and
- (c) For a torture case, when there are signs, reports or allegations of severe pain or suffering suspected to have been inflicted by persons in authority or their agents.

Immediately but not later than six (6) hours after the initial assessment of the incident or information by the local police office or law enforcement agency, office or unit, a report shall be submitted to the Chief of Police, Provincial, or Regional director as the case may be. If the initial assessment indicates that the incident is a possible AO 35 Case, the report shall be certified as “Extremely Urgent”. After receipt of the report, the Chief of Police, Provincial or Regional Director, shall immediately but not

later than six (6) hours forthwith inform the designated AO 35 prosecutor in the locality about the same.

Section 11. Designation of AO 35 Prosecutors. There shall be in every city, province or region of the country, a roster of AO 35 prosecutors who shall be available on an on-call basis in order to serve as team leaders in the investigation and case build-up of AO 35 Cases.

Section 12. Convening of SITN. Immediately within 24 hours upon receipt from the Chief of Police, Provincial or Regional Director of the information and the names of the investigators that will form part of the SITN, the designated AO 35 prosecutor shall convene the team to start the case build-up.

If in case the investigation has been started by a local team of investigators, or a Special Investigation Task Group or Task Forces of the PNP or similar teams of the NBI or other law enforcement agencies, the SITN shall oversee, supervise and monitor the investigation to ensure that the case is supported by sufficient and strong evidence, provided however, that the Chairperson of the IAC may, in the exercise of plenary powers, direct the designated SITN to take over the investigation and case build-up from the local investigators, or Special Investigation Task Group or Task Forces of the PNP, or similar teams of the NBI or other law enforcement agencies, or to direct their absorption into the SITN. The investigator(s) thus absorbed shall be deemed as AO 35 investigator(s).

Section 22. Inquest of AO 35 Cases when SITN Has Not Yet Been Convened. In instances of warrantless arrest, the arresting officers shall immediately conduct an initial assessment in order to determine whether the offense for which the person was arrested falls in any of the circumstances enumerated under Section 1 III.B (New Cases) of these guidelines. If any of such circumstances is present, the arresting officers shall inform the AO 35 prosecutor, through any expedient means, about the arrest and pending inquest proceedings.

The said officer/s shall also certify before the inquest prosecutor his or her initial assessment that the person/s arrested subject of inquest may have committed an AO 35 offense.

The AO 35 prosecutor, upon receipt of the notice from the arresting officer/s shall convene the SITN to further enhance case build-up.

Section 23. Inquest of AO 35 Cases When SITN Has Been Convened. In instances where the SITN has been convened and the person suspected of committing an AO 35 case is taken into custody by other law enforcers without a warrant under circumstances allowed by the law/rules, the arresting officer shall immediately inform, by any expedient means, the AO 35 prosecutor of the said SITN of such warrantless arrest.

The AO 35 prosecutor shall then furnish the inquest prosecutor with all the documents necessary for the conduct of inquest proceedings and shall indicate that the complaint is a probable AO 35 case.

C. Existing/Current Cases (See Annex "D" for the flowchart)

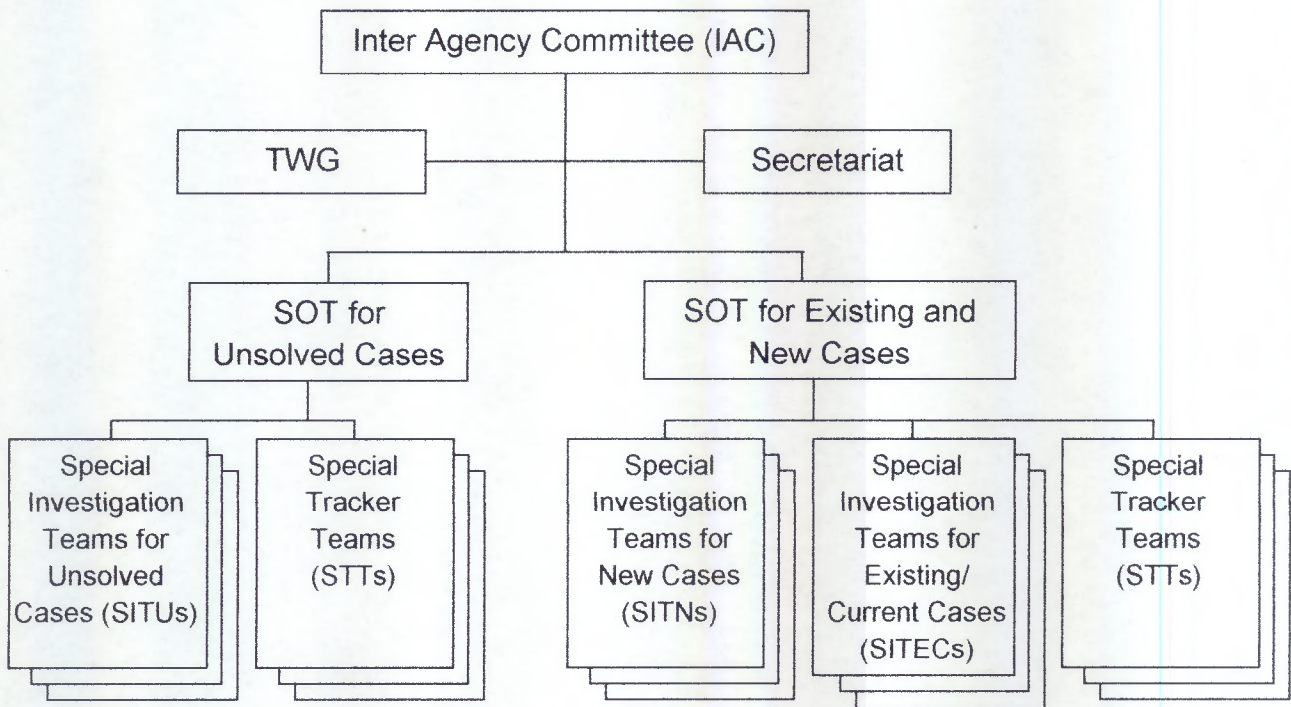
Section 24. Existing or Current Cases (SITEC) shall refer to cases that are being investigated or re-investigated by law enforcement officers per order of the Court; or undergoing preliminary investigation; or is already pending in Court whether there be an active trial or has been archived by the Court, as of November 22, 2012,

where such cases fall under the classification of any of the enumerated human rights violations under the Administrative Order.

Section 25. Identification of Existing/Current Cases By TWG. The TWG shall identify existing/current cases that may possibly fall within the ambit of AO No. 35. The TWG shall thereafter recommend possible interventions or actions involving such identified cases to the IAC for their appropriate instructions.

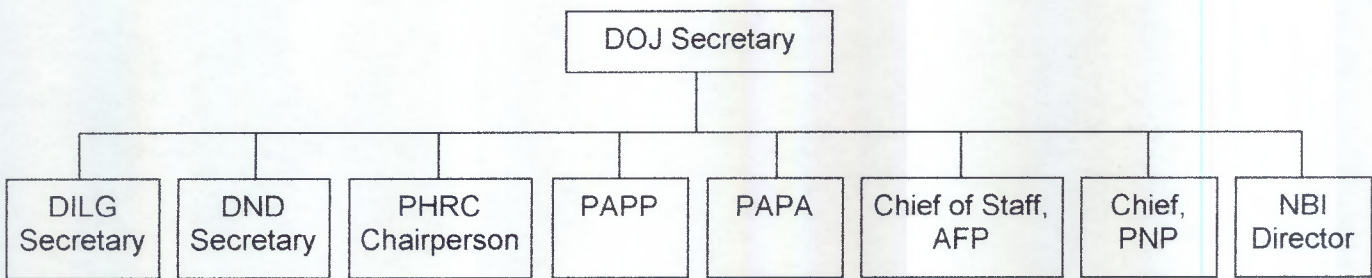
Section 26. Convening of the SITEC. Immediately within 24 hours upon receipt of the directive from the IAC to convene the special investigation team for existing/current cases (SITEC), the designated AO 35 prosecutor shall convene the team pursuant to Article III (B) hereof.

3. AO 35 Structures (Article VII)



Inter-Agency Committee (IAC)

IAC shall refer to the high-level policy-making and oversight body tasked to monitor and ensure the speedy resolution of AO 35 cases. The IAC shall be headed by the Secretary of the Department of Justice (DOJ) as the Chairperson.



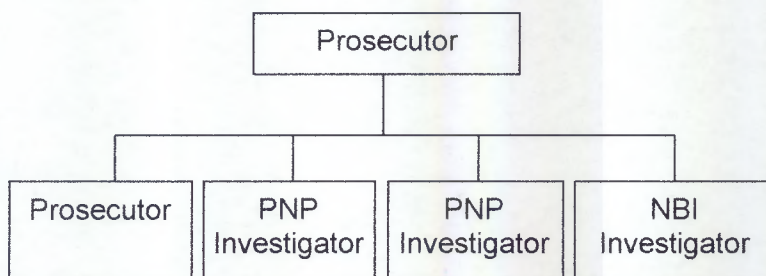
Legend: DILG – Department of Interior and Local Government
DND – Department of National Defense
PHRC – Presidential Human Rights Committee
PAPP – Presidential Adviser on Peace Processes
PAPA – Presidential Adviser for Political Affairs

Notes:

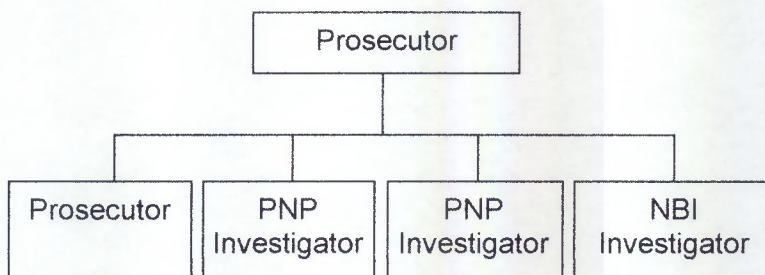
- The committee shall invite the Chairperson of the Commission on Human Rights and the Ombudsman as observers and resource persons.
- The above members of the IAC may designate their representatives to the committee. **The official representative of the PNP is the C, HRAO.**

Special Oversight Team (SOT)

SOT for unsolved cases



SOT for existing and new cases



Notes:

- Each SOTs shall be composed of five (5) members with a prosecutor and one investigator each from the PNP and the NBI, all of which must have at least ten (10) years of experience. The two (2) remaining members shall be another prosecutor and a PNP investigator, both of whom with at least five (5) years of experience. The most senior prosecutor shall be the head of the SOT.
- **The two (2) PNP investigators shall come from CIDG NHQ.**

Special Tracker Teams (STT)

STTs shall be composed of personnel from the PNP, the NBI, the PNP SITG/Task Force, or from any other law enforcement agencies of the government, or a combination of any of the foregoing.

Personnel from the AFP or other security forces of the government may be directed to complement the STTs, especially if the accused to be arrested is from the agency concerned.

STTs shall have the following functions:

- Submit an operational plan to the TWG;
- Conduct manhunt operations to locate the accused in AO 35 cases;
- Effect the arrest of the accused in AO 35 cases;
- Immediately return the warrant of arrest to the issuing court; and

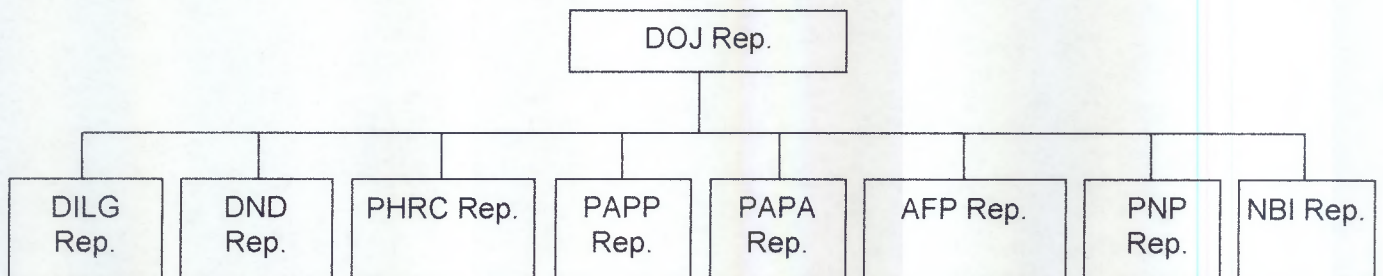
- Deliver the arrested person/s to a lawful detention facility in accordance with the order of the court.

STTs shall submit its report on the progress of its efforts to the SOT at least twice a month.

STTs may be dissolved upon compliance of their functions or upon order of the IAC.

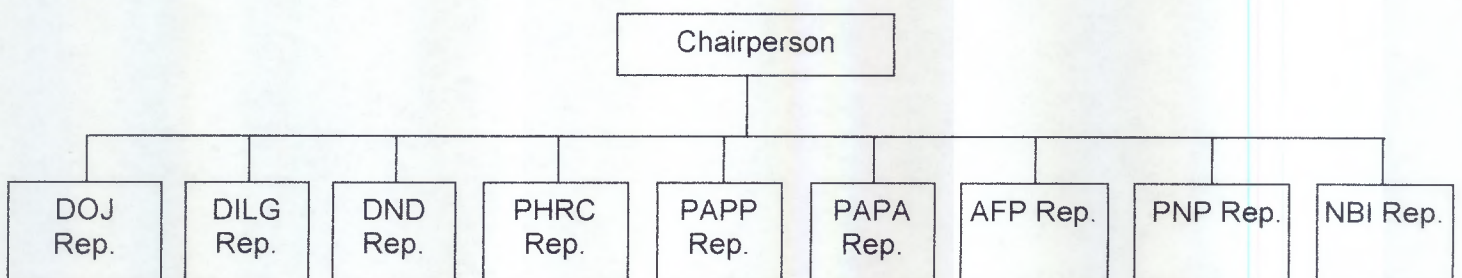
Technical Working Group (TWG)

The TWG shall be composed of representatives from IAC member-agencies. **DIDM TF USIG shall represent the PNP in the AO 35 TWG.**



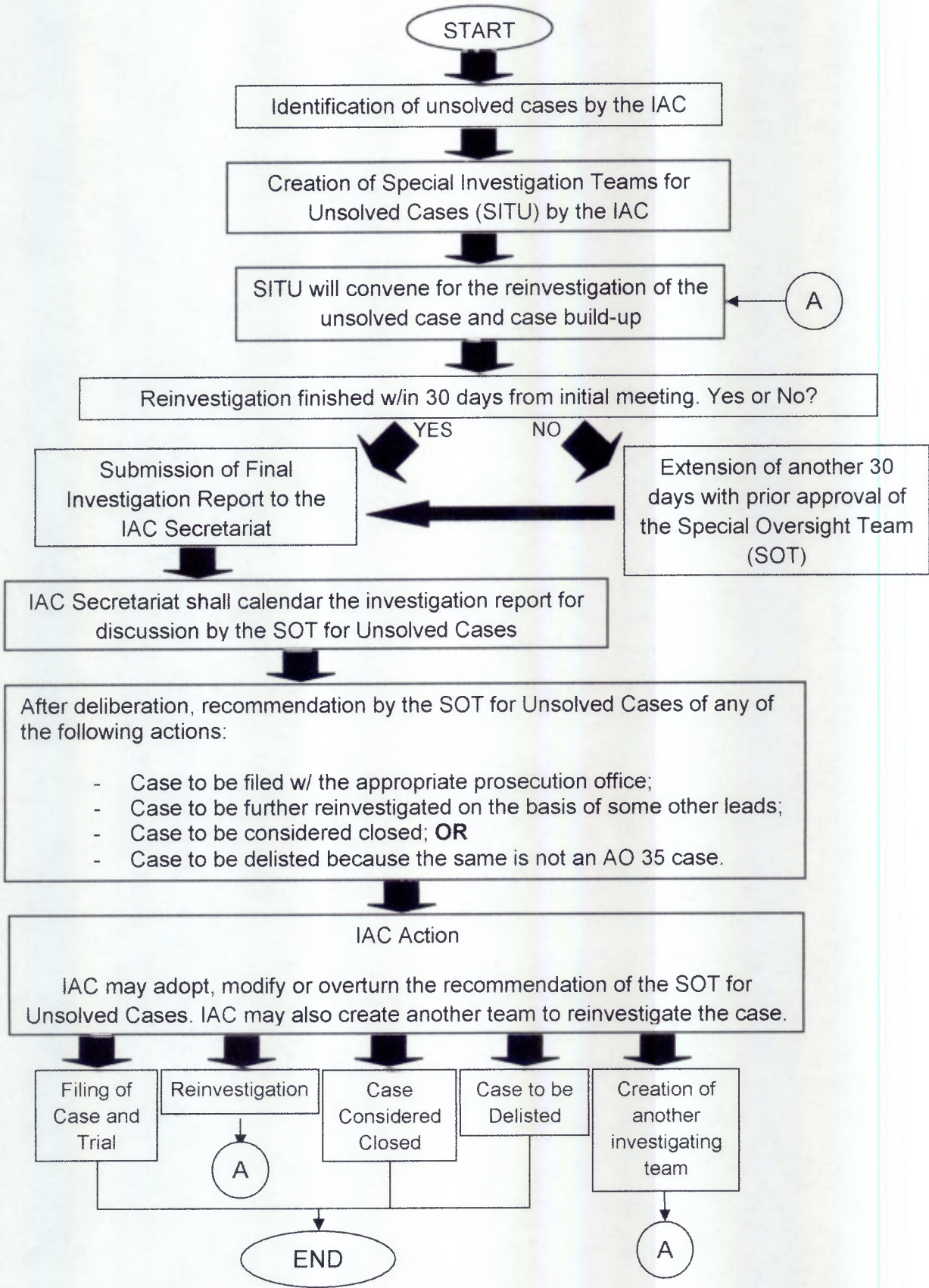
Secretariat

The Secretariat shall be composed of representatives from IAC member-agencies. It shall be headed by a Chairperson appointed by the IAC Chairperson upon recommendation of the majority of the member-agencies. **HRAO shall represent the PNP in the AO 35 Secretariat.**



Unsolved Cases Flowchart

Article III (System of Cooperation)



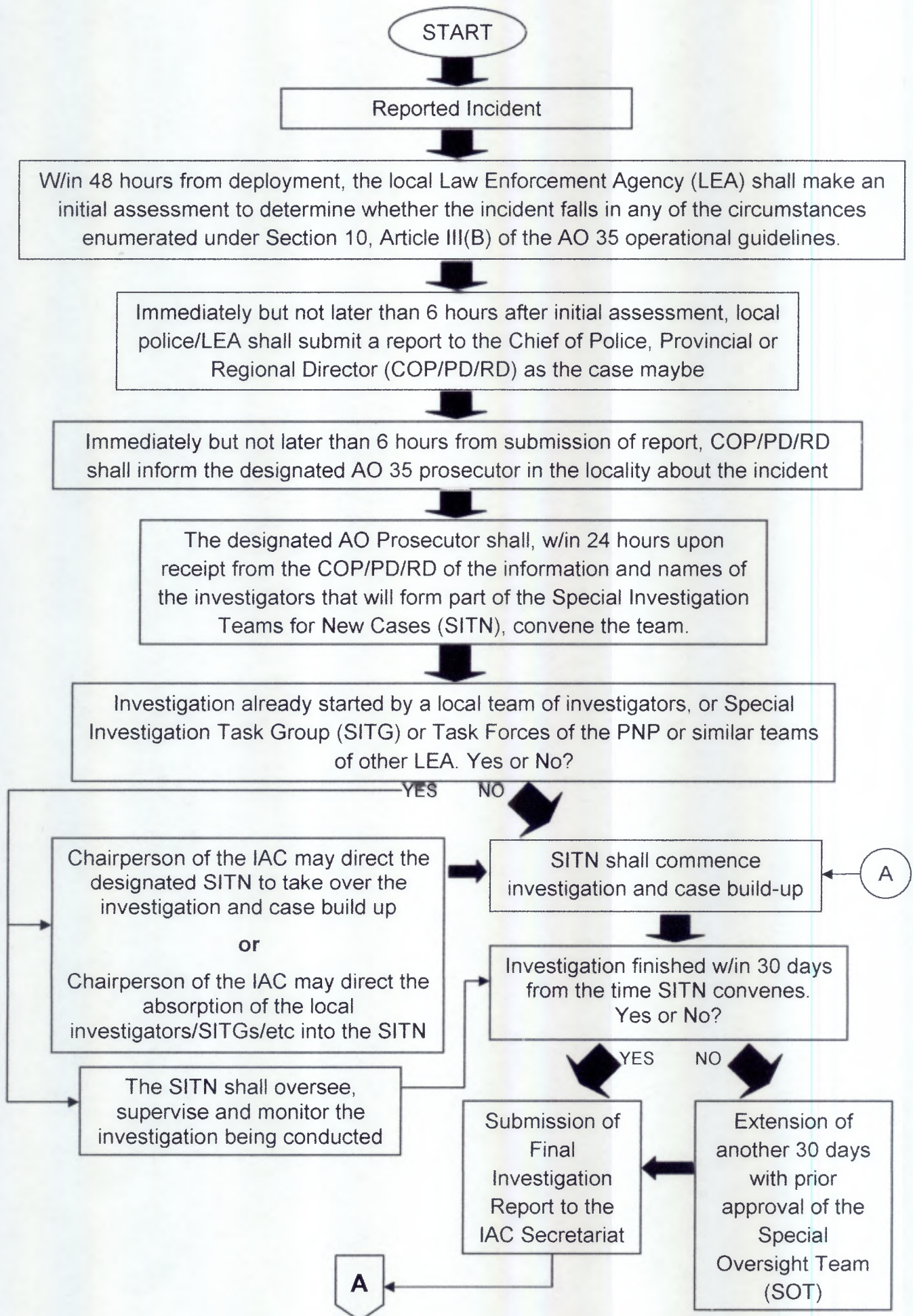
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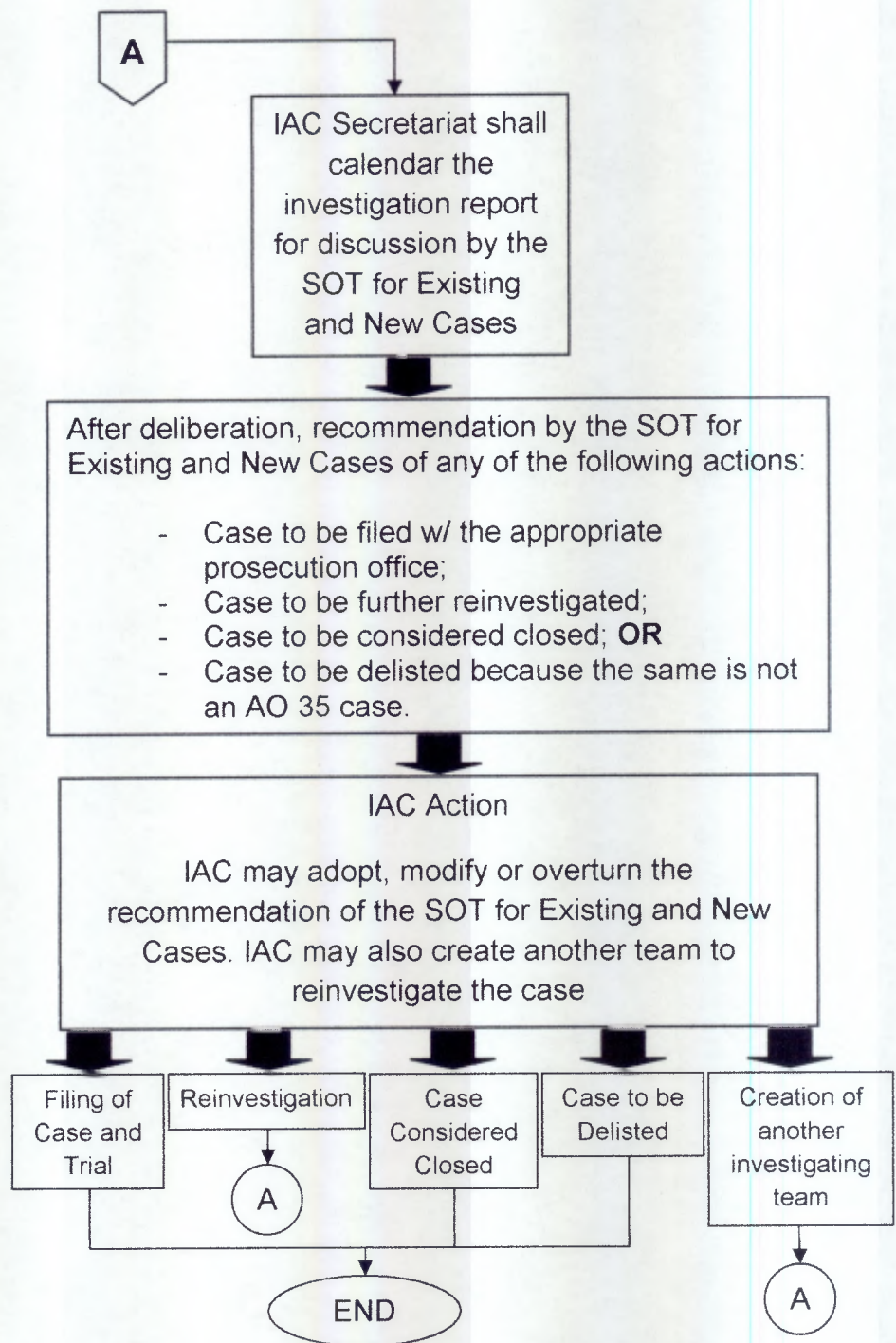
If the IAC adopts the recommendation for filing of a complaint, the complaint that shall be filed by the SITU must contain an Indorsement signed by the AO 35 Investigator (member of the SITU).

Said Indorsement shall indicate that the investigation was conducted pursuant to AO 35 and its operational guidelines. (Sec. 7 of the operational guidelines of AO 35).

New Cases Flowchart

*Suspect was not arrested by virtue of warrantless arrest
Article III (System of Cooperation)





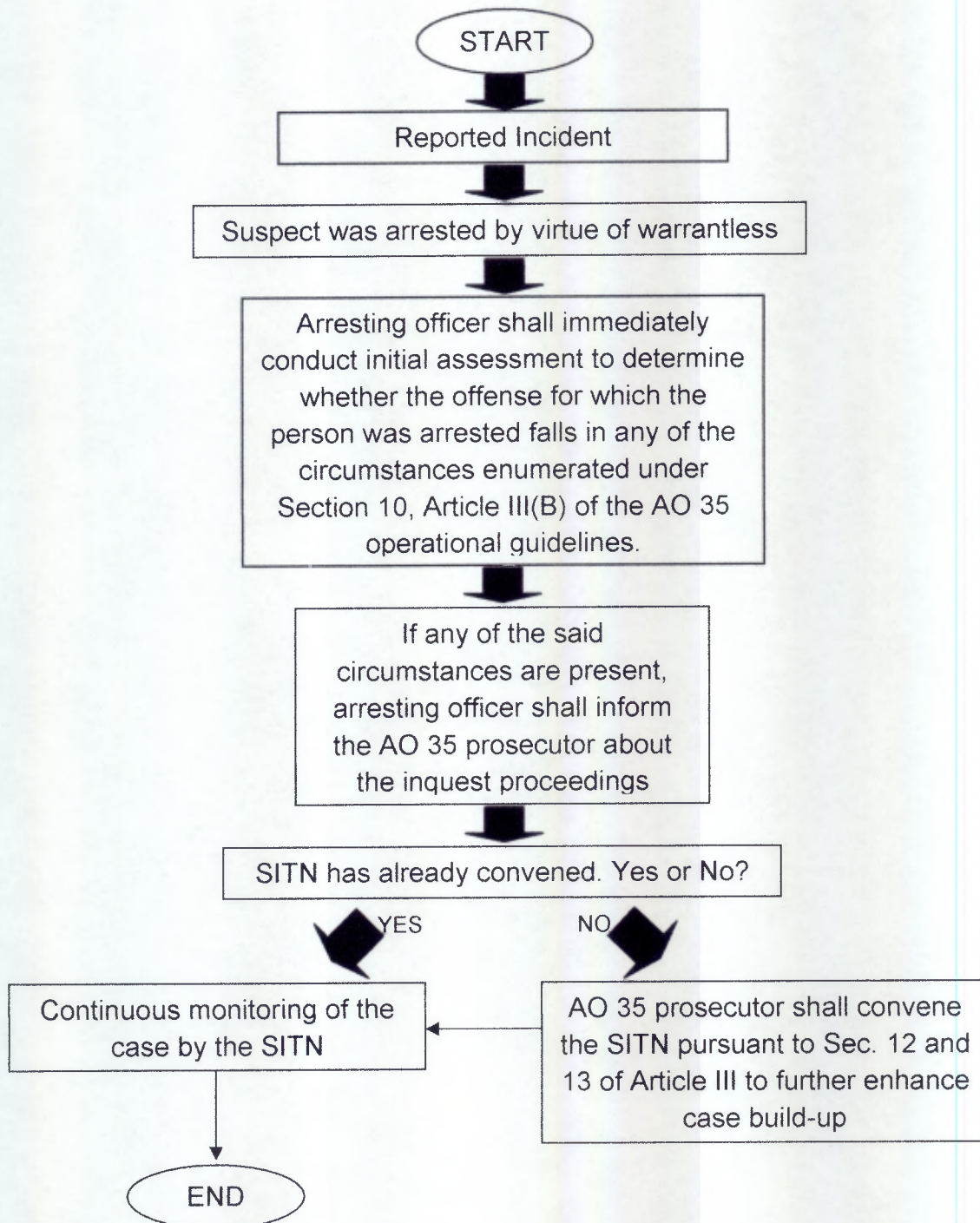
Notes:

1. If the initial assessment indicates that the incident is a possible AO 35 cases, the report shall be certified as "Extremely Urgent".
2. If the IAC chairperson directed the absorption of the local investigators, SITGs, etc. into the SITN, those absorbed shall be deemed as AO 35 investigators.
3. If the IAC adopts the recommendation for filing of a complaint, the complaint that shall be filed by the SITU must contain an Indorsement signed by the AO 35 Investigator (member of the SITU).

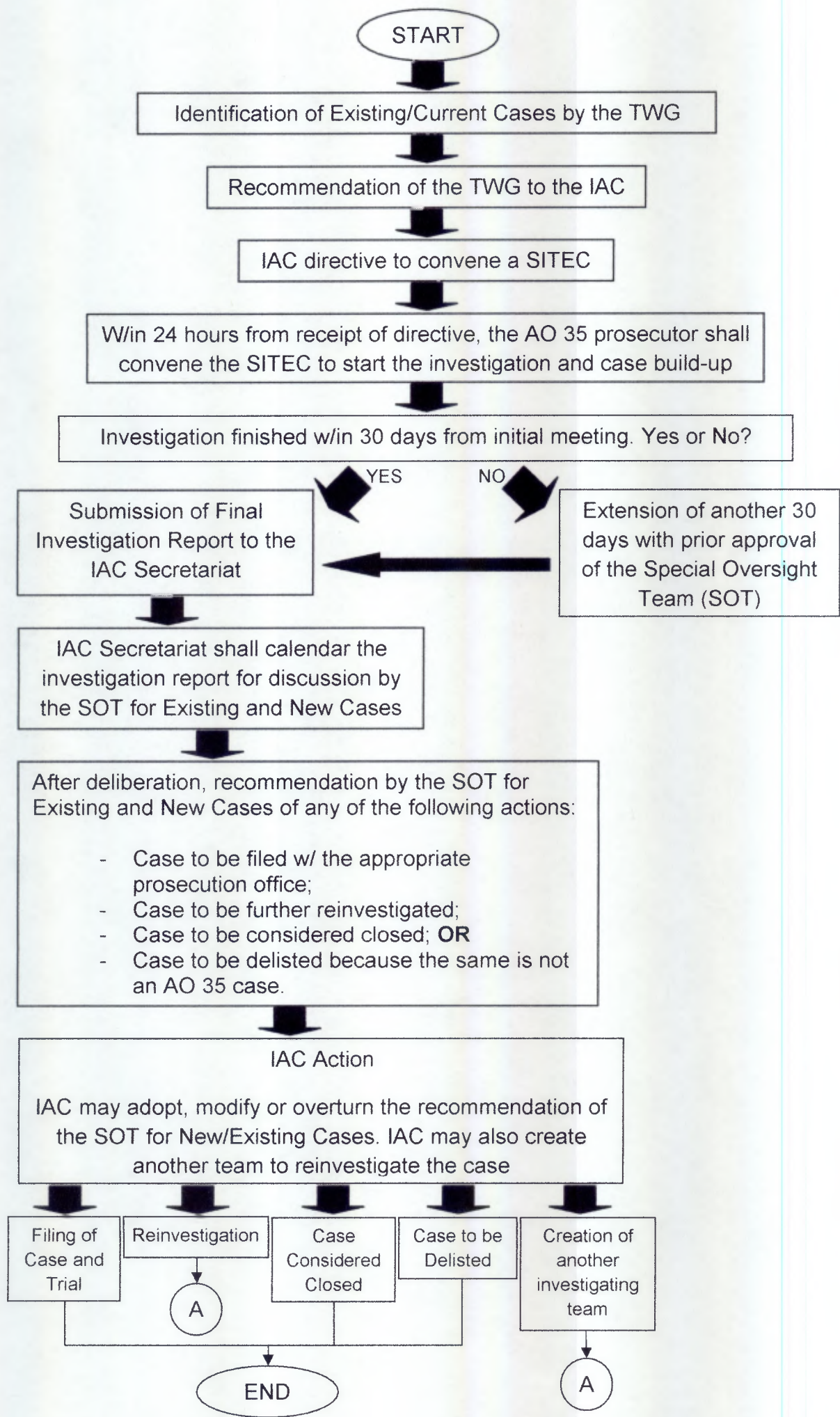
Said Indorsement shall indicate that the investigation was conducted pursuant to AO 35 and its operational guidelines. (Sec. 7 of the operational guidelines of AO 35)

New Cases Flowchart

* Suspect was arrested by virtue of warrantless arrest (INQUEST CASE)



Existing/Current Cases Flowchart
Article III (System of Cooperation)



Observations/ Issues and Concerns:

1. STTs were not included in the definition of terms.
2. Sec. 8 of Article VII. The creation of STTs must be clarified. Is it the SOTs who will create the STTs or the IAC.
3. Sec. 12 of Article III, when will the COP/PD/RD submit the information and names of the investigators that will form part of the SITN? Said "information" refers to what? Info of the investigators or info about the incident?
4. Sec 22 and 23 of Article III. The guidelines should also provide for a detailed step by step procedure when it comes to inquest cases (Arrest to creation of SITN) to guide the LEA accordingly. TF USIG made a flowchart (Inquest cases) based on its understanding of what the procedure will be under AO operating guidelines. Is the flowchart correct/sufficient?
5. Sec. 12 of Article III (paragraph 2). If a local team of investigator or SITGs was already created and organized, the SITN shall oversee, supervise and monitor the investigation. Question: Is it required that the investigation be finished within 30 days also?
6. Sec. 22 of Article III. "to determine whether the offense for which the person was arrested falls in any of the circumstances enumerated under section 1 of Article III B". Underlined phrase should be changed to "Section 10 of Article III".
7. Last paragraph of sec. 22. The phrase "pursuant to Sections 3 and 4 of this article" must be changed to "pursuant to Sections 12 and 13 of this article".