



General Assembly

Distr.
GENERAL

A/HRC/8/WG.4/2
24 December 2007

Original: ENGLISH

HUMAN RIGHTS COUNCIL

Eighth session

Open-ended Working Group on an optional protocol
to the International Covenant on Economic, Social
and Cultural Rights

Fifth session

Geneva, 4-8 February and 31 March-4 April 2008

**REVISED DRAFT OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT
ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS**

**Prepared by the Chairperson-Rapporteur,
Catarina de Albuquerque**

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* Annex I is circulated as received.

**Letter from the Chairperson-Rapporteur to the members of the Open-ended
Working Group on an optional protocol to the International Covenant on
Economic, Social and Cultural Rights**

1. The Human Rights Council in its resolution 1/3 requested the Chairperson-Rapporteur of the Working Group to prepare a first draft optional protocol to be used as a basis for the negotiations on an optional protocol to the International Covenant on Economic, Social and Cultural Rights. In response to this request, I prepared the draft optional protocol contained in document A/HRC/6/WG.4/2 which the Working Group considered and completed a first reading of at its fourth session, from 16 to 27 July 2007.
2. To facilitate the negotiation process, I have prepared a revised version of the draft which is enclosed in annex I to the present letter. I have revised the text on the basis of proposals for amendments made during the fourth session of the Working Group, also reflected in the report of that session (A/HRC/6/8).
3. The revised draft does not aim to reflect all discussions held during the fourth session of the Working Group, as a comprehensive account of those discussions is contained in the above-mentioned report of the session. Rather, the draft aims to reflect those proposals for which concrete text was proposed and presented to the Working Group at its fourth session. Amendments made to the original draft are marked in bold font (new text) or strikethrough (deletions). Moreover, in those cases where no discussion was held or objections raised to specific proposals for amendments, the proposed new text has been placed in square brackets.
4. In the explanatory memorandum, annex II, I have indicated the proposals for amendments which have been included in the revised draft and provided a few explanatory remarks on specific provisions, including on how, in some cases, I have combined different proposals in an effort to use the wording which seemed most consensual.
5. I hope the revised draft will assist us in moving forward during the fifth session, due to be held from 4 to 8 February 2008 (first part) and 31 March to 4 April 2008 (second part).

(Signed): Catarina de Albuquerque

Chairperson-Rapporteur of the Open-ended
Working Group on an optional protocol to the
International Covenant on Economic, Social
and Cultural Rights

ANNEXES

Annex 1

REVISED DRAFT OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

The States Parties to the present Protocol,

*Noting that **the peoples of the United Nations have, in the Charter of the United Nations, reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person, and in the equal rights of men and women, and have determined to promote social progress and better standards of life in larger freedom,***

*Also noting that the Universal Declaration of Human Rights proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, **[such as race, colour, sex, language, religion, political or other opinion, national or social origin, property or other status,***

*Recalling that the **Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights** recognize that the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy civil, cultural, economic, political and social rights,*

*Also recalling that the World Conference on Human Rights, in the Vienna Declaration and Programme of Action adopted in 1993, reaffirmed that all human rights are universal, indivisible and interdependent and interrelated, **and that the international community must treat human rights globally in a fair and equal manner, on the same footing and with the same emphasis,***

Considering that in order further to achieve the purposes of the International Covenant on Economic, Social and Cultural Rights (hereinafter referred to as the Covenant) and the implementation of its provisions it would be appropriate to enable the Committee on Economic,

Social and Cultural Rights¹ (hereinafter referred to as the Committee) to receive and consider, as provided in the present Protocol, communications concerning **alleged** violations of [any of the rights] set forth in the Covenant.

[Recalling that each State Party to the Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the Covenant by all appropriate means, including particularly the adoption of legislative measures]

Have agreed as follows:

Article 1

The competence of the Committee

1. A State Party to the Covenant that becomes a Party to the present Protocol recognizes the competence of the Committee to receive and consider communications [and to conduct inquiries] as provided for by the provisions of the present Protocol.
2. **No communication shall be received by the Committee if it concerns a State Party to the Covenant which is not Party to the present Protocol.**

Article 2

~~Individual~~ Communications

[1.] Communications may be submitted by or on behalf of individuals or groups of individuals, ~~subject to~~ **within** the jurisdiction of a State Party, claiming to be **[direct]** victims of a **[significant]** violation of any of the rights set forth in [Parts II and III of / **Part III read in**

¹ Established under Economic and Social Council resolution 1985/17.

conjunction with provisions contained in Part II of] the Covenant by that State Party. Where a communication is submitted on behalf of individuals or groups of individuals, this shall be with their **[express]** consent **unless the author can justify acting on their behalf without such consent.**

[1 bis. The Committee may grant amicus standing to non-governmental organizations or institutions, where appropriate, to make submissions with respect to a communication submitted pursuant to paragraph 1 of the present article. Submissions received from such organizations or institutions will be made available to the parties.]

[1 ter. Where appropriate, the Committee may receive and consider communications from non-governmental organizations with relevant expertise and interest, alleging a violation of any of the rights set forth in the Covenant.]

[2. Each State Party may, at the time of signature or ratification of the present Protocol or accession thereto, declare that it does not recognize the competence of the Committee to consider individual communications under certain provisions of articles 2 (1) and 6 to 15 of the Covenant.] **[A State party that has made a declaration under the present paragraph is requested to inform the Committee after 10 years of its ratification of the present Protocol or accession thereto whether or not it will maintain the declaration.]**

Article 3

~~Collective communications~~

[Article has been deleted]

Article 4

Admissibility

1. The Committee shall not consider a communication unless it has ascertained that all available **[judicial, administrative and other / domestic]** remedies have been exhausted. This shall not be the rule where the application of such remedies **[is unreasonably prolonged]** **[or**

unlikely to bring effective relief]. **[The requirement of exhausting domestic remedies does not apply when no such remedies have been established in national legislation.]**

2. The Committee shall declare a communication inadmissible where:

(a) It is not submitted within ~~six months~~ **a reasonable period** after the exhaustion of domestic remedies, except in cases where the author can demonstrate that it had not been possible to submit the communication within that time limit;

(b) The facts that are the subject of the communication occurred prior to the entry into force of the present Protocol for the State party concerned unless ~~the those~~ **those facts continued can** ~~be shown to amount to a violation of the Covenant~~ after that date;

(c) The same ~~matter~~ **violation** has already been examined by the Committee or has been or is being examined under another procedure of international investigation or settlement **of the same nature**;

(d) It is incompatible with the provisions of the Covenant **[or inconsistent with applicable instruments in the field of human rights]**;

(e) It is manifestly ill-founded or not sufficiently substantiated **[or dependent mainly on second hand information]**;

(f) It is an abuse of the right to submit a communication;

(g) It is anonymous or not in writing **[without prejudice for the possibility for victims to request that information revealing their identity be withheld and its confidentiality preserved]**.

[Article 5

Interim measures

1. At any time after the receipt of a communication **[and before any decision on the merits]** the Committee may ~~request~~ **transmit to the State party concerned for its urgent consideration a request [by a victim of an alleged violation] that** the State party ~~concerned to~~

will take such measures of interim protection [, **taking into account the availability of resources**], as may be necessary **in exceptional circumstances** to avoid ~~possible~~ irreparable ~~damage~~ **harm** to the victim(s) of the alleged violation, when the risk of such damage is sufficiently substantiated [**and based on reliable information**].

2. Where the Committee exercises its discretion under paragraph 1 of the present article, this does not imply a determination on admissibility or on the merits of the communication.]

Article 6

Transmission of the communication

1. Unless the Committee considers a communication inadmissible without reference to the State Party concerned, the Committee shall bring any communication submitted to it under the present Protocol confidentially to the attention of the State Party concerned [, **but the identity of the individual or groups of individuals concerned shall not be revealed without his, her or their express consent**] .
2. Within six months, the receiving State Party shall submit to the Committee written explanations or statements clarifying the matter, **its views on the admissibility** and the remedy, if any, that may have been provided by that State Party.

[Article 7

Friendly settlement

1. The Committee shall make available its good offices to the parties concerned with a view to reaching a friendly settlement of the matter [**within a reasonable period of time**] on the basis of the respect for the obligations set forth in the Covenant [**where and if the parties concerned wish to settle the matter amicably**]. [**The parties concerned shall determine when the process of reaching a friendly settlement has been concluded**] *or* [**The terms of a friendly settlement shall be subject to review and approval by the Committee**]

2. [Any agreement on / **The full implementation of**] a friendly settlement [shall be deemed to close / **closes**] consideration of the communication under the present Protocol.

3. **[During the friendly settlement process, the Committee may, at any time, end the friendly settlement and continue with the consideration of the merits of the communication.]**

4. **[After successfully effecting a friendly settlement, the Committee shall draw up a report outlining the terms of the settlement, which shall be sent to the parties concerned.]**

Article 8

~~Consideration of the merits~~**[Examination of communications]**

1. The Committee shall consider communications received under articles 2 ~~and 3~~ of the present Protocol in the light of all information made available to it ~~by the parties concerned,~~ **provided that this information is transmitted to the parties concerned, after the communication has been declared admissible.**

2. The Committee shall hold closed meetings when examining communications under the present Protocol.

3. [When examining communications under the present Protocol, the Committee ~~shall~~ **may** give due consideration to relevant ~~decisions and recommendations of work carried out by~~ other United Nations mechanisms ~~as well as of bodies belonging to~~ **and should consult, as appropriate,** regional human rights systems].

4. When examining communications under the present Protocol ~~concerning article 2, paragraph 1 of the Covenant,~~ the Committee **[shall focus on allegations of violations concerning the failure of a State party to [respect, protect and fulfil / realise / guarantee] the rights set forth in the Covenant]. In doing so, the Committee shall address will assess, [, where and as required,] the [[un]reasonableness] [and effectiveness / adequacy] of the steps taken by the State Party, [in conformity with article 2, paragraph 1 of the Covenant] to the maximum of its available resources, in relation to the subject of a communication under consideration with a view to achieving progressively the full realization of the rights recognized**

~~in the present Covenant by all appropriate means.~~ **[In its assessment, the Committee shall take into account the [broad] margin of appreciation of the State party to determine the optimum use of its resources.]**

Article 8bis

Follow-up to the Views of the Committee

[Previously article 8, paras.5-7]

1. After examining a communication, the Committee shall transmit **to the parties concerned** its Views on the merits together with its recommendations on the remedies, if any, **relevant to the specific communication and to the parties concerned.**
2. The State Party shall give due consideration to the Views of the Committee, together with its recommendations on the remedies, if any, and shall submit to the Committee, **preferably** within six months, a written response, including information on any action taken in the light of the Views and recommendations of the Committee.
3. The Committee may invite the State Party to submit further information about any measures the State Party has taken in response to its Views or recommendations, if any, including as deemed appropriate by the Committee, in the State Party's subsequent reports under articles 16 and 17 of the Covenant.

[Article 9

Inter-State communications

1. A State Party to the present Protocol 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 the Covenant. Communications under this article may be received and considered only if submitted by a State Party that has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be received by the Committee 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 to the present Protocol considers that another State Party is not fulfilling its obligations under the Covenant, it may, by written communication, bring the matter to the attention of that State Party. The State Party may also inform the Committee of the matter. Within three months after the receipt of the communication the receiving State shall afford the State that 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 settled 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 only after it has ascertained that all available 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 unlikely to bring effective relief;

(d) Subject to the provisions of subparagraph (c) of the present paragraph, 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 the respect for the obligations set forth in the Covenant;

(e) The Committee shall hold closed meetings when examining communications under the present article;

(f) In any matter referred to it in accordance with subparagraph (b) of the present paragraph, 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) of the present paragraph, 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, with all due expediency after the date of receipt of notice under subparagraph (b) of the present paragraph, submit a report, as follows:

- (i) If a solution within the terms of subparagraph (d) of the present paragraph is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached;
- (ii) If a solution within the terms of subparagraph (d) is not reached, the Committee shall, in its report, set forth the relevant facts concerning the issue between the States Parties concerned. The written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report. The Committee may also communicate only to the States Parties concerned any views that it may consider relevant to the issue between them.

In every matter, the report shall be communicated to the States Parties concerned.

2. A declaration under paragraph 1 of the present article 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 that is the subject of a communication already transmitted under the present article; no further communication by any State Party shall be received under the present 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 10]

Inquiry procedure

1. If the Committee receives reliable information indicating [grave or systematic] violations by a State Party of the rights set forth in the Covenant, the Committee shall invite that State Party

to cooperate 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 that may have been submitted by the State Party concerned as well as any other reliable information available to it, the Committee may designate one or more of its members to conduct an inquiry and to report urgently to the Committee. Where warranted and with the consent of the State Party, the inquiry may include a visit to its territory.

3. Such an inquiry shall be conducted confidentially and the cooperation of the State Party shall be sought at all stages of the proceedings.

4. After examining the findings of such an inquiry, the Committee shall transmit these findings to the State Party concerned together with any comments and recommendations.

5. The State Party concerned shall, within [six months] of receiving the findings, comments and recommendations transmitted by the Committee, submit its observations to the Committee.

6. 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 **provided for in article 15.]**

[Article 11

Follow-up to the inquiry procedure

1. The Committee may invite the State Party concerned to include in its report under articles 16 and 17 of the Covenant details of any measures taken in response to an inquiry conducted under article 10 of the present Protocol.

2. The Committee may, if necessary, after the end of the period of [six months] referred to in article 10, paragraph 5, invite the State Party concerned to inform it of the measures taken in response to such an inquiry.]

[Article 11 bis

The Committee's competence regarding the inquiry procedure

[Previously article 20]

1. Each State Party may, at the time of signature or ratification of the present Protocol or accession thereto, declare that it does not recognize the competence of the Committee provided for in articles 10 and 11.
2. Any State Party having made a declaration in accordance with paragraph 1 of the present article may, at any time, withdraw this declaration by notification to the Secretary-General.]

Article 12

Protection measures

A State Party shall take all appropriate ~~steps~~ **measures** to ensure that ~~individuals~~ **authors, individuals and groups of individuals** subject to its jurisdiction are not subjected to ~~and form of ill-treatment, reprisal, victimization~~ or intimidation as a consequence of ~~communicating with communications to~~ the Committee pursuant to the present Protocol.

Article 13

International assistance and cooperation

1. The Committee shall transmit, as it may consider appropriate **and with the consent of the State party concerned**, to United Nations specialized agencies, funds and programmes and other competent bodies **and other States parties**, its Views or recommendations concerning communications and inquiries that indicate a need for technical advice or **financial** assistance, along with the State party's observations and suggestions, if any, on these views or recommendations.
2. The Committee may also bring to the attention of ~~such~~ **the bodies and States referred to in the previous paragraph** any matter arising out of communications considered under the present Protocol which may assist them in deciding, ~~each within its field of competence~~, on the

advisability of international measures likely to contribute to assisting States Parties in achieving progress in implementation of the rights recognized in the Covenant.

Article 14

Special Trust fund

1. To support the implementation of recommendations on remedies of the Committee under any of the procedures set forth in the present Protocol [, and for the benefit of victims of violations of the Covenant,] a ~~special trust~~ fund shall be set up ~~by decision of the General Assembly~~ **in accordance with the relevant procedures of the General Assembly**, to be administered in accordance with the financial regulations and rules of the United Nations, to provide economic assistance, when requested, to States parties that lack the financial means to implement effective remedies.
2. ~~The Special Fund may be financed through voluntary contributions made by Governments, intergovernmental and non-governmental organizations and other private or public entities.~~

Article 15

Annual report

~~The Committee shall include~~ **In its annual report on its activities under the Covenant to the States Parties and to the General Assembly of the United Nations, the Committee shall include** a summary of its activities under the present Protocol.

Article 16

Dissemination and information

Each State Party [undertakes/**is encouraged**] to make widely known and to disseminate the Covenant and the present Protocol and to facilitate access to information about the Views and recommendations of the Committee, in particular, on matters involving that State Party[, and to do so in accessible formats **for people with disabilities who do not read conventional print**].

Article 17

Rules of procedure

[The Committee shall develop its own rules of procedure to be followed when exercising the functions conferred on it by the present Protocol / **[or: The State parties shall develop, on the first Conference of States parties, rules of procedures to be followed by the Committee when it exercises the functions conferred on it by the present Protocol.]**

Article 18

Signature, ratification and accession

1. The present Protocol shall be open for signature by any State that has signed, ratified or acceded to the Covenant.
2. The present Protocol shall be subject to ratification by any State that has ratified or acceded to the Covenant. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
3. The present Protocol shall be open to accession by any State that has ratified or acceded to the Covenant.
4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article 19

Entry into force

1. The present Protocol shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the [tenth/ **twentieth**] instrument of ratification or accession.
2. For each State ratifying **or acceding to** the present Protocol or acceding to it after its entry into force, the present Protocol shall enter into force three months after the date of the deposit of its own instrument of ratification or accession.

~~Article 20~~

[Article 20 has been moved up to become new article 11 bis]

[Article 21]

Reservations

No reservations to the present Protocol shall be permitted.]

Article 22

Amendments

1. Any State Party may propose an amendment to the present Protocol and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate any proposed amendments to the States Parties with a request that they notify her or him whether they favour a conference of States Parties for the purpose of considering and voting on the proposal. In the event that at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.
2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Protocol in accordance with their respective constitutional processes.
3. When amendments enter into force, they shall be binding on those States Parties that have accepted them, other States Parties still being bound by the provisions of the present Protocol and any earlier amendments that they have accepted.

~~Article 23~~

~~Transfer of competences~~

~~—— A Conference of States Parties to the present Protocol may decide, by two thirds majority, whether it is appropriate to transfer to another body, without excluding any possibility, the competences attributed to the Committee by the present Protocol.~~

Article 24

Denunciation

1. Any State Party may denounce the present Protocol at any time by written notification addressed to the Secretary-General of the United Nations. Denunciation shall take effect after the date of receipt of the notification by the Secretary-General.
2. Denunciation shall be without prejudice to the continued application of the provisions of the present Protocol to any communication submitted under articles 2, 3 and 9, **10 and 11** before the effective date of denunciation.

Article 25

Notification by the Secretary-General

The Secretary-General of the United Nations shall notify all States referred to in article 26, paragraph 1, of the Covenant of the following particulars:

- (a) Signatures, ratifications and accessions under the present Protocol;
- (b) The date of entry into force of the present Protocol and of any amendment under article 22;
- (c) Any denunciation under article 24.

Article 26

Official languages

1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.
2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States referred to in article 26 of the Covenant.

Annex II

EXPLANATORY MEMORANDUM

Preamble

1. Paragraph 1: the amendments reflect proposals to add wording from preambular paragraph 5 of the Universal Declaration of Human Rights (UDHR) and also to include a reference to the equal rights of men and women.
2. Paragraph 2: the amendment reflects a proposal to add the list of prohibited grounds of discrimination listed in article 2, paragraph 1, of the UDHR. While some States supported the initial draft, I believe the amendment would make the text clearer. Given the non-exhaustive nature of the list, I believe it would not jeopardize the notion that there might be other grounds of discrimination.
3. Paragraph 3: the amendment reflects suggestion to include a reference to the UDHR as a source of the expression “freedom from fear and want”.
4. Paragraph 4: the amendment reflects proposal to add wording from the Vienna Declaration and Programme of Action (from section I, paragraph 5).
5. Paragraph 5: the amendments reflect suggestions to: (a) insert the word “alleged” before violations; (b) place between brackets “any of the rights”, as this wording would need to be revised in light of the agreement reached on articles 2 and 3 of the draft; and (c) include a reference to the origins of the Committee on Economic, Social and Cultural Rights. With regard to the latter, I have done so in a footnote, as I believe this proposal was the most consensual.
6. New paragraph 5 bis reflects a proposal to insert such new paragraph to highlight the obligation to take steps to the maximum of available resources set out in article 2, paragraph 1, of the Covenant.
7. One delegate proposed to delete all preambular paragraphs except the last one. This proposal did not seem to receive support from the floor.

Article 1

8. Amendments reflect proposals to: (a) bracket “and to conduct inquiries” pending an agreement on whether the protocol would include such a procedure and (b) to add a paragraph with language from the Optional Protocol to the International Covenant on Civil and Political rights (ICCPR-OP1), article 1.

Article 2

9. Paragraph 1: the amendments reflect proposals to: (a) delete the word “individual” in the title (there would be no need for such reference if, as proposed, article 3 on collective communications is deleted); (b) before “the jurisdiction”, replace “subject to” with “within”, which is agreed language from the Optional Protocol to the Convention on the Elimination of Discrimination Against Women (OP-CEDAW); (c) add “direct” before the word “victims”; (d) add “significant” before the word “violation”; (e) amend the text in brackets to read “Part III read in conjunction with provisions contained in Part II of”; (f) insert “express” before the word “consent”; (g) after “consent” add “...unless the author can justify acting on their behalf without such consent.”, which is agreed language from OP-CEDAW; (h) insert two new subparagraphs providing for the possibility of granting amicus standing to non-governmental organizations (1 bis) and of receiving communications from such organizations (1 ter).

10. With regard to proposals (c) and (d) above, it should be noted that the wording proposed is not found in any existing communications procedures under the core international human rights treaties.

11. Paragraph 2: the amendment reflects a proposal to add specific wording requiring a State party that has made a declaration under paragraph 2 to reconsider its position after a 10 year period.

Article 3

12. Deletion of article 3 was suggested by a number of States. On the basis of the Working Group’s discussions, I believe deletion of this article is justified by: (a) the lack of any clear support for this article; (b) the importance of ensuring consistency among United Nations human rights instruments to which the notion of collective communications - borrowed from

the European context - is foreign; (c) the fact pointed out by many delegations that the possibility for groups of individuals to submit communications is already covered under article 2.

Article 4

13. Paragraph 1: the amendments reflect proposals to (a) replace “domestic” before the word “remedies” with a specific reference to “judicial, administrative and other” and (b) specify that “The requirement of exhausting domestic remedies does not apply when no such remedies have been established in national legislation”.

14. Paragraph 2, subparagraph (a): the amendment reflects proposals to use a more flexible deadline. In line with a proposal made by several delegations, I have proposed to use language similar to that of article 56, paragraph 6 of the African Charter on Human and Peoples’ Rights, which refers to the submission of communications “within a reasonable period from the time local remedies are exhausted or from the date the Commission is seized of the matter”.

15. Paragraph 2, subparagraph (b): the amendment reflects the proposal to use agreed language of OP-CEDAW article 4, paragraph 2 (e) which would retain the idea that the alleged violation in question must have an element of continuity.

16. Paragraph 2, subparagraph (c): the amendments reflect a proposal to (a) replace the word “matter” with “violation” and (b) proposals to specify that the “procedure of international investigation or settlement” referred to should be equivalent to or of the same nature as that under the optional protocol. The proposal which seemed most consensual in that regard was to use agreed language from the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED), article 31, paragraph 2 (c).

17. Paragraph 2, subparagraph (d): the amendment reflects a proposal to add “or inconsistent with applicable instruments in the field of human rights”. This is new language which is not contained in any other communications procedure, or in the rules of procedure of any of the treaty monitoring bodies. I would like to note that this additional criterion might place a considerable burden on the Committee on Economic Social and Cultural Rights, as it would be

required to assess the compatibility of a communication not only with the Covenant, but with every single applicable instrument in the field of human rights.

18. Paragraph 2, subparagraph (e): the amendment reflects proposal to add new wording to exclude communications which are dependent mainly on second-hand information.

19. During the fourth session of the Working Group, one delegation sought further clarification as to the wording proposed for subparagraph (e). In that regard, I would like to note that the language proposed in the first draft is identical to article 4, paragraph 2 (c) of OP-CEDAW. As is clear from the *travaux préparatoires* of OP-CEDAW, the criteria relating to communications that are “manifestly ill-founded or not sufficiently substantiated” were inspired by the jurisprudence of the Human Rights Committee. In this regard, a report of the Secretary-General to the Commission on the Status of Women points out that “Insufficient substantiation is not addressed in the ICCPR-OP1 as a criterion of admissibility but is addressed in the rules of procedure of the Human Rights Committee. Rule 90 (b) requires, among other admissibility criteria, that a claim be submitted ‘in a manner sufficiently substantiated’. The Human Rights Committee has noted that ‘although an author does not need to prove the alleged violation at the admissibility stage, he must submit sufficient evidence substantiating his allegation for purposes of admissibility’. Where a claim is not substantiated for purposes of admissibility, the Human Rights Committee has held communications inadmissible under rule 90 (b)” (E/CN.6/1998/7, paragraph 20).

Article 5

20. The whole article is placed in square brackets, as some States proposed the inclusion of the present article in the rules of procedure. Except for OP-CEDAW and ICPPED, no other core human rights treaty foresees the possibility of interim measures.

21. Paragraph 1: the amendments reflect proposals to: (a) specify that a request for interim measures should only be transmitted “before any decision on the merits”; (b) replace “request” with “transmit to the State party concerned for its urgent consideration a request” (I have used agreed language from ICPPED, article 31, paragraph 4, which seemed most consensual); (c) specify that a request should be made by a victim or victims; (d) add a reference to the availability of resources; (e) indicate that interim measures are only necessary in “exceptional

circumstances”; (f) replace “possible irreparable damage” with “irreparable harm”; (g) refer to “victims” in the plural (I have proposed to use the wording “victim(s)”, as in rule 108, paragraph 9 of the Rules of Procedure of the Committee against Torture); (h) add a reference to the need for a request to be “based on reliable information”.

22. New paragraph 2 reflects a proposal to add such a paragraph, using agreed language from OP-CEDAW, article 5, paragraph 2, to specify that a request for interim measures would not imply a determination on admissibility or on the merits.

Article 6

23. One delegation found that inadmissible communications should be sent to the State Party concerned. However, except for the Committee on the Elimination of Racial Discrimination (CERD), existing procedures make it clear that only communications that fulfil specific admissibility criteria outlined in the relevant instrument are to be brought to the attention of the State party. Article 14, paragraph 6 (a) of the International Convention on the Elimination of Racial Discrimination (ICERD) stipulates that “The Committee shall confidentially bring any communication referred to it to the attention of the State Party alleged to be violating any provision of this Convention, but the identity of the individual or groups of individuals concerned shall not be revealed without his or their express consent. The Committee shall not receive anonymous communications.”

24. Paragraph 1: the amendment reflects a proposal to add language from ICERD, article 14, paragraph 6 (a), specifying that the revelation of the identity of the author(s) of a communication would require his, her or their express consent. In this regard, I would like to note that the knowledge of the identity of the author(s) by the State party would seem essential to providing an effective remedy. Therefore the permanent withholding of the author's identity would need to be the exception, and this issue might be left out of the rules of procedure. One option could be to require an author expressly to object to the revelation of his/her identity, rather than requiring his/her express consent to such a revelation.

25. With regard to another suggestion made to establish time limits for the Committee to decide on the admissibility and merits of a communication, I would like to note that the rules of

procedure of some treaty bodies establish that, in the pre-admissibility stage, they may set time limits for the submission of additional information, clarifications and observations “with a view to avoiding undue delay” (see Committee Against Torture (CAT) rule 108, paragraph 5, Human Rights Committee (HRC) rule 91, paragraph 1 and CERD rule 92, paragraph 5). If deadlines are not kept either by the State party or by the author, the treaty body may decide the question of admissibility “in light of available information” (see CAT rule 108, paragraph 6 and CERD rule 92, paragraph 6).

26. Paragraph 2: the amendment reflects a suggestion to specify that States parties shall also submit to the Committee their views on admissibility.

Article 7

27. The whole article is placed in square brackets as some delegations mentioned that the friendly settlement of disputes should only be allowed in inter-State disputes. In this regard, I would like to note that references to friendly settlement is found in the rules of procedure of some treaty bodies, as is for instance the case of the Human Rights Committee, according to which “[T]he Committee shall proceed to make its good offices available to the States parties concerned with a view to a friendly resolution of the matter on the basis of respect for human rights and fundamental freedoms as recognized in the Covenant.” (rule 79).

28. Paragraph 1: the amendments reflect proposals to (a) specify that the procedure should aim at reaching a settlement “within a reasonable period of time”; (b) specify that procedures would only be initiated “where and if the parties concerned wish to settle the matter amicably” (as was noted in the Working Group, this would seem to be implicit in the initial text, since the Committee limits itself to making its good offices available); (c) specify that it is the parties concerned, and not the Committee, who would determine when the process of reaching a friendly settlement had been concluded, or (d) specify that the Committee should be given the competence to assess whether a friendly settlement is in conformity with the Covenant.

29. Paragraph 2: the amendments reflect a proposal to (a) add language to clarify that no communication should be closed before a friendly settlement has been fully implemented and (b) replace “shall be deemed to close” with “closes”.

30. New paragraphs 3 and 4 reflect proposals to clarify that the Committee is at liberty to end the friendly settlement procedure (paragraph 3) and to specify that the Committee should write up a report with the terms of any settlement reached (paragraph 4).

Article 8

31. Title: the amendment reflects a proposal to use the title “examination of communications”.

32. Paragraph 1: the amendments reflect proposals to (a) delete the reference to article 3; (b) delete the reference to “by the parties concerned”; (c) add language from OP-CEDAW, article 7, paragraph 1, “provided that this information is transmitted to the parties concerned”; (d) specify that the Committee shall consider only consider a communication after it has been declared admissible.

33. With regard to (c) above, it should be noted that in the practice of the treaty bodies, all information submitted in the context of a specific communication or requested by the treaty body is to be made available to both parties (see e.g. CERD rule 94, paragraph 1 and CAT rule 110, paragraph 1).

34. Paragraph 3 is placed in square brackets since some delegations argued for its deletion. Amendments to the paragraph reflect proposals to: (a) replace the word “shall” with “may”; (b) replace “decisions and recommendations of” with “relevant work carried out by”; (c) replace “as well as bodies belonging to” with “and should consult, as appropriate”.

35. Paragraph 4: in revising the text, I have aimed to reflect the various proposals made and use the language which seems the most consensual. In particular, the amendments reflect proposals to: (a) refer to the tripartite typology of obligations to “respect, protect and fulfil” or, alternatively, to refer to the obligation to “realize” or “guarantee”; (b) replace “will assess” with “shall address”; (c) add “where and as required”; (d) refer to the “unreasonableness” and/or “effectiveness” and/or “adequacy” of the steps taken; (e) refer to a (broad) margin of appreciation of States to determine the optimum use of their resources.

Article 8 bis

36. In line with a proposal made by several delegations, I have split up article 8, separating paragraphs 5-6 into a new article 8 bis under the heading “Follow-up to the views of the Committee”. This would ensure consistency in the text, since article 11 also deals with the “Follow-up to the inquiry procedure”.

37. Paragraph 1 (previously article 8, paragraph 5): the amendments reflect proposals made that met the general agreement of delegations.

38. Paragraph 2 (previously article 8, paragraph 6): the amendment reflects a proposal to extend the deadline referred to in this paragraph.

Article 9

39. The article is placed in square brackets as some delegations suggested its deletion. ICCPR, ICERD, CAT and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW) all include inter-State procedures. However, as of 1 November 2007, these had never been used. The current draft requires States to opt in to this procedure, thus enabling those States that wish to subject themselves to the procedure to do so, while respecting the views of other States that might not wish to do so.

Articles 10 and 11

40. The articles are placed in square brackets as some delegations argued for their deletion.

41. Article 10, paragraph 1: Square brackets reflect a concern expressed by some delegates about the expression “grave or systematic” violations. It should be noted that this is language similar to that contained in OP-CEDAW, article 8, paragraph 1.

42. Article 10, paragraph 6: the amendment reflects a suggestion to add “provided for in article 15.”

Article 11 bis

43. In line with a suggestion made by a number of delegates, former article 20 (The Committee’s competence regarding the inquiry procedure) has been moved up and is now proposed as article 11 bis, in order to make it clearer that the inquiry procedure is optional.

Article 12

44. The amendments reflect a number of proposals which seemed to meet general agreement.

Article 13

45. At the fourth session of the Working Group, arguments were made for and against merging articles 13 and 14. I suggest keeping the two provisions separate as I believe that substantively they address different subjects.

46. Paragraph 1: the amendments reflect proposals to (a) clarify that States parties should consent to the transmittal of any information concerning a need for international assistance; (b) clarify that such information could also be sent to other State parties; and (c) add “financial” before the word “assistance”.

47. Paragraph 2: the amendments reflect proposals to (a) add a reference to States and (b) delete “each within its field of competence”.

Article 14

48. Title and paragraph 1: following a proposal by several delegations, I have deleted reference to “special” before the word fund. Instead, I propose to refer to “trust fund”.

49. Paragraph 1: the other amendment reflects a proposal to use the wording “in accordance with the relevant procedures of the General Assembly”, as in article 26 of the Optional Protocol to the Convention against Torture (OP-CAT), rather than “by decision of the General Assembly”.

50. Paragraph 2: following several interventions on the financing of the fund, I suggest deleting this paragraph. There will thus be no references to “special” and “voluntary contributions”. Rather, the matter is left to the general financial rules and regulations of the United Nations.

Article 15

51. A proposal made by one delegation to put the language of this provision more in line with article 24 of CAT was included in the revised draft.

Article 16

52. The amendments reflect proposals to (a) replace “undertakes” with “is encouraged” and (b) to further specify the meaning of “accessible formats”. With regard to the latter proposal, I would like to note that this is an expressions entrenched in the human rights vocabulary. It relates, as was mentioned during the Working Group’s discussions, to formats that can be read by blind, deaf-blind, and vision-impaired people (e.g. braille, audio, electronic text, large print, and tactile diagrams). If the Working Group considers that further clarification would be helpful, I have proposed “for people with disabilities who do not read conventional print”. Another delegation suggested deleting the whole reference to accessible formats, and I have therefore placed it in brackets.

Article 17

53. Suggestions were made to retain or delete this article. Moreover, one delegate proposed new text indicating that the rules of procedure should be adopted by the States parties at the first conference of States parties.

Article 18

54. No comments were made on this draft article.

Article 19

55. Paragraph 1: the amendment reflects a proposal to increase the number of necessary ratifications or accessions for the entry into force of the optional protocol.

56. Paragraph 2: the amendment reflects a proposal to add “or acceding to” after “ratifying”.

Article 20

57. This paragraph was moved up and has now become article 11bis.

Article 21

58. This article is kept between brackets. Some delegations argued that a final decision on the question of reservations would depend on the decision on the scope of the proposed protocol under article 2.

Article 22

59. No comments were made on this draft article.

Article 23

60. Since no delegation supported the maintenance of this provision and several delegations asked for its deletion, I propose its deletion.

Article 24

61. Paragraph 2: the amendment reflects a proposal to add “10 and 11” after “9”. This proposal is therefore included in the text.

Articles 25 and 26

62. No comments were made on these articles.
