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

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

* The revised draft optional protocol is contained in the annex, which is circulated as received.

** Starting with the sixth session, the symbol system for the documents of the Working Group will indicate the session of the Working Group only; for reports to the Human Rights Council, however, the symbol will also include an indication of the relevant session of the Council.

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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

The Human Rights Council in its resolution 1/3 gave the Open-ended Working Group a two-year mandate to draft an optional protocol to the International Covenant on Economic, Social and Cultural Rights and requested the Chairperson-Rapporteur of the Working Group to prepare a first draft to serve as a basis for the negotiations.

In response to this request, I submitted a first draft of the optional protocol (A/HRC/6/WG.4/2) to the fourth session of the Working Group (16-27 July 2007). Subsequently, in order to facilitate the negotiation process, I prepared a revised draft (A/HRC/8/WG.4/2), which the Working Group considered at the first part of its fifth session (4-8 February 2008). On the basis of discussions held at those meetings, I have prepared a second revised draft which is annexed to the present letter.

We were able to make significant progress in our last meetings and several delegates have expressed a sense of optimism about the prospect of finalizing our work within the current mandate. I have sought to reflect the advancement made by revising the text and removing bracketed options where there seemed to be a broad consensus in the Working Group. The articles are mainly based on agreed language from communications procedures under other core international human rights treaties, but also reflect some new language on which there seemed to be general agreement. I therefore hope that the new draft will be broadly acceptable to all delegations.

In a number of cases further discussions are needed to explore possible solutions and reach consensus. In those cases the text remains in brackets. In particular, the Working Group will need to give focused attention to finding consensus solutions with regard to article 2; article 8, paragraph 4; and article 14. In the present draft, I have sought to integrate and reflect those proposals which have received the broadest support among delegates with a view to focusing our discussions. I have not included proposals which met with significant objections, as I believe those proposals would not bring the Working Group closer to a consensus.

I hope that the new revised draft will assist us in finalizing the negotiations on the optional protocol during the second part of the fifth session, due to be held from 31 March to 4 April 2008.

(*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

Annex

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

Prepared by the Chairperson-Rapporteur after the first part of the fifth session of the Open-ended Working Group on an 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 and in the dignity and worth of the human person,

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, birth or other status,

Recalling that the Universal Declaration of Human Rights, and the International Covenants on Human 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,

Reaffirming the universality, indivisibility, interdependence and interrelatedness of all human rights and fundamental freedoms,

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 Rights (hereinafter referred to as the Committee) to carry out the functions provided for in the present protocol,

[*Recalling* that each State Party to the Covenant undertakes to take steps, individually and through international assistance and cooperation, 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

Competence of the Committee to receive and consider communications

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 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 a Party to the present Protocol.

Article 2

Communications

1. Communications may be submitted by or on behalf of individuals or groups of individuals, under the jurisdiction of a State Party, claiming to be victims of a violation of any of the rights set forth in [Parts II and III of/Part III read in 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 consent unless the author can justify acting on their behalf without such consent.

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.]

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 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.

2. The Committee shall declare a communication inadmissible when:

(*a*) It is not submitted within six months 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 those facts continued after that date;

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

(*d*) It is incompatible with the provisions of the Covenant;

(*e*) It is manifestly ill-founded or not sufficiently substantiated;

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

(*g*) It is anonymous or not in writing.

Article 5

Interim measures

1. At any time after the receipt of a communication and before a determination on the merits has been reached, the Committee may transmit to the State Party concerned for its urgent consideration a request that the State Party take such interim measures as may be necessary to avoid possible irreparable damage to the victim or victims of the alleged violation.

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.

2. Within six months, the receiving State Party shall submit to the Committee written explanations or statements clarifying the matter 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 on the basis of the respect for the obligations set forth in the Covenant.

2. An agreement on a friendly settlement closes consideration of the communication under the present Protocol.

Article 8

Examination of communications

1. The Committee shall consider communications received under article 2 of the present Protocol in the light of all information made available to it, provided that this information is transmitted to the Parties concerned.

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

3. When examining communications under the present Protocol, the Committee may consult, as appropriate, relevant documentation emanating from other United Nations bodies and mechanisms as well as from regional human rights systems.

4. [When examining a communication under the present Protocol, the Committee shall consider, where relevant, the reasonableness of the steps taken by a State Party in conformity with article 2, paragraph 1, of the Covenant. In doing so, the Committee will respect a margin of discretion of a State Party to determine the appropriateness of policy measures as long as they are consistent with the provisions of the Covenant.]

Article 8 bis

Follow-up to the Views of the Committee

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.

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. 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

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 measures to ensure that individuals under its jurisdiction are not subjected to any form of ill-treatment or intimidation as a consequence of communicating with 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, its Views or recommendations concerning communications and inquiries that indicate a need for technical advice or 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 bodies, with the consent of the State Party concerned, 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**

[**Trust Fund**]

1. A [trust fund] shall be set up in accordance with the relevant procedures of the General Assembly, to be administered in accordance with the financial regulations and rules of the United Nations, in order to assist individuals or groups of individuals to submit communications under the present Protocol and to provide expert and technical assistance to Governments and non-governmental organizations for the implementation of the rights recognized in the Covenant as the Committee may consider appropriate in the context of the present Protocol and with the consent of the State Party concerned.

2. The provisions of this article are without prejudice to the obligations of each State Party to fulfil its obligations under the Covenant.]

Article 15

Annual report

The Committee shall include in its annual report a summary of its activities under the present Protocol.

Article 16

Dissemination and information

Each State Party undertakes 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 persons with disabilities.

Article 17

Rules of procedure

[Article has been deleted]

Article 18

Signature, ratification and accession

1. The present Protocol is open for signature by any State that has signed, ratified or acceded to the Covenant.

2. The present Protocol is 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 instrument of ratification or accession.

2. For each State ratifying or acceding to the present Protocol, the Protocol shall enter into force three months after the date of the deposit of its own instrument of ratification or accession.

Article 20

The Committee's competence regarding the inquiry procedure

[Article 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 to the present Protocol may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate 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

[Article has been deleted]

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 one year 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 and 9 or to any procedure initiated under article 10 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.
