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**Report of the open-ended working group to consider options regarding
the elaboration of an optional protocol to the International Covenant
on Economic, Social and Cultural Rights on its second session***

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* The annexes are being circulated in the languages of submission only.

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Introduction

1. In its resolution 2004/29, the Commission on Human Rights decided to renew for a period of two years the mandate of the open-ended working group to consider options regarding the elaboration of an optional protocol to the International Covenant on Economic, Social and Cultural Rights (ICESCR/the Covenant) and to convene it for a period of 10 working days prior to the sixty-first as well as the sixty-second sessions of the Commission. Pursuant to the decision, the working group met for its second session from 10 to 20 January 2005. The present report is submitted to the sixty-first session of the Commission.

I. ORGANIZATION OF THE SESSION

2. The second session of the working group was opened on 10 January 2005 by the Chief of the Research and Right to Development Branch of the Office of the High Commissioner for Human Rights (OHCHR), who reported on recent activities relevant to the deliberations of the working group. The High Commissioner addressed the working group later during the session. She referred to her view that the working group was among the most important initiatives currently under consideration by the Commission on Human Rights as it offered an opportunity to ensure that economic, social and cultural rights would receive the same attention as civil and political rights. Much of the reticence around proposals for an optional protocol turned around questions of the justiciability of economic, social and cultural rights; however, courts were increasingly playing a vital role in enforcing economic, social and cultural rights. A petition system at the international level could help to develop understanding of the substantive content of international norms and lead to real change for individuals. The availability of remedies at the international level would also provide a useful incentive to ensure the development of effective remedies at the national level.

3. At the 1st meeting of the second session, the working group re-elected by acclamation Catarina de Albuquerque (Portugal) as its Chairperson-Rapporteur. The Chairperson-Rapporteur reported on activities undertaken since the last session of the working group, in particular her briefing of the Committee on Economic, Social and Cultural Rights on the outcome of the working group's first session; participation in a seminar on an optional protocol to ICECSR, jointly organized by the Government of Portugal and the International Commission of Jurists; participation in a seminar organized by the Inter-American Institute of Human Rights on economic, social and cultural rights held in Costa Rica; and participation in a workshop organized by the Government of Chile on an optional protocol to the Covenant.

4. The working group adopted its agenda (E/CN.4/2005/WG.23/1) as well as its programme of work.

II. OPENING STATEMENTS

5. State delegations and NGO representatives made opening statements at the 1st meeting of the working group.

6. The representative of Canada, while supportive of debating all options for an optional protocol, noted that there were still fundamental problems concerning the assessment of compliance by States parties with the Covenant, as well as the scope and justiciability of

particular provisions. The representative voiced concerns about the risk of interference of an international body in resource allocation decisions made by States and about the duplication of mechanisms, and expressed interest in considering alternatives to an individual complaints mechanism during the discussions.

7. The representative of Costa Rica expressed support for the development of an instrument that could ensure that economic, social and cultural rights were fully upheld. The representative noted that the San Salvador Protocol to the Inter-American Convention on Human Rights could provide the working group with useful guidance, and encouraged the working group to consider the scope of any remedies attached to an optional protocol, particularly in serious cases of systematic violations.

8. The representative of Croatia expressed support for the elaboration of an optional protocol to the Covenant. The representative referred to the system of collective complaints at the European level as a good example for deliberations in the working group. Similarly, the individual complaints mechanisms under the Convention on the Elimination of All Forms of Discrimination against Women (hereafter Convention on Women) could provide useful points of reference.

9. The representative of Ethiopia, speaking on behalf of the African Group, expressed the view that the elaboration of an optional protocol to the Covenant would contribute to the promotion of economic, social and cultural rights. The representative proposed that an optional protocol should address and incorporate the issue of international assistance and cooperation, in a well-defined and measurable framework; clearly define the parameters used in examining complaints, taking into account the progressive nature of States' obligations, the availability of resources and different levels of economic development among States; make provision for accepting group complaints; and ensure complementarity with other communications mechanisms.

10. The representative of Finland expressed the view that human rights could be given concrete meaning through individual complaints. The delegation supported an individual communications mechanism of a procedural nature which, in its view would, inter alia, provide States with a direct role in the development of international jurisprudence on economic, social and cultural rights; strengthen the principle of international accountability; and place economic, social and cultural rights on an equal footing with civil and political rights in the international human rights system.

11. The representative of Indonesia stated that the working group was timely and that economic, social and cultural rights should be treated on an equal footing with civil and political rights. The representative also mentioned the importance of supporting developing countries' efforts to fulfil their obligations under ICESCR. The representative also thanked States for the support and solidarity in the wake of the tsunami disaster.

12. The representative of the Islamic Republic of Iran expressed the view that the development of new normative instruments should be based on a careful evaluation of needs and requirements, and that the obligations specified in article 2 (1) of the Covenant should be underlined and covered in this process.

13. The representative of Luxembourg, speaking on behalf of the European Union (EU) and associated countries, expressed support for the mandate of the working group. The EU expected that debates with different experts would enrich the discussion of the working group, as they had the previous year. The EU hoped that the second session would see significant advances in the identification of options for the elaboration of an optional protocol.

14. The representative of Mexico expressed support for the elaboration of an optional protocol as a means to promote the effective implementation and justiciability of economic, social and cultural rights and give this category of rights equal status with civil and political rights in the international human rights system. The representative emphasized that an optional protocol would assist States in understanding the nature of their obligations under the Covenant and facilitate the effective implementation of the rights at the national level, and called on the working group to go beyond analysing different options and commit to drafting an optional protocol.

15. The representative of Norway expressed its commitment to explore options for enforcing economic, social and cultural rights more effectively at the international level and to address the asymmetry in enforcement mechanisms available to civil and political rights, on the one hand, and economic, social and cultural rights, on the other. The representative asked the working group to consider whether an individual complaints mechanism was the most effective means to ensure effective implementation of the Covenant, and whether an optional protocol should be comprehensive or selective (“à la carte” approach) in scope.

16. The representative of Portugal reaffirmed the Government’s commitment to the promotion and protection of economic, social and cultural rights and expressed support for the elaboration of an optional protocol of a procedural nature containing a communications procedure.

17. The representative of the Russian Federation supported the elaboration of an optional protocol. Any individual or collective complaints mechanism should take into account the level of economic development and features of the legal systems of the countries concerned. The Russian Federation found the “à la carte” approach most appropriate. The representative called on the working group to move on to elaborate the text of the optional protocol.

18. The representative of the Sudan stressed that peace was a precondition for the enjoyment of economic, social and cultural rights, and that there would be no peace without worldwide respect for those rights.

19. The observers for the American Association of Jurists, the Centre on Housing Rights and Evictions (COHRE), the International Commission of Jurists (ICJ), the Europe-Third World Centre (CETIM), the International Women’s Rights Action Watch, the International Coalition for an Optional Protocol and the World Peace Council supported the elaboration of an optional protocol to the ICESCR, outlining some of the benefits that it could offer, including the fact that it would provide individuals with a remedy in case of violations of the rights in the Covenant.

III. INTERACTIVE DIALOGUE WITH SPECIAL RAPPORTEURS

20. At its 2nd meeting, on 10 January 2005, the working group held an interactive dialogue with Special Rapporteurs. The invited experts were: Jean Ziegler, Special Rapporteur on the right to food; Emmanuel Decaux, Special Rapporteur of the Sub-Commission on the Promotion and Protection of Human Rights on the universal implementation of international human rights treaties; Doudou Diène, Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance.

21. Mr. Ziegler recalled the paper he had submitted to the first session of the working group (E/CN.4/2004/WG.23/CRP.7) and illustrated the three different levels of obligations correlative to the right to food - the obligations to respect, protect and fulfil. Mr. Ziegler referred to the commitment to the right to food reaffirmed in the Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security adopted by the Food and Agriculture Organization of the United Nations in 2004. He highlighted jurisprudential developments and the increasing number of court decisions relating to the right to food, and other economic, social and cultural rights, citing cases from South Africa and India, as well as from the African and American regional human rights systems.

22. Mr. Decaux stressed the importance of putting the two Covenants on the same footing. He contested the view that the rights of the ICESCR were more vaguely defined, underlining how a communications procedure would further clarify the content of these rights. Mr. Decaux advised against an “à la carte” approach, which risked establishing a hierarchy of rights. He argued that the aim of an optional protocol should not be to revise the Covenant but to strengthen its implementation. In his view, an optional protocol would enable greater openness and participation of individuals and civil society and be an incentive for States to strengthen domestic mechanisms of redress. Finally, he underlined that States would have a margin of discretion in determining appropriate measures to implement recommendations of the Committee under a communications procedure.

23. Mr. Diène reflected on the relationship between modern forms of racism and discrimination and the ICESCR, and how those issues would also be relevant to a communications procedure. He underlined the central importance of cultural rights in addressing contemporary forms of racism and discrimination, and regretted that those rights had not been subjected to the same in-depth analysis as other rights of the ICESCR. Mr. Diène stated that racism and discrimination were becoming ever more complex. Mr. Diène highlighted the importance of effective protection of cultural rights under the Covenant in tackling new forms of racism and xenophobia.

24. The key theme of the discussion was the concept of progressive realization under the ICESCR. The Special Rapporteurs all rejected the idea that the “progressive realization” provision made the ICESCR fundamentally different from the International Covenant on Civil and Political Rights (ICCPR), stating that both Covenants imposed immediate obligations and obligations requiring progressive realization. Mr. Decaux underlined that the ICESCR required States to “take steps” towards the full realization of the rights guaranteed therein. Mr. Ziegler

noted that even States facing serious resource constraints would normally be able to comply with their obligations to respect and protect, while the obligation to fulfil could be more difficult. Both Mr. Decaux and Mr. Ziegler argued that the Committee could determine the appropriateness of measures taken by a State party towards the realization of Covenant rights.

25. Another question addressed to the Special Rapporteurs concerned the scope of a future communications procedure. Mr. Decaux and Mr. Ziegler highlighted the danger that an “à la carte” approach would undermine the coherence of the Covenant and introduce a hierarchy of rights. With regard to whether an optional protocol should cover the right to self-determination, as enshrined in article 1 (1) of the Covenant, it was noted that the inclusion of that article in a future optional protocol would not bring anything new, as an identical article was already covered by the petitions procedure of the ICCPR.

IV. INTERACTIVE DIALOGUE WITH EXPERTS OF THE INTERNATIONAL LABOUR ORGANIZATION AND THE UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

26. The 3rd meeting of the working group, on 11 January 2005, was devoted to an interactive dialogue with a panel of experts from other United Nations organizations with supervisory mechanisms relevant to some economic, social and cultural rights. The invited experts were Lee Swepston from ILO and Vladimir Volodin from UNESCO.

27. In his presentation, Mr. Volodin explained that the procedure for dealing with alleged violations of human rights within the competence of UNESCO was not of a judicial or quasi-judicial nature, nor was it treaty based. The purpose of the procedure was to establish a dialogue with the Government concerned, in complete confidence, with a view to seeking friendly settlement of the case. He explained that the monitoring body comprised 30 member States; that individuals or groups of individuals alleging the violation of their rights could submit communications; and that decisions were not published.

28. Mr. Swepston explained that the ILO Constitution provided for two complaints procedures. First, there was a representations procedure allowing an industrial association of employers or workers to institute a representation concerning the failure to secure effective observance of an ILO convention. Once declared admissible, the ILO Governing Body would establish a three-person committee composed of members from Government and employers' and workers' groups to consider complaints. Second, there was an inter-State procedure allowing an ILO member State to bring complaints against another member State that had ratified the same convention. The Governing Body could initiate the procedure on its own initiative or following a complaint by a delegate to the International Labour Conference. The Governing Body could then establish a Commission of Inquiry to investigate the complaint and report. A third ILO complaints procedure provided for complaints against Governments for alleged violation of the freedom of association, even where the relevant conventions had not been ratified. The supervisory body was the Committee on Freedom of Association, which comprised representatives of the Government and employers' and workers' groups of the Governing Body. The Committee published its decision. None of the ILO procedures allowed for individual

communications. Mr. Swepston mentioned that the issue of availability of resources in the ILO was one of several factors in the organization's earlier discussions about whether to extend the scope of its mechanisms to consider individual communications, and that that option had never received any support in the ILO.

29. Responding to questions from delegations about the risk of duplication and overlap between different international procedures concerned with State compliance with economic, social and cultural rights, the experts agreed on the importance of ensuring consistency in the interpretations made by different international bodies. In this context, both experts referred to a long-standing practice of cooperation between their respective agencies and the Committee on Economic, Social and Cultural Rights. The UNESCO expert furthermore agreed that an optional protocol to the Covenant would complement rather than create duplication of activities, and promote or reinforce the monitoring and enforcement of economic, social and cultural rights.

30. Responding to questions about the extent to which economic, social and cultural rights or certain aspects of some rights were justiciable, Mr. Swepston, recognizing the complexity of the issue, noted that under the ILO procedures, all human rights were equally justiciable and that ILO had not yet found any provision of its conventions that could not be made subject to a representation or complaint. There was also a considerable body of practice of justiciability at the national level of the economic and social rights covered by ILO conventions. Mr. Volodin stated that justiciability of economic, social and cultural rights followed from the universal acceptance of the interdependence and interrelatedness of all rights.

31. To a question on whether there were different levels of obligations for more and lesser developed countries with regard to economic, social and cultural rights, one of the experts replied that there was no difference in the content of the obligations. Rather, the difference was in the measures States had to take in order to implement their obligations - such measures depended on the level of development and legal system of each State. If a country did not have the capacity to implement its obligations effectively, the ILO offered technical assistance.

32. Responding to a concern about whether an optional protocol to the ICESCR would interfere in the domestic policy of a State party - for example concerning resource allocations to health care or education - one of the experts noted that an international communications procedure was not an enforcement mechanism, and served only as a reminder to States that they might not be complying with international obligations.

33. On the issue of advantages and disadvantages of an "à la carte" approach in an optional protocol, both experts agreed that a comprehensive approach would ensure the highest level of protection of economic, social and cultural rights, and that a selective approach could result in creating a hierarchy of rights.

34. In replying to questions on the degree of State cooperation and compliance with the complaints procedures, both experts stated that there had been a high degree of cooperation in follow-up, and that examination of communications had engaged States parties in a process of reflection at the national level.

35. Responding to several questions and comments about whether the optional protocol could provide for an initial confidential phase while the Committee sought a friendly settlement in conformity with the Covenant, both experts agreed that under the complaints systems of their organizations, a complaints mechanism could provide for an initial confidential phase while seeking a friendly settlement. UNESCO kept complaints confidential for 25 years, while the ILO published the findings on all complaints immediately.

V. INTERACTIVE DIALOGUE WITH TREATY BODY EXPERTS

36. The 4th meeting of the working group, on 11 January 2005, was devoted to an interactive dialogue with a panel of experts: Eibe Riedel, member of the Committee on Economic, Social and Cultural Rights; Andreas Mavrommatis, member of the Committee against Torture (CAT); and Göran Melander, former member of the Committee on the Elimination of Discrimination against Women (CEDAW).

37. Mr. Riedel informed participants that CESCR supported a communications procedure covering all provisions of articles 1 to 15 of the Covenant. The Committee also viewed its draft optional protocol (E/CN.4/1997/105) as a good starting point for discussions. Commenting on some of the issues raised by delegations, Mr. Riedel explained how the Committee took into account the particular situations in individual countries when considering the status of implementation of the Covenant. Concerning the discussion on the scope of a future optional protocol, Mr. Riedel pointed to disadvantages of an “à la carte” approach, which might introduce a hierarchy of rights. He also encouraged delegations to consider inquiry procedures and interim measures similar to those of the Optional Protocol to the Convention on Women.

38. In his presentation, Mr. Mavrommatis underlined that all rights in the international human rights treaties stemmed from the Universal Declaration of Human Rights. A communications procedure under the ICESCR would resolve any doubts as to the justiciability of economic, social and cultural rights. As a member of CAT and a former member of the Human Rights Committee, he highlighted how the petitions procedures of those treaty bodies had generated a wealth of jurisprudence illuminating the content of treaty provisions. He equally drew attention to the positive experience with the inquiry procedure under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which was not used to criticize States, but to assist them in addressing problems.

39. Mr. Melander observed that the communications procedure under the optional protocol to the Convention on Women, a convention that covered civil and political as well as economic, social and cultural rights, clearly demonstrated that all rights could be subject to a communications procedure. He stated that communications procedures complemented the State reporting system by allowing for a more in-depth consideration of individual cases. He drew attention to the inquiry procedure included in the optional protocol, which allowed CEDAW to react to information on cases of serious or systematic violations of the Convention. While the optional protocol did not provide for inter-State complaints, Mr. Melander recommended the inclusion of such a procedure in an optional protocol to ICESCR.

40. Responding to questions about possible overlap between different international communications procedures, the experts agreed that appropriate admissibility criteria would ensure that the same case would not be considered by more than one international petitions mechanism. As the United Nations Secretariat received communications centrally, the Secretariat could also help ensure that only one treaty monitoring body received a given communication. The competent committee could also request amicus curiae briefs from other bodies to ensure consistent interpretations of similar provisions.

41. On the question of retrogressive measures, Mr. Riedel underlined that it was not the role of the CESCR to make decisions on State policies or allocation of resources as such. However, the Committee would assess whether such policies adequately took into account the provisions of the Covenant. By way of example, Mr. Riedel referred to the test of reasonableness found in common law systems. If States could give reasonable justifications for such measures, they might not be considered retrogressive.

42. Mr. Riedel also noted that it should be left to the Committee to determine the justiciable elements of the provisions of the Covenant; the Committee would be guided by the wealth of information already available on the adjudication of economic, social and cultural rights.

43. Answering questions regarding various options for, and technical aspects of, a future communications procedure, the experts favoured giving standing to both individuals and groups. With regard to the issue of exhaustion of domestic remedies, it was explained that such remedies were not limited to judicial mechanisms, but could also include various others, such as national human rights institutions. In cases where no domestic remedies existed, a petitioner would be able to take a communication straight to the international level.

VI. INTERACTIVE DIALOGUE WITH REGIONAL EXPERTS

44. At its 5th and 6th meetings, on 12 January 2005, the working group started interactive dialogues with experts from two regional human rights mechanisms. There was agreement that a representative of the inter-American human rights system should be invited to the third session of the working group.

45. E.V.O. Dankwa, Commissioner of the African Commission on Human and Peoples' Rights addressed the working group in relation to the African regional system. Mr. Dankwa informed the working group that the African Charter on Human and Peoples' Rights provided for inter-State communications and "other communications", the latter having been interpreted by the Commission to include communications from individuals and groups of victims of alleged violations of all rights. Ratification of the Charter implied acceptance of the Commission's mandate to consider communications. The Commission might recommend provisional measures to be taken by a concerned State, and might also undertake a mission of inquiry if a particular situation were deemed to warrant such a step. The Commission would attempt to find an amicable settlement between a concerned State and the petitioner. Hearings before the Commission were confidential, but the decisions on communications were published. Mr. Dankwa provided the working group with several examples of jurisprudence from the Commission in cases involving the rights to health, education, favourable conditions of work and cultural life. In relation to an optional protocol to the ICESCR, Mr. Dankwa expressed a preference for a mechanism with a comprehensive scope.

46. Questioned on the concept of progressive realization, Mr. Dankwa replied that the concept was not explicitly incorporated into the Charter, but was still being taken into consideration by the Commission. While the lack of resources could not be used as an excuse for non-implementation of Charter obligations and had, in fact, never been invoked in the framework of the African Commission, different levels of resources were nevertheless taken into account by the Commission.

47. On the question of the rate of implementation of the Commission's recommendations, which were not legally binding, Mr. Dankwa noted that implementation depended on the political will of countries to honour their obligations. In that context, he indicated that the follow-up system to the African Commission's decisions was very weak and that the Commission had to rely on promotional missions, submissions from NGOs, national human rights institutions and others to monitor the rate of implementation.

48. Replying to a question on the advantage of having a communications procedure in addition to other methods to encourage compliance (appeals by NGOs, interventions by special rapporteurs, friendly settlements and inquiry missions), the expert said that while different mechanisms complemented each other, an individual communications mechanism had great potential to affect positively States' compliance with their obligations.

49. Mr. Dankwa saw no danger in overlap between international and regional communications instruments. The Commission might not assume jurisdiction over a case already settled by an international tribunal, and he found that the two levels of supervision would be mutually reinforcing.

50. Mr. Kristensen, Deputy Executive Secretary of the Committee of Independent Experts (European Committee of Social Rights), explained the State reporting system and collective complaints procedure under the European Social Charter. The complaints procedure, in operation since 1998, allowed certain types of organizations (national and international trade unions and employers' organizations and NGOs) to lodge complaints with the European Committee of Social Rights concerning any of the substantive provisions of the Charter that States parties had selected as applicable domestically. After examining the merits of a case, the Committee drew up a report containing its decisions, which was submitted to the Committee of Ministers. The latter Committee adopted resolutions or recommendations to States parties on the basis of the report's decisions, and the report was then made public.

51. Summarizing the experience with the complaints procedure, Mr. Kristensen said the procedure had had a decisive impact on the efficiency of the supervisory system. The procedure had raised awareness of the Charter among the public, helped clarify and develop case law under the Charter, and ensured greater compliance with the Charter among States parties.

52. Responding to questions concerning advantages and disadvantages of an "à la carte" approach, Mr. Kristensen explained how that approach had allowed States with problems in certain areas to ratify the protocol. On the negative side, the expert noted that the "à la carte" model did not help promote a full understanding of the Charter provisions, thus creating different Charters for different countries. In reply to questions on the status of economic, social and

cultural rights in the European human rights system, Mr. Kristensen said that the process of reforming the Social Charter, which had led to the adoption of a complaints procedure, was firmly rooted in the idea that social rights were human rights on an equal footing with civil and political rights.

53. With regard to the concept of progressive realization, Mr. Kristensen noted that States were under an immediate obligation to comply with the provisions of the Charter upon ratification. However, the Committee in practice recognized that some economic, social and cultural rights were realized in a gradual way. In reply to questions concerning the exclusion of communications from individuals, the expert clarified that organizations with standing before the Charter were able to raise concerns affecting both groups and individuals who did not themselves have a right to lodge communications. Responding to a concern about the possibility of conflicting decisions being handed down by different regional and international treaty monitoring bodies on the same case, the expert noted that hypothetically this was a possibility.

54. The representative of Poland commented that Poland had ratified the Charter only because it allowed States parties to select provisions applicable domestically. Another aspect that had weighed in favour of ratification was that the findings of the Committee of Independent Experts were subject to review by the Governmental Committee and the Committee of Ministers. Such review admitted economic and social considerations into the evaluation of State compliance. He stated that the Committee of Independent Experts tended to interpret the provisions of the Charter broadly and formulate findings irrespective of the social and economic context of the rights in question. Thus, he said that most of their negative conclusions were not accepted as recommendations from the Committee of Ministers to States. The representative gave examples of findings of the Committee of Independent Experts questioning the spending levels on particular social programmes by States or their specific social policies. Responding to this comment, the expert explained that the Committee could interpret the Charter in a dynamic way in accordance with the spirit of the Charter and had done so for many years. He noted that on the whole those interpretations were accepted by States and that the Committee of Ministers in its resolutions and recommendations generally did not dispute or challenge the findings of the Committee.

VII. DISCUSSION OF OPTIONS REGARDING THE ELABORATION OF AN OPTIONAL PROTOCOL TO ICESCR AND PART III OF THE COVENANT

55. At its 7th, 8th and 9th meetings, on 13 and 14 January 2005, the working group considered Part III of the Covenant, dividing the discussion into four groups: general statements; articles 6 to 9; articles 10 to 12; and articles 13 to 15. Before opening the discussion, the Chairperson read out a reply received from the Office of the Legal Counsel of the United Nations to a request for clarification of the power of the Committee on Economic, Social and Cultural Rights to receive individual communications. The Office of the Legal Counsel reiterated the advice contained in its memorandum of 2 March 2004 that “[t]o entrust the Committee ... with the examination of individual petitions against States for their non-compliance with their obligations under the Covenant, the consent of those States would be required, and their acceptance to be bound by the procedure should be expressed in the optional protocol itself”.

56. In relation to articles 6 to 9, Mr. Riedel informed the working group that the CESCR frequently referred to the experience of ILO and relevant regional bodies. In relation to article 6, the Committee had emphasized the obligation of States to provide equal access to places of work and to prevent discrimination in employment. The Committee frequently considered article 7 in conjunction with article 6 and questioned States on the non-discriminatory access to employment and services. In relation to article 8, issues covered by the Committee included representativity of trade unions, the problems facing small trade unions, and discrimination against trade union members. The Committee had interpreted article 9 to refer to an obligation for States to provide social security, social insurance and social assistance at a minimum level, particularly in relation to marginalized and disadvantaged groups.

57. In relation to articles 10 to 12, Mr. Riedel drew attention to the close relationship between those rights and the other provisions of the Covenant. He noted that the Committee in its interpretation of those articles had deduced various components and minimum requirements, such as non-discriminatory access to goods and services. Failure to satisfy such minimum obligations would put the burden of proof on the State to demonstrate that it had made every effort to use its available resources.

58. In relation to articles 13 to 15, Mr. Riedel noted that the Committee had devoted much attention to article 13 (right to education), which contained the most specific obligations in the Covenant. Discussions with States parties had included the issues of discrimination in relation to education, the question of school fees, measures to reduce illiteracy rates, and high drop-out rates in secondary schools, particularly in rural areas. The Committee had considered article 15 (right to take part in cultural life) in the context of non-discrimination and access of minorities to cultural life and expressions, bearing in mind the considerations of the Human Rights Committee under article 27 of the ICCPR.

59. The representatives of Canada, France, Finland, Poland, Portugal, the Russian Federation and Switzerland, as well as the observers for the Colombian Commission of Jurists, the ICJ and COHRE, drew attention to different national experiences, including case law, with regard to the rights recognized in Part III. The representative of Chile informed the working group that an optional protocol consisting of a communication procedure would help the Government increase a rights perspective in the drafting and adoption of laws on economic, social and cultural rights. The representative of Switzerland noted that its constitution distinguished between social rights and social goals, and prescribed that no direct subjective right to State subsidies could be derived from the latter, the latter not being justiciable. The representative of Portugal highlighted the State's positive experience with the complaints procedure under the European Social Charter, where a negative finding by the European Committee had assisted the Government in taking appropriate remedial measures. The observer for COHRE examined cases on the right to social security from international, regional, and national supervisory mechanisms.

60. The representatives of the United Kingdom and Poland expressed concern that an individual complaints mechanism would require the CESCR to examine domestic policies and programmes in greater detail than it did under the State reporting procedure. Mr. Riedel stated that the Committee would refrain from recommending specific policy options and leave the discussion of how to implement the Committee's recommendation to the State party. The

representatives of South Africa and Bolivia asked how the Committee would consider the effects of globalization and structural adjustment programmes on the ability of some States to implement their obligations under the Covenant. Mr. Riedel noted that the Committee was conscious of problems in that regard and would list them as matters of concern or as factors impeding full implementation of the Covenant.

61. In response to questions from delegations concerning the risk of overlap and duplication of mechanisms, Mr. Riedel pointed out that other international instruments were more restricted in scope than the Covenant, and that existing mechanisms are restricted in access (ILO) and transparency (UNESCO). Further, the risk of duplication of mechanisms could be addressed by developing appropriate admissibility criteria for an optional protocol as well as amicus curiae briefs. Mr. Riedel welcomed the suggestion made by the representative of Canada that NGOs' right of participation in the reporting procedure could be strengthened, but did not agree that that could replace an individual communications procedure.

62. The representatives of Spain and Poland queried how the Committee would interpret the concept of the family in article 10 (1) of the Covenant under a complaints mechanism, especially with regard to non-traditional forms of families. The representative of Poland asked whether the Committee would admit a communication concerning a same-sex union from an individual in a State that did not legally recognize such unions. Mr. Riedel noted that the changes in the traditional notion of the family had been discussed among Committee members; the Committee in its practice took into account domestic legislation and realities when considering that issue.

63. The representative of China noted the reference to the importance of international cooperation in article 11 and questioned whether complaints relating to a lack of international cooperation could be considered under a communications procedure. Mr. Riedel noted that the Committee regularly raised this issue in the reporting process by encouraging States to seek international assistance or to provide such assistance if they had the means to do so. The Committee had not dealt with international assistance and cooperation in terms of violations.

64. The representative of Costa Rica questioned the obligation to respect core obligations in relation to illegal immigrants. In that regard, Mr. Riedel underlined that States parties had obligations to ensure that illegal migrants enjoyed at least minimum essential levels of economic, social and cultural rights, such as basic health care.

65. The representative of New Zealand asked how the Committee would balance a needs-based approach with a rights-based approach to service delivery. For example, the delegate asked how a State could fulfil its obligations under article 12 through the provision of health services to small rural communities and large urban populations where the direct availability of services differed and might be subject to complaints to the Committee. Mr. Riedel stated that the Committee would respect priorities set under national policies; however, those priorities would have to be justified according to reasonable and objective criteria directed to the fulfilment of State obligations under article 12.

66. Commenting on a question raised by the representative of Angola as to how the Committee interpreted the imprecise terms “adequate” and “appropriate” in article 11, Mr. Riedel explained that the Committee had interpreted the terms so as to give States a broad margin of discretion, considering the appropriateness of measures on a country-by-country basis.

67. The representative of Japan noted that the right to food would normally imply a positive obligation to undertake certain action, and questioned whether the Committee could request a State to provide food. The representative of Poland questioned whether the right to food implied that every hungry person would be able to file a complaint under a complaints procedure, to which Mr. Riedel responded that under article 11 the State party could be reminded that its obligation was to take every step necessary within available resources to provide equal access to food in order to prevent starvation. The representative of Portugal noted that hunger affected the basic dignity of the person and consequently people suffering from hunger should be able to complain. The representative of FIAN argued that the Committee’s general comment No. 12 identified situations that would constitute a violation of the right to food.

68. In relation to article 13, the representatives of the Russian Federation, Finland, Portugal and Mexico indicated that the right to education was justiciable under their national legal systems and would be susceptible to consideration by the Committee under an optional protocol. The representative of Canada expressed concern about duplication of remedies if the right to education and cultural rights were to be included in a complaints mechanism under the Covenant given the UNESCO procedures and the communications procedures of other human rights treaty bodies. The representatives of Portugal and Chile highlighted the fact that other mechanisms such as the UNESCO, CERD and CEDAW procedures did not cover all dimensions of the right to education as guaranteed in the Covenant. The UNESCO procedure regarding legal standing and transparency was more restrictive than the treaty body procedures.

69. The representative of Canada proposed expanding the mandate of the Special Rapporteur on the right to education to consider individual complaints as an alternative to an optional protocol to the Covenant. Mr. Riedel and the representative of Portugal considered that an optional protocol would not be the appropriate means to alter mandates established by the Commission on Human Rights.

70. The representative of Ghana expressed concern that fees introduced in order to finance maintenance of school facilities or as part of a national strategy aimed at increasing the number of students could be interpreted by the Committee as violating article 13. Mr. Riedel noted that States would bear the burden of proof to justify that such steps were not retrogressive. The representative of the Congo highlighted the fact that maintenance of tuition fees for foreign students could obstruct access to education for students from developing countries seeking education overseas.

71. Responding to a comment about compliance of private schools and universities with the Covenant, Mr. Riedel stated that the Covenant did not preclude private educational institutions, but State obligations remained in relation to such institutions, for example, through the protection of the general education standards and the guarantee to marginalized and disadvantaged groups of equal access to education.

VIII. DISCUSSION OF OPTIONS REGARDING THE ELABORATION OF AN OPTIONAL PROTOCOL TO ICESCR AND PARTS I AND II OF THE COVENANT

72. At its 10th and 11th meetings, on 14 and 17 January 2005, the working group considered Parts I and II of the Covenant, examining articles 1 and 2 (1) and articles 2 (2) to 3.

73. Introducing the articles, Mr. Riedel noted that article 1 of the Covenant played a lesser role in the Committee's practice than Part II (which defined the meaning and scope of articles 6-15). In relation to Part II, he highlighted the principle of progressive realization and international cooperation and assistance contained in article 2 (1), as well as the principles of non-discrimination and equality between men and women set out in articles 2 (2) and 3.

74. Before starting the discussions, the representative of Ethiopia (on behalf of the African Group) made preliminary proposals in relation to a communications procedure that should be comprehensive; provide for exhaustion of local and regional remedies; not introduce new obligations, but be only a supervisory mechanism containing both individual and collective complaints procedures; and incorporate concrete and well-defined international economic and technical support to developing countries.

75. The call for a comprehensive approach was repeated by the representatives of Finland and Portugal, who underlined the dynamic relationship between all the provisions of the Covenant. The Russian Federation expressed the view that States should be able to avoid article 1 being subject to the procedure since there was no sufficient national or international legal practice on the matter due to the specific nature of the right. The representative of Finland questioned the appropriateness of individual complaints under that article, given the collective nature of the right to self-determination.

76. In relation to article 2 (1), the discussions focused on the reference to international assistance and cooperation. The representatives of the United Kingdom, the Czech Republic, Canada, France and Portugal believed that international cooperation and assistance was an important moral obligation but not a legal entitlement, and did not interpret the Covenant to impose a legal obligation to provide development assistance or give a legal title to receive such aid.

77. The representative of Egypt stressed that article 2 (1) recognized a legal obligation of international assistance which should be reflected in the text of an optional protocol. The Committee could review commitments made by States regarding international cooperation. The representatives of Egypt and the Congo stated that international cooperation could not be considered a precondition for the fulfilment of obligations under the ICESCR. The representative of the Congo noted that it was important to assist States in meeting their obligations, but only when they were unable to deal with specific challenges alone. Those challenges would need to be clearly identified. The representative of China stated that the obligation under article 2 (1) was to "take steps". Taking steps related to measures taken at the national level as well as cooperation and assistance at the international level. The purpose of the measures was to achieve the progressive realization of rights.

78. The representatives of China, the Czech Republic, Finland and Portugal underlined the importance of an optional protocol including article 2 (1). Portugal noted that, as a purely procedural instrument, an optional protocol would accommodate different views on the obligation of international assistance.

79. On the issue of international cooperation, Mr. Riedel referred to general comment No. 3 of the Committee. He explained that the Committee in its practice focused on States parties' obligation to take deliberate and targeted steps, but usually did not refer to an obligation to meet specific targets, thus leaving a wide margin of discretion to States parties on policy choices. He equally noted the difficulty of invoking a right to international assistance under a communications procedure, while it might be utilized in an inter-State procedure.

80. The observer for the ICJ noted the difficulty of establishing a causal link between the lack of international assistance and specific violations under an individual communications procedure, but that the lack of international assistance could be a mitigating factor in assessing States' ability to guarantee the rights in the Covenant. The observer for CETIM stated that international cooperation was not limited to development aid, but also referred to the principle that a State should not impose on another people or State measures that worked against the realization of their economic, social and cultural rights.

81. With regard to article 2 (2) (non-discrimination), the representatives of Finland, Canada and the Russian Federation informed the working group of relevant domestic case law, underlining the justiciability of this aspect of the Covenant. Several delegations highlighted the immediate character of the obligation of non-discrimination, with regard to both direct and indirect forms of discrimination.

82. On a question concerning the difference between application of article 26 of the ICCPR (equality before the law) and article 2 (2) of the ICESCR, Mr. Riedel observed that while the Human Rights Committee had dealt with petitions under article 26 concerning social security benefits, a communications procedure under the ICESCR would allow for a more specific focus on non-discrimination in relation to the rights in the ICESCR if the Committee were entrusted to monitor their implementation. NGOs underlined the importance of seeing the Covenant as a cohesive whole, and that some forms of discrimination in the area of economic, social and cultural rights could only be addressed under the ICESCR.

83. Responding to a question concerning article 2 (3), Mr. Riedel said that the wider margin of discretion for developing countries with regard to their obligations to non-nationals should be seen in the light of the principle of progressive realization and particular difficulties facing developing countries. He noted that that provision had only rarely been a central issue in the practice of the Committee.

84. Addressing questions raised as to the meaning of "other status" in the list of prohibited grounds of discrimination in article 2 (2), Mr. Riedel explained by way of example that the Committee in its practice addressed discrimination faced by older persons, persons with disabilities, and disadvantaged and marginalized groups. Commenting on article 3, the representatives of Brazil, Mexico and France stressed that this was an area where States needed to be particularly vigilant and where a strengthening of international monitoring mechanisms was important.

IX. DISCUSSION OF THE REPORTS OF THE SECRETARY-GENERAL

85. At its 12th meeting, on 18 January 2005, the working group considered the reports prepared by the Secretary-General containing comparative summaries of existing communications and inquiry practices under international human rights instruments and under the United Nations system (E/CN.6/1997/4 and E/CN.4/2005/WG.23/2) with a view to discussing which procedures, if any, could be incorporated into a communications procedure under the ICESCR. The reports referred to existing complaints procedures, inquiry procedures, and inter-State procedures within the United Nations system, and the 1503 procedure of the Commission on Human Rights, as well as relevant procedures within the ILO and UNESCO.

86. The working group decided to proceed with discussing the applicability of admissibility criteria found in existing communications and inquiry procedures to an optional protocol to the ICESCR. The representatives of the Russian Federation and Portugal expressed support for including a provision in an optional protocol that would render anonymous communications inadmissible. France observed that while an anonymous communication should be inadmissible, the possibility of withholding the name of a complainant from the concerned State should be considered, if the complainant faced the danger of retribution by the State.

87. In relation to the rights covered by an optional protocol, the representatives of Brazil, Costa Rica, Ethiopia, Finland, Mexico, Portugal and South Africa and the observers for several NGOs suggested that all rights in the Covenant should be the subject of communications through a comprehensive optional protocol. The representative of the Russian Federation reiterated the Government's support for an "à la carte" approach.

88. The representative of Australia suggested that the author of a communication must claim to be a victim of a specific violation. The representative of France proposed qualifying the scope of the optional protocol by limiting it to serious violations of the rights. This suggestion was supported by the representatives of Greece and Germany, the latter suggesting qualifying the communications mechanisms to cases concerning violations of the core content of a right. The representatives of Ghana, Finland and the Russian Federation and the observer for COHRE expressed opposition to that idea as it would raise problems of defining such qualifications and introduce additional obstacles for victims of violations who would bear the burden of proof for such qualifications. The representative of Belgium, while receptive to the French proposal, said that it would be difficult to develop criteria qualifying the rights subject to an optional protocol complaints procedure without amending the content of the Covenant.

89. On the question of admissibility criteria to avoid duplication of procedures, the representatives of Belgium, Brazil, Finland, Portugal and the Russian Federation expressed support for including criteria in that regard. The representatives of Portugal and Mexico favoured a provision precluding examination under an optional protocol of a complaint when the same matter submitted by the same author had been submitted for examination to a different mechanism.

90. A number of delegations made interventions on the issue of whether reservations to an optional protocol should be permissible. The representative of the Russian Federation noted that the right of States to make reservations to international treaties was a well-established principle

in international law, as long as such reservations were not incompatible with the object and purpose of the treaty, and thus reservations should be permitted under an optional protocol. While noting that reservations to existing mechanisms aimed largely at avoiding duplication of adjudication, the representative suggested that OHCHR should compile a more detailed study of reservations made by States parties to treaty body procedures for the next session of the working group. The representative of the Czech Republic suggested that the optional protocol should include a provision excluding reservations to the procedure.

91. The representative of Ethiopia argued against permitting reservations to an optional protocol, and the representative of Ghana stated that allowing reservations would be contrary to the spirit of an optional protocol with a comprehensive scope. The representative of France suggested that reservations expressed by States upon ratification of the ICESCR should extend to any communications procedure. The representative of Portugal stated that it was too early to take a decision on the issue of reservations, while the representative of Belgium was in favour of excluding reservations to the optional protocol, or at least limiting reservations as far as possible.

92. In relation to the exhaustion of remedies, the representatives of Australia, Belgium, Brazil, Costa Rica, Ethiopia (speaking on behalf of the African Group), Greece, the Russian Federation and Spain supported the inclusion of a provision requiring exhaustion of domestic remedies - not limited to judicial remedies alone - as a condition of admissibility under an optional protocol. The representatives of Mexico and Brazil proposed that such remedies should be effective. Where a remedy was ineffective - for example, as a result of inordinate delays - the requirement could be waived. The representatives of Angola, Argentina, Costa Rica and France expressed support for exhaustion of regional remedies. The representative of the United Kingdom noted that some domestic remedies would be political in nature, and questioned whether the Committee would consider a parliamentary hearing or debate about a particular issue of concern to be a domestic remedy. Mr. Riedel referred to regular criteria developed in international and regional jurisprudence when determining whether domestic remedies had been exhausted. While parliamentary procedures might end up providing redress to a complainant, such procedures were not sufficient to qualify as judicial or quasi-judicial remedies.

93. The representative of China called for admissibility criteria to be as specific as possible and suggested that the Committee should communicate the details of a communication to the State party, although in certain cases, the name and address of the alleged victim could be omitted.

94. The representatives of Australia and the United Kingdom, while stressing that the working group had not yet reached the stage of negotiating specific provisions, called for the criteria concerning standing and jurisdiction to be clearly and carefully defined.

X. DISCUSSION OF THE DRAFT OPTIONAL PROTOCOL PROPOSED BY THE COMMITTEE

95. At its 13th meeting, on 18 January 2005, the working group had before it the draft optional protocol (E/CN.4/1997/105), submitted by CESCR to the Commission on Human Rights in 1997.

96. Before discussing the draft optional protocol, the representative of Saudi Arabia raised the question of the legal status of the Committee. The representative drew attention to the Committee's lack of treaty status as a subsidiary body of the Economic and Social Council, and noted how that weakened the Committee's position and compromised its independence. Underlining the importance of discussing the issue further, the representative proposed that the working group consider giving the Committee treaty status through amendments to the Covenant. The representative of Sweden argued that, based on the legal opinion of the Office of Legal Council, an option was to regulate the status of the Committee under an optional protocol.

97. Other delegations noted that a discussion of amendments to the Covenant was beyond the scope of the working group's mandate. It was noted that the question of the Committee's legal status and its power to receive communications under an optional protocol were two different issues which should be dealt with separately. A number of delegations equally underlined that the Committee's lack of treaty status did not prevent States from giving it a mandate to receive communications under an optional protocol.

98. Having reached a consensus to postpone further discussion on the legal status and competence of the Committee, delegations proceeded to discuss the Committee's draft. The representatives of Angola, Portugal, Mexico, the Czech Republic and the Russian Federation noted that the Committee's draft was a good point of departure for future discussions. The representative of Sweden, however, noted that the draft needed to be updated and revised in light of developments since its elaboration and that some of the issues it raised were better dealt with in the rules of procedure. Delegations also underlined the need to discuss and define the draft's proposals further with regard to the legal standing of individuals and groups, the representation of alleged victims by third parties, the exhaustion of domestic and regional remedies, and admissibility criteria.

99. The representatives of France and the Czech Republic suggested that the preamble might be an appropriate place to refer to the principle of international cooperation and assistance and relevant international declarations and instruments. With regard to the proposal in the Committee's draft in relation to article 1, the representative of France suggested the possibility of joint supervision of this article by the Human Rights Committee and CESCR to ensure consistency of interpretation.

XI. DISCUSSION OF OPTIONS FOR AN OPTIONAL PROTOCOL

100. At the 14th meeting of the working group, on 19 January 2005, the Secretariat responded to a request from the United Kingdom for information concerning the resource implications flowing from the adoption of an optional protocol to the ICESCR. During the first three to five years, it was expected that the costs could be absorbed within existing resources. As the volume of petitions increased gradually, additional funds might be required for an additional staff member.

101. As stipulated in the programme of work, the working group proceeded to discuss options for an optional protocol to the ICESCR. The representatives of Argentina (speaking on behalf of the Group of Latin American and Caribbean States (GRULAC)), Belgium, Chile,

Costa Rica, Croatia, Cuba, the Czech Republic, Ecuador, Ethiopia (speaking on behalf of the African Group), Finland, France, Germany, Mexico, Peru, Portugal, the Russian Federation, Spain, Slovenia and Venezuela expressed support for an optional protocol to the ICESCR containing a communications mechanism. The representatives of the Russian Federation and Switzerland called specifically for an optional protocol adopting an “à la carte” approach, but Switzerland found interesting the idea of an approach - be it comprehensive or “à la carte” - restricted to the minimal content of the rights and focusing on complaints about violations of the obligations to respect and protect, with a possible opting-out procedure. The representative of Switzerland furthermore suggested that the scope of an optional protocol be limited to complaints about violations of the obligation to respect and protect. The representative of Germany expressed support for the idea of focusing the scope of an optional protocol on the core content of the rights. Most of the other delegations supporting an optional protocol favoured a comprehensive approach, although there was wide acknowledgement of the need for further discussion of the issue in order to reach a consensus. The representative of the Islamic Republic of Iran stated that the discussions were a good basis for continuing work to elaborate different and numerous options; any options should also include elements of international cooperation and technical assistance as reflected in the Covenant itself. The observers for the International Coalition for an Optional Protocol, COHRE and the ICJ expressed their support for a comprehensive communications procedure as well as an inquiry procedure.

102. The representative of Argentina (on behalf of GRULAC) considered that the existence of an optional protocol would contribute significantly towards ensuring that economic, social and cultural rights were treated equally to civil and political rights. The group requested the Chairperson to submit a document listing elements that could be contained in an optional protocol to its third session. The document should explain the nature and scope of the future protocol; consider the respective benefits of a protocol with a comprehensive or an “à la carte” scope; detail ways to ensure the effective functioning of a communications procedure; and list criteria for admissibility, as well as other elements.

103. The representatives of Australia, Canada, Japan, Poland and the United States had yet to be convinced that an optional protocol with a communications mechanism would contribute effectively to improving implementation of economic, social and cultural rights. The representative of Australia called for the focus to be placed on improving implementation of economic, social and cultural rights at the national level. While the United Kingdom was still sceptical of the need to elaborate an optional protocol, its representative noted that the deliberations in the working group had been helpful and it was willing to continue dialogue in a constructive manner.

104. The representative of the United States stated that an optional protocol would be ineffective and costly. The representative proposed that the Chairperson invite to the next working group experts known to have other opinions. The working group had not presented any arguments that an optional protocol would improve the rights of people living under a Government unwilling or unable to protect their rights.

105. The representative of Ethiopia, on behalf of the African group, referred to its previous proposal concerning an optional protocol and suggested that a future instrument should be divided into at least two parts, including one on international assistance and cooperation that

would take into consideration General Assembly resolutions addressing the issue. The African Group rejected the proposal to include this only in the preamble. Only an inter-State procedure should be applicable to international cooperation. The Group encouraged the Committee to develop its jurisprudence on implementation of article 2 (1), and stated that the Committee and eminent personalities could submit their opinions on this matter. The Group furthermore proposed the establishment of a fund to assist states in implementing the recommendations and proposed remedies for violations of the Covenant. Finally, the African Group encouraged the working group to take regional mechanisms into account.

106. The representative of France suggested that the CDESCR be given treaty body status. The representative also suggested that an optional protocol should contain an article specifically providing for jurisprudence of the Human Rights Committee to be taken into consideration in cases arising under article 1 of the Covenant. The representative of Greece also stressed the importance of consistency with the relevant jurisprudence of the Human Rights Committee.

107. The representative of Canada stated that before discussing the modalities of an optional protocol, attention should be devoted to examining other potentially viable ways of improving the monitoring of economic, social and cultural rights, such as: modifying the existing State reporting process to allow the Committee to look at individual situations of potential non-compliance; extending the mandates of special rapporteurs to receive and assess urgent communications; reviewing the UNESCO and ILO communications procedures; or creating a procedure for the friendly settlement of complaints. The Working Group would benefit from hearing a diversity of views.

108. The representative of the Czech Republic suggested that States should be invited to provide information about the extent to which economic, social and cultural rights were justiciable at the national level and to list "benchmarks".

109. While the Russian Federation reiterated its call for the drafting of an optional protocol to begin at the next session of the working group, delegations expressed support for the idea presented by Argentina on behalf of GRULAC that the Chairperson be invited to draft a paper with elements for an optional protocol in order to facilitate a more focused discussion at the third session of the working group. The representatives of Portugal, Australia, Poland, Switzerland and the United Kingdom stressed that such a paper should not imply a change in the working group's mandate. The representative of Romania emphasized the need for the paper to demonstrate ways in which an optional protocol would have a positive impact on the implementation of the Covenant. Delegations requested that the paper present a non-judgemental analysis of all the various options for an optional protocol, including the following elements:

(a) The scope of rights subject to an optional protocol - whether comprehensive or "à la carte" - and the possibility of opting in or out of the procedure in relation to specific rights or provisions in the Covenant;

(b) The criteria for admissibility of complaints, including avoidance of duplication, and exhaustion of domestic and regional remedies;

(c) The standing of individuals or groups under an optional protocol;

- (d) The permissibility of reservations to the optional protocol;
- (e) The attribution to the CESCR of a mediation role for the friendly settlement of disputes;
- (f) The authority to order interim measures;
- (g) The nature of economic, social and cultural rights, particularly in view of the risk of interfering in domestic political discussions about resource allocation;
- (h) Inquiry procedures;
- (i) International cooperation and assistance;
- (j) Cost implications of an optional protocol with a complaints mechanism;
- (k) The inclusion of an inter-State complaints mechanism;
- (l) The relationship between an optional protocol and existing mechanisms;
- (m) An analysis and assessment of the impact of an optional protocol on improving implementation of economic, social and cultural rights at the national level;
- (n) The option of having no optional protocol.

Annex I

LIST OF PARTICIPANTS

States members of the Commission on Human Rights

Argentina, Armenia, Australia, Brazil, China, Congo, Costa Rica, Cuba, Dominican Republic, Ecuador, Egypt, Ethiopia, Finland, France, Germany, Guatemala, Guinea, Hungary, Indonesia, Ireland, Italy, Japan, Kenya, Mexico, Netherlands, Nigeria, Paraguay, Peru, Republic of Korea, Romania, Russian Federation, South Africa, Saudi Arabia, Sudan, United Kingdom of Great Britain and Northern Ireland, United States of America.

States not members of the Commission on Human Rights

Afghanistan, Albania, Algeria, Angola, Austria, Azerbaijan, Belarus, Belgium, Belize, Benin, Canada, Chile, Czech Republic, Colombia, Croatia, Cyprus, Denmark, Democratic People's Republic of Korea, El Salvador, Estonia, Ghana, Greece, Iran (Islamic Republic of), Israel, Latvia, Luxembourg, Libyan Arab Jamahiriya, Madagascar, Malaysia, Mali, Malta, Mauritius, Morocco, Mozambique, Myanmar, New Zealand, Nicaragua, Norway, Oman, Panama, Philippines, Poland, Portugal, Serbia and Montenegro, Spain, Slovakia, Slovenia, Sweden, Switzerland, Syrian Arab Republic, Thailand, Tunisia, Turkey, Venezuela.

Non-member State of the United Nations

Holy See.

Organizations, bodies, programmes and specialized agencies of the United Nations

International Labour Office, International Monetary Fund, United Nations Educational, Scientific and Cultural Organization, World Health Organization.

National human rights institutions

Danish Institute for Human Rights, Inter-American Institute of Human Rights, National Human Rights Commission of the Republic of Korea.

Non-governmental organizations in consultative status with the Economic and Social Council

Amnesty International, Association of Organizations for Social and Educational Assistance, Centre on Housing Rights and Evictions, Colombian Commission of Jurists, European Roma Rights Center, Europe-Third World Centre, FIAN - Foodfirst Information and Action Network, Franciscans International, International Commission of Jurists, International Committee for the Respect and Application of the African Charter on Human and Peoples' Rights, International Federation of Human Rights Leagues, International Organization for the Development of Freedom of Education, International Service for Human Rights, International Women's Rights Action Watch, National Coordinator for Human Rights - Peru, New Humanity, World Organization against Torture, Norwegian Refugee Council, Commission of the Churches on International Affairs of the World Council of Churches and World Peace Council.

Annex II

LIST OF DOCUMENTS

<i>Symbol</i>	<i>Title</i>
E/CN.4/2005/WG.23/1	Provisional agenda
E/CN.4/2005/WG.23/2	Comparative summary of existing communications and inquiry procedures and practices under international human rights instruments and under the United Nations system: report of the Secretary-General
E/CN.4/2005/WG.23/CRP.1	Selection of case law on economic, social and cultural rights: background paper prepared by the Secretariat
E/CN.4/2005/WG.23/CRP.2	Information provided by non-governmental organizations: written submission presented by the Centre on Housing Rights and Evictions (COHRE)
E/CN.4/2005/WG.23/CRP.3	Information provided by non-governmental organizations: joint submission presented by the Centre on Housing Rights and Evictions, the International Commission of Jurists, Foodfirst Information and Action Network and International Women's Rights Action Watch Asia-Pacific on behalf of the International Coalition for an Optional Protocol to the International Covenant on Economic, Social and Cultural Rights
E/CN.4/2005/WG.23/CRP.4	Information submitted by the Food and Agriculture Organization of the United Nations
E/CN.4/2005/WG.23/CRP.5	Conclusions and recommendations of the Subregional Workshop for Judges and Lawyers on the Justiciability of Economic, Social and Cultural Rights in South-East Asia, Manila, 3-5 November 2004
E/CN.4/2005/WG.23/CRP.6	Information provided by the Government of Portugal: report of the European Round Table on Economic, Social and Cultural Rights, Lisbon, 24-25 May 2004
E/CN.4/2005/WG.23/CRP.7	Information provided by Amnesty International
E/CN.4/2004/WG.23/CRP.1	Selection of case law on economic, social and cultural rights: background paper prepared by the Secretariat
