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DRAFT INTERNATIONAL COVENANT ON HUMAN RIGHTS AND MEASURES OF IMPLEMENTATION

Uruguay: Proposed additions and amendments to the draft first International Covenant on Human Rights (Document E/1681) relating to the establishment of the office of the United Nations High Commissioner for Human Rights. (Attorney-General)

Article 19

1. The primary responsibility for ensuring the effective implementation of the personal rights and freedoms (civil and political) referred to in Articles and recognized in this Covenant shall be vested in each State Party hereto with respect to all individuals within its jurisdiction.

2. There shall be established a permanent organ, known as "The United Nations High Commissioner (Attorney General) for Human Rights" to exercise the functions hereinafter provided with respect to the implementation of the provisions of this Covenant and the supervision of its observance.

3. The functions conferred by this Covenant upon the organ established under paragraph 2 of this Article are without prejudice to the functions and powers of organs of the United Nations established by the Charter, or of their subsidiary organs, or of organs of the specialized agencies referred to in Article 57 of the Charter.

Article (20)

1. The United Nations High Commissioner for Human Rights or Attorney-General (hereinafter referred to as High Commissioner (Attorney-General)) shall be appointed by the General Assembly of the United Nations upon the recommendation of the States Parties to this Covenant, from among persons of high moral character and recognized competence and independence, who possess, in the countries of which they are nationals, the qualifications required for appointment to the highest judicial offices.

2. At least three months before the date of the opening of the session of the General Assembly at which the appointment of the High Commissioner (Attorney-General) is to be made, the Secretary-General of the United Nations shall address a written communication to the States Parties to this Covenant inviting them to submit their nominations within a period of two months.

3. Each State Party to this Covenant may nominate one or two persons possessing the qualifications described in paragraph 1 of this Article. These persons may be nationals of the nominating States or of any other States.

4. The Secretary-General shall prepare a panel of the persons thus nominated and submit it to the States Parties of this Covenant together with an invitation to designate representatives to a meeting called for the purpose of deciding upon a recommendation on the appointment of the High Commissioner (Attorney-General). The Secretary-General shall fix the date and make all arrangements necessary for such a meeting.

5. The recommendation of the States Parties to this Covenant shall be made by a two-thirds majority vote of the representatives, present and voting. The quorum shall consist of two-thirds of the said States. The names of all persons obtaining a two-thirds majority of the votes shall be communicated by the Secretary-General to the General Assembly.

6. The appointment shall be made by a two-thirds majority vote of the members of the General Assembly, present and voting.

7. The High Commissioner (Attorney-General) shall, before taking up his duties, make a solemn declaration before the General Assembly that he will exercise his functions impartially and in accordance with the dictates of his conscience.

8. The term of office of the High Commissioner (Attorney-General) shall be of five years and the High Commissioner shall be eligible for re-appointment.

Article (21)

1. The High Commissioner (Attorney-General) shall collect and examine information with regard to all matters relevant to the observance and enforcement by the States Parties to this Covenant of the rights and freedoms recognized herein. This information shall include reports, transmitted by the States Parties to this Covenant, laws and regulations, judicial decisions, records of parliamentary debates, writings in periodicals and in the press and communications from international and national organizations and from individuals.

2. States Parties to this Covenant shall transmit to the High Commissioner, at times agreed with him, periodic reports on the implementation of the provisions of this Covenant in the territory under their jurisdiction. Such reports shall include the text of relevant laws, administrative regulations, international agreements to which the said States are parties and significant judicial and administrative decisions.

3. The High Commissioner (Attorney-General) may, at times agreed with the States Parties concerned, conduct on-the-spot studies and inquiries on matters concerning the implementation of this Covenant.

Article (22)

1. The High Commissioner (Attorney-General) may at any time initiate consultations with the States Parties to this Covenant on any case or situation which, in his opinion, may be inconsistent with the obligations assumed by that State Party under the Covenant and make to any State Party such suggestions and recommendations as he may deem appropriate for the effective implementation of this Covenant.

Article (23)

1. The High Commissioner (Attorney-General) shall receive and examine complaints of alleged violations of this Covenant which may be submitted to him by individuals, groups of individuals, national and international non-governmental organizations and inter-governmental organizations.

2. No action shall be taken by the High Commissioner (Attorney-General) on any complaint which

a) is anonymous

b) contains abusive or improper language; however, specified charges of improper conduct, levelled at individuals or bodies of persons shall not be considered to constitute abusive or improper language;

c) does not refer to a specific violation of this Covenant by a State Party to the detriment of an individual or a group of individuals who, at the time of the alleged violation, were within the jurisdiction of the said State;

d) is manifestly inconsequential;

e) emanates from a national organization but does not relate to a violation allegedly committed within the jurisdiction of the State to which that organization belongs.

3. Complaints received from organizations, whether national or international, shall not require the authorization of the individuals or groups against whom the alleged violation was committed.

4. The Secretary-General of the United Nations shall communicate to the High Commissioner (Attorney-General) any complaint of an alleged violation of this Covenant or any information relating to such an alleged violation which may be received by him or by any other organ of the United Nations.

Article (24)

1. Subject to the provisions of paragraph 2 of Article (5) the High Commissioner (Attorney-General) may conduct such preliminary investigations as he may consider appropriate of the merits of a complaint with a view to deciding whether the object or the character of the complaint justifies further action by him.

2. In conducting the preliminary investigations the High Commissioner may call for the assistance of the competent governmental agencies of the State Party concerned. He may also seek the assistance of such non-governmental organizations as may be familiar with the local conditions and the general issues involved.

Article (25)

1. Subject to the provisions of paragraph 2 of Article (5) the High Commissioner (Attorney-General) shall have full discretion to decide with respect to any complaint received by him of an alleged violation of this Covenant

- a) not to take action;
- b) to defer taking action until such time as he may deem appropriate;
- c) to take action.

The High Commissioner (Attorney-General) shall inform the author of the complaint of his decision.

2. In case the High Commissioner (Attorney-General) decides to take action, he may decide to undertake negotiations with the State Party concerned with respect to the complaint received by him of an alleged violation of this Covenant in a territory within the jurisdiction of the said State. The High Commissioner (Attorney-General) may refer the complaint to the Security Council if in his opinion such negotiations are not likely to result in a satisfactory solution or have not resulted in a satisfactory solution.

3. In making his decision under this Article the High Commissioner (Attorney-General) shall give due consideration to the availability and the use made by the alleged victim of the violation of domestic remedies, including means of enforcement, to the availability and the use made of diplomatic remedies or of procedures established by United Nations organs or specialized agencies or of other available procedures provided by international agreement.

Article (26)

The following provisions shall apply in cases where the High Commissioner (Attorney-General) has decided to take action as provided in paragraph 2 of Article (7):

1. The High Commissioner (Attorney-General) shall communicate the complaint to the State Party concerned and ask for its observations thereon within such time limit as the High Commissioner may recommend.

2. The High Commissioner (Attorney-General) shall fully investigate the case on the receipt of the observations of the State Party concerned or on the expiration of the delay recommended by him for the submission of such observations.

3. States Parties to this Covenant shall place at the disposal of the High Commissioner, (Attorney-General) upon his request, such information as they may possess regarding the case.

4. The High Commissioner (Attorney-General) shall be entitled to conduct an inquiry within the territory under the jurisdiction of the State Party concerned, which shall afford all facilities necessary for the efficient conduct of the inquiry.

5. The High Commissioner (Attorney-General) shall have the right to summon and hear witnesses and to call for the production of documents and other objects pertaining to the case.

Article (27)

When the High Commissioner (Attorney-General) has decided to take action on a complaint as provided in paragraph 1 of Article (7) he may call upon the State Party concerned to comply with such provisional measures as he may deem necessary and desirable in order to prevent an aggravation of the situation.

Article (28)

1. The High Commissioner (Attorney-General) will make every effort to settle the object of a complaint on which he has decided to take action as provided in paragraph 1 of article (7) through negotiation and conciliation.

2. The High Commissioner (Attorney-General) shall notify in writing to the State Party concerned his intention to enter into negotiations with respect to a given complaint and request the State Party to designate, representatives for the purpose of such negotiations. The High Commissioner (Attorney-General) shall fix in consultation with the State Party concerned the date and place of such negotiations.

3. The High Commissioner (Attorney-General) shall inform the author of the complaint of the results of the negotiations.

Article (29)

1. The High Commissioner (Attorney-General) shall seize the Security Council of his accusation by a notice given to the Secretary-General of the United Nations and to the State Party concerned. Such notice shall indicate the provision of the Covenant the violation of which is alleged and shall be accompanied by all relevant documents.

2. The High Commissioner (Attorney-General) shall have the right to be present or to be represented at all hearings and other meetings which the Council may hold on the complaint and to make submissions to the Council orally or in writing. He shall receive communication of all documents, including the minutes of meetings relating to the case and may, in conformity with the rules of procedure of the Council examine such witnesses or experts as may appear before the same.

3. The High Commissioner may, at any time, by a notice given to the Secretariat of the Council and the State Party concerned withdraw the complaint

from the agenda of the Council. Upon the receipt of such notice of withdrawal the Council shall cease to consider the complaint.

Article (30)

The High Commissioner (Attorney-General) shall submit annual and, when necessary special, reports to the General Assembly for its consideration.

Article (31)

1. The High Commissioner (Attorney-General) shall appoint his staff subject to such financial provisions and administrative regulations as the General Assembly may approve in this respect.

2. The High Commissioner (Attorney-General) may, in consultation with the States Parties concerned, appoint regional commissioners who shall under his direction and supervision, assist him in the performance of his functions with respect to a given region.

3. The paramount consideration of the employment of the staff and in the determination of the conditions of service shall be the necessity of securing the highest standard of efficiency, integrity and competence. Due regard shall be given to the importance to recruiting the staff from nationals of the States Parties to the Covenant.

Article (32)

1. In the performance of their duties the High Commissioner (Attorney-General) and his staff shall not seek or receive instructions from any government or from any other authority or any organization. They shall refrain from any action which might accrue to the detriment of the position and the independent discharge of their functions as established by this Covenant.

2. The States Parties to this Covenant undertake to respect the exclusively international character of the responsibilities of the High Commissioner and his staff and not to seek to influence them in the discharge of their responsibility.

Article (33)

The High Commissioner (Attorney-General) shall enjoy diplomatic privileges and immunities. Members of his staff shall enjoy such privileges and immunities as are necessary for the independent exercise of their functions.

Article (34)

The High Commissioner (Attorney-General) shall reside at the permanent seat selected by him.

Article (35)

1. The High Commissioner (Attorney-General) shall receive a salary and allowances commensurate with the importance and dignity of his office. The salary and the allowances shall be fixed by the General Assembly of the United Nations and may not be lowered during the High Commissioner's (Attorney-General's) term of office. They shall be free of all taxes.

2. The General Assembly shall fix the conditions under which a retirement pension may be accorded to the High Commissioner (Attorney-General).

3. The expenses incurred by the exercise by the High Commissioner (Attorney-General) of his functions under this Covenant shall be borne by the United Nations in such manner as shall be decided by the General Assembly.

Note

Additional provisions may be added to this draft proposal, or the existing provisions amended accordingly, to apply to the implementation of so-called economic, social and cultural rights, provided, however, that these rights have been adopted, with a greater or lesser degree of precision, in final form, and provided further, that they shall be implemented gradually and with the utmost regard to reality.