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PROMOTION AND PROTECTION OF ALL HUMAN RIGHTS, CIVIL, POLITICAL, ECONOMIC, SOCIAL AND CULTURAL RIGHTS, INCLUDING THE RIGHT TO DEVELOPMENT

Report of the Open-ended Working Group on an optional protocol to the International Covenant on Economic, Social and Cultural Rights on its fourth session (Geneva 16-27 July 2007)*

Chairperson-Rapporteur: Catarina de Albuquerque (Portugal)

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

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Introduction

1. In its resolution 1/3, the Human Rights Council gave the Working Group on an optional protocol to the International Covenant on Economic, Social and Cultural Rights (the Working Group) a mandate "to elaborate an optional protocol to the International Covenant on Economic, Social and Cultural Rights" and requested the Chairperson to prepare "a first draft optional protocol … to be used as a basis for the forthcoming negotiations". The first draft optional protocol prepared by the Chairperson is contained in document A/HRC/6/WG.4/2. The present report summarizes the discussion of the fourth session of the Working Group (16-27 July 2007).

I. ORGANIZATION OF THE SESSION

2. The fourth session of the Working Group was opened by the Director of Operations, Programmes and Research Division of the Office of the United Nations High Commissioner for Human Rights (OHCHR).

3. In her statement to the Working Group, the United Nations High Commissioner for Human Rights emphasized the importance of strengthening the protection of economic, social and cultural rights through the adoption of an optional protocol. She noted that the approaching sixtieth anniversary of the Universal Declaration of Human Rights provides an occasion to reiterate the equal status of all human rights. The High Commissioner referred to the Optional Protocol to the Convention on the Rights of Persons with Disabilities (OP-CRPD), which acknowledges that all human rights - including those subject to progressive realization - can appropriately be subject to individual communications, and underlined the importance of ensuring consistency and coherence with the existing body of international human rights law.

4. The Working Group re-elected by acclamation Catarina de Albuquerque (Portugal) as Chairperson-Rapporteur. The Chairperson reported on activities undertaken since resolution 1/3 was adopted, including her briefing of the Committee on Economic, Social and Cultural Rights (CESCR) in May 2007, her participation in two regional meetings on an optional protocol to the International Covenant on Economic, Social and Cultural Rights in Mexico and Helsinki and her convening of a seminar of independent experts in Lisbon.

5. The Working Group adopted its agenda[1] and its programme of work.

II. OPENING STATEMENTS

6. Brazil (on behalf of the Group of Latin America and Caribbean Countries) welcomed the draft optional protocol prepared by the Chairperson. Portugal (on behalf of the European Union and associated countries) and Mexico expressed their appreciation that the draft uses agreed language from other United Nations human rights treaties, reflecting the main approaches discussed during previous meetings. They stressed the importance of putting economic, social and cultural rights on an equal footing with civil and political rights.

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[1] A/HRC/6/WG.4/1.

7. Egypt (on behalf of the African Group) reiterated its support for an optional protocol, stressing the importance of defining clear parameters for the examination of communications, enacting and giving full effect to international assistance and cooperation, ensuring appropriate means of communication and consultation with regional mechanisms, and avoiding setting undue precedents in the United Nations human rights system.

8. Belarus, Croatia, Ethiopia, Peru and Spain noted that the optional protocol should be comprehensive in scope. Finland stressed the need to ensure consistency among various communication procedures at the international level.

9. Azerbaijan and Chile emphasized that economic, social and cultural rights have to be considered on an equal footing with civil and political rights. Colombia and South Africa referred to the opportunity this negotiation process offers to advance the protection of economic, social and cultural rights.

10. Greece and Switzerland expressed preference for a flexible approach and Switzerland stressed the need for an opt-out clause. Turkey expressed preference for an option that would allow States to expand the scope of rights subject to an optional protocol over time.

11. China highlighted the importance of international assistance and cooperation and stated that further discussion is required on the collective and inter-State complaint mechanisms and inquiry procedure contained in the draft.

12. Australia, Japan and India mentioned that the optional protocol should establish clear criteria for assessing violations of economic, social and cultural rights. Australia stated that the specificities of such criteria should not be left to the Committee's rules of procedures. Japan stressed that the adjudication of economic, social and cultural rights requires the elaboration of universally applicable standards which acknowledge differences amongst countries. India stated that the optional protocol should be based on a common understanding of criteria against which States' obligations of "progressive realization" would be assessed.

13. The United States of America (the United States) expressed concern that economic, social and cultural rights have to be progressively realized in accordance with available resources and therefore do not lend themselves to quasi-judicial adjudication. Italy stressed that the optional protocol should take into account the specific nature of certain economic, social and cultural rights.

14. Nigeria emphasized that the rights of States to determine their own policy priorities should not be undermined by an optional protocol. A point also made by the United States.

15. The Russian Federation (Russia) expressed satisfaction that the work of the Working Group was moving into a practical phase.

16. Several States underscored the need to build broad support for an optional protocol, France stating that the Working Group needs to look for the broadest consensus possible.

17. Brazil stressed that individual communications should not be subject to stricter requirements than collective communications and supported the inclusion of an inquiry procedure, while stressing the need to clarify the actions or omissions that would lead to an inquiry. Brazil also noted that an à la carte approach would mean a conceptual setback. Ecuador recalled that the concept of progressive realization does not allow States to unduly postpone their efforts to ensure the full realization of these rights.

18. The Republic of Korea expressed its preference that individual communications under an optional protocol should be restricted to grave violations and noted that the inclusion of a collective communication mechanism requires careful consideration.

19. The NGO Coalition for an optional protocol to the International Covenant on Economic, Social and Cultural Rights (the NGO Coalition), the International Federation for Human Rights (FIDH), Amnesty International, the International Commission of Jurists (ICJ), the FoodFirst Information and Action Network (FIAN) and the International Network for Economic, Social and Cultural Rights (ESCR-Net) emphasized that the optional protocol should be comprehensive in scope consistent with other international human rights mechanisms.

III. FIRST READING OF THE DRAFT OPTIONAL PROTOCOL

Preamble

20. On paragraph 1, Ethiopia proposed to add wording from the Universal Declaration on Human Rights: “and have determined to promote social progress and better standards of life in larger freedom”, a proposal supported by several States. It was also suggested that a reference to the equal rights of men and women could be added.

21. Concerning paragraph 2, Egypt (on behalf of the African Group) suggested adding the non-exhaustive list of grounds of discrimination contained in article 2 of the Universal Declaration on Human Rights. Argentina, Mexico, Portugal, Spain, Switzerland and the United Kingdom supported the current draft, noting that its wording better captured new prohibited grounds of discrimination.

22. Considering paragraph 3, Ethiopia suggested adding a reference to the Universal Declaration on Human Rights as a source of the wording “freedom from fear and want”.

23. On paragraph 4, Ethiopia proposed including wording from the Vienna Declaration and Programme of Action (sect. I, para. 5): “The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis.”

24. On paragraph 5, a number of States noted that the wording “any rights set forth in the Covenant” should be revised in light of the discussions on articles 2 and 3. Japan and Sweden suggested incorporating agreed language from the preamble of the first Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR-OP1) in relation to communications “from individuals”.

25. France, supported by Azerbaijan, Denmark, Egypt, Nigeria, Peru and the United Kingdom, suggested adding the word “alleged” before violations.

26. The United Kingdom proposed a reference to the origin of CESCR, adding "established under Economic and Social Council (ECOSOC) resolution 1985/17". Denmark, Egypt, Peru and Poland supported such a reference. South Africa suggested this could be solved with a footnote. The NGO Coalition stated that a reference to the legal status of CESCR was unnecessary. Belgium noted that a discussion on its legal status was beyond the Working Group's mandate.

27. The United Kingdom proposed incorporating "as amended or replaced from time to time" after the reference to the ECOSOC resolution. Egypt, India, Morocco and Nigeria objected to this proposal.

28. Russia suggested that the best solution would be for the preamble to include only the present paragraph 5.

29. Colombia, Egypt, India, Nigeria and Peru, proposed an additional preambular paragraph, in line with article 2, paragraph 1, of the Covenant, referring to the obligation to take steps to the maximum of available resources.

Article 1

30. Ethiopia and India favoured deletion of the titles used for each article in the draft.

31. China, Colombia, Denmark, India, Japan and Russia expressed reservations concerning the competence of the Committee to conduct inquiries. China, Egypt (on behalf of the African Group), Russia, Switzerland and Turkey suggested bracketing this text pending discussions on articles 2, 3, 10 and 11.

32. Chile, Mexico and Spain supported the text as drafted. Australia, Ecuador, India, Japan, the Netherlands, New Zealand, Russia, Turkey, the United States and the United Kingdom suggested adding text from ICCPR-OP1, article 1: "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

33. Belgium, Bolivia, Brazil, Burkina Faso, Chile, Ecuador, Egypt (on behalf of the African Group), Ethiopia, Finland, France, Guatemala, Italy, Liechtenstein, Mexico, Nigeria, Norway, Peru, Portugal, Senegal, Slovenia, South Africa, Spain, Sweden, Uruguay, Venezuela (Bolivarian Republic of), Amnesty International, CETIM, FIAN, the ICJ, the NGO Coalition and International Women's Rights Action Watch (IWRAW) Asia-Pacific supported a comprehensive approach and the deletion of paragraph 2. It was noted that an à la carte approach would establish a hierarchy among human rights, disregard the interrelatedness of Covenant articles, amend the substance of the Covenant, disregard the interest of the victims, and defy the purpose of the optional protocol to strengthen the implementation of all economic, social and cultural rights.

34. Sweden proposed to insert a threshold in paragraph 1, limiting the scope to "substantial" or "significant" violations. Italy stressed that the optional protocol should recognize the progressive realization of economic, social and cultural rights.

35. Liechtenstein, Portugal, Switzerland, Uruguay and Venezuela (Bolivarian Republic of) proposed to delete the bracketed text in paragraph 1. Egypt stated that it would be able to accept excluding Part I of the Covenant from the scope of the procedure. India stated that it was open to a limited approach, covering Parts II and III of the Covenant, if clear guidelines on how to assess States' performance were defined.

36. Australia, Greece, India, Morocco, Russia and the United States favoured excluding Part I of the Covenant from the scope of a communications procedure. The United Kingdom suggested that if a comprehensive approach were ultimately followed it would be more correct to state that the provisions of Part II may only be invoked in conjunction with the substantive rights contained in Part III. The same would apply to an à la carte approach.

37. Australia, China, Denmark, Germany, Greece, Japan, the Netherlands, New Zealand, Poland, the Republic of Korea, Russia, Switzerland, Turkey, the United Kingdom and the United States were in favour of an à la carte approach that would allow States to limit the application of the procedure to only certain provisions of the Covenant along the lines of paragraph 2 of the draft. It was pointed out that such a selective approach would enable a larger number of States to become parties to the protocol and allow States to limit the procedure to those rights for which domestic remedies exist.

38. Poland and the United Kingdom preferred an opt-in approach, as opting-out from certain rights might send the signal that these rights were less important. The United Kingdom noted that this approach would allow States parties to add further rights at a later stage while not preventing other States from accepting petitions under all Covenant rights. Poland proposed to establish a minimum number of articles that all States parties would have to accept.

39. The Netherlands proposed to add a third paragraph to article 2, enumerating those provisions that may be excluded from the protocol. China stated that it is not appropriate for States to opt out of article 2, paragraph 1, which sets out guidelines for the whole Covenant. The Republic of Korea suggested adding to paragraph 2: "A State party that has made a declaration under the present paragraph is requested to inform the Committee after 10 years of its ratification of the present Protocol or accession thereto whether or not it will maintain the declaration."

40. France stated that communications should be considered in the light of the obligations to respect, protect and fulfil.

41. Egypt and India said that an optional protocol should define clear parameters to be applied by the Committee when examining communications.

42. Finland and Norway supported the provision in paragraph 1 that communications may be submitted by or on behalf of individuals and groups of individuals. India preferred to limit standing to individuals or groups of individuals claiming to be the victims of a violation. China suggested referring to "direct victims".

43. Belarus, Burkina Faso, China, Egypt (on behalf of the African Group), Ethiopia, Morocco and Russia proposed that communications on behalf of individuals or groups of individuals be submitted with their prior "express" consent. Ecuador, Peru, the NGO Coalition and ICJ stated

their concern about this proposal, as it might be difficult to obtain express consent in certain cases. Egypt (on behalf of the African Group) noted that "express" consent did not require a written signature. Instead of requiring "express" consent, Brazil, Chile, Portugal and Uruguay proposed to formulate paragraph 1 along the lines of article 2 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (OP-CEDAW) by inserting "unless the author can justify acting on their behalf without such consent". Ecuador suggested inserting "or invoking a legitimate interest".

44. The NGO Coalition stressed the importance of granting national and international non-governmental organizations (NGOs) the standing to submit communications on behalf of alleged victims. Bolivia stated that the Committee should decide whether a person or group had the standing to submit a communication on behalf of an alleged victim.

45. Guatemala asked whether "groups of individuals" in paragraph 1 (*grupos de personas* in the Spanish translation) included collective entities such as unions. China sought clarification as to the difference between communications submitted by groups of individuals and collective communications. Brazil, Ecuador, Egypt (on behalf of the African Group), Ethiopia, Japan, Mexico, Morocco, Peru, Russia, South Africa and Uruguay suggested deleting the word "individual" in the title of article 2, as the article also dealt with communications by groups of individuals.

46. Ethiopia and the United Kingdom proposed replacing the words "subject to the jurisdiction" in the first sentence of paragraph 1 with the words "within [the] jurisdiction" used in the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). Egypt and Nigeria favoured retaining the language of the draft.

Article 3

47. Algeria, Australia, Belarus, Burkina Faso, China, Colombia, Ecuador, Egypt (on behalf of the African Group), Greece, India, Japan, Morocco, Nigeria, Norway, the Republic of Korea, Russia, Senegal, Tanzania, the United Kingdom, Ukraine, the United States and Venezuela (Bolivarian Republic of) called for the deletion of article 3. Brazil supported the deletion of paragraph 2. Denmark and New Zealand stated that article 3 should be deleted if it allows anyone without a concrete link to a victim to submit a communication. Belgium and Turkey stated that the lack of a victim requirement would require further elaboration.

48. Argentina, Brazil, Denmark, Ecuador, New Zealand, Poland, Turkey, Slovenia, Sweden and Switzerland stressed that the scope of article 3 required further study. Slovenia, South Africa and Spain stated that additional debate on the potential benefits of this article was necessary. Finland stressed the need to give further consideration to the article as a means of complementing article 2.

49. Argentina, Ecuador, Poland and Turkey noted that the meaning of "unsatisfactory application" in paragraph 1 needed further clarification. Brazil, Ecuador and Ethiopia proposed to replace this term by "violations". Germany suggested referring to "substantial violations".

50. Switzerland noted the need to clarify whether an opt-out provision in article 2 would apply to article 3. Germany stated that article 3 should provide for an opt-out possibility with regards to paragraph 1. Belgium, China, Finland, the United Kingdom and Venezuela (Bolivarian Republic of) said that it was unclear whether the admissibility criteria in article 4 also applied to collective communications. India stated that article 3 was incompatible with article 4.

51. Belgium, Mexico, Norway and Spain underscored the importance of allowing NGOs to lodge communications on behalf of victims. India, Guatemala, Norway, Venezuela (Bolivarian Republic of) and the United States mentioned that NGOs already have standing under article 2 when assisting those with a sufficient victim nexus, while Spain stated that article 2 does not necessarily cover this dimension. Finland favoured having NGOs draw attention to shortcomings in the implementation of the Covenant. Austria, Egypt (on behalf of the African Group) and Ethiopia stressed the importance for groups of individuals to be able to submit communications. This possibility was included in article 2.

52. The Republic of Korea expressed concern that article 3 could lead to unreasonable interference with national policies.

53. Norway, Russia and the United Kingdom stated that the Committee already had the competence to assess "unsatisfactory application or implementation of the Covenant" under the reporting procedure. Austria, China, Greece and the Republic of Korea raised concern that article 3 might give rise to an unprecedented number of communications.

54. Belgium, Brazil, Ecuador, Ethiopia, Mexico and the NGO Coalition expressed concern about the limitations on standing of NGOs and about using ECOSOC status as a criterion for standing. Belgium, Brazil and Burkina Faso suggested adding national NGOs to a new paragraph 3 of article 2. Ethiopia proposed that paragraph 2 should allow any organization with knowledge of a violation to represent a victim. Ecuador suggested following the approach of the American Convention on Human Rights to grant standing to legally recognized non-governmental entities.

55. Portugal stressed that certain rights under the Covenant can only be exercised collectively, notably article 8, paragraph 1, subparagraphs (b) and (c). Before taking a decision on whether to maintain article 3 or not, this particular feature of the Covenant had to be borne in mind.

56. The FIDH and the ICJ expressed support for a collective communication mechanism under an optional protocol.

Article 4

57. On paragraph 1, Argentina, Belgium, Mexico, Slovenia and Switzerland agreed with the text as drafted.

58. China and Turkey cautioned against allowing the Committee to determine whether the application of domestic remedies has been unreasonably prolonged. Venezuela (Bolivarian Republic of) suggested that the Committee could interpret this on a case-by-case basis.

59. Burkina Faso, Ecuador, Egypt (on behalf of the African Group), Poland and the United States suggested deleting "unlikely to bring effective relief". Ecuador suggested adding "the requirement of exhausting domestic remedies does not apply when no such remedies have been established in national legislation".

60. The United Kingdom suggested referring to "all available judicial, administrative and other remedies", as there may be different options for realizing economic, social and cultural rights. Italy and Greece supported this proposal.

61. Argentina, Belgium, Denmark, Finland, Mexico and Russia agreed with the six-month time limit in paragraph 2, subparagraph (b). Finland noted that it was flexible concerning a possible one year time limit. Netherlands, Peru, South Africa and Spain proposed extending the time limit to one or three years. Ethiopia and the NGO Coalition recommended excluding such a time limit, noting it was not included in any other United Nations human rights instrument and that it would be an unnecessary barrier to access to the procedure. The NGO Coalition suggested using text similar to article 56 (6) of the African Charter on Human and Peoples' Rights if a time limit were retained.

62. The United Kingdom proposed considering exhaustion of regional remedies in paragraph 2, subparagraph (a). Portugal, supported by Argentina, Azerbaijan, Belgium, Norway, Peru, the NGO Coalition, ICJ, Amnesty International and ESCR-Net, stated that such a criterion, combined with the prohibition to admit matters already examined, would prevent victims from accessing the system, establishing a hierarchy between international and regional mechanisms.

63. In relation to subparagraph (b), Australia, Azerbaijan and the United Kingdom suggested adding "continuing" before "violation of the Covenant". Japan suggested using wording from OP-CEDAW, article 4, paragraph 2 (e).

64. Concerning subparagraph (c), France proposed replacing the word "matter" with "violation", a proposal which met with general agreement. Belgium suggested adding "equivalent" before "procedure of international investigation ...". Greece noted that it might be interpreted as excluding collective procedures under the European system. Amnesty International suggested adding wording from article 31 of the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED): "of the same nature".

65. Thailand recommended adding to paragraph 2, subparagraph (d), "or inconsistent with applicable instruments in the field of human rights".

66. Denmark requested further clarification on subparagraph (e). China and India proposed adding a criterion that no allegations based on second hand sources should be admitted.

Article 5

67. Argentina, Belgium, Brazil, Chile, Ecuador, France, Finland, Liechtenstein, Mexico, Peru, Portugal, Spain, Uruguay and Venezuela (Bolivarian Republic of) highlighted the need for interim measures to be included in the optional protocol. Germany, the Republic of Korea and Switzerland proposed their inclusion in the rules of procedures. Poland, South Africa, Uruguay,

Amnesty International, ESCR-Net, FIAN and the ICJ favoured retaining article 5. The function of interim measures to prevent irreparable harm was of such importance that the matter should not be deferred to the Committee's rules of procedure. Ethiopia, Finland, South Africa and the United States stated that requests for interim measures should only be issued in exceptional or grave circumstances. Denmark, Japan, Sweden and Turkey noted that further discussion and clarification were needed.

68. Ecuador, Italy, India, New Zealand and Russia suggested that interim measures should only be granted after a communication has been declared admissible. Argentina, Belgium, Chile, Peru, Portugal, ESCR-Net, FIAN and the NGO Coalition stressed that interim measures, serving the purpose of an urgent response to prevent irreparable damage, should not be limited by admissibility criteria.

69. Argentina, Colombia, Ecuador, Ethiopia, Italy, New Zealand, Peru, Poland, Spain, Russia and the NGO Coalition suggested adding a second paragraph "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." in line with OP-CEDAW, article 5, paragraph 2. Italy stressed the importance of taking into account the specific nature of economic, social and cultural rights in the adoption of interim measures.

70. China and the United States proposed that the Committee should "transmit" requests for interim measures by victims of alleged violations rather than making such requests at its own initiative. Colombia, Uruguay, ESCR-Net, FIAN and the NGO Coalition suggested requiring States parties to give "urgent consideration" to these requests.

71. The NGO Coalition stated that article 5 should include an obligation to take all necessary steps to give effect to interim measures.

72. Ethiopia, Germany and New Zealand proposed adding "and before any decision on the merits" after "communication". Several States supported adding "exceptional circumstances to avoid irreparable harm". Ethiopia proposed adding "and reasonable, based on resources available" after "necessary", while India proposed adding "taking into account the availability of resources" after "interim protection". Belgium, France and Switzerland opposed referring to resource availability as States are obliged to avoid possible irreparable damage at all times.

73. Several States and NGOs suggested referring to "victims" in the plural.

74. Brazil and Mexico recommended including a provision allowing States to comment on the requested interim measures and submit information. Several States noted that the Committee could act "based on the request of the victims, individuals, groups of individuals or representatives". France proposed a reference to "reliable information" at the end of the article.

75. Germany suggested replacing the request to take measures with "to transmit for its urgent consideration a request that". Finland noted that article 5 did not clearly express whether a State party would be required only to refrain from action or also to take positive action to prevent possible irreparable damage. Norway expressed general scepticism about including a mandate

for the Committee to request interim measures, but stressed that the issue should be addressed in the protocol. Poland considered that it was up to the State to decide on whether or not to adopt interim measures and on their character.

Article 6

76. South Africa inquired whether communications found inadmissible should be transmitted to the State party concerned. Australia noted that if inadmissible communications were to be transmitted, paragraph 2 should clarify that States were not required to respond.

77. Russia welcomed the confidentiality requirement in paragraph 1. Mexico and South Africa questioned whether such confidentiality was necessary. Switzerland suggested clarifying whether the identity of victims must be kept confidential. Portugal proposed adding, "but the identity of the individual or groups of individuals concerned shall not be revealed without his, her or their express consent" (from ICERD, article 14, paragraph 6 (a)).

78. Russia inquired when computation of the six months period in paragraph 2 would start. Argentina asked whether it referred to all stages of the proceedings. France and Mexico favoured establishing time limits for the Committee to decide on the admissibility and merits of a communication.

79. France and the United Kingdom proposed inserting "and its views on the admissibility" after the words "clarifying the matter" in paragraph 2. Peru stated that the article should indicate whether it may suffice to clarify the matter without providing a remedy. Senegal stated that paragraph 2 should invite States to provide information on possible future remedies.

Article 7

80. Argentina, Brazil, Colombia, Denmark, Ethiopia, Finland, France, Mexico, South Africa, Spain, Switzerland and Venezuela (Bolivarian Republic of) supported including article 7. Argentina and Mexico emphasized that a friendly settlement procedure should be voluntary and welcomed a reference to the fact that any settlement should be in accordance with the obligations set forth in the Covenant. Pakistan stated that the Committee's good offices should be made available to the State party concerned.

81. China, India, Sweden and the United States noted that a friendly settlement procedure should only apply to inter-State complaints, in line with other human rights instruments.

82. Switzerland proposed inserting the words "within a reasonable period of time" after "settlement of the matter" in paragraph 1. India preferred not to indicate any time frame, as the Committee should be able to start examining a communication any time one of the parties loses interest in pursuing a friendly settlement.

83. Ethiopia suggested adding, at the end of paragraph 1, "when and if the parties concerned wish to settle the matter amicably".

84. Venezuela (Bolivarian Republic of) suggested adding a new sentence to paragraph 1 to underline that only the parties, and not the Committee, would be able to determine when the process of reaching a friendly settlement had concluded.

85. Australia, Ethiopia, France and the United States favoured replacing the words "shall be considered to close" in paragraph 2 by "closes" to underline that a friendly settlement automatically closes consideration.

86. Denmark suggested vesting the Committee with the competence, similar to that enjoyed by the European Court of Human Rights, to assess whether a friendly settlement is based on respect for Covenant rights. Brazil and Switzerland warned that no communication should be closed before a friendly settlement has been fully implemented.

87. Mexico said the Committee would need to follow up on the implementation of friendly settlements. Finland and Spain stated that the Committee should have the power to review friendly settlements. Australia, China, the United States and Venezuela (Bolivarian Republic of) opposed this view.

Article 8

88. Ecuador, Germany, Slovenia and Spain supported article 8 as drafted. Ethiopia proposed amending the title to read "examination of communications".

89. Argentina, Brazil, Chile, Japan, Mexico, Nigeria, Peru, Poland, Spain and Turkey proposed inserting the words "after having been declared admissible" at the end of paragraph 1. Italy, Japan, Ethiopia and Mexico suggested inserting text from OP-CEDAW, article 7, paragraph 5, at the end: "provided that this information is transmitted to the parties concerned". Turkey asked for the deletion of "received under articles 2 and 3". China, Egypt, India, Russia and Venezuela (Bolivarian Republic of) asked for the reference to article 3 to be deleted. Switzerland suggested deleting the phrase "made available to it by the parties concerned".

90. Regarding paragraph 3, Argentina, Belgium, Brazil, Chile, Germany, Italy, Nigeria, Poland, Slovenia, Spain and Switzerland supported the draft text. Poland mentioned that the paragraph could also be left to the rules of procedure. Azerbaijan, India and Russia proposed its deletion. Nigeria wanted to avoid establishing a hierarchy between regional and international mechanisms. Liechtenstein suggested substituting "relevant decisions and recommendations" with "relevant work carried out by".

91. China, Finland, Russia and Turkey suggested that the word "shall", in paragraph 3, should be replaced by "may". Egypt (on behalf of the African Group) wished to clarify the word "relevant" and suggested using similar wording to that of the African Charter on Human and Peoples' Rights, article 45, paragraph 1 (c), replacing "as well as of bodies belonging to regional human rights systems" by "and should consult, as appropriate, regional human rights systems, when examining communications under the present Protocol". France, Liechtenstein and Venezuela (Bolivarian Republic of) suggested deleting the reference to regional human rights systems given their different nature. Ethiopia proposed adding a reference to the recommendations of United Nations specialized agencies.

92. Article 2 bis, proposed by the African Group, considered together with article 8, paragraph 4, aimed at providing a methodology for examining communications, specifying that the Committee shall (a) "focus, in principle, on allegations of violations concerning the failure of a State party ... to respect or protect the rights set forth in the Covenant", and (b) "address, where and as required, the reasonableness of the steps taken by the State party in conformity with article 2, paragraph 1, of the Covenant, in relation to the subject matter of a communication".

93. Germany, Slovenia and Sweden stated that they did not see the rationale for this proposal. Australia, Belgium, Norway, Portugal, Sweden and the United Kingdom expressed concern about the wording "in principle". Australia and the United Kingdom suggested replacing the word "address" by "assess". The United Kingdom further proposed inserting "in this context" to replace "where and as required". Argentina, Belgium, the Netherlands, Norway, Poland, Portugal and Slovenia stressed the importance of covering violations of the obligation to fulfil. Egypt clarified that the intention was not to exclude the fulfil dimension which was covered in the second paragraph of the proposal. Amnesty International and the ICJ expressed concern that various amendments were referring to concepts that are not in the Covenant.

94. Belgium, Chile, Finland, Germany, Mexico, the Netherlands, Portugal, Slovenia and Spain supported article 8, paragraph 4, as drafted. Azerbaijan, Denmark, Nigeria, Norway and Russia expressed concern about the term "reasonableness". The United Kingdom said that reasonableness was a familiar concept in some legal systems and proposed that its meaning could be defined in an explanatory annex.

95. The United States proposed an amendment to paragraph 4, replacing the term "reasonableness" with the concept of "unreasonableness" and adding a reference to "the broad margin of appreciation of the State party to determine the optimum use of its resources". Belgium, Ethiopia, Mexico, Portugal, Slovenia, Amnesty International, FIAN, the ICJ and the NGO Coalition expressed concern that this proposal came close to amending the Covenant. Egypt, Ethiopia, Portugal, Slovenia, the ICJ and the NGO Coalition expressed concern about the restrictiveness of the term "unreasonable". China, India, Japan, Norway, Poland and the United Kingdom expressed support or interest in such "unreasonableness" criteria.

96. Egypt, Norway, Poland and Sweden appreciated the reference to "a broad margin of appreciation" in the proposal of the United States.

97. Poland proposed an amendment of paragraph 4 referring to "unreasonableness" and the "broad margin of appreciation" and indicating that compliance would be monitored in the light of article 2, paragraph 1.

98. Switzerland proposed an amendment of paragraph 4, to modify the proposal of the African Group by removing the words "in principle" and adding a sentence on "the broad margin of appreciation" of States.

99. Egypt (on behalf of the African Group) mentioned its openness to the various suggestions made for revisions to its initial proposal.

100. Mexico, Amnesty International, the ICJ and the NGO Coalition expressed concern about referring to the "broad margin of appreciation", noting that while a margin of appreciation is implicit in the Covenant it is not always broad, depending on the specific context and right in question. Austria suggested a reference to the "margin of appreciation" in the preamble as a potential avenue for compromise.

101. Liechtenstein proposed an amendment to paragraph 4 referring to "communication" in the singular, replacing "will" with "shall", and leaving out the term "reasonableness". Ecuador supported this proposal. Russia considered it a good basis for further negotiations.

102. France tabled another proposal for paragraph 4, introducing the "respect, protect, fulfil" typology of obligations and requiring the Committee to examine the reasonableness of the measures taken by the State party in the light of available resources.

103. Greece underlined its support to the essence of the proposals made by the African Group, the United States, Poland and Switzerland. China and India noted that several amendments only referred to article 2, paragraph 1, of the Covenant, while other articles, including article 2, paragraph 2, were equally important. Belgium and Russia expressed concern that some amendments would amount to a reinterpretation of the Covenant. Ethiopia expressed concern about micromanaging the work of the Committee through an optional protocol.

104. Chile, Amnesty International, FIAN and the NGO Coalition suggested adding the term "effective" after "reasonable" in paragraph 4.

105. Regarding paragraph 5, the United Kingdom proposed to move the words "to the parties concerned" after "transmit" and to add "relevant to the specific communication and parties concerned". Australia, Ecuador, Greece, Italy, Nigeria, Poland, Spain and Turkey supported the proposal. Argentina, China and Sweden remained open to it. Poland indicated that the meaning of *mesures correctives* (remedies) should be clarified in the protocol. The ICJ favoured the paragraph as drafted, emphasizing that adding "relevant to the parties concerned" was problematic, as remedies can have relevance to other parties, notably to prevent future violations.

106. On paragraph 6, France and the NGO Coalition, proposed reviewing the six-month period, considered to be too short for implementing recommendations.

107. Concerning paragraph 7, Finland, Mexico and Slovenia favoured the text as drafted. Finland and Slovenia supported the possibility of oral hearings with basic rules included in the protocol, while Ethiopia suggested that such hearings were better dealt with in the rules of procedure.

108. Ethiopia suggested splitting article 8 into two articles, with paragraphs 5, 6 and 7 forming a new article 8 bis dealing with follow-up. The NGO Coalition suggested taking paragraphs 6 and 7 of article 8 to form a new article entitled "Follow-up to the Communication Procedure".

Article 9

109. China, Ecuador, Ethiopia, Japan, Norway and the United Kingdom suggested that article 9 be deleted. Ethiopia and Norway noted that this procedure, although included in other instruments, has never been used. Egypt, France, Mexico, the Netherlands, Portugal, South Africa, Spain and the NGO Coalition supported article 9 as drafted. It was noted that such a procedure had proved to be useful in the regional human rights systems. Australia and Venezuela (Bolivarian Republic of) reserved their position on the issue, while Egypt and Portugal mentioned that the procedure should be optional.

110. Ethiopia and France requested clarification of the notion of "exhaustion of domestic remedies" under paragraph 1, subparagraph (c). Australia, Burkina Faso and Japan highlighted the need for further discussion. Ethiopia noted the high cost of such a procedure for developing countries.

Articles 10 and 11

111. Austria, Brazil, Chile, Costa Rica, Ecuador, Finland, Liechtenstein, Portugal, Senegal, South Africa, Sweden and the NGO Coalition supported an inquiry procedure. Finland noted it allowed a response to be made to serious violations in a timely manner. It was noted that an inquiry procedure could be used by individuals and groups facing difficulties in accessing the communication procedure or in danger of reprisal. Portugal welcomed the use of agreed language from other United Nations instruments.

112. Australia, China, Egypt, India, Russia and the United States were not in favour of an inquiry procedure, suggesting that articles 10, 11 and 20 be deleted. Nigeria and Poland expressed reservations about such a procedure. Denmark suggested limiting the application of this procedure, if retained, to cases of non-discrimination or other fundamental and well-defined principles. The United States noted that there is no equivalent provision under ICCPR-OP1.

113. Australia, Ethiopia, Italy, Poland and the United States mentioned that there could be overlaps with the work of Special Rapporteurs. Burkina Faso and Senegal noted that the work of a Special Rapporteur differed from an inquiry procedure. Norway requested information on the application of similar procedures under CEDAW and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), and their added value.

114. Burkina Faso, China, Egypt (on behalf of the African Group), Ethiopia, Nigeria and the United States expressed concern about the term "grave and systematic violations".

115. Brazil pointed to the need for clear human rights indicators to identify situations of grave and systematic violations which would justify an inquiry.

116. Chile and the United Kingdom stated that an absence of resources would not justify grave violations. The ICJ referred to the distinction between lack of willingness and lack of resources as a way of determining States' failure to comply with their responsibilities.

117. Burkina Faso and Venezuela (Bolivarian Republic of) suggested adding "provided for in article 15" at the end of article 10, paragraph 6.

118. France stressed the need to change the six-month period in article 11, paragraph 2, in line with its proposal for article 8, paragraph 6.

Article 12

119. Chile, Egypt, France, Mexico, Portugal, South Africa, Switzerland and Amnesty International supported the inclusion of protection measures. South Africa suggested clarifying that protection should be given to authors, individuals and groups of individuals and that the article should refer to "communications". Switzerland proposed moving this provision after article 8. In relation to "ill-treatment or intimidation", several delegations expressed preference for a broader reference, such as "any form of reprisal" or "victimization of any form". Egypt suggested replacing "steps" with "measures".

Articles 13 and 14

120. Egypt (on behalf of the African Group), supported by China, Belarus, Burkina Faso, India, Nepal, Peru and Senegal proposed merging articles 13 and 14 under one heading and deleting the qualifiers "special" and "voluntary" in references to the fund.

121. Russia proposed bringing article 13 closer to the wording of article 45, paragraph 3, of the Convention on the Rights of the Child (CRC), stressing that request for technical assistance or advice should come from States, not from the Committee. This point was supported by Belarus, China, Egypt, Guatemala, Peru and Venezuela (Bolivarian Republic of). Venezuela (Bolivarian Republic of) proposed amendments to stress that international assistance could not be imposed on States. Guatemala noted that any faculty given to the Committee to transmit information should be in conformity with the confidentiality requirement set out in articles 6 and 10.

122. Argentina, Austria, Belgium, Finland, France, Germany, Italy, Japan, the Netherlands, New Zealand, Norway, Poland, Slovenia, Sweden, Switzerland and the United Kingdom supported article 13 as drafted. Venezuela (Bolivarian Republic of) noted that the State reporting procedure was more appropriate to identify needs for technical assistance and advice.

123. Peru proposed adding a new paragraph to highlight the importance of international assistance and cooperation for the realization of economic, social and cultural rights.

124. China, supported by Belarus and Nigeria, proposed to divide the first and second sentence of article 13 into two paragraphs, inserting "or requested by the State party concerned" after "appropriate", adding a reference to "financial" assistance as well as a reference to "other States parties" among the addressees and deleting "each within its field of competence, on the advisability of international measures likely". India and Nepal supported inserting "or financial" in the first sentence. Slovenia objected to this proposal. Venezuela (Bolivarian Republic of) noted that the Committee should not transmit its recommendations to "other States parties".

125. Austria inquired what "other competent bodies" in article 13 referred to. Venezuela (Bolivarian Republic of) understood this to mean bodies dealing with the provision of technical assistance.

126. India suggested deleting "for the benefit of victims of violations" in article 14, paragraph 1, to underline that the Committee's recommendations may also refer to situations where a State party fails to comply with the Covenant due to a lack of resources. Russia preferred replacing "by decision of the General Assembly" by "in accordance with the relevant procedures of the General Assembly", as in article 26 of the Optional Protocol to the Convention against Torture (OP-CAT).

127. Argentina, Belarus, Germany, Slovenia and Ukraine supported article 14. Austria, Australia, Belgium, Denmark, France, Liechtenstein, Netherlands, New Zealand, Poland, Sweden, Switzerland, United Kingdom and the United States objected to the establishment of a special fund. Finland was not convinced that a special fund was appropriate in the protocol and found the wording "funds to provide economic assistance" too wide. Japan, Guatemala, Norway, Poland, the Republic of Korea, Russia and Venezuela (Bolivarian Republic of) reserved their position on article 14 at this stage, while Argentina, Mexico, Slovenia and Ukraine could see the possible usefulness of a fund based on voluntary contributions. Guatemala and Italy stressed that the fund, if created, should be based on voluntary contributions. South Africa suggested that the fund could be financed by a combination of voluntary and mandatory contributions.

128. China and Egypt noted that deleting the word "voluntary" did not mean that contributions to the special fund would not become mandatory. Rather, the level of contributions would be at the discretion of States parties and be subject to the level of available resources, in accordance with the obligation set out in article 2, paragraph 1, of the Covenant. The Netherlands and Ukraine noted the need to develop criteria for deciding which States could receive resources from such fund.

129. Some delegates feared that such a fund would duplicate existing funds and that it would send a wrong signal that non-compliance with the Covenant rights could be justified by a lack of international assistance. It was noted that no special fund was created under the OP-CRPD, despite the Convention's precise language on international assistance, which could be a source of inspiration for articles 13 and 14. Equally, it was pointed out that the fund under OP-CAT has a more targeted purpose than that proposed in article 14 of the draft, that the fund was unlikely to attract sufficient funding, that it would involve high administrative costs and impose an additional burden on OHCHR, and that it was unclear how the beneficiaries of the fund would be identified and how the funds would be channelled to victims.

130. Other delegates said that the special fund would not duplicate existing funds, and that it would give effect to the legal obligation set out in article 2, paragraph 1, of the Covenant to provide international assistance. It was noted that concerns about duplication had not been an issue when adopting article 26 of the OP-CAT, that the additional burden for OHCHR should not prevent the creation of the fund, that the implementation of the Committee's views would require a fund which was adequately funded, that developing countries did not seek to detract from their obligations, and that shared efforts were required, as developing countries could not fully realize Covenant rights without international assistance, which was mandated by the Covenant and the Charter of the United Nations.

Article 15

131. Venezuela (Bolivarian Republic of) proposed reformulating article 15 along the lines of CAT, article 24. Mexico suggested including follow-up to communications among the issues to be covered in the annual report.

Article 16

132. India stated that the reference "and to do so in accessible formats", if intended to address the specific needs of persons with disabilities, should be more explicit. China suggested to replace "undertakes" by "are encouraged" and to delete "and to do so in accessible formats".

Article 17

133. Finland, the Netherlands and the NGO Coalition supported the inclusion of article 17 as drafted, allowing the Committee to adopt its own rules of procedure, in accordance with the established practice of other treaty bodies. Australia reserved its position on this article until it became clear what would be included in the rules of procedure. Russia stated that the optional protocol could define elements for the rules of procedure as in article 29 of the ICCPR. China suggested that the first conference of States parties should adopt the Committee's rules of procedure. Germany, Guatemala, Japan, Mexico, Nigeria, Poland and South Africa noted that the Committee should have sufficient discretion to develop its own rules of procedure. The United States and Venezuela (Bolivarian Republic of) underlined that the rules of procedure should not address substantive issues or create additional obligations.

134. Egypt and Nigeria suggested deleting article 17 in order not to straightjacket the Committee in developing its rules of procedure. Egypt noted that this would also avoid giving the rules of procedure a legal status, making them less binding on States.

135. France, supported by Venezuela (Bolivarian Republic of), proposed adding "and in no case create any additional obligations for States parties" at the end of article 17.

Article 18

136. No comments were made on article 18.

Article 19

137. Australia, Austria, New Zealand and Sweden suggested raising the number of required ratifications or accessions for the entry into force of the protocol to 20. Argentina, Belgium, Chile, Finland, Mexico, Portugal, Venezuela (Bolivarian Republic of) and the NGO Coalition stressed that 10 ratifications would allow the instrument to enter into force rapidly, providing space for further ratifications. Belgium underlined that procedural texts require fewer ratifications, that ICCPR-OP1 required 10 ratifications and that this protocol should be coherent with its sister instrument. New Zealand suggested amending paragraph 2 to say: "For each State ratifying or acceding to the present protocol … ."

Article 20

138. Several States suggested moving article 20 after article 11. India objected to an opt-out only for article 11, since articles 10 and 11 come as a package. South Africa underlined its principled opposition to reservations and opt-out clauses. The NGO Coalition proposed deleting article 20.

Article 21

139. Several States noted that a final decision on article 21 depended on the decision on the scope of the protocol in article 2. Australia, Germany, Italy and the United Kingdom stated that reservations should not be used to limit the scope of the optional protocol. Denmark considered more States would ratify the instrument if reservations were allowed.

140. Argentina, Belgium, Chile, Finland, Germany, Mexico, Portugal, South Africa and Venezuela (Bolivarian Republic of) opposed the possibility of reservations and stressed that reservations were not compatible with a procedural instrument. India suggested deletion of the article. Greece, Poland and Turkey stated that the optional protocol should remain silent on the issue and leave it to be determined by the principles of international law.

141. Egypt, supported by China, expressed the view that reservations should be allowed. Egypt stated that reservations could not be used to limit the scope of rights covered by the procedure, but only to clarify how a State would go about implementing its obligations under the protocol.

142. The NGO Coalition emphasized that, as also stated by the Human Rights Committee, reservations by their nature are incompatible with the object and purpose of a procedural instrument and that all recently negotiated instruments of a similar nature have explicitly excluded reservations.

Article 22

143. No comments were made on article 22.

Article 23

144. Denmark, Egypt, France, India, Mexico, Russia, Spain and the United Kingdom deemed this article unnecessary, and Germany asked for clarification on its objective. Several States noted that the inclusion of a similar provision in the ICPPED had been a political compromise with a particular history and was not relevant in the context of this protocol.

Article 24

145. Egypt suggested adding articles “10 and 11” after “9” in paragraph 2. India sought clarification on the benefits of an extended time frame of one year, which differs from ICCPR-OP1 and OP-CEDAW.

Article 25

146. No comments were made on article 25.

Article 26

147. No comments were made on article 26.

IV. DEEPENING OF THE DISCUSSIONS

148. Upon conclusion of the first reading of the draft, the Working Group focused the ensuing discussion on three topics: (a) the criteria to be used by the Committee in examining communications (arts. 2 bis and 8, para. 4); (b) the scope of the optional protocol (art. 2); (c) international assistance and cooperation and the proposal for the establishment of a fund (arts. 13 and 14); (d) admissibility criteria (art. 4); (e) interim measures (art. 5); (f) friendly settlement (art. 7); and (g) other issues considered of particular importance in the draft optional protocol.

Criteria to be used by the Committee in examining communications (art. 8, para. 4)

149. Egypt (on behalf of the African Group) and Nigeria proposed a revised version of article 2 bis, to replace article 8, paragraph 4: "When examining communications the Committee shall consider allegations of violations concerning the failure of the State Party to respect, protect and fulfil rights set forth in the Covenant, article 2, paragraph 1. In doing so the Committee shall address the reasonableness of the steps taken by the State party, to the maximum of its available resources, in relation to the subject matter of a communication under consideration."

150. The United Kingdom expressed preference for the Chair's proposal, removing the reference to article 2, paragraph 1, as the Committee should use the test of reasonableness on all communications. Belgium expressed concern that it went beyond the Covenant. Mexico stated that a possible compromise would be to rely on more general language and paragraph 4 as drafted, mentioning that it could also support Liechtenstein's proposal with Russia's amendments. Germany supported the paragraph as drafted, stating that it could also support the proposal of Liechtenstein.

151. The Netherlands, Slovenia and the United Kingdom questioned the added value of the first part of the African Group's proposal. Norway, Portugal, Russia, the United Kingdom, Amnesty International and the NGO Coalition expressed concerns over the reference to "respect, protect and fulfil". Amnesty International and the NGO Coalition suggested replacing this with "realize", Mexico with "guarantee" and Poland with "guarantee the exercise of the rights provided for in the Covenant". Egypt (on behalf of the African Group) noted that this typology is based on the jurisprudence of the Committee.

152. Azerbaijan, India, Mexico, Portugal, Russia, Sweden, the United Kingdom and the NGO Coalition expressed concern that the proposal excluded article 2, paragraph 2, of the Covenant and other interpretative articles in Part II. Russia suggested adding "where and as

required" as stated in the Swiss proposal. Azerbaijan suggested adding in the first sentence "meet its obligations" before "respect, protect and fulfil" and replace "concerning" by "due to". Egypt (on behalf of the African Group) clarified that there had been no attempt to exclude paragraph 2.

153. Bangladesh and India expressed their support for criteria to assess the reasonableness of steps. Australia stressed the need for criteria to assess communications. Poland underlined the need to respect the margin of appreciation of States concerning the use of resources. Denmark and the United States reiterated support for the unreasonableness standard. Ethiopia objected to the use of this standard. Greece underlined the importance of including language on the reasonableness standard. Azerbaijan, Amnesty International and Russia expressed reservations about the inclusion of either "reasonable" or "unreasonable". Russia noted that the proposal of Liechtenstein might be an alternative. Azerbaijan suggested adding "as appropriate" before "the reasonableness". Chile, Mexico, ATD Quart Monde, the ICJ and the NGO Coalition stated that the term "effectiveness" should be added after "reasonableness" and Slovenia suggested adding the word "adequacy". Egypt (on behalf of the African Group) stressed that the notion of effectiveness relates to outcomes and goes beyond the scope of the Covenant.

154. The Netherlands and the United Kingdom suggested replacing "address" by "assess". The ICJ suggested ending the first part of the African Group's proposal after "Covenant".

Scope of the optional protocol (art. 2)

155. Japan and Russia supported the provision on standing in paragraph 1.

156. Bangladesh, China, India and Nepal said that only direct victims or duly authorized representatives acting on their behalf should have standing.

157. Portugal, supported by Belgium, the Netherlands, South Africa and Switzerland, reiterated the proposal to add wording from OP-CEDAW (see paragraph 43 above).

158. China replied that individuals or groups of individuals who are unable to submit a communication themselves could authorize a representative to submit a communication on their behalf. Nepal noted that the requirement to exhaust domestic remedies would normally ensure that a victim's consent has been obtained. The NGO Coalition, the FIDH and Amnesty International stated that NGOs should be able to submit communications on behalf of individuals or groups of individuals, without their "express" consent in cases where it would be difficult to obtain that consent.

159. The United Kingdom suggested replacing "subject to the jurisdiction" in paragraph 1 of the draft by "under the jurisdiction", in line with article 14 of the Covenant. Azerbaijan objected that article 14 dealt with a different issue.

160. South Africa reiterated its support for a comprehensive approach in paragraph 1. India, Nepal, Russia and Sri Lanka objected to extending the scope to Part I of the Covenant. The United Kingdom noted that Part II of the Covenant contains no self-standing rights. If a comprehensive approach were pursued, the scope of paragraph 1 could be limited to the "rights set forth in Part III read in conjunction with the provisions contained in Part II". Russia observed

that "any of the rights set forth in the Covenant" in paragraph 1 only referred to Part III of the Covenant. Portugal objected that other optional protocols did not limit the scope to specific articles. Bangladesh, India and Sri Lanka reserved their position on the scope, pending a decision on the criteria in article 8, paragraph 4.

161. Italy and Switzerland suggested adding text from article 1 of ICCPR-OP1 (see paragraph 32 above) at the end of paragraph 1. Japan, Russia, South Africa, Turkey and the United Kingdom suggested inserting this text as a new article 1 bis. Azerbaijan considered the amendment redundant. Belgium expressed concern that it could exclude cases with transborder effects.

162. Russia suggested that a new paragraph 3 could list the rights that must be accepted. Austria inquired into the relationship between paragraph 2 and article 2, paragraph 2, of the Covenant, and the Netherlands stated that the opt-out option should not apply to the principle of non-discrimination.

International assistance and cooperation and establishment of a fund (arts. 13 and 14)

163. China and South Africa reiterated the proposal to add "to other States parties" in article 13. Venezuela (Bolivarian Republic of) referred to General Assembly resolution 2625 (XXV) and noted that the Committee should only transmit a communication if requested to do so by the State party. Portugal suggested adding that the Committee "could" make recommendations available to other States.

164. Egypt (on behalf of the African Group), India, Nigeria and South Africa encouraged States to be innovative in their approach, emphasizing that international assistance was a legally binding obligation. In this regard, Bangladesh and Nepal expressed support for wording suggested in the previous proposals made by China, Venezuela (Bolivarian Republic of) and Ethiopia.

165. Egypt (on behalf of the African Group) and Nigeria reiterated that articles 13 and 14 should be merged and that the word "voluntary" should be deleted. Guatemala and the United Kingdom stated they would not be able to accept an obligatory fund.

166. The Netherlands considered it unfortunate to have a fund linked to individual communications, giving the impression that international cooperation is only necessary when related to successful communications.

167. Austria, Australia, Belgium, Germany, France and the United Kingdom reiterated their support for article 13 as drafted. The United Kingdom said they would alternatively consider the proposal of Venezuela (Bolivarian Republic of).

168. In relation to article 14, the United Kingdom questioned the compatibility of a fund for remedies for individual victims and providing assistance to a State that lacks resources, or worse, a State that has committed a violation. Austria, Belgium, Germany and the United Kingdom questioned the practicality and effectiveness of the fund proposed in article 14.

169. France, Mexico, Portugal and Spain welcomed the balance in the draft text, but remained open to improving the wording. South Africa said they would consider elements of all proposals.

170. Amnesty International and ICJ emphasized that international cooperation and assistance are an essential part of the Covenant.

171. Venezuela (Bolivarian Republic of) noted that a State could also mention what kinds of international cooperation it requires in its reports to the Committee. In line with resolution 2625 (XXV), States must cooperate amongst themselves. However, States should decide what cooperation they would accept and under what terms.

Admissibility criteria (art. 4)

172. The Netherlands and Mexico supported the draft text, but were open to considering other proposals, bearing in mind precedents from other instruments.

173. Australia and the Netherlands stressed that there was a distinction between the admissibility stage and the consideration of the merits and raised concern about the resource demands on governments if both procedures were considered simultaneously. Venezuela (Bolivarian Republic of) asked whether the Committee could consider the two issues separately.

174. On paragraph 1, the United Kingdom mentioned exhaustion of all forms of domestic remedies. Bangladesh, Belgium and the Netherlands objected to this. The Netherlands noted that the term "domestic remedies" includes all domestic remedies as long as these are effective, and hence there was no need to refer to administrative and other remedies. The United Kingdom suggested that the term "and" in its proposal could be replaced by "or", in order not to create additional obstacles.

175. On paragraph 2, subparagraph (a), Bangladesh, Italy, Amnesty International and the Inter-American Platform for Human Rights, Development and Democracy (PIDHDD) asked for the deletion of the six-month time limit. South Africa and the NGO Coalition suggested replacing it by a "reasonable time limit". Greece, Russia and Switzerland favoured fixing a time limit but were flexible on this point.

176. The United Kingdom mentioned that paragraph 2, subparagraph (c), should mention that a matter examined by a regional procedure should not be examined by the Committee under the optional protocol. Belgium and Greece supported this proposal. The Netherlands mentioned that the term "international" encompassed universal and regional mechanisms and therefore met the concerns expressed by the United Kingdom.

177. Switzerland and the NGO Coalition proposed adding, at the end of paragraph 2, subparagraph (g), "without prejudice of the possibility for victims to request that information revealing their identity be withheld and its confidentiality preserved".

Interim measures (art. 5)

178. Argentina and Egypt (on behalf of the African Group) supported the inclusion of article 5.

179. Mexico supported the proposals previously made by Chile and Germany. The NGO Coalition and PIDHDD supported Chile's proposal.

180. Ecuador, Portugal, the Netherlands and the United Kingdom supported inclusion of language from OP-CEDAW, article 5, as the adoption of interim measures should not prejudice the admissibility of a case. Egypt suggested that article 6 should come before article 5.

181. Egypt and the United Kingdom questioned how the Committee, meeting only twice a year, would be able to respond to urgent situations and issue requests for interim measures at any time during the year. Amnesty International and the Netherlands mentioned that it was up to the Committee to organize its work and that the Committee should be able to respond at any time during the year.

182. The United Kingdom supported the proposal that States should be able to comment on the proposed interim measures. Egypt and the Netherlands expressed doubts about this proposal as interim measures have to be taken with maximum speed.

Friendly settlement (art. 7)

183. Argentina, Australia, Ecuador, Mexico, the Netherlands and the United Kingdom supported the inclusion of a friendly settlement.

184. China and Russia noted the need to look at the legal effect of a friendly settlement. Australia stated that the legal consequence of such settlement would be that the communication was no longer under consideration.

185. The NGO Coalition suggested four amendments to article 7: (a) that the Committee will make available its good offices to the parties concerned; (b) that the terms of a friendly settlement shall be subject to review and approval by the Committee; (c) that the Committee may at any time end the friendly settlement and continue with the consideration of the merits of the communication; and (d) that the Committee shall draw up a report outlining the terms of the settlement and send it to the parties concerned. Australia, the United Kingdom, the United States and Venezuela (Bolivarian Republic of) noted that the Committee's review of a friendly settlement would undermine the nature of such settlement. The Netherlands favoured a specific reference to the Committee deciding that a case is closed and that the friendly settlement does justice to the obligations under the Covenant. Senegal and Venezuela (Bolivarian Republic of) agreed that the role of the Committee should be to provide its good offices. Senegal stressed that it might be problematic to exclude the Committee from the implementation of the settlement. South Africa suggested that the African Charter on Human and Peoples' Rights could provide guidance on this matter.

186. The ICJ stressed that what should close a case should not be the reaching of an agreement but rather actual compliance with that agreement. Thailand suggested a new version of paragraph 2, reading: "The Committee shall close consideration of the communication under the present protocol, when an agreement on friendly settlement has been reached between the parties."

Other comments on the draft

187. Italy suggested the deletion of articles 10, 11 and 20.

188. Concerning article 12, Amnesty International proposed replacing "steps" by "measures", "ill-treatment or intimidation" by "any threats, intimidation or denial of any human right or fundamental freedom" and "communicating with" by "a communication to".

189. Germany supported article 17 as drafted.

190. Russia suggested adding a provision in line with article 29 of OP-CAT.

191. Mexico suggested considering the possibility of allowing for interpretative clauses under the optional protocol, which would ensure a comprehensive instrument while taking into account preoccupations expressed by delegations.

ANNEX I

List of participants

States members of the Human Rights Council

Angola, Azerbaijan, Bangladesh, Bolivia, Bosnia and Herzegovina, Brazil, Canada, China, Egypt, France, Germany, Ghana, Guatemala, Italy, Japan, Madagascar, Mexico, Netherlands, Nicaragua, Nigeria, Peru, Republic of Korea, Romania, Russian Federation, Senegal, Serbia, Slovenia, South Africa, Sri Lanka, Switzerland, Ukraine, United Kingdom of Great Britain and Northern Ireland, Uruguay.

States not members of the Human Rights Council

Albania, Algeria, Argentina, Australia, Austria, Belarus, Belgium, Burkina Faso, Chile, Colombia, Congo (Republic of the), Costa Rica, Croatia, Czech Republic, Democratic People's Republic of Korea, Denmark, Dominican Republic, Ecuador, El Salvador, Ethiopia, Finland, Georgia, Greece, Haiti, Hungary, India, Israel, Latvia, Lesotho, Libyan Arab Jamahiriya, Liechtenstein, Monaco, Morocco, Mozambique, Nepal, New Zealand, Norway, Panama, Paraguay, Poland, Portugal, Slovakia, Spain, Sudan, Sweden, Thailand, The former Yugoslav Republic of Macedonia, Turkey, United Republic of Tanzania , United States of America, Venezuela (Bolivarian Republic of), Zimbabwe.

Non-Member States of the United Nations

Holy See.

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

Committee on Economic, Social and Cultural Rights; International Labour Organization (ILO); United Nations Educational, Scientific and Cultural Organization (UNESCO); World Health Organization (WHO).

National and regional human rights institutions

German Institute for Human Rights, Inter-American Institute of Human Rights, International Coordinating Committee for National Human Rights Institutions (ICC).

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

ActionAid International; Åland Islands Peace Institute; Amnesty International; Asian Indigenous & Tribal Peoples Network; ATD Quart Monde; Centre du Commerce International pour le Développement (CECIDE); Commission Africaine des promoteurs de la Santé et les Droits de l'Homme (CAPSDH); Europe-Third World Centre (CETIM); Centre on Housing Rights and

Evictions (COHRE); FASE; FoodFirst Information and Action Network (FIAN); Fédération Internationale des ligues des Droits de l'Homme (FIDH); Inter-American Platform for Human Rights, Development and Democracy (PIDHDD); International Commission of Jurists (ICJ); Interfaith International; International Council on Human Rights Policy (ICHRP); International Federation Terre des Hommes (IFTDH); International League for the Rights and Liberation of Peoples (LIDLIP); International Service for Human Rights; International Women's Rights Action Watch Asia Pacific (IWRAW); OIDEL; Pax Christi International; Tides Center; UNESCO Etxea.

ANNEX II

List of documents

Symbol	Title
A/HRC/6/WG.4/1	Provisional agenda
A/HRC/6/WG.4/2	Draft optional protocol to the International Covenant on Economic, Social and Cultural Rights prepared by the Chairperson-Rapporteur

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