

NGO-COALITION CLOSING STATEMENT TO THE OPEN ENDED WORKING GROUP ON AN OPTIONAL PROTOCOL TO THE ICESCR

4 APRIL 2008

This statement is made on behalf of the NGO Coalition, those present today, including AALI, Amnesty International, Action Aid, Centre for Equality Rights in Accommodation, Centre on Housing Rights and Evictions, Community Law Centre of the University of the Western Cape, EngendeRights, ESCR-Asia, ESCR-Net, FIAN, ICJ, IWRAW – Asia Pacific, Plataforma Inter-Americana, Social Rights Advocacy Centre, Terre des Hommes.

While many compromises have been made, we believe that this text is a significant achievement, on the assumption of a number of understandings, as follows:

Article 2

We supported, throughout, a comprehensive approach including all rights in the Covenant, and would have preferred the inclusion of Part I of the Covenant. Our understanding of the intent of article 2 is that although a communications would be inadmissible if it alleges only a violation of article 1, admissible communications may nevertheless be considered in light of all parts of the Covenant, including Part 1.

Article 3-1

We understand that the deletion of the phrase “unlikely to bring effective relief” from a previous draft was justified by the fact that implicit in the understanding of remedies in this section is the requirement that remedies be effective, and that this approach will guide the work of the Committee.

Article 4

Our understanding of article 4 is that if it is ever used by the Committee, the author of a communication will not be required to meet a new burden of proof. We also interpret this section as intending that the term “clear disadvantage” will be interpreted in a manner which takes into account the particular circumstances of indigenous people, women, persons with disabilities and other groups.

Article 5

The term “Exceptional circumstances” is not intended to introduce any new requirement or burden for the Committee, but rather a reflection of the fact that it is only in exceptional rather than in routine cases that interim measures will be required.

Article 7-2

The fact that an agreement on friendly settlement of a communication closes consideration of the communication does not imply a decision on whether a right has been violated and

does not foreclose a new communication being submitted if the friendly settlement is not effective or adequately implemented.

Article 8-1

Our understanding of the term “documentation” in 8-1 and 8-3 is that this term includes a wide range and types of information which may assist the Committee in the examination of communications and does not foreclose any particular form of information.

Article 8-4

With respect to the deletion of “as appropriate” we understand that article 8-4 is still to be read consistently with the fact that many obligations under the Covenant such as non-discrimination, are of immediate effect and are not subject to progressive realization or to be assessed under a reasonableness standard.

Article 13

We understand the term “ill treatment” to include any form of reprisal for any activity related to a communication or inquiry under the Protocol.**Article 16**

We welcome the way that persons with disabilities have been taken into account here and understand that this will be understood as a component of general obligations to disseminate information in accessible formats for other groups as well, including dissemination in appropriate languages.

Reservations

The deletion of the prohibition of reservations was based on the understanding that no reservation may be permitted that is inconsistent with the objects or purposes of the Covenant, as required by the Vienna Convention.

Final Comment

We congratulate the Chair on her tireless and inspiring commitment to this process and her dedication to achieving the best possible outcome. We thank the Secretariat for its assistance throughout, and for the ongoing assistance of Professor Riedl. We thank all delegates for their spirit of co-operation and willingness to interact constructively with the NGO community and to remember, throughout, the endeavours of this Working Group to those whose rights are at stake. What has been achieved today is of historic importance, and represents a significant advancement in international human rights on the 60th anniversary of the UDHR. It has been a privilege for all of us to be involved in this process.