

August 11, 2006

Draft provisions of an implementing mechanism

Facilitator's text

This draft seeks to reflect the comments made during the informal inter-sessional consultations. Wherever treaties in force and to a lesser extent draft treaties provide language to address the issues included in the present draft, the language has been drawn from them. All citations are deemed to be included in the present text exclusively for reference purposes.

Where there are outstanding issues or divergence of views on any given subject or provision, an attempt has been made to highlight them through footnotes.

While some drafting changes were suggested at the last informal consultations held on August 11th, on draft articles 37 and 37 (bis), the facilitator did not include them in the present version of his text, since these two provisions require further discussion.

New language with regard to the draft text circulated on August 9, 2006 is highlighted in bold characters.

ARTICLE 34 – COMMITTEE ON THE RIGHTS OF PERSONS WITH DISABILITIES¹

1. There shall be established a Committee on the Rights of Persons with Disabilities (hereafter referred to as the Committee) which shall carry out the functions hereinafter provided. (CAT, art. 17; See also, ICCPR, art. 28 and CERD, art. 8)
2. The Committee shall consist, at the time of entry into force of the present Convention, of 12 experts. Thereafter, for every additional thirty ratifications or accessions to the Convention, the membership of the Committee shall increase by 2 members, until its total composition attains a maximum number of 18 members. (See CEDAW, art. 17.1 and CMW, art. 72.1 (b))
3. The members of the Committee shall serve in their personal capacity and shall be of high moral standing and recognized competence and experience in the field covered by the present Convention. (See ICCPR, art. 28.2; CERD, art. 8; CEDAW, art. 17.1; CAT, art. 17.1; CRC, art. 43.2; CMW, art.72.1)

¹ While there was support for the establishment of a Committee of experts as an implementing mechanism for the Convention, some delegations expressed reservations regarding the creation of such a body, including due to possible duplication and overlap with the work of other human rights treaty bodies, and in view of the ongoing reform process of the United Nations human rights treaty body system. The Ad Hoc Committee may wish to consider possible ways to address these concerns.

4. The members of the Committee shall be elected by States Parties, consideration being given to equitable geographical distribution, the representation of the different forms of civilization² and of the principal legal systems, balanced gender representation, and the participation of persons with disability expertise and diverse disability experience. (See CERD, art. 8.1; CEDAW, art. 17.1; CRC, art.43.2).
5. The members of the Committee shall be elected by secret ballot from a list of persons nominated by the States Parties from among their nationals³, at meetings of States Parties convened by the Secretary General of the United Nations. At those meetings, for which two thirds of States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting. (See CRC, art. 43.5)
6. When nominating their candidates, States Parties are invited to consider doing so in consultation with competent national organizations, including representative organizations of persons with disabilities or other relevant groups.⁴
7. The initial election shall be held no later than six months after the date of entry into force of the present Convention. At least four months before the date of each election, the Secretary General of the United Nations shall address a letter to the States Parties inviting them to submit the nominations within two months. The Secretary General shall subsequently prepare a list in alphabetical order of all persons thus nominated, indicating the State Parties which have nominated them, and shall submit it to the States Parties to the present Convention. (CRC, art. 43.4)
8. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election once. However, the term of six of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these six members shall be chosen by lot by the chairman of the meeting referred to in paragraph [5] of this article. (See ICCPR, art.32; CAT, art. 17.5; CEDAW, art. 17.5; CRC, art. 43.6)
9. The election of the six additional members of the Committee shall be held in accordance with the provisions of paragraphs [2], [5], [7] and [8] of this article, following the thirtieth ratification or accession. (See CEDAW, art. 17.6; CMW, art. 72 .5 (b))

² There were differences of views regarding the inclusion of the "representation of different forms of civilization" among the considerations to be taken into account in the election of Committee members. The Ad Hoc Committee may wish to consider this issue further. In doing so, it may wish to take into account that such concept has been used in the context of the ICCPR (Art. 31.2), CERD (Art. 8.1) and CEDAW (Art. 17.1).

³ Some delegations supported the inclusion of a provision that would allow for States Parties to nominate nationals from a different State Party, while other delegations opposed such a possibility. The Ad Hoc Committee may wish to consider this issue further. In doing so, it may wish to take into account that OP CAT, (Article 6.2 (d)) establishes that: "Before a State Party nominates a national of another State Party, it shall seek and obtain the consent of that State Party".

⁴ While there was support for the general thrust of this paragraph, there were differences of views regarding the need to include it as a specific provision of the Convention. The Ad Hoc Committee may wish to consider this formulation further.

10. If a member of the Committee dies or resigns or declares that for any other cause she or he can no longer perform her or his duties, the State Party which nominated the member shall appoint from among its nationals, another expert possessing the qualifications and meeting the requirements set out in paragraphs [3] and [4] and [6] of this article, to serve for the remainder of the term. (See CRC, art. 43.7; CMW, art 72.6;)
11. If the State Party which nominated the member cannot appoint another expert as provided for in paragraph [10] of this article, it shall notify the Secretary General at the latest one month after the end of duties by the previous member. The Secretary General shall transmit this information to all States Parties. Another State Party from the same region as the former member of the Committee may appoint an expert to fill the vacancy of that member for the remainder of the term, as provided for in paragraph [10] of this article.⁵
12. The Committee shall establish its own rules of procedure.
13. The Secretary General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention, and shall convene its initial meeting. (See ICCPR, art. 36; CRC, art. 43.11; CMW, art. 72.7) The Committee shall meet at the United Nations Office in Geneva⁶ or at any other place it deems convenient, in accordance with relevant General Assembly resolutions.⁷ (See CEDAW, art. 20.2; CRC, art. 43.10)
14. With the approval of the General Assembly, the members of the Committee established under the present Convention shall receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide, having regard to the importance of the Committee's responsibilities. (ICCPR, art. 35; CRC, art. 43.12; CEDAW, art. 17.8; CMW, art. 72.8)
15. The members of the Committee shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations. (CMW, art.72.9)

⁵ The intent of draft article 34.11 is to address concerns expressed by a number of delegations regarding situations in which a State Party may not be in a position to nominate an expert to replace a Committee member. It also seeks to avoid the holding of additional elections. The Ad Hoc Committee may wish to consider whether the drafting adequately covers such concerns.

⁶ While a number of delegations wish to specify that the Committee should meet at the United Nations Office in Geneva, others expressed a preference for the United Nations Headquarters as the Committee's venue. The Ad Hoc Committee may wish to consider this issue further.

⁷ A group of delegations expressed reservations regarding the inclusion of the phrase "or at any other place it deems convenient, in accordance with relevant General Assembly resolutions". The intention of the language is to provide for the possibility of the treaty body meeting in different venues, as it deems appropriate, in accordance with established practice and relevant General Assembly provisions (See CEDAW, art. 20.2; CRC, art. 43.10 and GA res. 40/243). The Ad Hoc Committee may wish to consider the formulation further.

ARTICLE 35 – REPORTS BY STATES PARTIES

1. Each State Party shall submit to the Committee, through the Secretary General of the United Nations,⁸ a comprehensive report on measures taken to give effect to its obligations under the present Convention and on the progress made in that regard, within two years after the entry into force of the present Convention for the State Party concerned. (See CRC, art.44.1; CAT, art. 19.1)
2. Thereafter, States Parties shall submit subsequent reports upon request of the Committee.⁹ (See ICCPR art. 40.1 (b)) in accordance with the **Harmonised Guidelines on reporting under the international human rights treaties, including guidelines on a common core document and treaty-specific documents of 10 May 2006 (HRI/MC/2006/3)**, or other similar guidelines which are produced to assist States in meeting their reporting requirements and to ensure the efficiency of consideration of reports by the Committee. In undertaking its activities under the present article, the Committee shall ensure that equal attention is granted to the implementation of the obligations of all States Parties under the present Convention.
3. In their reports to the Committee, States Parties should avoid duplication and need not repeat information previously provided to the Committee or to other human rights treaty bodies.
4. When preparing reports to the Committee, States Parties are invited to consider doing so through an open and transparent process, in consultation with competent national organizations, including representative organizations of persons with disabilities.¹⁰
5. Reports may indicate factors and difficulties affecting the degree of fulfillment of obligations under the present Convention, (ICESCR, art. 17.2; CEDAW, art.18.2) as well as potential targets against which subsequent progress can be measured, and possible areas for international cooperation¹¹ aimed at the realization of the purposes and objectives of the present Convention.

ARTICLE 36 – CONSIDERATION OF REPORTS

1. Each report shall be considered by the Committee, which shall make such general comments and recommendations on the report as it may consider appropriate and shall forward these to the State Party concerned. The State Party may respond with any information it chooses to the Committee. (CAT, art. 19.3) The Committee may request

⁸ Some delegations expressed reservations regarding the reference to the Secretary General of the United Nations in this context. In considering this issue further, the Ad Hoc Committee may wish to take into account that all existing human rights treaties envisage submission of State Party reports to treaty bodies through the Secretary General.

⁹ There were differences of views on whether States Parties should submit subsequent reports at the request of the Committee or at periodic intervals, mainly due to concerns regarding the need to have an efficient reporting system while at the same time ensuring that reporting activities address issues in a balanced manner. The Ad Hoc Committee may wish to consider whether the present formulation of draft article 35.2 adequately addresses those concerns.

¹⁰ There were differences of views regarding the need to include draft article 35.4 it as a specific provision of the Convention. The Ad Hoc Committee may wish to consider this formulation further.

¹¹ Some delegations expressed concerns regarding the inclusion of a reference to international cooperation in this context. The Ad Hoc Committee may wish to consider this formulation further.

further information from States Parties relevant to the implementation of the present Convention (CRC, art. 44.4)

2. If a State Party is significantly overdue in the submission of a report, the Committee may notify the State Party concerned of the need to examine the implementation of the present Convention in that State Party, on the basis of the information available to the Committee if the relevant report is not submitted within three months following the notification, **and the Committee shall invite the State Party concerned to participate in such examination.** The State Party may respond by submitting the relevant report, at which time the provisions of paragraph 36 [1] of this article would apply.
3. The Secretary General of the United Nations shall **make available** the reports to all States Parties. (CAT, art. 19.2)
4. States Parties shall make their reports, as well as the **general comments and recommendations of the Committee**, widely available to the public in their own countries. (CRC, art. 44.6; CMW, art. 73.4)
5. The Committee shall transmit, as it may consider appropriate, to the competent intergovernmental organizations, United Nations specialized agencies and other competent bodies, reports from States Parties **in order to address a request or indication of a need for technical advice or assistance contained therein**, along with the Committee's observations and **recommendations**, if any, on these requests or indications. (See CRC, art. 45.b)

ARTICLE 37 - INDIVIDUAL COMMUNICATIONS¹²

1. A State Party to the present Convention may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications from or on behalf of individuals or groups¹³ subject to its jurisdiction who claim to be victims of a violation by a State Party of the provisions of the Convention. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration (CAT, art. 22.1) The procedure established under this article can only be initiated three years after the entry into force of the present Convention for the State Party concerned.
2. The Committee shall consider a communication inadmissible when:
 - (a) the communication is anonymous;
 - (b) the communication constitutes an abuse of the right of submission of such communications or is incompatible with the provisions of the present Convention;
 - (c) the same matter **has already been examined by the Committee or has been or is being examined** under another procedure of international investigation or settlement;

¹² A number of delegations had reservations regarding the inclusion of such a provision. In considering this issue further, the Ad Hoc Committee may wish to take into account the optional nature of such provision.

¹³ There were differences of views regarding the inclusion of groups in draft article 37.1. The Ad Hoc Committee may wish to consider this issue further. In doing so, the Ad Hoc Committee may wish to take into account that article 14.1 of the CERD and article 2 of OP CEDAW include a reference to groups.

(d) all available domestic remedies have not been exhausted. **This shall not be the rule** where the application of the remedies is unreasonably prolonged;

(e) it is manifestly ill-founded or not sufficiently substantiated; or when

(f) the facts that are the subject of the communication occurred prior to the entry into force of the present Convention for the State Party concerned unless those facts continued until that date.

(See CAT, art. 22; CERD, art. 14; OP CEDAW; and CMW, art. 77)

3. Subject to the provisions of paragraph 2 of the present article, the Committee shall bring any communications submitted to it under this article to the attention of the State Party to the present Convention that has made a declaration under paragraph [1]. Within six months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State. (CMW, art. 77.4; and OP CEDAW, art. 6.2)
4. At any time after the receipt of a communication and before a determination on the merits has been reached, the Committee may transmit to the State Party concerned for its urgent consideration a request that the State Party take such interim measures as may be necessary to avoid possible irreparable damage to the victim or victims of the alleged violation. (OP CEDAW, art. 5.1)
5. Where the Committee exercises its discretion under paragraph [4] of the present article, this does not imply a determination on admissibility or on the merits of the communication. (OP CEDAW, art. 5.2)
6. The Committee shall hold closed meetings when examining communications under the present article. The Committee shall forward its suggestions and recommendations, if any, to the State Party concerned and to the petitioner. (CERD, art. 14.7(b))

[Article 37 (bis) - INQUIRY PROCEDURES]¹⁴

1. If the Committee has reliable information indicating grave or systematic violations by a State Party of rights set forth in the present Convention, it shall invite that State Party to cooperate in the examination of the information and, for this purpose, to submit observations with regard to the information concerned.
2. Taking into account any observations that may have been submitted by the State Party concerned, as well as any other reliable information available to it, the Committee may conduct an inquiry.
3. After examining the findings of such an inquiry, the Committee shall transmit these findings together with any comments and recommendations to the State Party concerned.

¹⁴ A group of delegations proposed the inclusion of a provision on inquiry procedures. However, such a proposal was not discussed in detail. The Ad Hoc Committee may wish to consider this issue further.

4. The State Party concerned shall, within six months of receiving the findings, comments, and recommendations transmitted by the Committee, submit its observations to the Committee.
5. Such an inquiry shall be conducted confidentially and the cooperation of the State Party shall be sought at all stages of the proceedings. After such proceedings have been completed with regard to an inquiry made in accordance with paragraph 2, the Committee may, after consultations with the State Party concerned, decide to include a summary account of the results of the proceedings in its biannual report made in accordance with article 41 of the present Convention.

(Based CAT, art. 20; and CEDAW OP, art. 8)

ARTICLE 38 – COUNTRY VISITS

With the consent of the State Party concerned, **Members of the Committee** may conduct a visit to its territory in order to have a better understanding of factors affecting the degree of **implementation of the present Convention in that State Party and, where appropriate, identify areas of international cooperation aimed at the realization of the purposes and objectives of the present Convention.**¹⁵

ARTICLE 39 – COOPERATION BETWEEN STATES PARTIES AND THE COMMITTEE

1. Each State party shall cooperate with the Committee and assist its members in the fulfillment of their mandate, to the extent of the Committee's functions that the State party has accepted. (CED, art. 26.9)
2. In its relationship with States Parties, the Committee shall give due consideration to ways and means of enhancing national capacities for the implementation of the present Convention, including through international cooperation¹⁶.

¹⁵ Some delegations expressed reservations regarding the scope and purpose of draft article 38, while others still feel that such a provision is not necessary. In the view of a number of delegations, the reference to international cooperation in this context could be too prescriptive. The Ad Hoc Committee may wish to consider this formulation further.

¹⁶ Some delegations expressed concerns regarding the reference to international cooperation in this context. The purpose of the current drafting is to convey, in a non prescriptive manner, that international cooperation is one of the means of enhancing national capacities for the implementation of the convention. The Ad Hoc Committee may wish to consider whether the draft provision fulfills that objective.

ARTICLE 40 – RELATIONSHIP OF THE COMMITTEE WITH OTHER BODIES

1. In the framework of the competencies granted by the present Convention, the Committee shall co-operate with all relevant organs, offices and specialized agencies and funds of the United Nations, with the special procedures of the United Nations, and with the regional intergovernmental organizations concerned. **The Committee may invite relevant organs, offices and specialized agencies and funds of the United Nations to provide expert advice on the implementation of the present Convention in areas falling within the scope of their respective mandates, as it may deem appropriate. (See CRC, art. 45 (a))**
2. **The Committee shall also cooperate with all relevant national institutions and non governmental organizations working in the field covered by the present Convention, in accordance with national legislation of the State Party concerned. The Committee may assist relevant national institutions that so request, in the adoption of measures such as national action plans.**
3. As it discharges its mandate, the Committee shall consult other relevant bodies instituted by international human rights treaties, with a view to ensure the consistency of their respective observations and recommendations, and avoid duplication and overlap in the performance of their functions. (CED, art. 28.2)

ARTICLE 41 – REPORT OF THE COMMITTEE

1. The Committee shall report every two years to the General Assembly on its activities and may make general comments and recommendations based on the examination of reports and information received from the States Parties. Such general comments and recommendations shall be included in the report of the Committee together with observations, if any, from States Parties. (See CEDAW, art. 21.1)
2. The report of the Committee shall also be submitted to the Conference of States Parties for its consideration.

ARTICLE 42 – CONFERENCE OF STATES PARTIES

1. The States Parties shall meet regularly in a Conference of States Parties in order to consider any matter with regard to the implementation of the present Convention, including the operation and status of the Convention; matters arising from experience in the implementation of the present Convention; and the facilitation of international cooperation and the exchange of information and best practices for the implementation of the present Convention.¹⁷ (See Corruption Convention, art. 63.4.b; Ottawa Convention, art. 11.1)

¹⁷ While there was support for the thrust of draft article 42.1, some delegations considered the functions of the Conference of States Parties as contained in this paragraph to be too specific.

2. Two years after the first election of the members of the Committee, the **Conference** of the States Parties shall be convened by the Secretary-General of the United Nations. The subsequent meetings shall be convened by the Secretary-General of the United Nations biennially or upon the decision of the Conference of States Parties. (See Ottawa Convention, art. 11.2)
3. When fundamental changes have affected the human rights treaty body system, the Conference of States Parties will decide, by a majority of two-thirds of the States present and voting, whether it is appropriate to transfer to another body – without excluding any possibility – the functions pertaining to the implementation of the present Convention.
4. In any event, a Conference of the States parties will take place at the earliest four years and the latest six years following the entry into force of the present Convention to evaluate the functioning of the Committee.