**UN HUMAN RIGHTS TREATY BODIES STRENGTHENING PROCESS**

**DRAFT OPTIONAL PROTOCOL TO THE UNITED NATIONS HUMAN RIGHTS TREATIES**

**SUBMITTED BY SANTIAGO CORCUERA-CABEZUT**

**JULY 3, 2020**

Optional Protocol to the United Nations Human Rights Treaties

**Preamble**

*The States Parties to the present Protocol*

*Considering* that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.

*Noting* that the Universal Declaration of Human Rights proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

*Reaffirming* the universality, indivisibility, interdependence and interrelatedness of all human rights and fundamental freedoms,

*Recalling* that the 9 core international human rights instruments, and their corresponding optional protocols (the “United Nations Human Rights Treaties”), have established a committee of experts to monitor implementation of the provisions by its States parties (the “Treaty Bodies”).

*Recalling* that each State party to the United Nations Human Rights Treaties of the United Nations, have certain obligations *vis-a-vis* the existing Treaty Bodies, whether or not such State parties have declared that they recognize the competence of such Treaty Bodies to receive and substantiate individual or interstate communications.

*Recalling* that Resolution 68-268 of the General Assembly on Strengthening and enhancing the effective functioning of human rights treaty body system reaffirms “that the independence and impartiality of members of the human rights treaty bodies is essential for the performance of their duties and responsibilities in line with the respective treaties, and recalling the requirement that they be individuals of high moral standing serving in their personal capacity”.

*Considering* that Resolution 68/268 also “*Notes* the adoption, at the twenty-fourth annual meeting of the Chairs of the human rights treaty bodies, held in Addis Ababa from 25 to 29 June 2012, of the guidelines on the independence and impartiality of members of the human rights treaty bodies (the Addis Ababa guidelines), which are aimed at ensuring objectivity, impartiality and accountability within the treaty body system, in full respect for the independence of the treaty bodies, and in this regard encourages the treaty bodies to implement the guidelines in accordance with their mandates;

*Have agreed* as follows:

**Article 1 Commitment to nominate qualified and impartial candidates.**

A State Party to any or all of the United Nations Human Rights Treaties that becomes a Party to the present Protocol, agrees to nominate candidates to become members of Treaty Bodies of all the United Nations Human Rights Treaties to which it is a State party, who are independent, impartial and of high moral standing to serve in their personal capacity.

**Article 2 Procedure for selecting candidates by State Parties.**

Each State party who nominates candidates for election to become members of Treaty Bodies, agrees to conduct an internal process to select the corresponding candidate, which complies with at least the following requirements:

1. A public and transparent consultation shall be carried out by each State party with civil society, the academic community and other relevant national stakeholders, who may nominate candidates.
2. A panel of qualified and independent experts shall evaluate the candidates proposed under paragraph a) above.
3. The panel of independent experts shall propose to the State party a short list of three to five candidates who best comply with the qualifications indicated in Article 1.
4. The State Party shall nominate the person out of the list proposed by the panel of independent experts under paragraph c) above.

**Article 3 Promotion of candidates**

States parties may conduct negotiations with other States parties aimed to achieve appointment of their nominees, solely on the basis of the merits of the candidates. States parties shall abstain form **engaging in reciprocal political agreements or vote-trading** with other States parties aimed to achieve the appointment of the persons nominated by the States parties, either for the Treaty Body in question or for any other position within the United Nations or any other International organisation.

**Article 4 Advisory Committee on nominations of experts of Treaty Bodies**

An Advisory Committee on nominations of Treaty Bodies (hereinafter referred to as the “Advisory Committee”") shall be established to carry out the evaluation of the candidates presented by States parties to become members of the relevant Treaty Bodies. The Advisory Committee shall consist of five experts of high moral character and recognized competence in the field of human rights, who shall serve in their personal capacity and be independent and impartial.

2. The members of the Advisory Committee shall be elected by secret ballot from a list of persons nominated by States Parties from among nationals of the State Parties to this Protocol, which comply with the qualifications and after having followed a procedure compatible with the previous three articles of this Protocol. Elections shall be made at biennial meetings of the States Parties convened by the Secretary-General of the United Nations for this purpose. At those meetings, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Advisory 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.

3. The initial election shall be held no later than six months after the date of entry into force of this Protocol. 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 nominations within three months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the State Party which nominated each candidate, and shall submit this list to all States Parties.

4. The members of the Advisory Committee shall be elected for a term of four years. They shall be eligible for re-election once. However, the term of two 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 two members shall be chosen by lot by the chairman of the meeting referred to in paragraph 2 of this article.

5. If a member of the Advisory Committee dies or resigns or for any other reason can no longer perform his or her Committee duties, the State Party which nominated him or her shall, in accordance with the criteria set out in paragraph 1 of this article, appoint another candidate from among its nationals to serve out his or her term, subject to the approval of the majority of the States Parties. Such approval shall be considered to have been obtained unless half or more of the States Parties respond negatively within six weeks of having been informed by the Secretary-General of the United Nations of the proposed appointment.

6. The Advisory Committee shall establish its own rules of procedure.

7. The Secretary-General of the United Nations shall provide the Advisory Committee with the necessary means, staff and facilities for the effective performance of its functions. The Secretary-General of the United Nations shall convene the initial meeting of the Committee.

8. The members of the Advisory 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.

9. Each State Party shall cooperate with the Advisory Committee and assist its members in the fulfilment of their mandate, to the extent of the Advisory Committee's functions that the State Party has accepted.

**Article 5 Mandate of the Advisory Committee**

The Advisory Committee is mandated to facilitate that the highest-qualified individuals are appointed as members of the Treaty Bodies.

To that effect, the Committee shall:

1. develop a common questionnaire for all nominees that asks them to explain: i) their experience in public international law of human rights; ii) specific experience in the field of the scope covered by the United Nations Human Rights Treaty of the corresponding Treaty Body to which the person is nominated; iii) track record of impartiality and integrity; and iv) other aspects which the Advisory Committee may deem necessary or advisable.
2. ask nominees to demonstrate their legal knowledge by presenting relevant evidence;
3. check candidates’ references and any other information publicly available;
4. create a standard declaration for all candidates to sign that clarifies whether they are aware of any allegations of misconduct, including sexual harassment, made against them;
5. assess practical skills such as the ability to work collegially; knowledge of different legal systems; and exposure to and understanding of regional and sub-regional political, social, and cultural environments;
6. document the national-level nomination processes in the nominating State Parties and assess if such processes complied with the provisions of this Protocol ; and
7. report on the above aspects to the States Parties thirty days before the date on which the meeting of State Parties convened by the Secretary-General of the United Nations for purpose of appointing members to Treaty Bodies under the corresponding United Nations Human Rights Treaty is to be held.

**Article 6 Annual report**

The Advisory Committee shall include in its annual report a summary of its activities under the present Protocol.

**Article 7 Dissemination and information**

Each State Party undertakes to make widely known and to disseminate the United Nations Human Rights Treaties to which they are parties and the present Protocol and to do so in accessible formats for persons with disabilities.

**Article 8 Signature, ratification and accession**

1. The present Protocol is open for signature by any State that has signed, ratified or acceded to any or all of the United Nations Human Rights Treaties.

2. The present Protocol is subject to ratification by any State that has ratified or acceded to any or all of the United Nations Human Rights Treaties. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. The present Protocol shall be open to accession by any State that has ratified or acceded to any or all of the United Nations Human Rights Treaties.

4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

5. This Protocol shall be applicable to all United Nations Human Rights Treaties to which each State Party to this Protocol is a party.

**Article 9 Entry into force**

1. Articles 1 to 3 and 7 to 13 of the present Protocol shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the second instrument of ratification or accession. For each State Party ratifying or acceding to the present Protocol, after the second instrument of ratification or accession, Articles 1 to 3 and 7 to 13 of the present Protocol shall enter into force three months after the date of the deposit of its instrument of ratification or accession.

1. Articles 4 to 6 of the Present Protocol shall enter into force three months after the deposit of the tenth instrument of ratification or accession. For each State ratifying or acceding to the present Protocol, after the deposit of the tenth instrument of ratification or accession, Articles 4 to 6 of the Protocol shall enter into force three months after the date of the deposit of its instrument of ratification or accession.

**Article 10 Amendments**

1. Any State Party may propose an amendment to the present Protocol and submit it to the Secretary-General of the United Nations. The Secretary-General shall communicate any proposed amendments to States Parties, with a request to be notified whether they favour a meeting of States Parties for the purpose of considering and deciding upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a meeting, the Secretary-General shall convene the meeting under the auspices of the United Nations. Any amendment adopted by a majority of two thirds of the States Parties present and voting shall be submitted by the Secretary-General to the General Assembly for approval and thereafter to all States Parties for acceptance.

2. An amendment adopted and approved in accordance with paragraph 1 of the present article shall enter into force on the thirtieth day after the number of instruments of acceptance deposited reaches two thirds of the number of States Parties at the date of adoption of the amendment. Thereafter, the amendment shall enter into force for any State Party on the thirtieth day following the deposit of its own instrument of acceptance. An amendment shall be binding only on those States Parties which have accepted it.

**Article 11 Denunciation**

1. Any State Party may denounce the present Protocol at any time by written notification addressed to the Secretary-General of the United Nations. Denunciation shall take effect six months after the date of receipt of the notification by the Secretary-General.

**Article 12 Notification by the Secretary-General**

The Secretary-General of the United Nations shall notify all States parties to the United Nations Human Rights Treaties:

(a) Signatures, ratifications and accessions under the present Protocol;

(b) The date of entry into force of the corresponding articles of the present Protocol under article 9, and of any amendment under article 10;

(c) Any denunciation under article 11.

**Article 13 Official languages**

1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States parties to the United Nations Human Rights Treaties.

\* \* \* \* \*