

# **A WORLD COURT OF HUMAN RIGHTS**

**MANFRED NOWAK AND JULIA KOZMA**

## **Draft Statute of the World Court of Human Rights**

### **Part 1: Establishment of the Court**

#### **Article 1: The Court**

1. A World Court of Human Rights (“the Court”) is hereby established. It shall be a permanent institution of the United Nations and shall have the power to decide in a final and binding manner on all complaints about alleged human rights violations brought before it in accordance with this Statute.
2. The jurisdiction of the Court shall be complimentary to that of national courts of human rights to be established in accordance with Article 9.

#### **Article 2: Relationship of the Court with the United Nations**

1. The Court shall be brought into relationship with the United Nations through an agreement to be approved by the Assembly of States Parties to this Statute and thereafter concluded by the President of the Court on its behalf.
2. The expenses of the Court shall be borne by the regular budget of the United Nations. The General Assembly shall approve the budget on the basis of a draft prepared by the President of the Court.

#### **Article 3: Seat of the Court**

1. The seat of the Court shall be established at The Hague in the Netherlands (the “host State”).
2. The Court shall enter into a headquarters agreement with the host State, to be approved by the Assembly of States Parties and thereafter concluded by the President of the Court on its behalf.
3. The Court may sit elsewhere, whenever it considers it desirable, as provided in this Statute.

#### **Article 4: Legal status and powers of the Court**

1. The Court shall have international legal personality. It shall also have such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes.
2. The Court may exercise its functions and powers, as provided in this Statute, on the territory of any State Party and, by special agreement, on the territory of any other State.

#### **Article 5: Composition of the Court**

1. The Court shall consist of 21 judges, nationals of the States parties to the Statute, elected in an individual capacity from among jurists of the highest moral authority, impartiality and integrity, and of recognized competence in the field of human rights, who speak English fluently and possess the qualifications required in their respective States for the exercise of the highest judicial functions. All judges shall serve as full-

time members of the Court and shall be available to serve on that basis from the commencement of their terms of office.

2. During their term of office the judges shall not engage in any activity which is incompatible with their independence, impartiality or with the demands for a full-time office; all questions arising from the application of this paragraph shall be decided by the Court.
3. The judges, the Registrar and other staff of the Court shall receive such salaries, allowances and expenses as may be decided by the General Assembly.
4. The President of the Court, acting on behalf of the Court, may propose an increase in the number of judges specified in paragraph 1, indicating the reasons why this is considered necessary and appropriate. The Registrar shall promptly circulate any such proposal to all States Parties.
5. Any such proposal shall then be considered at a meeting of the Assembly of States Parties. The proposal shall be considered as adopted if approved at the meeting by a vote of two-thirds of the members of the Assembly of States Parties and shall enter into force at such time as decided by the Assembly of States Parties.

#### **Article 6: Election of the judges**

1. The judges shall be elected by the Assembly of States Parties by secret ballot from a list of persons possessing the qualifications prescribed in Article 5 and nominated for the purpose by the States Parties to the Statute. States Parties shall nominate only their own nationals and not more than one person.
2. The judges shall be elected for a term of six years. They shall be eligible for re-election if re-nominated. However, the terms of nine of the judges elected at the first election shall expire at the end of three years; immediately after the first election, the names of these nine judges shall be chosen by lot by the Chairperson of the Assembly of States Parties.
3. In the election of judges, States Parties shall take into account the need for the representation of the principal legal systems of the world, for equitable geographical representation and for a fair representation of female and male judges.
4. The initial election shall be held no later than six months after the date of entry into force of the present Statute.
5. At least four months before the date of each election, the Secretary-General of the United Nations shall address a written invitation to the States Parties to submit their nominations of judges within three months. The Secretary-General shall prepare a list in alphabetical order of all the persons thus nominated and shall submit it to the States Parties no later than one month before the date of each election.
6. Elections of the judges shall be held at an Assembly of States Parties convened by the Secretary-General of the United Nations at the Headquarters of the United Nations. At that Assembly, for which two thirds of the States Parties to the present Statute shall constitute a quorum, the judges elected shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.
7. In the event of a vacancy, an election shall be held in accordance with the provisions of this Article. A judge elected to fill a vacancy shall serve for the remainder of the predecessor's term.
8. The judges shall continue in office until the expiration of their term. However, they shall continue to serve with regard to cases that they have begun to hear and that are

still pending, for which purposes they shall not be replaced by the newly elected judges.

## **Part 2: Jurisdiction, Admissibility and Applicable Law**

### **Article 7: Individual complaints**

1. The Court may receive and examine complaints from any person, non-governmental organization or group of individuals claiming to be the victim of a violation by one of the States Parties to the present Statute of any human right provided for in any human rights treaty of the United Nations and its specialized agencies listed in Annex 1 to which the respective State is a Party.
2. The Court may also receive and examine complaints from any person, non-governmental organization or group of individuals claiming to be the victim of a violation of any human right provided for in any human rights treaty listed in Annex 1 by the United Nations or by any of its specialized agencies.
3. The Court may also receive and examine complaints from any person, non-governmental organization or group of individuals claiming to be the victim of a violation of any human right provided for in any human rights treaty listed in Annex 1 by any other regional or global inter-governmental organization, provided that the present Statute has been ratified or acceded to by at least half of the member States of the respective inter-governmental organization.
4. The Court may also receive and examine complaints from any person, non-governmental organization or group of individuals claiming to be the victim of a violation of any human right provided for in any human rights treaty listed in Annex 1 by any non-State actor subject to the jurisdiction of a State Party, provided that the respective State Party is also a party to the human rights treaty concerned and that the human right invoked lends itself to a violation by the respective non-State actor.
5. The Court may also receive and examine complaints from any person, non-governmental organization or group of individuals claiming to be the victim of a violation of any human right provided for in any human rights treaty listed in Annex 1 by any inter-governmental and non-governmental organization, including any business corporation, which has made an explicit declaration that it recognizes the jurisdiction of the Court in relation to specific human rights enlisted in such treaties. Members of the Global Compact are specifically encouraged to make such a declaration.
6. Upon ratification of this Statute, States Parties shall take the necessary action to ensure that other human rights treaty monitoring bodies of the United Nations are no longer competent to receive and consider human rights complaints or communications from individuals, non-governmental organizations or groups of individuals within their jurisdiction.

### **Article 8: Third party complaints and ex officio inquiries**

1. The Court may also receive and examine complaints by any State Party to the present Statute, by the United Nations High Commissioner for Human Rights, the Security Council and by the Human Rights Council of the United Nations relating to alleged systematic human rights violations by any State Party to the present Statute, inter-governmental or non-governmental organization, including business corporation, subject to the jurisdiction of the Court in accordance with Article 7.

2. If the Court receives reliable information which appears to it to contain well-founded indications that any of the human rights provided for in any human rights treaty listed in Annex 1 is being systematically practiced by a State Party, inter-governmental or non-governmental organization subject to the jurisdiction of the Court in accordance with Article 7, the Court shall start an investigation ex officio and examine the situation.

#### **Article 9: National court of human rights**

1. Each State Party shall establish, at the latest one year after the entry into force of the present Statute or of its ratification or accession, a national court of human rights. The national court shall be competent to receive and examine complaints from any individual, non-governmental organization or group of individuals claiming to be the victim of a violation of any human right provided for in any human rights treaty listed in Annex 1 by any authorities of the respective State Party or by any non-State actor subject to the jurisdiction of that State Party, provided that the State Party is also a party to the human rights treaty concerned and that the human right invoked lends itself to a violation by the respective non-State actor.
2. The national court of human rights shall decide in a final domestic manner whether there has been any violation of any human right provided for in any human rights treaty listed in Annex 1 by the respondent party.
3. If the national court of human rights finds a human rights violation, it shall afford the victim adequate reparation for the harm suffered, including restitution, rehabilitation, compensation and satisfaction.
4. The judgments of the national court of human rights shall be enforced by the respective domestic law enforcement bodies as any other binding judgment of a domestic court.
5. Each State Party shall regulate the organization and procedure before the national court of human rights, ensure that the international human rights treaties listed in Annex 1 can be directly applied before the national court of human rights, and establish the respective domestic remedies that need to be exhausted before a complaint can be submitted to the national court of human rights.

#### **Article 10: Admissibility criteria**

1. The Court may only deal with any individual complaint submitted under Article 7 if the complaint has first been submitted to the national human rights court in the respective State Party and the applicant is not satisfied with the judgment of the national court of human rights, including the reparation afforded. This admissibility requirement does not apply if the national human rights court has not yet been established or if the procedure before the national human rights court is not effective or does not afford due process of law for the protection of the right or rights that have allegedly been violated.
2. The Court shall not deal with any individual complaint submitted under Article 7 that
  - a) has been submitted later than six months after the final judgment of the national court of human rights; or
  - b) is anonymous; or
  - c) is substantially the same as a matter that has already been examined by the Court or has already been submitted to another procedure of international investigation or settlement, including before a regional court of human rights; or

- d) is incompatible with the provisions of the human rights treaty invoked; or
  - e) is manifestly ill-founded; or
  - f) constitutes an abuse of the right to individual complaint.
3. The Court shall reject any complaint which it considers inadmissible under this Article. It may do so at any stage of the proceedings.
  4. The admissibility criteria provided for in this Article do not apply to third party complaints submitted under Article 8. However, the Court may reject any such complaint which it considers as manifestly ill-founded or an abuse of the right to complaint.
  5. Any decision declaring a complaint admissible or inadmissible or striking it out shall be published in English and, in principle, in the official language of the State Party on the territory of which the alleged human rights violation was committed.

#### **Article 11: Third-party intervention**

1. The Court may, in the interest of the proper administration of justice, admit written comments by any third party interested in the case.
2. The Court may also invite interested third parties to take part in hearings.
3. If the respondent party is a non-State actor, the State Party under the jurisdiction of which the alleged human rights violation has been committed, shall participate in the proceedings as a third party.

#### **Article 12: Striking out complaints**

1. The Court may at any stage of the proceedings decide to strike a complaint out of its list of cases where the circumstances lead to the conclusion that:
  - a) the applicant does not intend to pursue his or her complaint; or
  - b) the matter has been resolved; or
  - c) for any other reason established by the Court, it is no longer justified to continue the examination of the complaint.
2. However, the Court shall continue the examination of the complaint if respect for human rights so requires.
3. The Court may decide to restore a complaint to its list of cases if it considers that the circumstances justify such a decision.

#### **Article 13: Examination on the merits**

1. If the Court declares a complaint admissible, it shall pursue the examination of the case, together with the representatives of the respondent parties.
2. If the Court decides to undertake an in depth investigation of the facts of a case, the respondent party and, in cases concerning any non-State actor, the State Party under the jurisdiction of which the alleged human rights violation has been committed, shall cooperate and furnish all required documents and necessary facilities.
3. If the Court decides to carry out a fact finding mission, the respondent party and, in cases concerning any non-State actor, the State Party concerned shall provide all necessary cooperation and facilitate the investigation, including by granting access to all places of detention and other facilities.
4. Decisions on admissibility may be joined with the judgment on the merits.

#### **Article 14: Friendly settlement**

1. At any stage of the proceedings the Court shall place itself at the disposal of the parties concerned with a view to securing a friendly settlement of the matter on the basis of respect for human rights.
2. If a friendly settlement is effected, the Court shall strike the case out of its list by means of a decision which shall be confined to a brief statement of the facts and of the solution reached.

#### **Article 15: Public hearings**

1. Hearings shall be public unless the Court in exceptional circumstances decides otherwise.
2. In addition to the applicants and the respondent parties, the Court shall hear such witnesses and experts as it deems necessary. Witnesses may be summoned to appear before the Court.
3. The Court shall take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses. For this purpose, it shall establish a Victims and Witnesses Unit within the Office of the Registrar.
4. Documents deposited with the Registrar shall be accessible to the public unless the President of the Court decides otherwise.

#### **Article 16: Judgments of the Court**

1. The Court shall decide whether or not the respondent party has violated an obligation to respect, fulfil or protect any human right provided for in any applicable human rights treaty listed in Appendix 1.
2. If the Court finds a human rights violation, it shall also afford the victim adequate reparation for the harm suffered, including restitution, rehabilitation, compensation and satisfaction.
3. The Court shall give reasons for its judgments as well as for decisions declaring complaints admissible or inadmissible or for striking them off the list of cases.
4. If a judgment does not represent, in whole or in part, the unanimous opinion of the judges, any judge shall be entitled to deliver a separate opinion.
5. Any judgment of the Court shall be published in English and, in principle, in the official language of the State Party on the territory of which the alleged human rights violation was committed.

#### **Article 17: Binding force, execution and supervision of judgments**

1. The judgments of the Court shall be final and binding under international law.
2. The States Parties and all other respondent parties are bound to abide by the judgment of the Court in any case to which they are parties. In particular, they are bound to grant the victim adequate reparation for the harm suffered, as decided by the Court, within a period of no longer than three months from the delivery of the judgment, unless the Court specifies a different deadline.
3. The States Parties undertake to directly enforce the judgments of the Court by the respective domestic law enforcement bodies as any binding judgment of a national human rights court or any other domestic court.

4. Any judgment of the Court shall be transmitted to the UN High Commissioner for Human Rights who shall supervise its execution. The States Parties, other respondent parties and the applicants shall report to the High Commissioner all measures taken to comply with the judgment and to enforce its execution.
5. If the High Commissioner concludes that any State Party or other respondent party fails to abide by or enforce any judgment of the Court, it shall seize the Human Rights Council or, in appropriate cases, the Security Council with a request to take the necessary measures that will bring about the enforcement of the judgment.

#### **Article 18: Provisional measures**

1. In cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons, the Court shall adopt such provisional measures as it deems pertinent in matters it has under consideration.
2. Such provisional measures are binding with immediate effect upon the respondent party and shall be enforced and supervised in the same manner as judgments in accordance with Article 17.
3. The Court shall withdraw provisional measures if they are no longer necessary to avoid irreparable damage to persons.

### **Part 3: Organization of the Court**

#### **Article 19: Organs of the Court**

The Court shall be composed of the following organs:

- a) Plenary Court
- b) Chambers and Committees
- c) Presidency
- d) Registry

#### **Article 20: The Plenary Court**

The Plenary Court shall:

- a) Elect its President, its first and second Vice-President for a period of three years. They may be re-elected.
- b) Set up Chambers and Committees, constituted for a fixed period of time.
- c) Elect the Presidents of the Chambers. They may be re-elected.
- d) Adopt the Rules of Procedure of the Court.
- e) Elect the Registrar and two Deputy Registrars.
- f) Take a decision to remove a judge, the Registrar or Deputy Registrar from office in accordance with Article 26.
- g) Exercise judicial functions in accordance with Article 21 paragraphs 8 and 9.

#### **Article 21: Chambers and Committees**

1. The Court shall establish three Chambers of seven judges each.
2. Chamber 1 shall be chaired by the President of the Court, Chamber 2 by the first Vice-President, and Chamber 3 by the second Vice-President.



3. Each Chamber shall establish two Committees of three judges each. The President and the Vice-Presidents of the Court shall not be members of a Committee.
4. Each Committee shall elect its own chairperson.
5. A Committee may, by a unanimous vote, declare inadmissible or strike out of its list of cases an individual complaint submitted under Article 7 where such a decision can be taken without further examination. The decision shall be final and binding.
6. If no decision is taken by a Committee in accordance with the preceding paragraph, a Chamber shall decide on the admissibility and merits of individual complaints submitted under Article 7.
7. A Chamber shall decide on the admissibility of third party complaints under Article 8.
8. A Chamber shall conduct ex officio inquiries, including fact finding missions to the territory of a State Party, in accordance with Article 8(2). It shall report on its findings to the Plenary Court.
9. The Plenary Court shall decide on the merits of third party complaints and ex officio inquiries under Article 8.
10. Where a case pending before a Chamber raises a serious question affecting the interpretation of any provision of a human rights treaty under consideration or where the resolution of a question before it might have a result inconsistent with a judgment previously delivered by the Court, the Chamber may, at any time before it has rendered its judgment, relinquish jurisdiction in favour of the Plenary Court.
11. Within a period of three months from the date of the judgment of a Chamber, any party to the case may, in exceptional cases, request that the case be referred to the Plenary Court. This request shall be submitted to another Chamber of the Court which shall accept the request only if the case raises a serious question affecting the interpretation or application of any provision of a human rights treaty under consideration, or a serious issue of general importance. If this Chamber accepts the request, the Plenary Chamber shall decide the case by means of a judgment.

## **Article 22: Final judgments**

1. The judgment of the Plenary Court shall be final.
2. The judgment of a Chamber shall become final:
  - a) when the parties declare that they will not request that the case be referred to the Plenary Court; or
  - b) three months after the date of the judgment, if reference of the case to the Plenary Court has not been requested; or
  - c) when another Chamber of the Court rejects the request of a party to refer the case to the Plenary Court.

## **Article 23: The Presidency**

1. The President and the First and Second Vice-Presidents of the Court shall be elected by an absolute majority of the judges. They shall each serve for a term of three years or until the end of their respective terms of office as judges, whichever expires earlier. They shall be eligible for re-election.
2. The First Vice-President shall act in place of the President in the event that the President is unavailable or disqualified. The Second Vice-President shall act in place of the President in the event that both the President and the First Vice-President are unavailable or disqualified.

3. The President, together with the First and Second Vice-Presidents, shall constitute the Presidency, which shall be responsible for the proper administration of the Court and all other functions conferred upon it in accordance with this Statute.
4. The President shall also function as chair of the first Chamber, the First Vice-President as chair of the second Chamber, and the Second Vice-President as chair of the third Chamber.

#### **Article 24: The Registry**

1. The Registry shall be headed by the Registrar, who shall be the principal administrative officer of the Court. The Registrar shall exercise his or her functions under the authority of the President of the Court.
2. The Registrar and the two Deputy Registrars shall be persons of high moral character, be highly competent and have an excellent knowledge of English. They shall be elected by an absolute majority of the judges for a period of five years and shall be eligible for re-election. They shall serve on a full-time basis.
3. The Registrar shall appoint such qualified staff as may be required. In the employment of staff, the Registrar shall ensure the highest standards of efficiency, competency and integrity and shall take into account the need for the representation of the principal legal systems of the world.
4. The Registrar shall set up a Victim and Witnesses Unit within the Registry. This Unit shall provide protective measures and security arrangements, counselling and other appropriate assistance for witnesses, victims who appear before the Court and others who are at risk on account of testimony given by such witnesses. The Unit shall include staff with expertise in traumatology.

#### **Article 25: Solemn undertaking**

Before taking up their respective duties under this Statute, the judges, the Registrar, deputy Registrars and all other staff employed by the Court shall each make a solemn undertaking in open court to exercise his or her respective functions impartially and conscientiously.

#### **Article 26: Removal from office**

In case of a serious breach of his or her duties under this Statute or inability to exercise the respective functions under this Statute, a judge, the Registrar or a Deputy Registrar shall be removed from office by a decision of the Plenary Court taken by a two-thirds majority of all judges. The person whose conduct is challenged shall have full opportunity to present and receive evidence and to make submissions in accordance with the Rules of Procedure of the Court.

#### **Article 27: Privileges and immunities**

1. The Court shall enjoy in the territory of each State Party such privileges and immunities as are necessary for the fulfilment of its purpose.
2. The judges, the Registrar and the Deputy Registrars shall, when engaged on or with respect to the business of the Court, enjoy the same privileges and immunities as are accorded to heads of diplomatic missions and shall, after the expiry of their term of office, continue to be accorded immunity from legal process of every kind in respect of words spoken or written or acts performed by them in their official capacity.

3. The staff of the Registry, counsel, experts, witnesses or any other person required to be present at the seat of the Court shall be accorded such treatment as is necessary for the proper functioning of the Court, in accordance with the agreement on the privileges and immunities of the Court.

#### **Article 28: Representation before the Court**

1. Applicants have the right to appear before the Court in person or to be represented by legal counsel or by any other duly authorized person or organization.
2. If the interests of justice so require, the Court, upon request of the applicant or another party, may grant legal aid to the applicant or another party without sufficient means to pay for legal counsel.

### **Part 4: Obligations of States Parties**

#### **Article 29: Cooperation with the Court**

1. States Parties shall, in accordance with the provisions of this Statute, cooperate fully with the Court in its examination of complaints submitted under Articles 7 and 8, and in carrying out ex officio investigations under Article 8 paragraph 2.
2. If the Court conducts a fact finding mission to the territory of a State Party, the authorities shall fully cooperate with the Court. In particular, the Court shall enjoy full freedom of movement and inquiry throughout the territory of the State Party, unrestricted access to State authorities, documents and case files as well as the right of access to all places of detention and the right to hold confidential interviews with detainees, victims, experts and witnesses.
3. The Court shall have the authority to make special requests to States Parties for cooperation and judicial assistance, and the requested States Parties shall provide such assistance and cooperation to the best of their abilities.

#### **Article 30: Compliance with and enforcement of judgments and provisional measures**

1. States Parties shall fully comply with any judgments and provisional measures in any proceedings to which they are a party. States Parties shall ensure that any judgments and provisional measures of the Court can be directly enforced by their domestic authorities in the same way as any judgments and binding decisions of national courts of human rights or any other domestic courts.
2. With respect to the enforcement of binding judgments against any inter-governmental or non-governmental organisation or any other non-State actor, States Parties shall provide full cooperation and judicial assistance, as requested by the Court.
3. States Parties shall enact special laws for the implementation of their obligations under this Statute.

## **Part 5: Obligations of non-State actors**

### **Article 31: Compliance by non-State actors**

1. Any inter-governmental and non-governmental organization, including any business corporation, which has made a specific declaration recognizing the jurisdiction of the Court in accordance with Article 7 paragraph 5, shall fully cooperate with the Court in any proceedings to which they are a party and shall comply with any judgment and provisional measure issued by the Court.
2. Any other inter-governmental and non-governmental organization as well as any other non-State actor which is a party to any proceedings before the Court shall fully cooperate with the Court in accordance with the provisions of this Statute and the respective laws of States Parties under the jurisdiction of which they operate. They shall comply with any judgment and provisional measure issued by the Court.

## **Part 6: Final clauses**

### **Article 32: Signature, ratification, accession and succession**

1. The present Statute is open for signature, ratification, accession and succession by all States.
2. Signatures as well as any instruments of ratification, accession and succession shall be deposited with the Secretary-General of the United Nations.

### **Article 33: Entry into force**

1. The present Statute shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification, accession or succession.
2. For each State ratifying the present Statute or acceding or succeeding to it after the deposit of the twentieth instrument of Ratification, accession or succession, the present Statute shall enter into force three months after the date of the deposit of its own instrument of ratification, accession or succession.

### **Article 34: Reservations/(Opting-In: needs to be drafted)**

1. Each State may, at the time of signature, ratification of, accession or succession to this Statute declare that it does not recognize the jurisdiction of the Court in relation to certain human rights treaties listed in Annex 1 or certain provisions thereof.
2. Any State Party having made a reservation in accordance with paragraph 1 of this Article may, at any time, withdraw this reservation by notification to the Secretary-General of the United Nations.
3. Other reservations shall not be made to this Statute.

**Article 35: Authentic texts**

The original of this Statute, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States.

## **Annex 1: International human rights treaties under the jurisdiction of the World Court of Human Rights**

International Covenant on Civil and Political Rights 1966 and Second OP 1990  
International Covenant on Economic, Social and Cultural Rights 1966  
Slavery Convention 1926  
Protocol Amending the Slavery Convention 1953  
ILO Convention Concerning Forced Labour 1930  
Genocide Convention 1948  
Refugee Convention 1951 and Protocol 1967  
Convention on the Political Rights of Women 1952  
Supplementary Convention on the Abolition of Slavery 1956  
ILO Convention Concerning the Abolition of Forced Labour 1957  
UNESCO Convention on the Elimination of Discrimination in the Field of Education 1962  
International Convention on the Elimination of All Forms of Racial Discrimination 1965  
Convention on the Elimination of All Forms of Discrimination against Women 1979  
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984  
Convention on the Rights of the Child 1989  
Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict 2000  
Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography 2000  
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families 1990  
ILO Worst Forms of Child Labour Convention 1999  
Palermo Trafficking Protocol 2000  
Convention on the Rights of Persons with Disabilities 2006  
Convention on the Protection of All Persons from Enforced Disappearance 2006

(Needs to be completed): ILO Conventions on Freedom of Association, Collective Bargaining, Equal Remuneration, Indigenous Peoples ....  
UN Conventions on Statelessness, Minimum Age of Marriage ....

## **Commentary**

### **Article 1**

Although the Statute is a treaty which only binds the States Parties, the World Court of Human Rights, as the International Court of Justice (ICJ) and the International Criminal Court (ICC), shall be a permanent institution of the United Nations. The ICJ is the main judicial organ of the United Nations deciding upon disputes between States on the basis of their obligations under general international law. The ICC is a permanent court holding individual perpetrators of war crimes, genocide and crimes against humanity accountable under international criminal law. The World Court of Human Rights shall be the main judicial organ of the United Nations holding States and certain non-State actors accountable for violations of international human rights law and providing victims of such human rights violations with the right to a remedy and reparation for the harm suffered. It thereby combines the functions of a classical human rights court with those of an International Civil Court in relation to the rights and obligations deriving from international human rights law. The judgments of the Court shall be final and binding and will be enforced by domestic law enforcement bodies in the same way as judgments of domestic courts.

The complimentary nature of the jurisdiction of the World Court and that of national courts of human rights is an important principle of the Statute, similar to that of the ICC Statute, and will be further elaborated in respect to Article 9.

### **Article 2**

The relationship between the Court and the United Nations shall be decided by an agreement similar to that concluded on the basis of Article 2 of the ICC Statute. Although the Statute only binds States Parties, the expenses of the World Court shall be borne by the regular budget of the United Nations, similar to the expenses of all present human rights treaty monitoring bodies of the United Nations. The system by which the expenses of certain human rights treaty bodies (e.g. CERD-Committee and CAT-Committee) were to be borne only by the States Parties of the respective treaties did not prove effective in practice.<sup>1</sup> In addition, the responsibility of the United Nations to provide the financial resources underlines the great importance of the World Court of Human Rights for the protection of human rights worldwide.

### **Article 3**

The Hague in the Netherlands has established a reputation of becoming the judicial capital of the world. In addition to hosting the ICJ and various arbitration courts, The Hague also became the seat of the ICC and of certain ad hoc criminal tribunals, such as the International Criminal Tribunal for the former Yugoslavia (ICTY), the Appeals Chamber of the International Criminal Tribunal for Rwanda (ICTR) and the ad hoc seat of the Special Court for Sierra Leone (SCSL) during the trial of former Liberian President Charles Taylor. It is, therefore, only consequent to also establish the seat of the World Court of Human Rights in The Hague, subject of course to the agreement of the Dutch Government. The headquarters agreement shall be concluded in a similar way as that concluded on the basis of Article 3 of

---

<sup>1</sup> See Manfred Nowak/Elizabeth McArthur, *The United Nations Convention against Torture – A Commentary*, Oxford 2008, pp. 593f.

the ICC Statute. Needless to say, the Court may also sit elsewhere whenever it considers it desirable. For the purpose of establishing the facts of certain cases in the most effective manner, it may be useful to hold public hearings in the country where the alleged human rights violations were committed.

#### **Article 4**

As the ICC, the World Court shall have international legal personality. Its legal status and powers shall follow the model of the ICC, as laid down in Article 4 of the ICC Statute.

#### **Article 5**

While the European Court of Human Rights consists of a number of judges equal to the number of States Parties to the ECHR (presently 47), the Inter-American Court of Human Rights only consists of 7 judges, and the African Court of Human and Peoples' Rights of 11 judges. The present human rights treaty monitoring bodies of the United Nations are composed of individual experts numbering between 10 and 23 experts. The proposed number of 21 judges for the World Court of Human Rights takes into account the expected global ratification of the Statute and the growing workload of the Court. It enables the Court to establish three Chambers of 7 judges and six Committees of three judges, excluding the President and the two Vice-Presidents of the Court (Article 21). Similar to the ICC, which presently consists of 18 judges, the proposed Statute contains a provision, modelled on that of Article 36 (2) of the ICC Statute, which enables the Assembly of States Parties, on the proposal of the President of the Court, to increase the number of judges without an amendment of the Statute.

While the present human rights treaty monitoring bodies of the United Nations, taking into account the need for diverse backgrounds required to examine State reports, are composed of experts from different professions, the World Court of Human Rights as the highest judicial body deciding on human rights complaints, shall be composed only of jurists with the required competence in the field of human rights and the qualifications for the exercise of the highest judicial functions in their respective countries. As full-time judges, they shall not engage in any other activity during their term of office which is incompatible with their independence and impartiality. They shall receive professional salaries similar to those of the judges of the ICJ and the ICC.

#### **Article 6**

The judges shall be nominated by the States Parties to the Statute and elected by secret ballot by the Assembly of States Parties for a term of six years. The need for balancing the need for both continuity and rotation is expressed in the relatively short term of office and the possibility of unlimited re-election. It is up to the States Parties whether they wish to re-nominate certain judges with outstanding performance and to the Assembly of States Parties whether they wish to re-elect them more than once.

The fact that the judges are elected by the Assembly of States Parties rather than by the General Assembly of the United Nations shall provide an incentive for States to ratify the Statute. The procedure for the election of judges follows that of the expert members of the present human rights treaty monitoring bodies of the United Nations (e.g. Articles 28 to 34



ICCPR). Only certain provisions which turned out not to be useful in practice, such as the possibility of States Parties to nominate more than one national, were modified accordingly.

## **Article 7**

This is the central provision establishing the broad jurisdiction of the Court. It shall have the power to decide about individual complaints (emanating from any person, non-governmental organization or group of individuals similar to Article 34 ECHR and Article 44 ACHR) against States Parties, the United Nations and its specialized agencies, other global or regional inter-governmental organizations, non-governmental organizations, business corporations and other non-State actors. The applicants must claim to be a victim of a violation of a human right provided for in one of the human rights treaties of the United Nations, the ILO or UNESCO explicitly enumerated in Annex 1 of the Statute.

States which ratify the Statute recognize the competence of the Court to examine individual complaints directed against themselves in relation to those human rights treaties to which they are parties. But Article 34 provides for an “opting out” reservation at the time of ratification, accession or succession. In other words: States may specify those provisions in human rights treaties to which they are a party which nevertheless shall not be invoked before the Court by any individual applicant.

With the entry into force of the present Statute, the Court shall also be competent to examine individual complaints directed against the United Nations and its specialized agencies, including the ILO, FAO, WHO, UNESCO, and the Bretton Woods institutions (IMF and the World Bank Group). If the United Nations, e.g. in exercising power in the context of an Interim Administration as UNMIK in Kosovo, violates a human right guaranteed by any of the human rights treaties enumerated in Annex 1, it can be held accountable by the alleged victim before the World Court of Human Rights. The same holds true for human rights violations allegedly committed by an act of the World Bank or the IMF.

Other global or regional inter-governmental organizations, such as the WTO, NATO, the OAS, African Union or the European Union, can only be held accountable before the World Court for alleged violations of international human rights treaties if at least half of the member States of the respective organization has become party to the Statute or, alternatively, if the respective organization has made an explicit declaration recognizing the jurisdiction of the Court in relation to specific human rights enlisted in such treaties. Such a declaration by the Secretary-General of the respective organization would, however, usually require authorization by at least half of the member States in the competent decision making bodies of the organization. As soon as at least half of the member States of the respective organization has ratified or acceded to the Statute, the jurisdiction of the Court applies to all human rights enlisted in Annex 1. However, the Court shall decide on a case by case basis whether the specific human rights invoked by an individual complaint can by their very nature be applied in relation to an inter-governmental organization. For example, it is difficult to imagine that NATO might be held accountable for a violation of the right to marry whereas such a violation could be claimed in relation to a United Nations interim administration. But NATO may be held accountable for torture methods applied by NATO troops in the context of a UN peace operation.

Non-State actors can be held accountable before the Court for alleged human rights violations only if they have made a declaration explicitly recognizing the jurisdiction of the Court or if

they are subject to the jurisdiction of a State party. A transnational corporation, which is a member of the Global Compact, may voluntarily accept the jurisdiction of the Court in relation to specific human rights, such as the right of its employees to form and join trade unions or the prohibition of the worst forms of child labour. But even without such a declaration, the respective business corporation may be held accountable before the Court for exploiting child labour if this is practiced on the territory of a State Party. The victims of such practices have the choice between bringing an individual complaint directly against the business corporation or against the respective State Party for not having taken the necessary steps, according to the due diligence principle, aimed at preventing the exploitation of child labour by the respective business corporation. The same holds true for other non-State actors, such as media enterprises, trade unions, political parties, religious associations, paramilitary organizations, rebel groups and other non-governmental organizations and even individuals. Again, the Court will have to decide on a case by case basis whether the human rights invoked can by their very nature be applied to the respective non-State actor.

When becoming a party to the Statute, States shall take the necessary action to ensure that individual complaints can no longer be lodged with other human rights treaty monitoring bodies of the United Nations. According to the respective treaties, individual communication procedures are never mandatory but require additional optional declarations or even ratifications which can easily be withdrawn. If a State Party to the 1<sup>st</sup> OP to the ICCPR ratifies the Statute, it is required to denounce this OP in accordance with Article 12 OP. If a State Party to the Statute made a declaration in accordance with Article 14 CERD or Article 22 CAT, it shall withdraw such declarations.

## **Article 8**

In addition to individual complaints, the Court shall also have jurisdiction to examine inter-State complaints as well as complaints lodged by the UN High Commissioner for Human Rights, the Security Council or the Human Rights Council relating to alleged systematic human rights violations by any State Party, inter-governmental or non-governmental organization, including business corporation, subject to the jurisdiction of the Court in accordance with Article 7. The Court shall only examine such third party complaints if they relate to alleged systematic violations of human rights, not to individual violations. Complaints against inter-governmental organizations and non-State actors shall only be examined if the respective jurisdiction requirements of Article 7 (alleged systematic violations committed on the territory of a State Party, by the United Nations or its specialized agencies or by an organization that has voluntarily accepted the jurisdiction of the Court) are fulfilled.

Inquiries into systematic human rights violations may also be conducted by the Court ex officio on the basis of reliable information which appears to the Court to contain well-founded indications for a systematic practice of human rights violations by a State Party, inter-governmental or non-governmental organization subject to the jurisdiction of the Court in accordance with Article 7. This competence of the Court is modelled on the inquiry procedure under Article 20 CAT and the OP to CEDAW and Article 34 CPED. If States Parties to the Statute have also accepted an optional inter-State complaints or inquiry procedure before another human rights treaty monitoring body of the United Nations, it is advisable to denounce the respective OP (e.g. in accordance with Article 19 of the OP to CEDAW or Article 32 CPED) or withdraw the respective optional declaration (e.g. in accordance with Article 21(2) CAT). The inter-State complaints procedure under Article 11 CERD is, however, mandatory and the inquiry procedure under Article 20 CAT can only be “opted out”

at the time of signature, ratification or accession (e.g. Article 28 CAT). In these cases, parallel inter-State complaint or inquiry procedures may be initiated. But in practice this risk will not present any major problems. The inter-State complaint procedure under Article 11 CERD is extremely weak and has never been resorted to by any State Party of CERD. In the future, it is advisable if States Parties to the Statute only lodge inter-State complaints before the Court rather than before the CERD-Committee. If the CAT-Committee, the CEDAW-Committee or the CPED-Committee continue to conduct ex officio inquiry procedures, the Court is advised not to initiate similar proceedings in relation to the same States Parties and vice versa.

Third party complaints can only be declared inadmissible by a Chamber of the Court if they are manifestly ill-founded or constitute an abuse of the right to complaint, in accordance with Articles 10(4) and 21. Ex officio inquiries, including fact finding missions to the territory of a State Party shall be conducted by a Chamber of the Court. Judgments on the merits of third party complaints and ex officio inquiries shall only be delivered by the Plenary Court in accordance with Article 21(9).

## **Article 9**

Some of the more recent UN human rights treaties require States Parties to establish specific national human rights monitoring bodies in addition to supervision by the respective international treaty monitoring bodies. For example, the OP to CAT of 2002 created a UN Subcommittee for the Prevention of Torture and at the same time requires States Parties to establish so called National Preventive Mechanisms; both bodies carry out preventive visits to places of detention and conduct confidential interviews with detainees. Similarly, the CRPD provides for an international expert committee and national monitoring mechanisms to supervise States Parties' compliance with the respective obligations of the Convention.

The Statute of the World Court of Human Rights follows this model by requiring States Parties to establish national courts of human rights. These domestic courts shall have the same powers as the World Court and applicants must have first complained to the national human rights court in the country where the alleged human rights violation occurred before they lodge a complaint with the World Court (Article 10(1)). This admissibility criterion presupposes that States Parties, when regulating the organization and procedure before the national courts of human rights in their domestic laws, must ensure that all human rights provisions in the treaties listed in Annex 1 can be directly applied by such courts. This requirement will have an important effect on the domestic implementation of international human rights treaties. Many States ratify international human rights treaties without incorporating them into domestic law. This leads to the consequence that such treaties are in effect ignored by domestic courts and administrative authorities, and victims often have no other opportunity than directly complaining to international courts or monitoring bodies. This may lead to overloading international or regional bodies, such as the European Court of Human Rights, with too many cases. The obligation to establish national courts of human rights with the power to directly apply international human rights law, to assess whether any domestic authority has violated any human right contained in the respective international human rights treaty, and to provide victims with adequate reparation shall have the effect of preventing the World Court from becoming overloaded with cases by transferring human rights adjudication to highly qualified national human rights courts. The better the national human rights courts apply international human rights treaties and thereby provide an effective remedy and reparation to the victims of human rights violations, the fewer cases will be submitted to the World Court. This will not only relieve the World Court from becoming the

“victim of its own success”, as is often stated with respect to the 100.000 cases presently pending before the European Court of Human Rights; it will also strengthen national human rights monitoring and implementation, which is the ultimate goal of international human rights protection.

The relationship between the World Court of Human Rights and national human rights courts is one of complementarity that can be compared to the relationship between the ICC and domestic criminal courts, as laid down in Articles 1 and 17(1) of the ICC Statute. If a State Party is unwilling or unable to provide adequate protection against human rights violations because it failed to establish a national human rights court or because the procedure before the national court is not effective or does not afford due process of law, this domestic remedy does not have to be exhausted, as stipulated in Article 10(1), and the victim can directly lodge a complaint with the World Court. If the national court of human rights, however, provides effective protection by following the respective case law of the World Court and by providing the victims with adequate reparation for the harm suffered, only few cases will be submitted to the World Court and even fewer cases will be decided in favour of the applicants.

## **Article 10**

The most important admissibility criterion for individual complaints is the requirement that the applicant first must submit a complaint to the national human rights court in the respective State Party. This is usually the court in the country where the alleged human rights violation, whether committed by a governmental authority or by a non-State actor, has occurred. If governmental agents commit a human rights violation outside their own territory, i.e. by occupying forces, the national human rights court in the country of the respective government shall in principle be competent. However, it will be up to the World Court to decide on a case by case basis relevant questions concerning the extraterritorial applicability of the respective human rights treaties. The requirement to first lodge a complaint with a national human rights court does not apply to complaints directed against inter-governmental organisations unless these organizations can be sued before a national human rights court.

The other admissibility criteria in Article 10(2) follow those applied by the European and Inter-American Courts of Human Rights and the relevant United Nations treaty monitoring bodies. The six months time limit shall only be applied to judgments of national courts of human rights. If such a domestic court does not exist in the respective State Party or is ineffective, the six months time limit does not apply. Article 10(2)(c) makes clear that no appeal shall be permissible from a regional human rights court to the World Court. This rule applies, however, only to the same matter, i.e. the same human rights issue between the same parties. Concerning the same matter, applicants should make up their mind whether they prefer to submit their case to the World Court or to the respective regional human rights court.

The admissibility criteria of Article 10 do not apply to third party complaints alleging systematic human rights violations. Such complaints cannot be declared inadmissible by a Committee. If such a complaint is, however, manifestly ill-founded or abusive, a Chamber may declare it inadmissible. If declared admissible, it shall be referred to the Plenary Court for adjudication.

## **Article 11**

As with proceedings before the European Court of Human Rights (Article 36 ECHR) and other courts, *amicus curiae* interventions by interested third parties are welcome. Often, other States Parties, inter-governmental organizations or non-governmental organizations can provide additional information or have a special interest to participate in the proceedings, either on the side of the applicant or the respondent party, or as a neutral third party.

Usually, *amicus curiae* briefs are submitted in writing, but the Court may also invite specific third parties to orally intervene during its hearings which normally are public hearings. In cases against non-State actors, the respective States Parties, under the jurisdiction of which the non-State actors concerned fall, have a right and an obligation to take part in the written and oral proceedings. Since human rights complaints against non-State actors constitute a new development in international law, it seems important that the respective States Parties take part in order to help clarifying the precise human rights obligations of States and non-State actors under their jurisdiction.

## **Article 12**

This provision is modelled on Article 37 ECHR. In practice, quite a few cases remain pending for quite a long time, usually in the pre-admissibility stage, because the applicant has lost the interest after a certain period of time, because the matter somehow can be considered as resolved thanks to new legislation or other developments, or for various other reasons. It is easier and simply less time-consuming to resolve these cases by means of short striking out decisions than by means of inadmissibility decisions, friendly settlements or similar alternatives. Strike out decisions will usually be taken by Committees of three judges in accordance with Article 21(5).

## **Article 13**

The proceedings on the merits must be distinguished from the admissibility stage although in practice both decisions may be joined. Such proceedings are usually conducted in writing only, but the Court may also hold public hearings in accordance with Article 15 whenever it deems this necessary. If the facts are disputed, the Court may also undertake an investigation which may even include a fact finding mission on the spot. Experience, e.g. with the European Court of Human Rights, shows however that such in depth investigations and fact finding missions only take place in exceptional cases.<sup>2</sup>

All proceedings must be conducted in accordance with the principle “*audiatur et altera pars*”. All parties are requested to provide relevant information, and all information before the Court shall be made available to the respective other parties. The same holds true for information received during an in depth investigation and fact finding mission on the spot. If the respondent party is a non-State actor, it is important that the State Party under the jurisdiction of which the alleged human rights violation was committed, equally participates in the proceedings in accordance with Article 11(3).

All parties to the proceedings, above all the respective States Parties, have an obligation to fully cooperate with the Court during the various stages of the proceedings. Non-cooperation

---

<sup>2</sup> Cf. the recent study by Philip Leach et al. on “International Human Rights & Fact Finding. An analysis of the fact-finding missions conducted by the European Commission and European Court of Human Rights”, Human Rights and Social Justice Research Institute, London Metropolitan University, February 2009.

by the applicant might lead to a decision to strike out the complaint in accordance with Article 12. Non-cooperation by the respondent party might lead to the practice that certain allegations by the applicant, if not refuted properly by the respondent party, are accepted as evidence and may lead to a judgment finding a human rights violation. Full cooperation by all parties is most important during fact finding missions. States Parties are required to facilitate such fact finding missions by all means, including unrestricted access to all places of detention and the possibility to conduct private interviews with victims, witnesses, experts and detainees.

#### **Article 14**

Friendly settlements play a traditional, albeit limited, role in most human rights complaints proceedings. It is up to the parties to offer a friendly settlement, but the Court shall place itself at the disposal of the parties as a mediator. It shall also ensure that friendly settlements do not simply reflect power relationships but are based on respect for human rights. Friendly settlements usually are offered by States Parties at a late stage of the proceedings when the risk of a judgment finding a human rights violation becomes evident. But in principle, they also can be agreed upon at the pre-admissibility stage.

Friendly settlements shall be agreed upon by both parties and lead to fairly short strike out decisions with a brief statement of the facts and the solution reached.

#### **Article 15**

While the complaints proceedings before UN human rights treaty monitoring bodies are only written, court proceedings must provide for the possibility of public hearings, in full accordance with the human right to a fair and public trial before an independent and impartial tribunal. Nevertheless, for capacity reasons, most proceedings before the European Court of Human Rights and other courts are restricted to an exchange of relevant written information which usually are sufficient for the court to establish the facts and decide the case. Public hearings are only scheduled when the complexity of the case and/or disputes concerning the facts or the law so require.

Usually, hearings are held in public but the Court may in exceptional circumstances exclude the public. Typical reasons for the exclusion of the public are the need to protect victims and/or witnesses, concerns for the protection of the right to privacy or of juvenile rights. Apart from these exceptional cases, hearings shall be public and the relevant documents deposited by the parties with the Registrar shall also be accessible to the public. This rule derives from the principle “Justice must not only be done; it must be seen to be done”, which must, of course, fully apply to domestic and international human rights procedures.

#### **Article 16**

Judgments of the World Court shall serve two important purposes. First of all, the Court shall assess, on the basis of all evidence available, whether or not the facts of the case amount to a human rights violation attributable to the respondent party, and the Court shall secondly, in case it found a violation, afford the victim with adequate reparation for the harm suffered. Strictly speaking, the World Court shall function both as a classical human rights court and as an international civil court providing redress for victims against State and non-State actors alike.

The respondent party commits a human rights violation if it fails to respect, fulfil or protect any human rights provided in any applicable human rights treaty listed in Appendix 1. These rights go beyond the civil and political rights usually subject to litigation before regional human rights courts and also include economic, social and cultural rights. This means that the positive obligations of States to fulfil and protect human rights, which also apply to civil and political rights, are becoming increasingly important.<sup>3</sup> Violations are only attributable to States if the respective authorities failed to meet the “due diligence” test, i.e. failed to take the necessary legislative, administrative, judicial or political measures that can reasonably be expected for the domestic fulfilment of the human rights concerned or for the protection of the victim against undue interference by private parties. Although there does exist international case law on the “due diligence” test,<sup>4</sup> it will be up to the World Court of Human Rights to develop further case law in relation to the obligations deriving from economic, social and cultural rights.

Similarly, the right of victims of human rights violations to adequate reparation for the harm suffered is in urgent need of further development through international case law.<sup>5</sup> Guidance can be sought in the case law of the Inter-American Court of Human Rights<sup>6</sup> or the former Human Rights Chamber for Bosnia and Herzegovina,<sup>7</sup> as well as in the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (the so-called van Boven/Bassiouni Guidelines), which were finally adopted after a long and difficult drafting process by the UN General Assembly in 2005.<sup>8</sup> These Guidelines provide for the following types of reparation: restitution, rehabilitation, compensation, satisfaction and guarantees for non-repetition. The part of the judgment dealing with reparation shall be formulated as a judicial order to be implemented by the respondent party within a certain period of time. Any delay on the part of the respondent party would lead to the payment of default interest.

In addition to the holding (violation of any human right and adequate reparation to the victim), the judgments of the Court shall contain detailed legal reasons which led to the respective findings. Judgments on all different issues shall be arrived upon by majority vote, but any judge shall be entitled to deliver a separate (dissenting or concurring) opinion.

It follows from Articles 10(5) and 16(5) that English shall be the only official language of the Court. But public hearings and other deliberations with the parties shall also be conducted in the official language of the State Party concerned. Similarly, the judgments, inadmissibility and strike out decisions shall be published in English and the relevant State language. This proposal represents a fairly radical departure from the practice of the United Nations, which has six official languages and usually adopts at least two or three of them as working languages. On the other hand, for financial and personnel reasons, The United Nations radically reduced its interpretation and translation services, and many documents are no

---

<sup>3</sup> Cf. Manfred Nowak, *Introduction to the International Human Rights Regime*, Leiden/Boston 2003, pp. 48ff.

<sup>4</sup> Starting with the judgment of the Inter-American Court of Human Rights in *Velasquez Rodriguez v. Honduras* of 29 July 1988, (Ser. C) No. 4 (1988), para. 172.

<sup>5</sup> Cf. Koen de Feyter et al., *Out of the Ashes. Reparations for Victims of Gross and Systematic Human Rights Violations*, Antwerpen/Oxford 2005.

<sup>6</sup> See Douglas Cassel, in Koen de Feyter et al., *Out of the Ashes. Reparations for Victims of Gross and Systematic Human Rights Violations*, Antwerpen/Oxford 2005, pp. 191-223.

<sup>7</sup> See Manfred Nowak, in Koen de Feyter et al., *Out of the Ashes. Reparations for Victims of Gross and Systematic Human Rights Violations*, Antwerpen/Oxford 2005, pp. 245-288.

<sup>8</sup> GA Res. 60/147 of 16 December 2005.

longer translated but exist only in the language in which they were drafted. Since the judgments of the World Court shall be widely understood in the country concerned in order to be directly enforced by domestic law enforcement bodies in accordance with Article 17(3) and to serve as precedent for the respective national human rights court, it is essential that they are translated into the respective national language, even if this is not one of the official languages of the United Nations. The words “in principle” illustrate, however, that there may be exceptions to this rule if, e.g., English is widely understood in the country concerned. If more than one national language is recognized, the respective Government shall choose which one it wishes to use. Since it would be unrealistic to demand that, in addition to the national language, two or more UN languages should be used as working languages, English was chosen as the only international language because it is today clearly the language most widely understood in different regions of the world. This demands that all judges, the Registrar and other staff shall be fluent in English.

### **Article 17**

The judgments of the Chambers and the Plenary Court shall be binding on the parties in accordance with Article 22 and shall be directly enforced by the respective domestic law enforcement bodies as any binding judgment of a domestic court. In particular, the respondent parties are bound to grant the victim within three months from the delivery of the judgment adequate reparation for the harm suffered, as specified in the holding of the judgment. If the reparation ordered includes more time consuming measures, such as legislative amendments, the Court may also grant a longer period for their implementation.

While the existing human rights treaty monitoring bodies of the United Nations feel responsible for the follow up and supervision of the implementation of their own decisions, this function shall be entrusted to the High Commissioner for Human Rights in relation to judgments of the World Court. On the basis of follow up reports by the respondent parties and the applicants, the High Commissioner shall assess whether or not the judgments of the Court have in fact been complied with. If there are doubts, they shall be referred to the Court for clarification.

Cases of non-compliance shall be reported by the High Commissioner to the Human Rights Council with a request to take the necessary measures that will bring about the enforcement of the judgment. The Universal Periodic Review is one but certainly not the only procedure in which the Human Rights Council may deal with States that fail to comply with judgments of the World Court. If the Human Rights Council fails to take the necessary measures or the State concerned fails to comply with the measures taken, the High Commissioner may also request the Security Council to take action.

### **Article 18**

As other human rights courts,<sup>9</sup> the World Court shall have the power to order binding provisional measures in urgent cases when necessary to avoid irreparable damage. This will, e.g., be the case if persons who have been sentenced to death or whose expulsion to another State has been ordered, lodge a complaint with the Court. The respective proceedings before

---

<sup>9</sup> Cf. Article 63(2) ACHR; Rule 39 of the Rules of Court, ECtHR; Article 27 (2) of the Protocol to the AfCHPR on the Establishment of an African Court on Human and Peoples' Rights; Article X (1) Annex 6 of the General Framework Agreement for Peace in Bosnia and Herzegovina (Dayton Peace Agreement).



the Court would not provide an effective remedy if the applicant was in the meantime executed or deported. Orders for provisional measures are binding with immediate effects and shall be directly enforced by the respondent parties as final judgments.

On the other hand, complaints to the Court shall not be misused by applicants for the sole purpose of delaying the execution of lawful domestic decisions. The Court shall, therefore, be bound to regularly review the legitimacy and further necessity of provisional measures in force. If they are no longer necessary, they shall be withdrawn.

### **Part 3 (Articles 19 to 28)**

Part 3 on the organization of the World Court follows partly the organizational structure of the European Court of Human Rights and partly that of the ICC and other courts. In order to effectively deal with the case load reasonably to be expected, the Court shall consist at the beginning<sup>10</sup> of 21 judges who shall be divided into three Chambers of seven judges and six Committees of three judges each. The power of the Committees to declare, by a unanimous vote, individual complaints inadmissible follows Article 28 ECHR. Apart from this quick procedure, Chambers shall usually deal with the admissibility and the merits of individual complaints as well as the admissibility of third party complaints, whereas the Plenary Court shall decide about the merits of inter-State and other third party complaints as well as ex officio inquiries. In addition, the Chamber may relinquish jurisdiction to the Plenary Court which shall also function, in exceptional cases, as Appeals Chamber, similar to the functions of the Grand Chamber of the European Court of Human Rights, in accordance with Articles 30 and 43 ECHR.

The Registrar, as the highest administrative officer of the Court, shall function as Registrar of the Plenary Court and Chamber 1, the two Deputy Registrars of Chambers 2 and 3. All three of them shall be elected by the judges, other staff appointed by the Registrar. While Article 46 ICC Statute foresees the removal of judges, the Registrar and Deputy Registrar by a decision of the Assembly of States Parties, Article 26 of the present draft Statute reserves this exceptional power to a majority vote of two thirds of all judges in the Plenary Court, similar to Article 24 ECHR. The provision on privileges and immunities follows Article 48 of the ICC Statute. There is no requirement to be represented by legal counsel, as applicants can also argue their case before the Court themselves. If they do not have the means to afford legal counsel, they are entitled to request legal aid which shall be granted by the Court if the interests of justice so require. The same applies, in principle, to private respondent parties. Organizational issues not provided for in the Statute shall be regulated in the Rules of Procedure which shall be adopted by the Plenary Court in accordance with Article 20(d).

### **Parts 4 and 5 (Articles 29 to 31)**

Any State Party is bound to enact a special law which establishes a national court of human rights in accordance with Article 9, ensures the direct applicability of the relevant international human rights treaties before the national human rights court and which provides the necessary measures for the implementation of the various obligations under the Statute. In particular, States Parties shall ensure their full cooperation with the Court in all matters, including the domestic enforcement of judgments, orders for provisional measures and

---

<sup>10</sup> If this number turns out to be insufficient, it may be increased at a later stage in accordance with Article 5 paragraphs 4 and 5.

reparation orders. States Parties shall also provide judicial assistance in relation to proceedings against other States Parties, inter-governmental organizations and non-State actors.

Inter-governmental organizations and non-State actors which are a party to any proceedings before the Court also have a direct obligation to fully cooperate with the Court and implement its judgments and decisions.

#### **Part 6 (Articles 32 to 36)**

The Statute of the World Court shall enter into force after the ratification or accession by 20 States. At the time of ratification or accession, States have the right to exclude the applicability of certain human rights treaties. While States have this “opting out” possibility, inter-governmental organizations and non-State actors which accept the jurisdiction of the Court by means of a declaration in accordance with Article 7(5) have the right to specify those human rights provisions in international human rights treaties which shall be applicable in proceedings before the Court. If States are more cautious at the beginning and exclude certain human rights treaties, e.g. those dealing with economic, social and cultural rights, they have, of course, the possibility to withdraw the respective “opting out” reservation at any later time. Other reservations to the Statute shall not be permissible, similar to Article 120 ICC Statute.

Amendments to the Statute of the World Court shall be made easier than amendments to United Nations human rights treaties.