



**Instruments
internationaux relatifs
aux droits de l'homme**

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Dix-neuvième réunion des présidents des organes
créés en vertu d'instruments internationaux relatifs
aux droits de l'homme
Genève, 21 et 22 juin 2007

Sixième réunion intercomités des organes
créés en vertu d'instruments internationaux relatifs
aux droits de l'homme
Genève, 18-20 juin 2007

RAPPORT SUR LES RÉSERVES

1. En application du paragraphe 16 de la résolution 61/34 de l'Assemblée générale du 4 décembre 2006, la Commission du droit international a tenu, au cours de sa cinquante-neuvième session, une réunion avec des experts des droits de l'homme de l'Organisation des Nations Unies, y compris des représentants des organes de suivi des traités relatifs aux droits de l'homme, afin de débattre des questions relatives aux réserves aux traités relatifs aux droits de l'homme. Cette réunion a eu lieu à Genève les 15 et 16 mai 2007. La liste des membres des organes créés en vertu d'instruments internationaux relatifs aux droits de l'homme qui y ont assisté figure dans l'annexe 1. Les échanges de vues ont principalement porté sur les conclusions préliminaires adoptées en 1997 par la Commission du droit international concernant les réserves aux traités multilatéraux normatifs, y compris les traités relatifs aux droits de l'homme, et sur d'autres questions touchant aux réserves aux traités relatifs aux droits de l'homme, comme par exemple, l'effet éventuel de réserves incompatibles avec l'objet et le but du traité et les conséquences des conclusions des organes créés en vertu d'instruments internationaux relatifs aux droits de l'homme.

Annex 1

**LIST OF HUMAN RIGHTS TREATY BODY MEMBERS PARTICIPATING IN THE
MEETING WITH THE INTERNATIONAL LAW COMMISSION**

Committee on the Elimination of All Forms of Racial Discrimination	Linos-Alexander Sicilianos
Committee on Economic, Social and Cultural Rights	Philippe Texier
Human Rights Committee	Sir Nigel Rodley
Committee on the Elimination of All Forms of Discrimination against Women	Cees Flinterman
Committee against Torture	Guibril Camara
Committee on the Rights of the Child	Jean Zermatten
Committee for the Protection of the Rights of All Migrant Workers and Members of Their Families	Ahmed Hassan El-Borai

Annex 2

The practice of the human rights treaty bodies with respect to reservations – concluding observations/comments (January - April 2007)

A. Committee on the Rights of the Child

Positive remarks

On one occasion, the Committee

- welcomed the information that the State party was in the process of withdrawing a reservation (Mali).

Critical remarks

On one occasion, the Committee

- recommended that the State party withdraw its reservations (Malaysia).

Comments on other treaties

On one occasion, the Committee

- recommended that the State party withdraw its reservation to another treaty, i.e. the International Covenant on Economic, Social and Cultural Rights of 1966 (Kenya).

Kenya

The Committee recommends that the State party:

(...)

(b) strengthen the support available to women before and after childbirth by taking appropriate measures including the removal of the reservation to paragraph 2 of Article 10 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) of 1966; (CRC/C/KEN/CO/2)

Malaysia

The Committee notes with appreciation the State party's ongoing efforts to review its reservations to articles 1, 2, 7, 13, 14, 15, 28, paragraph 1 (a) and 37 of the Convention. The Committee is of the opinion that many of the reservations are, with regard to the progress made in the adaptation of the legislation to the requirements of the Convention and in the light of the Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights of 1993, not necessary as also concluded at the Forum on Malaysia's reservations to the Convention on the Rights of the Child which was held on 29 September 2005.

In the light of article 51, paragraph 2, of the Convention, the Committee recommends that the State party expedite its ongoing efforts to review the nature of its reservations to articles 1, 2, 7, 13, 14, 15, 28, paragraph 1 (a) and 37 of the Convention with a view to withdrawing them in accordance with the Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights of 1993. (CRC/C/MYS/CO/1)

Mali

The Committee welcomes the information that the ratification of relevant international agreements and the enactment of the Child Protection Code have rendered the reservation to article 16 invalid and that it will be withdrawn.

The Committee, while referring to its previous recommendations, recommends that the State party take all necessary measures for a speedy withdrawal of the said reservation. (CRC/C/MLI/CO/2)

B. Committee on Elimination of Racial Discrimination

Critical remarks

On one occasion, the Committee

- noted with concern the State party's declaration that acceptance of the Convention does not imply the acceptance of obligations going beyond the constitutional limits, nor the acceptance of any obligations to introduce judicial processes beyond those provided in the Constitution. (Antigua and Barbuda).

Antigua and Barbuda

The Committee notes with concern the declaration entered by the State party at the time of ratification of the Convention, in particular its wording that acceptance of the Convention does not imply the acceptance of obligations going beyond the constitutional limits, nor the acceptance of any obligations to introduce judicial processes beyond those provided in the Constitution.

The Committee encourages the State party to consider withdrawing the declaration entered upon acceding to the Convention. (CERD/C/ATG/CO/9)

C. Committee on the Elimination of Discrimination against Women

Positive remarks

On one occasion the Committee

- commended the State party for ratifying the Convention without reservations (Tajikistan).

On one occasion the Committee

- welcomed the partial withdrawal of the reservation to article 11 of the Convention (Austria).

On three occasions the Committee

- commended the State party for objecting to reservations entered by other States parties that it considers incompatible with the object and purpose of the Convention (Austria, Greece, Netherlands).

Critical remarks

On one occasion the Committee

- expressed its concern that the State party is reluctant to withdraw its reservations to articles 5 (a) and 16 (1) of the Convention, and urged it to withdraw them, as well as to withdraw its reservation to article 16 (2) (India).

On one occasion the Committee

- expressed its concern that the State party, in the last five years, has not taken any positive action with the aim of withdrawing its reservations to articles 7 (a) and 16 of the Convention, which are contrary to the object and purpose of the Convention, and called upon the State party to take necessary steps in this regard. (Maldives).

On one occasion the Committee

- appealed to the Government of the State party to make further efforts to withdraw the remaining reservation to article 11 (Austria).

Tajikistan

The Committee commends the State party for its accession to the Convention on the Elimination of All Forms of Discrimination against Women without reservations. (CEDAW/C/TJK/CO/3)

Austria

While welcoming the partial withdrawal of the reservation to article 11 of the Convention with regard to the night work of women, the Committee notes that the reservation to article 11 with regard to the special protection of working women remains in place and appeals to the Government to make further efforts to withdraw the remaining reservation to article 11. (CEDAW/C/AUT/CO/6)

The Committee also commends the State party for objecting to reservations entered by other States parties that it considers incompatible with the objective and purpose of the Convention. (CEDAW/C/AUT/CO/6)

Greece

The Committee also commends the State party for objecting to reservations entered by other States parties that it considers incompatible with the object and purpose of the Convention. (CEDAW/C/GRC/CO/6)

India

The Committee is concerned by the State party's reluctance to review its policy of non-interference in the personal laws of communities without their initiative and consent and to withdraw its reservations to articles 5 (a) and 16 (1) of the Convention, which stand in contradiction not only to the overall spirit and aim of the Convention but also to the State party's existing constitutional guarantees of equality and non-discrimination.

The Committee urges the State party to review its reservations to articles 5 (a) and 16 (1) with a view to withdrawing them, to proactively initiate and encourage debate within the relevant communities on gender equality and the human rights of women and, in particular, work with and support women's groups as members of these communities so as to (a) modify social and cultural patterns of conduct to achieve elimination of prejudices and practices based on stereotyped roles for men and women and (b) review and reform personal laws of different ethnic and religious groups to ensure de jure gender equality and compliance with the Convention.

The Committee recommends that the State party take proactive measures to speedily enact legislation to require compulsory registration of all marriages, work with states and union territories to effectively implement such legislation and to consider withdrawing its reservation to article 16 (2). (CEDAW/C/IND/CO/3)

Maldives

The Committee also notes that Maldives has not withdrawn its reservations to articles 7 (a) and 16 of the Convention.

While welcoming the statement by the delegation that the Government of Maldives has entered into formal discussions on the withdrawal of the reservations made to articles 7 (a) and 16 of the Convention, the Committee is deeply concerned that, despite a similar statement made by the delegation when the Committee considered the initial report of the State party, no positive action in this regard has been taken in the last five years. The Committee draws the attention of the State party to the fact that reservations to articles 7 (a) and 16 are contrary to the object and purpose of the Convention.

The Committee calls upon the State party to accelerate the process of removing the Constitutional provision that bars women from the country's presidency and vice-presidency, which is contrary to the principle of equality of women and men contained in article 2 of the Convention, so that the State party may withdraw its reservation to article 7 (a) of the Convention. It also calls upon the State party to make the necessary revisions to law in the area of marriage and family relations without delay in order to facilitate the withdrawal of the reservation to article 16, which is contrary to the object and purpose of the Convention, and to

indicate in its next periodic report, if still relevant, a time frame for its withdrawal.
(CEDAW/C/MDV/CO/3)

Netherlands

The Committee commends the State party for objecting to reservations entered by other States parties that it considers incompatible with the object and purpose of the Convention.
(CEDAW/C/NLD/CO/4)

D. Committee against Torture

Positive remark

On one occasion the Committee

- welcomed the withdrawal of the reservation to article 20 of the Convention (Ukraine).

Ukraine

With regard specifically to the prevention of torture, the Committee welcomes the declaration made, in September 2003, under articles 21 and 22 of the Convention, that the State party recognizes the competence of the Committee to receive and consider State and individual communications, as well as the withdrawal of its reservation to article 20 of the Convention and the ratification of the Optional Protocol to the Convention, in September 2006.
(CAT/C/UKR/CO/5)

Annex 3**Table of reservations, objections and withdrawals (February – May 2007)****A. Convention on the Elimination of All Forms of Discrimination against Women**

Substantive provisions by article	Reservations	Declarations/ Understandings	Objections	Withdrawal (partial)	Withdrawal (total)
Global Articles 9(2), 15(4), 16 (a, c, f), 29(1)	Oman		Belgium, Finland, France, Hungary, Poland, Portugal, Romania, Slovakia, Spain, Sweden, United Kingdom		
Global Articles 9(2) and 29(1)	Brunei		Belgium, Czech Republic, Finland, Hungary, Netherlands, Norway, Portugal, Romania, Sweden		

B. International Covenant on Civil and Political Rights

Substantive provisions by article	Reservations	Declarations/ Understandings	Objections	Withdrawal (partial)	Withdrawal (total)
Articles 10(2)(b), 14(1) and 14(5)					Switzerland
Article 14(5)					Republic of Korea

C. Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women

Substantive provisions by article	Reservations	Declarations/ Understandings	Objections	Withdrawal (partial)	Withdrawal (total)
Articles 5, 8 and 9		Colombia			

D. Convention against Torture and other Cruel, Inhuman or Degrading Treatment and Punishment

Substantive provisions by	Reservations	Declarations/ Understandings	Objections	Withdrawal (partial)	Withdrawal (total)
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article					
Article 20					Morocco

E. Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment and Punishment

Substantive provisions by article	Reservations	Declarations/ Understandings	Objections	Withdrawal (partial)	Withdrawal (total)
Global		New Zealand			

F. Convention on the Rights of the Child

Substantive provisions by article	Reservations	Declarations/ Understandings	Objections	Withdrawal (partial)	Withdrawal (total)
Articles 7(2) and 40(2)					Switzerland

G. Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict

Substantive provisions by article	Reservations	Declarations/ Understandings	Objections	Withdrawal (partial)	Withdrawal (total)
Article 3(2)		Cuba, Egypt, Jordan, Montenegro, Yemen			

H. Convention on the Rights of Migrants Workers and Members of their Families

Substantive provisions by article	Reservations	Declarations/ Understandings	Objections	Withdrawal (partial)	Withdrawal (total)
Article 92(1)	Argentina				
