



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

Distr.
GÉNÉRALE

HRI/MC/2009/5
17 juin 2009

FRANÇAIS
Original: ANGLAIS

Vingt et unième réunion des présidents des organes
créés en vertu d'instruments internationaux relatifs
aux droits de l'homme
Genève, 2 et 3 juillet 2009

Neuvième réunion intercomités
des organes créés en vertu d'instruments
internationaux relatifs aux droits de l'homme
Genève, 29 juin-1^{er} juillet 2009

RAPPORT SUR LES RÉSERVES

1. La Commission du droit international a tenu sa soixantième session à Genève du 5 mai au 6 juin et du 7 juillet au 8 août 2008. Au cours de cette session, le Rapporteur spécial sur les réserves aux traités a publié son treizième rapport (A/CN.4/600), qui traite des réactions aux déclarations interprétatives. La Commission était également saisie d'une note du Rapporteur spécial sur un projet de directive 2.1.9 concernant la motivation des réserves (A/CN.4/586), qui avait été soumise à la fin de la cinquante-neuvième session. Il a décidé à la même session de renvoyer le nouveau projet de directive 2.1.9 au Comité de rédaction.

2. La question des réserves a été abordée avec les États examinés dans le cadre du Groupe de travail sur l'Examen périodique universel du Conseil des droits de l'homme et du Conseil lui-même en séance plénière, plusieurs États ayant été instamment priés de retirer leurs réserves aux instruments internationaux des droits de l'homme.

3. À sa quarante et unième session, tenue à New York du 30 juin au 18 juillet 2008, le Comité pour l'élimination de la discrimination à l'égard des femmes a adopté la décision 41/1 suivante: Le Comité a examiné la question de la compatibilité des réserves avec l'objet et le but de la Convention (voir le paragraphe 2 de l'article 28 de la Convention). Il a estimé qu'il était habilité à se prononcer sur cette question, et par voie de conséquence sur la recevabilité des réserves, au titre non seulement de ses fonctions se rapportant à la procédure de présentation des rapports prévue à l'article 18 de la Convention, mais aussi des procédures relatives aux communications individuelles et aux enquêtes prévues dans le Protocole facultatif (A/63/38).

Annexe I

General comments on reservations

At its forty-first session, the Committee on the Elimination of Discrimination against Women adopted the following decision

Decision 41/1

The Committee discussed the issue of the compatibility of reservations with the object and purpose of the Convention (vide article 28, para. 2 of the Convention). It decided that the determination of this issue, and thus of the permissibility of reservations, not only falls within its function in relation to the reporting procedure under article 18 of the Convention, but also in relation to the individual communication and inquiry procedures under the Optional Protocol (A/63/38).

The practice of the human rights treaty bodies with respect to reservations- concluding observations

A. Committee on the Rights of the Child

Positive remarks

On one occasion, the Committee

- Welcomed the oral information provided by the State party concerning its decision to withdraw the reservations to the Convention (United Kingdom of Great Britain and Northern Ireland).

United Kingdom of Great Britain and Northern Ireland

The Committee welcomes: (a) The information provided by the State party during the dialogue concerning its decision to withdraw the reservations to articles 22 and 37 (c) of the Convention (CRC/C/GBR/CO/4).

Critical remarks

On five occasions, the Committee

- Recommended to review the existing reservations to the Convention with a view to withdrawing them (United States of America, Djibouti, United Kingdom of Great Britain and Northern Ireland, Kingdom of the Netherlands, Maldives).

United States of America

The Committee regrets the restrictive interpretations of the provisions of the Optional Protocol lodged as “understandings” at the time of ratification.

The Committee recommends that the State party review with a view to withdrawing its understandings of the provisions of the Optional Protocol in the interest of improving the protection of children in situations of armed conflict (CRC/C/OPAC/USA/CO/1).

Djibouti

The Committee is concerned about the extent of the declaration made to the Convention by the State party and reiterates that such a declaration appears to be incompatible with the object and purpose of the Convention. The Committee notes the State party's desire, expressed in its written replies to the list of issues of the Committee, to replace its broad declaration under the Convention with a more specific reservation addressing articles 14 and 21. The Committee, bearing in mind the provisions of article 51 of the Convention enabling a State party to submit the text of reservations to the Convention only at the time of ratification or accession, takes note with interest of the State party's indication, expressed during the dialogue with the delegation, of its intention to reexamine its position on this field.

The Committee, in line with its previous recommendation, and in light of the Vienna Declaration and Programme of Action (1993), urges the State party to consider reviewing its declaration to the Convention with a view to withdrawing it (CRC/C/DJI/CO/2).

United Kingdom of Great Britain and Northern Ireland

The Committee, while welcoming the announced withdrawal of the reservations under articles 22 and 37 (c) of the Convention, regrets that the State party maintains its reservation with regard to the applicability of article 32 to its Overseas Territories and Crown Dependencies.

The Committee encourages the State party to withdraw its reservation to article 32 with respect to the Overseas Territories and Crown Dependencies (CRC/C/GBR/CO/4C/).

Kingdom of the Netherlands

The Committee notes that the State party maintains its reservations to articles 26, 37 and 40 of the Convention concerning children's right to social security, application of adult penal law to children of sixteen years and older in certain circumstances, and exceptions to the right to legal assistance.

The Committee, in line with its previous recommendations (CRC/C/15/Add.227, paragraph 10) and in light of the Vienna Declaration and Programme of Action, recommends that the State party take all necessary measures to withdraw its reservations to articles 26, 37 and 40 of the Convention (CRC/C/NLD/CO/3).

Maldives

The Committee regrets the State party's reservation to articles 14 and 21 upon signature of the Convention of the Rights of the Child and, while acknowledging as positive the State party's statement during the dialogue of its intent to remove the reservation, is concerned that no progress has been made in withdrawing, or limiting the extent of, the State party's reservation since the consideration of the State party's second and third periodic report in 2007 (CRC/C/MDV/CO/3, para. 10).

The Committee reiterates its previous recommendation that the State party review its reservation with a view to withdrawing or limiting it, in accordance with the Vienna Declaration and Plan of Action adopted by the World Conference on Human Rights on 25 June 1993 (A/CONF.157/23) (CRC/C/OPAC/MDV/CO/1).

B. Human Rights Committee

Critical remarks

On seven occasions, the Committee

- Recommended that the State party withdraw its reservations (France, Ireland, United Kingdom and Northern Ireland, Monaco, Denmark, Australia, Sweden).

France

While appreciating the State party's commitment to review its interpretative declaration concerning article 14, paragraph 5 of the Covenant, in regard to the right to appeal from a criminal conviction, and its declaration concerning article 13 on the expulsion of aliens, nonetheless the Committee remains concerned by the breadth and number of the other reservations and declarations taken to narrow the application of the Covenant. These include the reservation to article 4, paragraph 1 (claiming that the power of the President to take "measures required by circumstances" in a "state of emergency or state of siege" cannot be otherwise limited by the Covenant), as well as the reservation to articles 9 and 14 of the Covenant (stating that these articles cannot impede "enforcement of the rules pertaining to the disciplinary regime in the armies").

The State party should review its reservations and interpretative declarations to the Covenant, with a view to withdrawing them in whole or in part. (CCPR/C/FRA/CO/4)

Ireland

The Committee notes the State party's intention to withdraw its reservations to article 10, paragraph 2 and article 14 of the Covenant, but regrets that the State party intends to maintain its reservations to article 19, paragraph 2 and article 20, paragraph 1.

The Committee urges the State party to implement its intention to withdraw its reservations to article 10, paragraph 2 and article 14 of the Covenant. The State party should also review its reservations to article 19, paragraph 2, and article 20, paragraph 1 of the Covenant, with a view to withdrawing them in whole or in part (CCPR/C/IRL/CO/3).

United Kingdom of Great Britain and Northern Ireland

The Committee regrets that the State party intends to maintain its reservations. It notes in particular that the general reservation to exempt review of service discipline for members of the armed forces and prisoners is very broad in scope.

The State party should review its reservations to the Covenant with a view to withdrawing them. In particular, the State party should reconsider its general reservation concerning service discipline for members of the armed forces and prisoners (CCPR/C/GBR/CO/6).

Monaco

While taking note of the explanations provided by the State party in its written responses to the list of issues, the Committee reiterates its concern about the interpretative declarations made and the reservations entered when the Covenant was ratified.

The Committee recommends that the State party reconsider and reduce the number of its interpretative declarations and reservations, which have become out of date and unnecessary following changes in the State party, in particular those relating to articles 13, 14 (paragraph 5), 19 and 25 (subparagraph (c)) of the Covenant (CCPR/C/MCO/CO/2).

Denmark

The Committee regrets that the State party intends to maintain all the reservations entered upon ratification of the Covenant. It considers in particular that, following the recent reform of the jury system (CCPR/C/DNK/5, para. 350), which introduced the right to have one's conviction and sentence reviewed by a higher tribunal with respect to the most serious criminal cases, the scope of the reservation to article 14, paragraph 5, could be reduced.

The State party should keep the reservations to the Covenant under constant review, with a view to withdrawing them in whole or in part. The State party should in particular consider narrowing the scope of the reservation to article 14, paragraph 5, in the light of the recent reform of the jury system (CCPR/C/DNK/CO/5).

Australia

While taking note of the State party's explanations, the Committee regrets that it has not withdrawn any of its reservations entered upon ratification of the Covenant.

The State party should consider withdrawing its reservations to article 10, para. (2) (a) and (b) and 3; article 14 para.6; and article 20 of the Covenant (CCPR/C/AUS/CO/5).

Sweden

The Committee notes that the State party does not intend to withdraw any of its reservations to the Covenant (CCPR/C/SWE/CO/6).

C. Committee on Economic, Social and Cultural Rights

Critical remarks

On one occasion, the Committee

- Recommended that the State party give consideration to withdrawing the reservations (United Kingdom of Great Britain and Northern Ireland).

United Kingdom of Great Britain and Northern Ireland

The Committee recommends that the State party give serious consideration to withdrawing its reservations to articles 1, 2, 6, 7, 9 and 10 of the Covenant, especially those that have become obsolete (E/C.12/GBR/CO/5).

Comments on other treaties

On one occasion, the Committee

- Recommended that the State party withdraw its reservations to the ILO Convention 102 on Social Security (United Kingdom of Great Britain and Northern Ireland).

United Kingdom of Great Britain and Northern Ireland

The Committee encourages the State Party to extend its international and regional commitments in the area of social security to the existing advanced instruments and, in this connection, recommends that the State party consider ratifying ILO Convention 118 on Equality of Treatment (Social Security) and the European Social Charter (Revised). It also recommends that the State party commit itself fully to all the provisions of the ILO Convention 102 on Social Security (Minimum Standards) ratified by the State party and, for that purpose, consider withdrawing its reservations to Parts 6, 8 and 9 of the Convention.

D. Committee on the Elimination of Racial Discrimination

Critical remarks

On one occasion, the Committee

- Invited the State party to consider the possibility of withdrawing its reservations (Switzerland).

Switzerland

The Committee notes that the State party intends to maintain its reservation to article 2 of the Convention. The Committee also notes with concern the inadequate protection of the right to marry and found a family for aliens not stemming from European Union States. (art.2)

The Committee invites the State party to consider the possibility of withdrawing its reservation to article 2, paragraph 1 (a) of the Convention and encourages it to ensure that immigration policies and laws do not intentionally or unintentionally discriminate.

The Committee notes with concern the reasons expressed by the State party for maintaining its reservation to article 4 of the Convention relating to the prohibition of hate speeches. While taking into account the importance conferred by the Federal Constitution on the freedoms of expression and assembly, the Committee recalls that freedom of expression and assembly is not absolute and that the establishment and activities of organizations promoting or inciting racism and racial discrimination shall be prohibited. In this regard, the Committee is particularly concerned at the role played by some political associations and parties in the rise of racism and xenophobia in the State party. (art.4)

Taking into account the mandatory nature of article 4 of the Convention, the Committee invites the State party to consider withdrawing its reservation to article 4 and recommends that the State party enact legislation that declares illegal and prohibits any organization which promotes or incites racism and racial discrimination. In this context, the Committee draws the attention of the State party to its general recommendation No. 15 (1993) on article 4 of the Convention (CERD/C/CHE/CO/6).

On one occasion, the Committee

- Noted that the State party maintained its reservations with regard to the use of the term “race” (Germany).

Germany

While noting the State party’s reservations with regard to the use of the term “race”, the Committee is concerned that the State party’s strong focus on xenophobia, anti-Semitism and right-wing extremism may lead to the neglect of other forms of racial discrimination. The Committee is also concerned that the overall legislative design of key provisions of the Criminal Code may not be sufficiently precise in relation to racist elements in crimes. In this connection, the Committee also regrets the absence of a definition of racial discrimination in the State party’s domestic legislation. (art.1) (CERD/C/DEU/CO/18).

E. Committee on the Elimination of Discrimination against Women

Critical remarks

On three occasions the Committee

- Recommended the withdrawal of reservations by the State party to the Convention (United Kingdom of Great Britain and Northern Ireland, Bahrain, Libyan Arab Jamahiriya).

United Kingdom of Great Britain and Northern Ireland

The Committee notes that the United Kingdom maintains reservations to the Convention, including in respect of its Overseas Territories and Crown Dependencies, where reservations to articles 1, 2, 9, 11, 13, 15 and 16 are retained.

The Committee welcomes the State party’s expressed intention to review regularly its remaining reservations to the Convention. It urges the State party to consider actively the withdrawal of its reservations, commencing with those that, in the opinion of the Committee, have the character of interpretive declarations or may no longer be necessary in the light of recent developments (CEDAW/C/UK/CO/6).

Bahrain

While noting the explanation provided by the delegation that the reservation on article 2 of the Convention does not impact negatively on the enjoyment of women of their human rights, and taking into consideration the commitment made by the State party during its consideration at the universal periodic review mechanism as well as during the dialogue with the Committee, of the State party’s intention to withdraw its reservations to article 2, article 9, paragraph 2, article 15, paragraph 4, and article 16, the Committee remains of the opinion that these reservations are contrary to the object and purpose of the Convention

The Committee strongly encourages the State party to intensify its efforts and to take all necessary steps for withdrawal of all its reservations to the Convention so as to ensure that women in Bahrain benefit from all the provisions enshrined in the Convention (CEDAW/C/BHR/CO/2).

Libyan Arab Jamahiriya

While welcoming the withdrawal by the Libyan Arab Jamahiriya, in 1995, of its general reservation to the Convention the Committee is concerned at the State party's remaining reservations to article 2 concerning the right to inheritance and article 16, paragraphs (c) and (d) regarding marriage and divorce, as it is of the opinion that these reservations are contrary to the object and purpose of the Convention. In this regard, it notes that the State party did not enter any reservations to the International Covenant on Civil and Political Rights, which also requires equality between women and men in these areas

The Committee urges the State party to take all necessary steps, including the initiation of a public debate involving all sectors of society, for the withdrawal of all its reservations to the Convention, so as to ensure that women in Libyan Arab Jamahiriya benefit fully from all the provisions in the Convention (CEDAW/C/LBY/CO/5).

Positive remarks

On one occasion the Committee

- Commended the State party for objecting to reservations made by other States parties to the Convention (Canada).

Canada

The Committee commends the State party for objecting to reservations made by other State parties that it considers incompatible with the object and purpose of the Convention (CEDAW/C/CAN/CO/7).

On three occasions the Committee

- Noted the discrepancy between States parties acceding to the Convention without reservations and its implementation in the national legislation (Nigeria, Tanzania, Yemen)

Nigeria

Noting the rejection by the National Assembly of a 2005 draft bill on full domestication of the Convention, the Committee expresses its concern that the Convention has yet to be fully domesticated as part of national law despite its ratification in 1985 without any reservations. As expressed in its concluding observations of 2004 (A/59/38, Part one, paras 282-316), the Committee is concerned that without such domestication, the Convention is not a part of the national legal framework and its provisions are not justiciable and enforceable in Nigerian courts (CEDAW/C/NGA/CO/6).

Tanzania

The Committee is concerned that, although the United Republic of Tanzania ratified the Convention in 1985 without any reservations, the Convention has still not been domesticated as part of the law of the United Republic of Tanzania. It notes with concern that, without such full domestication, the Convention is not part of the national legal framework and its provisions are not justiciable and enforceable in the courts. While welcoming the efforts of the State party to achieve legislative reform, specifically in the context of the work of the Law Reform Commission, the Committee is concerned at the lack of priority given to comprehensive legal

reform to eliminate sex-discriminatory provisions and to close legislative gaps in order to bring the country's legal framework fully into compliance with the provisions of the Convention and to achieve women's de jure equality. The Committee is concerned, in particular, about the delay in the passage of the proposed amendments to the Law of Marriage Act of 1971, inheritance laws, concerned that other legislation and customary laws that discriminate against women and are incompatible with the Convention remain in force, both in the Tanzanian mainland and in Zanzibar (CEDAW/C/TZA/CO/6).

Yemen

The Committee is especially concerned that, although Yemen ratified the Convention more than 24 years ago without reservations, the incorporation of most of the provisions of the Convention into its domestic legal order is still to be completed, substantial parts of its legal system remains in contradiction, discrimination against women have not significantly improved and have even deteriorated with regards to certain issues, and the State party does not consider the implementation of the Committee's recommendations fully. This raises the question of the capacity of the State party to implement its obligation under the Convention (CEDAW/C/YEM/CO/6)

F. Committee on Migrant Workers

Critical remarks

On one occasion, the Committee

- Recommended that the State party withdraw its reservations to the Convention (Colombia).

Colombia

El Comité considera que las reservas formuladas por el Estado parte en relación con los artículos 15, 46 y 47 de la Convención parecen tener un carácter declaratorio y técnico, y no parecen presentar ningún conflicto entre los objetivos de las disposiciones de la Convención y la legislación en la materia del Estado parte.

El Comité recomienda al Estado parte que considere retirar las reservas formuladas en relación con los artículos 15, 46 y 47 de la Convención (CMW/C/COL/CO/1).

ANNEX II

Table of reservations, interpretative declarations, objections and withdrawals

A. International Covenant on Civil and Political Rights

Substantive provisions by article	Reservations	Declarations/ Understandings	Objections	Withdrawal (partial)	Withdrawal (total)
Articles 3, 18 and 23, 9, para 5; 14, para 7	Bahrain		Hungary, Latvia, Mexico, Netherlands, Poland, Slovakia, Sweden, United Kingdom		
Articles 8(3), 10(2) and 10(3)		Samoa			
Article 18	Maldives		Australia, Austria, Canada, Czech Republic, Estonia, Finland, France, Germany, Hungary, Ireland, Latvia, Netherlands, Portugal, Slovakia, Spain, Sweden, United Kingdom		

B. International Covenant on Economic, Social and Cultural Rights

Substantive provisions by article	Reservations	Declarations/ Understandings	Objections	Withdrawal (partial)	Withdrawal (total)
Art.8, par.1(d)		Bahrain			

C. 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) 29(1)	Brunei		Canada, France, Greece, Italy, Poland, Slovakia, Spain, United Kingdom		
Articles 2 (f), 5(a), 11 (2)b				Cook Islands	
Global Articles 9(2), 15(4), 16 (a), c), f), 29(1)	Oman		Czech Republic, Greece, Italy		
Article 9				Singapore	
Article 9 (1)					Turkey
Article 9 (2)	Qatar				Egypt
Article 15 (4)	Qatar				United Kingdom
Articles 7 & 16(1)(g)					Luxembourg

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

Substantive provisions by article	Reservations	Declarations/ Understandings	Objections	Withdrawal (partial)	Withdrawal (total)
Articles 1, 4 & 5		Thailand			
Articles 30 (1)	Thailand				

E. 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)		Angola, Burkina Faso, China, China (Hong Kong & Macao), Nepal, Vanuatu			

F. Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography

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