

## **MALAYSIA**

### **DISABILITY**

#### **RESERVATIONS AND DECLARATIONS**

*(Unless otherwise indicated, the reservations and declarations were made upon ratification, accession or succession)*

Declaration:

“Malaysia acknowledges that the principles of non-discrimination and equality of opportunity as provided in articles 3 (b), 3 (e) and 5 (2) of the said Convention are vital in ensuring full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity, which shall be applied and interpreted on the basis of disability and on equal basis with others. Malaysia declares that its application and interpretation of the Federal Constitution of Malaysia pertaining to the principles of non-discrimination and equality of opportunity shall not be treated as contravening articles 3 (b), 3 (e) and 5 (2) of the said Convention.

Malaysia recognizes the participation of persons with disabilities in cultural life, recreation and leisure as provided in article 30 of the said Convention and interprets that the recognition is a matter for national legislation.”

Reservation:

“The Government of Malaysia ratifies the said Convention subject to the reservation that it does not consider itself bound by articles 15 and 18 of the said Convention.”

#### **OBJECTIONS MADE TO STATE PARTY'S RESERVATIONS AND DECLARATIONS**

*(Unless otherwise indicated, the objections were made upon ratification, accession or succession)*

**Austria**, 24 June 2011

With regard to the reservation made by Malaysia upon ratification:

“The Government of Austria has examined the reservation made by Malaysia upon ratification to the Convention on the Rights of Persons with Disabilities.

The Government of Austria finds that articles 15 and 18 relate to fundamental principles of the Convention and that the exclusion of the application of these articles is contrary to the object and purpose of the Convention. The Government of Austria therefore objects to this reservation.

This position, however, does not preclude the entry into force in its entirety of the Convention between Austria and Malaysia.”

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**Belgium**, 28 June 2011

With regard to the reservation made by Malaysia upon ratification:

Belgium has carefully examined the reservation made by Malaysia upon accession to the Convention on the Rights of Persons with Disabilities on 19 July 2010.

The vagueness and general nature of the reservation made by Malaysia -which does not consider itself bound by Articles 15 and 18 of the Convention- may contribute to undermining the bases of international human rights treaties.

Belgium further notes that the reservation made in respect of Article 15 -concerning the prohibition against torture, which is an absolute protection- and Article 18 concerns fundamental provisions of the Convention and is incompatible with the object and purpose of that instrument.

Belgium notes that under Article 46 (1) of the Convention, reservations incompatible with the object and purpose of the Convention are not permitted. Furthermore, under customary international law, as codified in the Vienna Convention on the Law of Treaties, a reservation incompatible with the object and purpose of a treaty is not permitted (article 19 (c)).

Consequently, Belgium objects to the reservation formulated by Malaysia with respect to Articles 15 and 18 of the Convention on the Rights of Persons with Disabilities.

This objection shall not preclude the entry into force of the Convention between the Kingdom of Belgium and Malaysia.

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**Germany**, 3 August 2011

With regard to the reservation made by Malaysia upon ratification:

“The Government of the Federal Republic of Germany has carefully examined the reservation made by the Government of Malaysia upon ratification of the Convention on the Rights of Persons with Disabilities of 13 December 2006.

The Government of the Federal Republic of Germany considers that the provisions of Articles 15 and 18 are core provisions of the Convention and that the exclusion of their application is incompatible with the object and purpose of the Convention.

The Government of the Federal Republic of Germany therefore objects to this reservation as being inadmissible according to Article 46, paragraph 1 of the Convention.

This objection shall not preclude the entry into force of the Convention between the Federal Republic of Germany and Malaysia.”

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**Hungary**, 1 August 2011

With regard to the reservation made by Malaysia upon ratification:

“The Government of the Republic of Hungary has examined the reservations made by Malaysia on 19 July 2010 upon ratification of the Convention on the Rights of Persons with Disabilities, adopted by the General Assembly of the United Nations on 13 December 2006, with regard to Articles 15 and 18 of the Convention.

The Government of the Republic of Hungary is of the view that Articles 15 and 18 of the Convention address core human rights values that are not only reflected in several multilateral treaties, such as the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the International Covenant on Civil and Political Rights but also form part of the international customary law.

In consequence, according to Article 19 (c) of the Vienna Convention on the Law of Treaties, which is a treaty and customary norm, these reservations shall not be permitted as they are incompatible with the object and purpose of the Convention.

Therefore, the Government of the Republic of Hungary objects to the reservations made by Malaysia to the Convention on the Rights of Persons with Disabilities, adopted by General Assembly of the United Nations on 13 December 2006, with regard to Articles 15 and 18.

This objection does not preclude the entry into force of the Convention between the Republic of Hungary and Malaysia.”

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**Portugal**, 26 July 2011

With regard to the reservation made by Malaysia upon ratification:

The Government of the Portuguese Republic has examined the reservations made by Malaysia upon ratification of the Convention on the Rights of Persons with Disabilities, New York, 13 December 2006.

The Government of the Portuguese Republic considers that the reservation made by Malaysia to Articles 15 and 18 is a reservation that seeks to exclude the application of these two provisions that are related to fundamental principles of the Convention thus limiting the scope of the Convention on an unilateral basis and contributing to undermining the basis of International Law.

The Government of the Portuguese Republic considers that the present reservation is contrary to the object and purpose of the Convention that seeks to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.

The Government of the Portuguese Republic recalls that, according to customary international law as codified in the Vienna Convention on the Law of Treaties, and in accordance with Article 46 of the Convention on the Rights of Persons with Disabilities, a reservation incompatible with the object and purpose of the Convention shall not be permitted.

The Government of the Portuguese Republic therefore objects to the aforesaid reservation made by the Government of Malaysia to Articles 15 and 18 of the Convention on the Rights of Persons with Disabilities, New York, 13 December [2006].

However, this objection shall not preclude the entry into force of the Convention between the Portuguese Republic and Malaysia.”

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**Slovakia**, 18 July 2011

With regard to the reservation made by Malaysia upon ratification:

“The Slovak Republic has examined the reservation made by Malaysia as to its ratification of the Convention on the Rights of Persons with Disabilities of 13 December 2006, according to which:

‘The Government of Malaysia ratifies the said Convention subject to the reservation that it does not consider itself bound by articles 15 and 18 of the said Convention.’

The Slovak Republic considers the reservation to Articles 15 and 18 of the Convention as incompatible with the object and purpose of the Convention.

It is in the common interest of States that all parties respect treaties to which they have chosen to become party, as to their object and purpose, and that States are prepared to undertake any legislative changes necessary to comply with their obligations under the treaties.

The Slovak Republic notes that this calls into question the Malaysia’s commitment to the object and purpose of the Convention regarded to the prohibition of torture and to the rights associated

with liberty of movement and nationality.

According to Article 46, paragraph 1 of the Convention and according to the customary international law as codified by the Vienna Convention on the Law of Treaties, and in particular Article 19 (c), the reservation that is incompatible with the object and purpose of a treaty is not permitted.

The Slovak Republic, therefore, objects to the reservation made by Malaysia to Articles 15 and 18 of the Convention. This objection shall not preclude the entry into force of the Convention between the Slovak Republic and Malaysia, without Malaysia benefiting from its reservation.”

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**Sweden**, 6 July 2011

With regard to the reservations made by Malaysia upon ratification:

“The Government of Sweden has examined the interpretative declaration and reservations made by the Government of Malaysia at the time of its ratification of the Convention on the Rights of Persons with Disabilities.

The Government of Sweden recalls that the designation assigned to a statement whereby the legal effect of certain provisions of a treaty is excluded or modified does not determine its status as a reservation to the treaty. The Government of Sweden considers that the interpretative declaration made by the Government of Malaysia in substance constitutes a reservation, which raises serious doubt as to the commitment to the object and purpose of the Convention.

The Government of Sweden furthermore considers that the reservations to articles 15 and 18 raise serious doubt as to the commitment to the object and purpose of the Convention.

According to international customary law, as codified in the Vienna Convention on the Law of Treaties, reservations incompatible with the object and purpose of a treaty shall not be permitted. It is in the common interest of all States that treaties to which they have chosen to become parties, are respected as to their object and purpose by all parties, and that States are prepared to undertake any legislative changes necessary to comply with their obligations under the treaties.

The Government of Sweden therefore objects to the aforesaid reservations made by the Government of Malaysia to the Convention on the Rights of Persons with Disabilities and considers the reservations null and void. This objection shall not preclude the entry into force of the Convention between Malaysia and Sweden. The Convention enters into force in its entirety between Malaysia and Sweden, without Malaysia benefiting from its reservations.”