

# EQUALITY AND DISCRIMINATION - EQUALITY BEFORE THE LAW

## IV. CONCLUDING OBSERVATIONS, CONTINUED

### CERD

- Costa Rica, CERD, A/57/18 (2002) 21 at para. 80.

80. While commending the efficiency and credibility of the Costa Rican judicial system, the Committee expresses concern at information concerning the lack of equal access to the courts, particularly by minority and ethnic groups. The Committee encourages the State party to continue to make efforts to ensure *de facto* equal access to the courts to all persons, including members of minority and ethnic groups.

- Croatia, CERD, A/57/18 (2002) 24 at para. 101.

101. The Committee is concerned about repeated claims of discriminatory application of the right to equal treatment before the law, particularly in the area of property claims, where the courts reportedly continue to favour persons of Croat origin. The Committee also notes the large backlog of cases before the courts, which impedes access to justice. The Committee recommends that the State party reinforce its efforts to ensure non-discrimination in the application of the right to equal treatment before the law, particularly in the area of repossession of property...

- Qatar, CERD, A/57/18 (2002) 38 at para. 192.

192. As regards the right to equal treatment before the courts, the Committee takes note of the details provided by the delegation on the judicial reforms under way with a view to the establishment of a single jurisdiction for the enforcement of new legislation in areas including civil, commercial and penal law. It would like to know whether, given the current state of legislation, non-citizens and non-Muslims who suffer discrimination and who are entitled to bring proceedings before a civil court can also bring their cases before the Islamic Shariah courts. The Committee also wishes to know to what extent the Convention can be invoked before the civil and Shariah courts, and what rules of the Shariah answer to the requirements of the Convention...

- Switzerland, CERD, A/57/18 (2002) 46 at para. 244.

244. The Committee welcomes the progress made by the State party since the consideration of its initial report (CERD/C/270/Add.1) in significantly advancing the implementation of the provisions of the Convention. In this context, it welcomes the fact that the New Federal

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Constitution, which entered into force in January 2000, incorporates the principle that all human beings are equal before the law (art. 8).

- Uganda, CERD, A/58/18 (2003) 50 at para. 266.

266. The Committee notes with satisfaction that the State party enacted a new Constitution in 1995 which incorporates the basic provisions of the Convention, particularly the right to equality before the law and the prohibition of racial discrimination.

- Norway, CERD, A/58/18 (2003) 79 at para. 479.

479. The Committee is concerned about the shortage of well-qualified interpreters in court proceedings, which may be an obstacle to the enjoyment by non-native speakers of the right to equal treatment before the courts and all other organs administering justice.

The Committee recommends that the State party adopt further measures, in accordance with article 5 (a) of the Convention, to mitigate the current difficulties with regard to interpretation services.

- Nigeria, CERD, A/60/18 (2005) 54 at para. 295.

295. In the light of the “intersectionality” of ethnic and religious discrimination, the Committee remains concerned that members of ethnic communities of the Muslim faith, in particular, Muslim women, can be subjected to harsher sentences than other Nigerians. While noting the explanations provided by the delegation that all persons have the freedom to make their own choice with regard to the application of statutory, customary or religious law, the Committee notes that concerned persons may not necessarily be in a position to exercise individual choice in the matter (art. 5 (a)).

The Committee reminds the State party that all persons shall have the right to equal treatment before the courts and all other organs administering justice, and draws the attention of the State party to its general recommendation XXV (2000) on gender-related dimensions of racial discrimination.

- Zambia, CERD, A/60/18 (2005) 75 at para. 401.

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401. The Committee notes with concern the decision of the State party to appeal the High Court judgement in the case *Roy Clarke v. Attorney-General*, which quashed a deportation order concerning a British long-term resident on the basis that he would not have been punished for his journalistic activities if he were a Zambian citizen (art. 5 (d) (viii)).

The Committee recalls that under the Convention, differential treatment based on citizenship constitutes discrimination if the criteria for such differentiation are not applied pursuant to a legitimate aim, and are not proportional to the achievement of this aim. It recommends to the State party that it respect the right to freedom of expression without any discrimination based on citizenship...

### ICCPR

- United Kingdom of Great Britain and Northern Ireland, ICCPR, A/57/40 vol. I (2002) 36 at para. 75(18).

(18) The Committee remains concerned that, despite improvements in the security situation in Northern Ireland, some elements of criminal procedure continue to differ between Northern Ireland and the remainder of the State party's jurisdiction. In particular, the Committee is troubled that, under the so-called "Diplock court" system in Northern Ireland, persons charged with certain "scheduled offences" are subject to a different regime of criminal procedure, including the absence of a jury. That modified procedure applies unless the Attorney-General certifies, without having to justify or explain, that the offence is not to be treated as a scheduled offence. The Committee recalls its interpretation of the Covenant as requiring that objective and reasonable grounds be provided by the appropriate prosecution authorities to justify the application of different criminal procedure in particular cases.

The State party should carefully monitor, on an ongoing basis, whether the exigencies of the specific situation in Northern Ireland continue to justify any such distinctions. In particular, it should ensure that, in each case where a person is subjected to the "Diplock" jurisdiction, objective and reasonable grounds are provided and that this requirement is incorporated in the relevant legislation (including the Northern Ireland (Emergency Provisions) Act 1996).

- Republic of Moldova, ICCPR, A/57/40 vol. I (2002) 76 at para. 84(5).

(5) The Committee welcomes the adoption in 1994 of a Constitution that includes provisions designed to protect the rights of persons within the jurisdiction of the State party, including non-discrimination and equality before the law, and to reinforce the State party's

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legal order with respect to rights contained in the Covenant. The Committee also appreciates the competence of the Constitutional Court to strike down legislation incompatible with these rights, as occurred, for example, in the Court's determination that the *propiska* regime (the requirement to obtain a permit for internal movement) was unconstitutional...

- Egypt, ICCPR, A/58/40 vol. I (2003) 31 at para. 77(9).

(9) The Committee notes the discriminatory nature of some provisions in the Penal Code, which do not treat men and women equally in matters of adultery (articles 3 and 26 of the Covenant).

The State party should review its discriminatory penal provisions in order to conform to articles 3 and 26 of the Covenant.

- Israel, ICCPR, A/58/40 vol. I (2003) 64 at para. 85(16).

(16) While fully acknowledging the threat posed by terrorist activities in the Occupied Territories, the Committee deplors what it considers to be the partly punitive nature of the demolition of property and homes in the Occupied Territories. In the Committee's opinion the demolition of property and houses of families some of whose members were or are suspected of involvement in terrorist activities or suicide bombings contravenes the obligation of the State party to ensure without discrimination the right not to be subjected to arbitrary interference with one's home (art. 17), freedom to choose one's residence (art. 12), equality of all persons before the law and equal protection of the law (art. 26), and not to be subject to torture or cruel and inhuman treatment (art 7) .

The State party should cease forthwith the above practice.

- Philippines, ICCPR, A/59/40 vol. I (2003) 15 at para. 63(18).

(18) While the Committee takes note of the constitutional provisions guaranteeing equal treatment of all persons before the law, the lack of legislation explicitly prohibiting racial discrimination is a matter of concern (arts. 3 and 26).

The Committee urges the State party to take the necessary steps to adopt legislation explicitly prohibiting discrimination, in accordance with articles 3 and 26 of the Covenant...

- Liechtenstein, ICCPR, A/59/40 vol. I (2004) 61 at para. 73(9).

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(9) While noting the measures taken by the State party to promote equality and integration of non-citizens, the Committee regrets that the principle of equality before the law for all the individuals under the State party's jurisdiction is only indirectly recognized in the Constitution...

The State party should consider amending the Constitution to ensure that the principle of equality before the law is guaranteed to all individuals under its jurisdiction...

- Tajikistan, ICCPR, A/60/40 vol. I (2005) 70 at paras. 92(12) and 92(16).

(12) The Committee is concerned that a procurator, rather than a judge, remains responsible for authorizing arrests. This creates an imbalance in the equality of arms between the accused and the prosecution, as the procurator may have an interest in the detention of those who are to be prosecuted. Further, detainees are not brought before the procurator following their arrest. An appeal to a court to review the lawfulness and grounds of arrest is possible, but it does not guarantee the participation of the detainee (art. 9).

The State party should revise its criminal procedure legislation and introduce a system that ensures that all detainees are as a matter of course brought promptly before a judge who will decide without delay on the lawfulness of the detention.

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(16) The Committee is concerned that an inequality of arms between the prosecutor and the suspect/accused or defence counsel exists in practice, both during a criminal investigation and in court, for example in relation to obtaining and challenging evidence (art. 14, para. 1). This inequality also appears to be reflected in the very low number of acquittals handed down in the State party's courts, as apparent from the report (for example, the acquittal rate in 2002 was approximately 0.004 per cent).

The State party should amend its legislation and change its practice in order to guarantee full compliance with the basic principles of a fair trial, particularly the principle of equality of arms.

### **ICESCR**

- France, ICESCR, E/2002/22 (2001) 121 at paras. 864 and 874.

864. The Committee expresses its concern about the lack of recognition of minorities in France. While the French tradition emphasizes the unity of the State and the equality of all French citizens, and while there is a commitment on the part of the State party to respect and

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protect equal rights for all, the Committee is of the opinion that the fact that all individuals are guaranteed equal rights in the State party and that they are all equal before the law does not mean that minorities do not have the right to exist and to be protected as such in the State party. The Committee emphasizes that equality before the law is not always adequate to ensure the equal enjoyment of human rights, and in particular economic, social and cultural rights, by certain minority groups in a country.

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874. The Committee suggests that the State party review its position with regard to minorities, ensuring that minority groups have the right to exist and to be protected as such in the State party. The Committee recommends that the State party withdraw its reservation with regard to article 27 of the International Covenant on Civil and Political Rights and that it ratify the Framework Convention on the Protection of National Minorities, as well as the European Charter for Regional and Minority Languages, signed by State members of the Council of Europe in 1995 and 1992, respectively.

- Ireland, ICESCR, E/2003/22 (2002) 29 at paras. 130 and 141.

130. The Committee regrets that the State party has not yet undertaken any measures with regard to the Committee's 1999 observation concerning the inconsistency of article 40.1 of the Constitution on equality before the law with the principle of non-discrimination as set out in articles 2 and 3 of the Covenant.

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141. The Committee...recommends that the All-Party *Oireachtas* Committee urgently consider amending article 40.1 of the Constitution on equality before the law, in the light of the principle of non-discrimination as set out in article 2, paragraph 2, and article 3 of the Covenant.

- Israel, ICESCR, E/2004/22 (2003) 42 at paras. 266 and 282.

266. The Committee expresses concern about the fact that the Jewish religious courts' interpretation of personal status law with respect to divorce is discriminatory as regards women, especially the regulation that allows the husband to remarry even when the wife is opposed to the divorce, whilst the same rules do not apply to the wife.

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282. The Committee recommends that the State party take steps to modify the Jewish religious courts' interpretation of the law concerning divorce to ensure equality between men and women, as provided for in article 3 of the Covenant.

### **CEDAW**

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- Russian Federation, CEDAW, A/57/38 part I (2002) 40 at paras. 373 and 374.

373. The Committee is concerned that the Constitution which recognizes women's right to equality before the law does not contain a definition of discrimination or expressly prohibit discrimination on the ground of sex. The Committee notes that the Constitution has not become an effective instrument to prevent discrimination.

374. The Committee urges the State party to incorporate in the Constitution a specific right of non-discrimination on the ground of sex, and a definition of discrimination, in conformity with article 1 of the Convention. It calls on the State party to introduce effective enforcement procedures and take necessary measures, including public awareness-raising campaigns to ensure effective implementation of women's right to equality.

- Costa Rica, CEDAW, A/58/38 part II (2003) 86 at para. 50.

50. The Committee noted with satisfaction that the Constitution proclaimed the equality of all persons before the law and prohibited discrimination, and that the Act Promoting the Social Equality of Women explicitly proclaimed the equality of women and men...

## **CAT**

- Belgium, CAT, A/58/44 (2003) 49 at para. 129.

129. The Committee is concerned about:

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(o) The fact that rules on the exclusion of evidence obtained as a result of torture have emerged only from the decisions of the courts, and that judges seem to retain discretionary power in that regard.

- Croatia, CAT, A/59/44 (2004) 38 at paras. 77 and 78.

77. The Committee is concerned about the following:

(a) In connection with torture and ill-treatment which reportedly occurred during the 1991-1995 armed conflict in the former Yugoslavia:

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(ii) Allegations that double standards were applied at all stages of the proceedings against Serb defendants and in favour of Croat defendants in war crime trials;

...

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78. The Committee recommends that the State party:

(a) Take effective measures to ensure impartial, full and prompt investigations into all allegations of torture and other cruel, inhuman or degrading treatment, the prosecution and punishment of the perpetrators as appropriate and irrespective of their ethnic origin, and the provision of fair and adequate compensation for the victims;

...

### CRC

- France, CRC, CRC/C/140 (2004) 124 at paras. 639 and 640.

639. The Committee welcomes information provided in the State party's report that all children in France are equal before the law and have a right to freedom of religion, expression in their own language in private affairs and right to cultural activities. However, the Committee remains concerned that equality before the law may not be sufficient to ensure equal enjoyment of rights by certain minority groups, such as the Roma, among others, who may face *de facto* discrimination. The Committee regrets that the State party has not considered reviewing its position and withdrawing its reservation to article 30 of the Convention.

640. The Committee encourages the State party to continue measures to prevent and combat racism, xenophobia, discrimination and intolerance, by, *inter alia*, ensuring follow-up to the recommendations of the United Nations treaty bodies and the European Commission against Racism and Intolerance (ECRI), in particular as concerns children. The Committee urges the State party to review its position with respect to children belonging to minority groups and to consider withdrawing its reservation to article 30.