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PAKISTAN'S RESERVATIONS: A CHALLENGE TO THE INTEGRITY OF THE UNITED NATIONS HUMAN RIGHTS TREATY SYSTEM

Pakistan must withdraw obstructive and legally impermissible reservations to core international human rights treaties, Amnesty International and the International Commission of Jurists said today.

The organizations expressed dismay that the government has failed to withdraw reservations that it entered on becoming party to the International Covenant on Civil and Political Rights (ICCPR) and the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), exactly one year ago.

Many of the reservations are incompatible with the object and purpose of the treaties and are therefore impermissible under international law. Entering such reservations challenges the integrity of the treaties and one of them threatens to attack the effective functioning of the UN system which monitors the implementation of human rights treaties.

On 23 June 2010, Pakistan ratified the ICCPR and the CAT. In doing so, the government appeared to be upholding the pledges it made when it ran for election to the UN Human Rights Council, as well as giving effect to a recommendation for such ratifications made by several states when it was examined under the Universal Periodic Review mechanism in 2008. Amnesty International and the International Commission of Jurists welcomed the ratifications but expressed deep concern that the Pakistan government entered sweeping reservations to several provisions of both of these core international human rights treaties.

Consequently, the organizations call upon the Pakistan government to remove all of the reservations it has entered. Human rights are universal; each and every one of the rights provided in these two treaties is essential for each and every human being to thrive. There is no reason why the people of Pakistan should be entitled to fewer rights, or to weaker protections of their rights, than any other people elsewhere in the world.

The Pakistan government entered reservations to eight of the ICCPR's 27 substantive articles, and to seven of the CAT's 16 substantive articles. Many of these reservations are incompatible with the object and purpose of the treaties because of their scope, generality and the restrictions they impose on key rights, including non-derogable rights such as the right to life; freedom from torture and other cruel, inhuman or degrading treatment or punishment; and freedom from gender discrimination.

Moreover, through a reservation to Article 40 of the ICCPR, Pakistan seeks to avoid reporting under the Covenant and to disregard the fundamental role of the UN Human Rights Committee in evaluating the state's observance of its ICCPR obligations. Such a reservation is unprecedented and similarly incompatible with the object and purpose of the Covenant. Pakistan had suggested that this reservation is a "technical error". However, Pakistan has had 12 months to remove this reservation – that it has failed to do so raises some serious doubts about this claim.

A reservation is a unilateral statement purporting to exclude or modify the legal effect of certain provisions of an international treaty, including as it applies at the domestic level. Under the Vienna Convention on the Law of Treaties, such modifications are only allowed if entered at the time of ratification, and if they are in accordance with the object and purpose of the treaty.

Upholding the integrity of the treaties and the functioning of the UN treaty system is in the interests of all states parties. Amnesty International and the International Commission of Jurists therefore welcome formal objections lodged by some states parties to the ICCPR and the CAT and urge other states parties to act urgently and do likewise.

Background information:

There are 167 states parties to the ICCPR and 147 to the CAT. Neither the ICCPR nor the CAT expressly prohibit reservations but under the Vienna Convention on the Law of Treaties (article 19), a state may enter a reservation only if it is compatible with the object and purpose of the treaty. The Human Rights Committee has stated that because of the special character of human rights treaties, "The normal consequence of an unacceptable reservation is not that the Covenant [on Civil and Political Rights] will not be in effect at all for a reserving party. Rather, such a reservation will generally be severable, in the sense that the Covenant will be operative for the reserving party without benefit of the reservation." [General Comment 24, para. 18]

Pakistan entered reservations to eight of the 27 substantive articles of the ICCPR (Articles 3, 6, 7, 12, 13, 18, 19, 25, as well as to article 40) and to seven of the 16 substantive articles of the CAT (Articles 3, 4, 6, 8, 12, 13, and 16, as well as to article 28).

In a statement issued on 1 April 2011, the Human Rights Committee, which oversees implementation of the ICCPR, asserted: "Article 40 gives the Human Rights Committee the competence to consider and study reports submitted by the States Parties. This competence is of critical importance for the performance of the Committee's monitoring functions and essential to the *raison d'être* of the Covenant". In its earlier General Comment 24 of 1994, the Committee stated that "a reservation that rejects the Committee's competence to interpret the requirements of any provisions of the Covenant would also be contrary to the object and purpose of the treaty".

Amnesty International and the International Commission of Jurists consistently call on all states to ratify the core international human rights treaties without entering reservations, and to withdraw any reservations made in the past. These organizations also regularly draw attention to reservations when presenting information about states parties to UN bodies, including the treaty monitoring bodies.

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International Secretariat, Amnesty International, 1 Easton St., London WC1X 0DW, UK
www.amnesty.org