

PAKISTAN'S RESERVATIONS TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

SUMMARY

The Government of Pakistan acceded to the UN's International Covenant on Civil and Political Rights (ICCPR) on 23 June 2010. However, while doing so, the Government entered numerous reservations to the Covenant. The reservations pertain to key provisions of the ICCPR, such as freedom of opinion, right to life and – importantly for the country's democratic development – elections and participation in public affairs. Most reservations are not specific in scope and make ICCPR obligations subject to Pakistani law.

Pakistan's reservations to the ICCPR are incompatible with international law. Under international law, reservations must be transparent and specific. Pakistan's far-reaching reservations do not pass these tests, and therefore may be regarded as unlawful and inapplicable. Such reservations are damaging in undermining the application of the ICCPR in Pakistan's legal and political practice, and may also expose Pakistan to objections from other States that are party to the treaty.

The Government of Pakistan may therefore want to consider withdrawing its reservations at the earliest opportunity, or at least making reservations specific in nature.

I. PAKISTAN'S RESERVATIONS TO THE ICCPR

The Government of Pakistan ratified the ICCPR¹ on 23 June 2010. Upon ratification, Pakistan entered numerous reservations, which relate to Articles 3, 6, 7, 12, 13, 18, 19, 25 and 40 of the Covenant.² The reservation pertaining to Article 25 (participation in public affairs, right to vote) states:

"The Islamic Republic of Pakistan declares that the provisions of Articles 25 shall be so applied to the extent that they are not repugnant to the Provisions of the Constitution of Pakistan."

Similar reservations were entered in relation to Articles 3 (equal right of men and women), 6 (right to life), 7 (torture, cruel punishment), 18 (freedom of thought, conscience and religion) and 19 (freedom of opinion):

"The Islamic Republic of Pakistan declares that the provisions of Articles 3, 6, 7, 18 and 19 shall be so applied to the extent that they are not repugnant to the Provisions of the Constitution of Pakistan and the Sharia laws."

Additional reservations were registered in relation to Articles 12 (liberty of movement) and 13 (expulsion of aliens). Moreover, the Government noted *"that it does not recognize the competence of the Committee provided for in Article 40 of the Covenant."* Article 40 stipulates reporting requirements to the UN's Human Rights Committee (the ICCPR treaty body).³

II. DO PAKISTAN'S RESERVATIONS COMPLY WITH INTERNATIONAL LAW?

According to Article 19 of the Vienna Convention on the Law of Treaties⁴ reservations are prohibited if *"(a) prohibited by the treaty; (b) the treaty provides that only specified reservations, which do not include the reservation in question, may be made; or (c) in cases not falling under subparagraphs (a) and (b), the reservation is incompatible with the object and purpose of the treaty."*⁵ As the ICCPR contains no provisions on reservations, the question is whether Pakistan's reservation on Article 25 ICCPR is incompatible with the *"object and purpose of the treaty."*

In General Comment 24, the UN's Human Rights Committee has laid down general rules on incompatibility of reservations with the ICCPR.⁶ According to General Com-

ment 24, reservations are incompatible with the object and purpose of the ICCPR if:

- **A reservation is unspecific and non-transparent:** *"Reservations must be specific and transparent, so that the Committee, those under the jurisdiction of the reserving State and other States parties may be clear as to what obligations of human rights compliance have or have not been undertaken. Reservations may thus not be general, but must refer to a particular provision of the Covenant and indicate in precise terms its scope in relation thereto"*.⁷
- **A reservation makes ICCPR obligations subject to changes in domestic law:** *"Of particular concern are widely formulated reservations which essentially render ineffective all Covenant rights which would require any change in national law to ensure compliance with Covenant obligations. No real international rights or obligations have thus been accepted"*.⁸
- **A reservation removes an autonomous meaning to Covenant obligations:** *"Nor should interpretative declarations or reservations seek to remove an autonomous meaning to Covenant obligations, by pronouncing them to be identical, or to be accepted only insofar as they are identical, with existing provisions of domestic law. States should not seek through reservations or interpretative declarations to determine that the meaning of a provision of the Covenant is the same as that given by an organ of any other international treaty body"*.⁹

Pakistan's reservation to Article 25 states that *"Articles 25 shall be so applied to the extent that they are not repugnant to the Provisions of the Constitution of Pakistan."* In light of General Comment 24, Pakistan's reservation to Article 25 of the ICCPR is incompatible with international law for the following reasons:

- **The reservation is unspecific.** The reservation relates to Article 25 as a whole and not to specific features of participation in public affairs or the right to vote. General Comment 24 states that *"it is desirable for a State entering a reservation to indicate in precise terms the domestic legislation or practices which it believes to be incompatible with the Covenant obligation reserved"*.¹⁰ For example, if the Government wishes to maintain the Constitutional requirement for Pakistan's President and Prime Minister to be Muslim,¹¹ a specific reservation to this effect could have been submitted.¹²
- **The reservation is not transparent.** The reservation refers to a domestic legal document which is not easily understood by other State parties (states

¹ The full text of the ICCPR can be downloaded here:

<http://www2.ohchr.org/english/law/ccpr.htm>

² http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en#EndDec.

³ The Human Rights Committee is the body of independent experts that monitors implementation of the ICCPR by its State parties.

<http://www2.ohchr.org/english/bodies/hrc/>

⁴ http://untreaty.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf.

⁵ Pakistan has signed but not ratified the Vienna Convention; however, the Convention forms international customary law, which binds Pakistan.

⁶ General comment No. 24: Issues relating to reservations made upon ratification or accession to the Covenant or the Optional Protocols thereto, or in relation to declarations under article 41 of the Covenant, UN doc. HRI/GEN/1/Rev.7 p. 161.

[http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/69c55b086f72957ec12563ed04ecf7a?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/69c55b086f72957ec12563ed04ecf7a?Opendocument).

⁷ General Comment 24, para. 19.

⁸ *supra*, para. 12.

⁹ *supra*, para. 19.

¹⁰ *supra*, para. 20.

¹¹ Constitution of Pakistan, Articles 41 and 91.

¹² It is possible that such provisions would also be regarded as incompatible with the object and purpose of the Covenant.

which have exceeded to the Covenant) and which is subject to changes and interpretation.

- **Unlawful hierarchy of norms.** By indicating that the mentioned ICCPR articles only apply as far as they are in line with Pakistan's Constitution, the reservation introduces a *de facto* hierarchy of norms by which national law supersedes international obligations. No real international rights or obligations have thus been accepted. This is contrary to what General Comment 24 requires.¹³ A leading commentary on the Vienna Convention notes that "*reservations aimed at preserving the integrity of internal law may go against a treaty's object and purpose in view of their often undetermined and sweeping nature.*"¹⁴

Equally, Pakistan's reservations to Articles 3, 6, 7, 18 and 19 of the ICCPR do not comply with international law, as they make ICCPR obligations subject to domestic legislation in the same non-transparent and unspecific terms.

Pakistan's reservation to the State reporting requirements under the ICCPR is also problematic. Without State reporting, authoritative review of ICCPR implementation is highly problematic. Without reporting, the Government would also deprive itself from the opportunity of entering into a dialogue with the UN Human Rights Committee to identify possible areas for reform.

Overall, the numerous reservations to key obligations of the ICCPR raise the question of whether this is a case where a State "*is in effect accepting a limited number of human rights obligations, and not the Covenant as such*".¹⁵ The UN Human Rights Committee has stated that such an approach is incompatible with the purpose and object of the ICCPR.¹⁶

III. CONSEQUENCES OF IMPERMISSIBLE RESERVATIONS

The legal consequence of an impermissible reservation is its "*severability*", i.e. the State in question is considered bound by the treaty without the benefit of its reservation.¹⁷ In other words, the Covenant will apply to the reserving party as if no reservation had been entered.

Other States Parties to the Covenant may object to the reservations and declare that they consider them null and void.

Even if the reservations were in line with Pakistan's international legal obligations, "*reservations should be withdrawn at the earliest possible moment*", as stated by the UN Human Rights Committee in General Comment 24. A State Party may withdraw its reservation at any time.

IV. CONCLUSION

Given the consequences of impermissible reservations, it would be useful for the Government of Pakistan to consider withdrawing its reservations. If the Government decides not to withdraw all reservations, those remaining could be made specific and not subject to domestic legislation. The Government should report to the UN Human Rights Committee and benefit from the Committee's expertise in identifying which areas of Pakistani legislation may need amendments in light of ICCPR obligations.

13 General comment 24, para. 19.

14 M. Villiger, *Commentary on Vienna Convention on the Law of Treaties*, 2009, p 272, para 13.

15 General Comment 24, para. 19.

16 *supra*, para. 19.

17 *supra*, para. 18.

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