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The Hon Kevin Rudd MP
Minister for Foreign Affairs
Parliament House
Canberra
ACT 2600

17 June 2011

By email: Kevin.Rudd.MP@aph.gov.au

Dear Mr Rudd,

**Australia's lodging objection to Pakistan's reservations when ratifying ICCPR and
UNCAT**

I am writing on behalf of Australian Lawyers for Human Rights (ALHR) to express our deep concern at the nature and scope of the reservations Pakistan declared when ratifying the *International Covenant on Civil and Political Rights (ICCPR)* and the *United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT)* on 23 June 2010. I write to strongly encourage the Australian Government to raise Australia's concerns both directly with Pakistan and to lodge Australia's objections to Pakistan's reservations with the United Nations by 22 June 2011.

ALHR is a network of Australian lawyers active in practising and promoting awareness of international human rights standards in Australia. ALHR has a national membership of over 2,000 people, with active National, State and Territory committees. ALHR has extensive experience and expertise in the principles and practice of international law, and human rights law in Australia.

Australia has frequently referred to its commitment to human rights and expressed a strong wish to be a future member of the United Nations Security Council. This requires, amongst many things, upholding human rights and respectfully challenging practices that are contrary to the protection and promotion of human rights, including challenging reservations to international

treaties. This is particularly important in circumstances that breach international rules of the law of treaties and are contrary to the object and purpose of the human rights treaties themselves.

Pakistan has entered reservations to 8 of the *ICCPR*'s 27 substantive articles, and to 7 of the *UNCAT*'s 16 articles, in addition to entering a reservation limiting the powers of the respective committees set up to oversee the implementation of each of these two treaties. ALHR is concerned and would like to see the withdrawal of all reservations. Of extreme concern are the reservations relating to freedom from discrimination, the right to life, the right to freedom from torture and other cruel, inhuman or degrading treatment or punishment and submitting reports to and engaging with the respective committees set up to oversee the implementation of each of these two treaties.

ALHR refers to the Human Rights Committee's *General Comment No 24* relating to reservations made upon ratification or accession to a Covenant where the Committee states the "object and purpose test... governs the matter of interpretation and acceptability of reservations."¹ ALHR submits the reservations outlined above are inconsistent with the object and purpose of the relevant treaties.

I further note that Pakistan has historically argued against reservations. I refer to discussions in the International Court of Justice in 1973 in the *Trial of Pakistani Prisoners of War (Pakistan v India)* in which Mr Yahya Bakhtiar, then Attorney-General of Pakistan, addressing India's reservation to the Genocide Convention and citing approvingly the International Court of Justice' Advisory Opinion in the *Reservations to the Genocide Convention* case, stated, *inter alia*, the following:

... the Court visualised that a reservation could only be valid and have legal effect as such, if it was not against the *object and purpose* of the Convention, or, in other words, its basic aim and character.

In view of this we contend that *reservations that are inconsistent with the basic character of the Convention must be regarded as impliedly prohibited by it*, or, to put the matter in another way, such reservation must, in the light of the character of the Convention, be considered as null and void and without legal effect.² [emphases added]

ALHR was represented as part of the Australian NGO delegation to Geneva for Australia's first Universal Periodic Review appearance in January 2011. While acknowledging this is a different human rights process, the underlying issue is the same. ALHR witnessed first hand the significant value of a state party constructively participating in HRC review processes, including by providing a report in advance to the HRC. ALHR is therefore deeply concerned by Pakistan's reservation to Article 40 of the *ICCPR*. Article 28 of the *UNCAT* and strongly encourages Australia to also challenge these reservations.

¹ Human Rights Committee, 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. CCPR/C/21/Rev.1/Add.6, 4 November 1994, para. 6. The Committee cites Article 19(3) of the Vienna Convention on the Law of Treaties.

² ICJ pleadings, *Trial of Pakistani Prisoners of War (Pakistan v. India)*, ICJ Rep. 1973, third public sitting (26 June 1973, 10 am.), p. 71. And see Mr Bakhtiar's further comments to the same effect, pp. 71-106, *passim*.

I strongly urge the Australian Government to lodge its objections to the reservations Pakistan made upon ratifying the *ICCPR* and *UNCAT* by 22 June 2011. Human rights are inalienable, indivisible and universal and should be for the benefit of all.

Thank you in advance for your leadership in this matter and I look forward to your response to this very important issue.

Yours faithfully,



Stephen Keim

President

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