

SUPPORT TO ELECTORAL
REFORM IN PAKISTAN

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PAKISTAN'S 2013 ELECTIONS: TESTING THE POLITICAL CLIMATE AND THE DEMOCRATISATION PROCESS

SUMMARY

The Federal Parliament and the Provincial Assemblies have now passed the middle of their terms. Initial enthusiasm about the return of an elected civilian government in 2008 has subsided and there appears to be much skepticism about the accomplishments of the civilian institutions. Indeed, the different branches of power are locked in a struggle over their respective competencies and most national media and opposition parties are highly critical about the performance of the current government.

As such, conditions may not appear conducive for further democratisation, particularly in view of other pressing policy priorities— from post-flood reconstruction and an economic crisis to fighting terrorism. The next elections will likely be hard fought in a context of increasing polarization and political violence, with a greater degree of controversy and more challenges than in 2008.

At the same time, a number of democratic achievements should not be overlooked, including the 18th Amendment to the Constitution and the National Finance Award. Moreover, the conditions that enabled the 2008 transition from military to civilian rule still remain in place, namely a vibrant media, a proactive judiciary and pro-democracy political coalitions.

Some two years ahead of the next scheduled national and provincial assembly elections, the international community must continue its support for developing democratic institutions and practices, as well as for electoral reform. Focus should now be on reforming and strengthening the electoral framework in line with the numerous recommendations by Pakistani and international observers of the 2008 elections.

A stronger electoral framework would not only make future elections more democratic. It would also contribute to conflict prevention and political stability because a more legitimate process is less inviting for violent contestation.

1. INTRODUCTION

The February 2008 elections hailed the return of democracy to Pakistan. More than half way through the current five-year term of Parliament, further democratisation does not appear to be high on the domestic or international agenda. There is a widespread sense of disillusionment and cynicism about the political process in Pakistan. The country also clearly has a range of other pressing priorities, such as post-flood reconstruction, economic stability, fighting terrorism and international politics.

The contrast to the situation two years before the 2008 elections is marked. At that time, the country was poised to dismantle the Musharraf regime and the international community was preparing to support the 2008 elections, along with the possible restoration of democracy. Today, the 2013 elections are rarely mentioned and electoral reform is not high on the list of priorities for policy makers.

The 2013 elections will be an important test of the political climate and the country's democratisation process. If the electoral framework is weak or the elections are badly managed, this could undermine political stability in the country. However, a genuinely democratic election and a peaceful transfer of power—regardless of which party or parties form the next government—would help stabilize civilian rule.

2. DEMOCRATIC ACHIEVEMENTS

Many Pakistanis are disillusioned with the democratic process in the country. This disillusionment stems from the realities of political violence, corruption, lack of internal party democracy, delayed local elections, tensions between the different branches of power and the limited reach of elected institutions.

In conjunction with Pakistan's current crises, these on-going problems have obscured real achievements toward democratisation that have been made since 2008. These include the following developments:¹

- After the 2008 elections, the Supreme Court abolished the educational requirements to stand for elections. The bachelor's degree requirement imposed in 2002 had reduced the right of candidature to less than 10% of the electorate.
- The 18th Amendment furthered democracy in the country and included aspects of electoral reform. Beyond this, the process of adopting the 18th Amendment was a positive one, with all parties engaged in painstaking negotiations that led to

unanimous approval in Parliament.

- The government ratified the International Covenant on Civil and Political Rights (ICCPR), which contains substantial obligations for democratic governance, including the right to stand and to vote in elections. The government added wide-ranging reservations to the ratification, but there appears to be potential to review these in future.
- The leadership of the Election Commission of Pakistan (ECP) is regarded as increasingly progressive. The ECP has adopted a five year strategic plan. If properly financed, supported and implemented, this would greatly improve the ECP's performance.
- Parliament appears to be cautiously expanding and strengthening its legitimate role, for example by beginning to scrutinize the issue of the military budget. For the first time, the Ministry of Defence provided Parliament with details about the costs of the Army, Air Force and Navy in the context of the 2008-09 budget process. It was also the first time that the defence budget was debated in the Senate.

Importantly, the factors that enabled the 2008 transition remain in place, namely a vibrant media, active civil society and a political party system based on pluralism. The assertiveness of the judiciary was vital for the return of democracy, but the judiciary continues to lock horns with the legislature and the executive branch. While discord among these institutions is problematic, it should not be surprising that the branches of governmental power are competing for their place in a political and constitutional context that is still new.

The challenge will be to build on recent positive dynamics. In particular, the 2013 elections should be seen as an opportunity to extend these developments and consolidate the practice of periodic, genuine democratic elections, along with the peaceful and legal transfer of power.

3. KEY CHALLENGES FOR ELECTORAL REFORM

The 2008 elections were transformative and re-established civilian rule in Pakistan. That does not mean that they were problem-free, as is evidenced in various election observer reports. It is obvious that there is still some way to go before elections can be consistently peaceful, accepted by the population and fully in line with Pakistan's international obligations on democratic elections.

The regularly held by-elections highlight continuing shortcomings in the electoral process. Several recent reports from the Free and Fair Election Network (FAFEN) cite low voter turnout, poorly trained election officials, incidents of fraudulent or suspicious voting, and a heavy

¹ For more achievements, see PILDAT's "Mid-Term Assessment of the Quality of Democracy in Pakistan", September 2010, p. 12.

police and security presence inside polling stations.²

The steps that must be taken to address these issues are well articulated in the recommendations of Pakistani civil society organisations,³ international election observers and assistance providers. All these actors agree on the direction and scope of the electoral reform that is required on three distinct levels:⁴

Legal Framework for National and Provincial Assembly Elections

The primary achievement in this arena has been the adoption of the 18th Amendment of the Constitution, which gives a role to opposition parties in the appointment of the Chief Election Commissioner and Members of the ECP, increases due process in the context of candidacy requirements and provides for more overall transparency in the election process. Although these developments are largely positive, the 18th Amendment also has a few shortcomings, for example in relation to democratic practices within the political party structures.⁵

In addition to implementing the 18th Amendment in primary legislation, a wide range of other issues related to election law require reform in line with recommendations by the 2008 EU Election Observation Mission, the Electoral Support Group and other groups. *Inter alia*, these include: disallowing candidacy in more than one constituency in a given election; clarifying the identification requirements for registering and voting in an election; improving the procedures for tabulating votes and publishing election results; introducing effective remedies for electoral dispute resolution; and unifying election laws to increase transparency and understanding of the legal framework.

While electoral reform is a frequent talking point for the President and the Prime Minister, to date there has been no decisive activity by the government or Parliament to amend primary election laws. The ECP is preparing a legislative reform package for general elections, which will be presented to the government soon. However, Parliament has not yet shown that it is prepared to engage in a full review of such a reform package.

The Sub-committee on Electoral Reform in the National Assembly currently does not include representation from

all of the political parties sitting in Parliament and has not met since April 2010. Most major political parties agree on the need for a robust parliamentary mechanism to address electoral reform. To date, however, no significant efforts have been made to establish a multi-party mechanism to address the important issue of electoral reform.

Considerable time is needed to debate, consult and adopt electoral reforms. The ECP also must have sufficient time to implement these reforms and inform the public of changes to the legislation well in advance of the 2013 elections. To allow for adequate time, Parliament therefore should begin the process of reforming election legislation without delay. It is generally advisable that changes to election laws take place at least one year before elections are scheduled.⁶

The Election Commission of Pakistan (ECP)

The ECP has made great strides over the past 18 months, including the development of a 5-year strategic plan that has benefited from broad stakeholder consultations. The ECP also has taken steps to update the computerized electoral rolls in collaboration with the National Database and Registration Authority (NADRA), which is the national civil registry office. IFES has provided substantial technical support to the ECP since 2006, with the aim of achieving these results.

In contrast to many other countries, there is a regular indicator for assessing the quality of the electoral process in Pakistan: throughout 2010, by-elections have taken place for seats in the National Assembly and/or the Provincial Assemblies, mainly as a result of the fake degree crisis.⁷ After observing most of these by-elections, reports from FAFEN suggest that there is still a long way to go in improving the administration of elections. For example, FAFEN reports highlight fraudulent voting, interference by security officials and other unauthorised persons in the election process, inconsistent and weak administration of by-elections, inadequately trained polling officials and campaigning violations.

² See: www.fafen.org.

³ In particular, see: Free and Faire Election Network (FAFEN), www.fafen.org; Pakistan Institute of Legislative Development (PILDAT), www.pildat.org; and the Human Rights Commission of Pakistan (HRCP), www.hrcp-web.org.

⁴ For a synopsis of the recommendations by international observer groups of the 2008 elections, see: "Summary of Electoral Reform— Recommendations for Pakistan 2009", January 2009, prepared by IFES and endorsed by the Election Support Group (ESG). Also see the EU EOM's "Final Report 2008", which elaborates on a number of recommendations. FAFEN and PILDAT have likewise adopted highly relevant lists of recommendations. Finally, the ECP is preparing a list of legal amendments for general elections, which will be submitted for government consideration in the near future.

⁵ For a more detailed overview, see: "The 18th Amendment of the Constitution and Electoral Reform in Pakistan", DRI Briefing Paper, August 2010. <http://www.democracy-reporting.org/publications/country-reports/pakistan.html>.

⁶For example, the Council of Europe's Code of Good Practice in Electoral Matters notes that 'the fundamental elements of electoral law... should not be open to amendment less than one year before an election'. The Turkish Constitution also notes that 'Amendments made to electoral laws shall not be applied to elections to be held within one year from the amendments' entry into force' (Article 67.6).

⁷ In 2002, President Musharraf introduced a law that required candidates for public office to hold a bachelor's degree or its equivalent. The law was controversial because it effectively disqualified the majority of the population from running for office. The Supreme Court struck down the law following the 2008 general elections. However, under the Article 62 of the Constitution, a person is not qualified to be a Member of Parliament if s/he has committed forgery. In 2010, allegations surfaced that more than 100 sitting MPAs, Senators and MNAs filed forged educational degrees for contesting the elections. ECP and the Higher Education Commission began the process of verifying the degrees of MPs after the issue was highlighted by the National Assembly Standing Committee on Education and Media. The issue has become highly politicized. The bulk of recent by-elections are due to disqualifications on the basis of fake degrees. This trend is expected to continue into 2011. The high number of these by-elections could have far-reaching implications for political stability.

These by-elections provide a crucial indicator for the progress that has been made so far, as well as on-going challenges ahead of the general elections of 2013.

Local Government Elections

The Constitution requires the provinces to establish a local government system and devolve political, financial and administrative authority to the elected representatives of the local government. But there have been no achievements in this area except the adoption of a new local government law in Balochistan in May 2010.⁸ In other provinces, no new laws have been tabled yet.

Given that local government elections have been used by Pakistan's former dictators to undermine the political parties, local elections have a bad reputation. In addition, the current arrangement serves the interests of the provincial governments, which appoint administrators to manage local affairs.

There is, then, a real challenge to establish elected local government as a regular feature of Pakistan's political system, as found in other democracies. Elected local governments are important for enhancing the participation of local communities, providing more accountability and for promoting general confidence in a democratic system of government.

4. CONCLUSION

To provide fresh impetus to the process of democratisation in Pakistan, domestic and international actors should reinvigorate their efforts to promote democracy in general and electoral reform in particular. An improved electoral framework will not only further democracy, it will also reduce the potential for instability and violence.

Gaps and ambiguities in the electoral framework have often led to political instability in Pakistan, the latest example being the degree requirement for candidates and the ensuing spate of court cases dealing with the fake degrees of some current office holders.⁹

Likewise, the lack of an effective remedy for electoral disputes means that some office holders are found to have been incorrectly seated many years after an election, particularly in the case of local elections. Such discrepancies have occasionally resulted in violence. The effectiveness and speed of electoral dispute resolution can become a critical issue in relation to political stability, for example where election results are very close.

⁸ DRI is currently in discussion with Provincial Assembly members and local government officials in Balochistan about amendments to the Balochistan local government election chapter in order to bring it in line with Pakistan's international obligations.

⁹ As already mentioned, this requirement was abolished in 2008.

ABOUT DEMOCRACY REPORTING INTERNATIONAL

Democracy Reporting International (DRI) is a non-partisan, independent, not-for-profit organisation registered in Berlin, Germany. DRI promotes political participation of citizens, accountability of state bodies and the development of democratic institutions worldwide. DRI helps find local ways of promoting the universal right of citizens to participate in the political life of their country, as enshrined in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

DRI has an 18-month grant from the European Union to work with Pakistani legislatures (federal and provincial) on promoting electoral reform as a follow-up to the 2008 EU Election Observation Mission. The grant also includes work with the media to improve coverage of electoral reform and local elections, as well as assessments of the local elections.

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