

NO VOICE: THE EXCLUSION OF WOMEN FROM VOTING

EXECUTIVE SUMMARY

Various cases have arisen in Pakistan of elections in which hardly any women have voted. On 29 January 2011 in District Shangla (PK 87 Shangla I) in Khyber Pakhtunkhwa province (KP), out of 59,177 registered female voters, more than 59,000 were not permitted to vote according to the leading domestic observer organisation, the Free and Fair Election Network (FAFEN). For one polling station, there were written agreements between local-level party officials declaring that women would not be allowed to vote and instructing female polling officials to leave the polling station. One of the agreements is counter-signed by the presiding officer. These are public documents.

Pakistan's constitution affirms the equality of women and men, and Pakistan has international legal obligations to achieve this. Under the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), Pakistan has committed itself to 'take all appropriate measures to eliminate discrimination against women in the political and public life of the country'.

Despite these national and international legal obligations, the response by relevant bodies and political parties has generally been very limited, with polling station and election results being accepted despite women being excluded from the process. Both the integrity of the election process and the representativeness of those elected are thus left open to question. The minimal or non-existent participation of women as voters in some areas also fundamentally undermines their participation in public life.

Current law requires a stronger response to such exclusion. It also allows plenty of room for a stronger response that would help increase women's participation. The Election Commission of Pakistan (ECP) is constitutionally mandated to ensure the fair conduct of

elections (i.e., to be proactive in doing so) and could declare a poll void, as well as seek prosecution of offenders in cases where women are directly or indirectly barred from voting. If women's non-participation ultimately resulted in an election being annulled, all candidates and political groups would be deterred from excluding women from voting. High courts can also deal with election-related complaints.

Political parties could take stronger measures to deter the disenfranchisement of female voters, as well as take stronger action against their members involved in such practices. Additional measures could be taken to increase the integrity of women's polling stations, such as increasing training of officials, and encouraging political parties and observer groups to ensure a presence in women's polling stations. Gender-disaggregated data made public swiftly after polling would enable scrutiny of the level of female participation.

The legislative framework could be strengthened by:

- requiring annulment where there is evidence that attempts have been made to specifically dissuade women from participating, or where female turnout is below a certain percentage
- making it mandatory for all women to have photographs on their Computerized National Identity Cards (CNICs), as is required for men, so there is less opportunity for impersonation of female voters

The ECP's response is critical for increasing women's participation. Political parties and parliament have pivotal roles in strengthening legislation and party manifestos, scrutinising the work of the ECP, contributing to debate on this subject and creating a culture of inclusion. Failure to take action by these bodies disempowers women and undermines the underlying democratic concept of elected officials being representatives of the people.

1. INTRODUCTION

Various cases have arisen in Pakistan of elections in which hardly any women have taken part as voters. On 29 January 2011 in Shangla (KP) out of a total of 59,177 registered female voters, 'more than 59,000 women voters were not allowed to vote'¹ according to the leading domestic observer group, FAFEN.² The ECP has concluded that 98 votes had been cast in female polling stations, but others have stated that these ballots were in fact cast by men in the name of women. Other cases include the Musakhel (PB-15) by-election on 13 November 2010, where there were media reports³ of women being banned from combined polling stations (where men and women vote in different locations/booths on the same premises).

Evidence⁴ from domestic observer groups suggests there is higher turnout at combined stations than at female polling stations which may, in turn, suggest that women are more likely to try and vote when accompanied by a male relative. The majority of polling stations in Pakistan are combined. The 2008 EU Election Observation Mission (EU EOM) Final Report also documents various cases during the national and provincial assembly elections where similar problems arose.⁵

Despite strong commitments and legal obligations to take measures to ensure women's inclusion in public life, as well as a domestic legal basis for challenging actions intended to exclude women from voting,⁶ the problem persists. Such low levels of female participation can be difficult to confirm without publication of results by gender and polling station (e.g., Shangla by-election polling station results from January 2011 were only put on the ECP website in June 2011) because ballots from combined stations are mixed together before counting; i.e., counting is not done separately for male and female booths. There is also no tradition of examining the electoral roll to ascertain and report the number of men and women who have voted, although this information would be relatively easy to obtain.⁷ Therefore analysis of gender turnout relies on information from observers, election staff and party agents.

2. THE NATURE OF THE PROBLEM

In some cases, there is written documentary evidence of local level agreements to prevent women from voting.⁸ In the case of Shangla, for example, there were two such letters identified in which local party representatives declared women would not be allowed to vote and instructing female polling officials to leave the polling station. One of the agreements was also countersigned by the presiding officer, who had been deputed by the ECP.⁹ FAFEN noted that, "The ban on women voting was reinforced by election officials deputed at the polling stations who did not set up female polling booths despite having been notified by the ECP in the Polling Scheme for the constituency."¹⁰

Various explanations are given for this exclusion. Women may be self-excluding, choosing not to vote because of security concerns, cultural tradition and/or personal preference. However, in earlier elections women have voted in these constituencies.¹¹ The agreements, along with threats and intimidation, indicate that concerted attempts are made to exclude women from the process,¹² in violation of a number of legal provisions.¹³ Arguments given in defence of women's exclusion have been both contradictory and highly implausible. They have included the suggestion that there is increased incidence of irregularities and fraud in women's polling stations so the electoral process is better protected if women do not vote at all and no women's booths or stations are opened.

3. PAKISTAN'S LEGAL OBLIGATIONS

Pakistan has ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW),¹⁴ which includes a number of relevant obligations. States parties are obliged to:

¹ See: <http://www.fafen.org/site/v4/content.php?id=619>.

² See: FAFEN <http://www.fafen.org/site/v1/pressdet.php?id=332>.

³ See *Dawn News* archives: <http://archives.dawn.com/archives/73481>.

⁴ In Musakhel there were eight female stations, seven male polling stations and 53 combined stations. See: <http://www.ecp.gov.pk/Bye/2010/PB/PB-15.pdf>. Also see: <http://www.fafen.org/site/v1/admin/products/p4ce0f19f7a2c6.pdf>, and the Election Day Process Analysis of the 2008 general elections conducted by FAFEN at: http://www.fafen.org/site/v4/admin/contents/PDF/503_698.pdf, page 15.

⁵ EU Election Observation Mission, Pakistan 2008, Final Report, pages 45-46. http://www.eueompakistan.org/PDF/final%20report/EU_EOM_Pakistan_Final_Report.pdf. All subsequent references in the text to the EU EOM 2008 Final Report are from this source.

⁶ RoPA sections 78 and 81. See: <http://pakistanconstitution-law.org/2010/06/16/the-representation-of-the-people-act-1976/>. All subsequent references to the RoPA are from this source.

⁷ The electoral roll is divided into male and female voter lists for use in polling stations. During polling the voter's name is ticked when s/he comes to cast their ballot.

⁸ In addition to Shangla, see Charsadda district 2005 at: http://www.dailytimes.com.pk/default.asp?page=story_9-8-2005_pg1_8; and Peshawar 2008 at: http://www.dailytimes.com.pk/default.asp?page=2008\02\19\story_19-2-2008_pg1_4. The EU EOM 2008 Final Report gives examples of other non-written agreements.

⁹ The ECP reported that the implicated presiding officers have denied knowledge of these agreements.

¹⁰ See FAFEN: <http://www.fafen.org/site/v1/pressdet.php?id=332>. FAFEN reports that in two of seven dedicated female stations it visited, no polling booths had been set up, and that only one female polling booth was set up in the 45 combined polling stations it visited.

¹¹ For example, see the results from the 2008 elections in Shangla in which women voted in five out of 15 female polling stations: <http://www.ecp.gov.pk/Results/PSWise/PA/Form1617PA/PK/PF-87.pdf>. It is worth noting that the 98 female votes recorded for the 2011 Shangla by-election were all for the same candidate at the same polling station. See: <http://www.ecp.gov.pk/Bye/2010/PA/PK/PK87.pdf>.

¹² The EU EOM 2008 Final Report, page 45, fn. 151. Also see press articles, such as: <http://www.jang.com.pk/thenews/feb2011-weekly/nos-20-02-2011/dia.htm#2>.

¹³ Article 7 of CEDAW obliges states parties to 'ensure to women, on equal terms with men the right to vote in all elections'. Article 25 of the constitution of Pakistan prohibits discrimination on the basis of sex, and section 81 of the RoPA states that a person 'is guilty of undue influence if he [or she]... impedes or prevents the free exercise of the franchise by an elector or compels, induces or prevails upon any elector to vote or refrain from voting.' See: <http://pakistanconstitution-law.org/>. All subsequent references to the constitution of Pakistan are drawn from this source.

¹⁴ Pakistan ratified CEDAW in 1996. See: www.un.org/womenwatch/daw/cedaw/cedaw.htm.

- ‘embody the principle of the equality of men and women in their national constitutions... and to ensure, through law and other appropriate means, the practical realization of this principle’ (CEDAW article 2)
- take ‘all appropriate measures to eliminate discrimination against women in the political and public life of the country’ and to take ‘all appropriate measures to eliminate discrimination against women by any person, organization or enterprise’ (CEDAW article 2)
- ‘take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men’ (CEDAW article 3)
- take ‘all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right: (a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies’ (CEDAW article 7)

The convention also stipulates that, “Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention” (CEDAW article 4).

The International Covenant on Civil and Political Rights (ICCPR), which Pakistan ratified in 2010, establishes the right of all citizens to participate in the electoral process and without discrimination. Article 25 of the ICCPR states:

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (a) To take part in the conduct of public affairs, directly or through freely chosen representatives; (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors...

States parties are also obliged to:

- ‘respect and to ensure to all individuals... the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status’ (ICCPR article 2.1a)
- ‘ensure the equal right of men and women to the enjoyment of all civil and political rights’ (ICCPR article 3)

4. DOES PAKISTAN MEET ITS LEGAL OBLIGATIONS?

The constitution of Pakistan provides a strong basis for meeting its international legal obligations and has clear requirements for equality between men and women.

Article 25, Equality of citizens:

- 1) All citizens are equal before law and are entitled to equal protection of law.
- 2) There shall be no discrimination on the basis of sex.
- 3) Nothing in this Article shall prevent the State from making any special provision for the protection of women and children.

Article 26, Non-discrimination in respect of access to public places:

- 1) In respect of access to places of public entertainment or resort not intended for religious purposes only, there shall be no discrimination against any citizen on the ground only of race, religion, caste, sex, residence or place of birth.
- 2) Nothing in clause (1) shall prevent the State from making any special provision for women and children.

Article 34 goes so far as to impose an obligation on the state to ensure the full participation of women in national life. It states, “Steps shall be taken to ensure full participation of women in all spheres of national life.”

Supplementing these provisions are a number of others that provide some protection for women’s right to vote, although there remains some room for improvement. These provisions are found elsewhere in the constitution and the Representation of the People Act (RoPA) 1976, as well as in a limited number of other laws.

Article 218(3) of the constitution states that:

- 3) It shall be the duty of the Election Commission... to organize and conduct the election and to make such arrangements as are necessary to ensure that the election is conducted honestly, justly, fairly and in accordance with law, and that corrupt practices are guarded against.

Thus the ECP is not only empowered, but constitutionally obligated, to ensure elections are fair and conducted according to law. This obligation can also be seen as relevant in light of Pakistan’s announcement of intent in June 2011 to withdraw or narrow the scope of its reservations to various articles in the ICCPR, including those related to elections.¹⁵ This announcement demonstrates acknowledgement of the place of international law in the legal framework of States parties, namely the creation of a broader framework within which sits national legislation, and one with which national legislation should comply.

The ECP is further empowered to perform its

¹⁵ See: <http://www.pid.gov.pk/press22-06-2011.htm>.

constitutional duty by the Election Commission Order, 2002.¹⁶ The ECP is given powers equivalent to that of a high court. Section 6 states:

The election commission shall have the power to issue such directions or orders as may be necessary for the performance of its functions and duties, including an order doing complete justice on any matter pending before it and an order for the purpose of securing the attendance of any person or the discovery or production of any document. Any such direction or order shall be enforceable throughout Pakistan and shall be executed as if it had been issued by the High Court.

This duty extends to all elections in Pakistan - national and provincial assembly elections, as well as local government elections.

In addition to the ECP's duty to ensure elections are fair, the RoPA creates a more structured avenue for challenging an election on the grounds that, *inter alia*, undue influence¹⁷ has been exerted in order to compel a person to refrain from voting.¹⁸ However, this avenue is the only official mechanism for challenging an election.¹⁹ It is also unduly narrow in scope because it is restricted to applications by candidates only.²⁰ It is therefore less likely to be used to challenge an election where attempts have been made to exclude women voters as voters themselves may not apply.

Pakistan is a federal republic presently undergoing a process of devolution, with the provinces at different stages in relation to creating local government legislation. As part of devolution, provinces not only have a duty to legislate according to national law, but also in compliance with Pakistan's international obligations. At the time of publication, only the province of Balochistan has completed this legislative process.²¹ Notwithstanding provisions to challenge candidate nomination and disqualification, the Balochistan legislation suffers from a similar weakness related to challenging elections as at the

national level. That is, it restricts access to the official avenue for challenging an election to candidates only.

An alternative avenue for challenging attempts to exclude women voters is found in article 199 of the constitution. Under this broad provision, any aggrieved party may apply to the high court for an order declaring any act done by a person carrying out functions in connection with the affairs of the state to be without legal effect²² (e.g., the validation of an election by the declaration of results by the ECP), and giving directions to any authority (including the ECP) as may be appropriate for the enforcement of, *inter alia*, the right to freedom of movement and the right to non-discrimination on the basis of sex.²³

Although not specifically tailored to elections, this course of action offers protection for some of the fundamental rights closely associated with elections and allows for a wider range of applicants and remedies. Given the narrowness of the official channels for challenging elections it may thus be more useful to anyone wishing to challenge women's exclusion. Provincial high courts have already ruled on a number of election-related disputes. Orders have been issued staying recounts and elections to reserved seats, and on matters of eligibility.^{24 25}

5. THE GAP BETWEEN PRINCIPLES AND PRACTICE

So if there is a legal basis for challenging actions that exclude women from voting, why is it still happening? It seems, then, that a continuing problem lies with implementation of existing obligations, as well as inconsistency and a degree of passivity by the ECP when it comes to taking the initiative in cases where women have been prevented from voting or are alleged to have been prevented from voting.

There was positive action by the ECP in 2005²⁶ in annulling results in a small number of districts in the then North West Frontier Province, where women were found to have been excluded following applications to the chief election commissioner. However, in the 2008 national and provincial assembly elections when evidence²⁷ suggested

¹⁶ The Election Commission Order, 2002 extends to elections to the parliament and senate (Section 5).

¹⁷ Undue influence is defined in section 81 of the RoPA and forms part of the definition of the offence of 'corrupt practice'. Also see section 78 of the RoPA.

¹⁸ These challenges are referred to as 'election petitions' in the RoPA. Election petitions must be filed within 45 days of the publication of the final results. They are heard by a tribunal that has the powers of a civil court; see sections 64 & 65 of the RoPA. Tribunal decisions may then be appealed to the supreme court within 30 days of the announcement of the tribunal's decision; see section 67(3) of the RoPA. Tribunals must 'declare the election as a whole to be void if it is satisfied that the result of the election has been materially affected by... failure of any person to comply with the provisions of [RoPA] or the rules; or the prevalence of extensive corrupt or illegal practice at the election' (section 70 of the RoPA).

¹⁹ Article 225 of the constitution states, "No election to a House [i.e., the national parliament] or a Provincial Assembly shall be called in question except by an election petition presented to such tribunal and in such manner as may be determined by Act of [Parliament]". Provinces are currently at various stages of legislating on this matter.

²⁰ Other official mechanisms exist for challenging a person's candidature. For example, these can be found in section 8E of the Conduct of General Elections Order, 2002 and Section 14(1) of the RoPA.

²¹ For an assessment of the Balochistan Local Government Act by Democracy Reporting International, see: http://www.democracy-reporting.org/files/dri_balochistan_lefa.pdf.

²² Article 199(1)(a)(ii) of the constitution of Pakistan.

²³ Article 199(1)(b)(iii) of the constitution of Pakistan. Before making such an order, the high court must first be satisfied that no other adequate remedy is provided by law (article 199(1), the constitution of Pakistan).

²⁴ In 2002, the high court in Lahore stayed a recount in NA 125 Lahore 8, along with elections to reserved seats following an application by PML-Q. Also in 2002, the high court in Sindh stayed elections to reserved seats on application from an MQM candidate. In 2008, the high court in Lahore declared Nawaz Sharif ineligible to stand in a by-election after an application filed by a voter and an independent candidate. *National Assembly Elections in Pakistan, 1970 – 2008*, FAFEN and Church World Service, Pakistan/Afghanistan, 2010.

²⁵ Article 184 of the constitution also allows the supreme court to make any of the same orders referred to in article 199 'if it considers that a question of public importance with reference to the enforcement of any of the fundamental rights [listed in chapter I of part II of the constitution, including non-discrimination on the basis of sex] is involved', thus strengthening legal protection for these rights.

²⁶ The EU EOM 2008 Final Report, page 46, and the report of the Commonwealth Expert Team on the local government elections, page 8; see: http://www.thecommonwealth.org/shared_asp_files/uploadedfiles/DC01549D-657A-4CFE-BD39-1AA7B7D44B64_PAKISTANCETREPORTFINALPRINTNIGVERSION.pdf

²⁷ The Maulana Fazl-ur-Rehman wing of political party Jamiat Ulema-e-Islam (JUI-F) confirmed to the EU EOM in 2008 that it participated in an agreement with other parties and tribal leaders to exclude women in Khyber Agency. There were

there may have been attempts to exclude women, the ECP argued that in any case it could not annul a vote in such circumstances on its own initiative, but must await an official complaint from an aggrieved person.²⁸ In the case of the elections in Shangla in 2011, the ECP has acknowledged that such actions are undesirable and need to be condemned, but it does not appear to be taking any other further action. Given the seriousness of the ECP's obligation to ensure fair elections and the wide-ranging powers it is given in order to do so, the ECP should be undertaking proactive measures to monitor the conduct of elections, including reviewing elections results and turnout data, to fully enfranchise women. Instead, it has only taken reactive measures when evidence of exclusion is presented to them.

The ECP's five-year strategic plan (2010-2014)²⁹ refers to eight guiding principles, one of which is the inclusion of marginalised groups, stating that, "The ECP will always endeavour to create favourable conditions for women, minorities and persons with disabilities with regard to the electoral process." Another guiding principle is 'gender balance': "The ECP will strive to establish a fair gender balance in its ranks by creating conditions for women to be able to work in the organisation."

One of the ECP's 15 strategic goals also relates to marginalised groups, whereby the ECP proposes, "To formulate laws and strictly implement them to ensure that marginalised groups including women, minorities and persons with disabilities are able to participate in the political and electoral processes."³⁰ Another strategic goal, related to human resources, includes the objective that 'eligible women have at least 10% representation in the ECP jobs' by June 2013. The ECP will need to make significant strides to reach this goal and ensure that its staff composition is diverse and reflects the public which it serves.

The degree to which the ECP's actions are consistent with the strategic plan will shape public confidence in the institution and influence voter attitudes and turnout, including females.

Party responses also appear to have been limited, with only the Awami National Party (ANP) taking action against its lower level officials in the case of Shangla. All other parties appear to have been silent on the matter. This is in contrast to commitments made in party manifestos about gender equality and female political participation.³¹

also numerous accounts of threatening behaviour and other similar agreements in Bajaur, Kurram and Mohmand Agencies, and Dir and Peshawar districts, as well as in a number of villages in Mandi Bahauddin, Sargodha and Mianwali in Punjab. The EU EOM 2008 Final Report, page 46.

²⁸ *Ibid.*

²⁹ See: <http://www.ecp.gov.pk/sp/>.

³⁰ This strategic goal includes an ambition to 'conduct research on voting participation of women to formulate relevant policies' in July 2011.

³¹ For example the Pakistan People's Party (PPP) promises 'to give high priority to empowerment of women and ensure their equal rights'; see:

<http://www.ppp.org.pk/manifestos/2008.pdf>. The Pakistan Muslim League – Nawaz (PML-N) states that, "We want social equality for all, men and women... [and to] promote participation of women in national development and their social, political, and economic empowerment." See:

http://www.pmln.org.pk/party/op_3_what-we-stand-for.pmln. The PML-Q states that, "Empowerment of women will be pursued with vigour since no country can progress unless and until it gives over 50% of its population equal rights in the country's political, social, economic and cultural life." See: <http://www.pml.org>.

Two parliamentary bodies, the Standing Committee on Women Development and the Women's Parliamentary Caucus, called for the ECP to conduct a thorough investigation of the problems of women's voting in the Shangla by-election. The ECP concluded that no offence was deemed to have been committed. Civil society organisations and media outlets also called for stronger actions to be taken, including legislative reform.³²

6. LEGISLATIVE FRAMEWORK: OPPORTUNITIES FOR A STRONGER RESPONSE

The following stronger measures, in accordance with existing provisions in the law, are recommended.

- The ECP should carry out regular proactive monitoring of elections, including review of election results, and comparisons of turnout at single and combined polling stations, in order to gather information about whether women are exercising their right to vote and to formulate strategies to respond to problems.
- The ECP should 'stop the polls at any stage of the election if it is convinced that it shall not be able to ensure the conduct of the election justly, fairly and in accordance with law due to large scale malpractices, including coercion, intimidation and pressures, prevailing at the election'.³³ The ECP is also entitled to 'issue such instructions and exercise such powers, and make such consequential orders, as may in its opinion, be necessary for ensuring that an election is conducted honestly, justly and fairly, and in accordance with the provisions of [the RoPA] and the rules'.³⁴
- The ECP should declare a poll void, 'if, from the facts apparent on the face of the record and after such summary inquiry as it may deem necessary, the Commission is satisfied that, by reason of grave illegalities or violation of the provisions of [the RoPA] or the rules, the poll in any constituency ought to be declared void'.³⁵
- The ECP should seek prosecution of offenders. 'A person is guilty of corrupt practice... if he [or she] calls upon or persuades any person to vote, or to refrain from voting'.³⁶ The RoPA also states that a person 'is guilty of undue influence if he [or she]... impedes or prevents the free exercise of the franchise by an elector or compels, induces or prevails upon any elector to vote or refrain from voting'.³⁷
- The ECP should seek prosecution of ECP staff who have committed such offences, with the law stating that it is

[pk/pml-manifesto.php](http://www.pml-manifesto.php). The ANP commits to, "Repeal all discriminatory laws and policies that infringe on the equal rights of women and their participation." See: http://awaminationalparty.org/news/index.php?option=com_content&task=blogsection&id=5&Itemid=27.

³² For example, see the following articles: <http://www.thenews.com.pk/TodaysPrintDetail.aspx?ID=29332&Cat=7&dt=2/4/2011>; <http://www.dawn.com/2011/02/14/barring-women-from-election-process.html>; and <http://www.jang.com.pk/thenews/feb2011-weekly/nos-20-02-2011/dia.htm#2>.

³³ RoPA section 103(a).

³⁴ RoPA section 103(c).

³⁵ RoPA section 103AA(1).

³⁶ RoPA section 78.2.

³⁷ RoPA section 81.

a punishable offence to 'dissuade any person from giving his [or her] vote' or to 'influence in any manner the voting of any person' or to do 'any other act calculated to influence the result of the election'.³⁸ Breaches of official duty are subject to fines and imprisonment for up to two years.³⁹

- The ECP should more regularly consider exercising the above-mentioned powers of declaring a poll void up to 60 days after publication of the final results.⁴⁰
- The ECP should provide gender-disaggregated polling data so female turnout can be scrutinised in all elections. Such data should easily be made publicly available immediately after polling has been completed.
- Greater efforts should be made by the ECP to strengthen the integrity of female polling stations, by ensuring they are well located and that there are sufficiently well trained female polling staff. The ECP should also make greater efforts to monitor stations in locations vulnerable to such problems.
- The ECP should produce and implement a policy in which it states that it will actively monitor and thoroughly investigate problems related to women's exclusion from voting. Such a policy should clearly state that the ECP will not tolerate such problems, and that occurrences of these problems could result in annulments, prosecutions and staff suspensions.⁴¹
- The ECP should take stronger measures with its staff, checking and investigating alleged offenders, and responding to wrongdoing with maximum force. Preventative measures could be taken with stronger gender awareness training for all staff, particularly those working in locations vulnerable to such problems. Staff should also be rotated into such areas to reduce opportunities for pressure and intimidation.
- Greater efforts should be made by the National Database Registration Authority (NADRA) to ensure that all women have photographs on their CNICs. At present, this is not a mandatory requirement. However, without photographs on the identification documents that are used, impersonation of women voters may be undertaken with ease.⁴²
- Greater efforts should be made by parties and candidates to ensure that they have female agents at female polling stations and booths, thereby reducing opportunities for fraud. Similarly, observer groups and the media could make additional efforts to scrutinise female polling booths and stations.

- Political parties and candidates should respond more strongly to any party members involved or alleged to be involved in attempts to dissuade women from voting and make clear statements to that effect. Parties and candidates could be more proactive in encouraging female participation.

7. REFORMING THE LEGISLATIVE FRAMEWORK

An ECP package of proposed changes to election laws for general elections is expected imminently, thus there will soon be an onus on parliament to consider reform of the legal framework.⁴³ To date, it appears that ECP proposals have not included provisions related to the problem of women being prevented from voting.

However a number of positive suggestions for legislative proposals addressing women's exclusion were made by the ECP in 2008 to the Senate's Standing Committee on Human Rights.⁴⁴ These have not resulted in any legislative action to date, nor do they appear to be included in current ECP proposals for legislative reform. The ECP's 2008 proposals included: expanding the offence of undue influence to explicitly address entering into an agreement restraining women from voting; powers for the ECP to declare a polling station's results void where there has been an agreement, or less than 10 % of women have voted; and a requirement for presiding officers to state the turnout of male and female voters.

In June 2011, FAFEN published its own model provisions for electoral reform, in which underrepresentation of women voters is also addressed.⁴⁵

DRI recommends that the review of the legal framework should consider various options:⁴⁶

- The category of those permitted to file election petitions should be expanded, to include political parties, civil society organisations and voters.⁴⁷
- Photographs could be made mandatory on CNICs, to reduce the opportunity for impersonation of women voters. The law could explicitly require the ECP to take stronger preventative measures, such as producing gender-disaggregated data, monitoring, and undertaking thorough investigations when allegations of such problems arise.
- The law could explicitly require the ECP to annul polling station and entire constituency results where there is

³⁸ RoPA section 90.

³⁹ RoPA section 91.

⁴⁰ RoPA section 103AA(2)(3). The ECP and tribunals do not move a petition concurrently, thus if there is a case is with the tribunal, the ECP may not act. RoPA section 56.

⁴¹ RoPA sections 7.6 and 7.7 also state that the ECP shall also refer the matter to the appropriate authority for disciplinary action for staff employed in other parts of the civil service.

⁴² Impersonation is an election offence under RoPA sections 78.2 and 80.

⁴³ Legal reform is also needed so there is consistency with the Constitution following the 18th and 19th amendments (8 April 2010 and 22 December 2010 respectively).

⁴⁴ The ECP's proposals and the Committees decisions (dated 20 May 2008) are available in hard copy from the Research Wing of the ECP.

⁴⁵ See:

http://www.fafen.org/site/v4/archive.php?cat=502&start_date=June%2001,%202011&end_date=June%2030,%202011&showcal=1.

⁴⁶ All of the suggested changes are for primary legislation, requiring no change in the constitution.

⁴⁷ The EU EOM 2008 Final Report, page 62,

evidence that attempts have been made to dissuade women from participating.

- The law could explicitly provide for tribunals to disqualify a returned candidate if there is evidence that the candidate or their election agent or any other person with their connivance participated in preventing, or attempted to prevent women from voting.
- The law could state that where female turnout is below a certain percentage, election results will be annulled.
- Provinces could review their legislative frameworks for local government elections in order to consider incorporating similar measures in their respective drafting and reform processes.

8. CONCLUSION

Pakistan has a strong international and domestic legal framework for the protection of women's right to vote, but their exclusion from the voting process remains a stark problem. While legislative and regulatory changes can help to increase women's representation among the electorate, it is the implementation of the law that creates the gap between principles and practice. Therefore the key issue is one of sufficient political will on the part of stakeholders who can influence the process, including the ECP, political parties and domestic observer groups.

In its general recommendation 23, the CEDAW Committee states that 'societies in which women are excluded from public life... cannot be described as democratic.'⁴⁸ It also states that where 'traditions and social and cultural stereotypes discourage women from [voting]... any such practices should be prevented'.⁴⁹ Political parties and leaders must demonstrate their political will and commitment to allow women to exercise their right to vote. Parliament and the provincial assemblies need to shore up the existing gaps in legislation.

Elections are the primary mechanisms used to decide on access to positions of power. As such, this mechanism itself should not be dominated by one group of electors over another. The ECP has a central role in elections and therefore in creating the conditions for an even distribution of decision-making power among the electorate. Where it has historically shown restraint or inconsistency in this regard, it should consider its significant constitutional responsibility, as well as the letter and spirit of its five-year strategic plan, to ensure fair elections and exercise its extensive powers to fully enfranchise women.

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 world-wide. 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.

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⁴⁸ Paragraph 14.

⁴⁹ Paragraph 20(c).