

PAKISTAN'S LOCAL GOVERNMENT REFORM AND ELECTORAL ARRANGEMENTS

Summary

Throughout Pakistan's history, local government (LG) has been an object of political manoeuvring, rather than a recognised layer of government. On the one hand, the various military rulers have established elected local bodies to legitimise their own power and weaken that of the political parties. On the other hand, civilian governments have not promoted elected LG because they have preferred to rule through provincial administrators. The association of elected government with military rule has tainted the very concept of elected LG. It is imperative that elected government be established as a regular feature of a functioning democracy in Pakistan.

Although historically the constitutional status of LG has been weak, this was strengthened by constitutional amendments under President Musharraf, which have been retained in the recent 18th Amendment of the Constitution. Article 140 A of the Constitution requires provinces to "(...) establish a LG system and to devolve political, financial and administrative responsibility and authority to the elected representatives of the local government."

The current framework for LG, which is a combination of both direct and indirect elections, was adopted by the Musharraf government in 2001. Like previous LG schemes, it was marred from the beginning because it prohibits political parties from participation in local elections - a violation of the right to freedom of association and an obvious attempt to weaken the role of political parties. Moreover, the system was imposed during a period when the Constitution was suspended, without approval by the Provincial Assemblies. Two LG elections were under the system (2000/2001 and 2005). Both were marred by allegations of wide-spread rigging.

Local government elections were scheduled to be held in 2009. After the political changes in 2008, however, the new provincial governments decided to postpone these elections in order to amend the LG systems. Until 31 December 2009, any such changes required Presidential approval. In early 2010, all four provinces suspended the elected local bodies and tasked administrators (civil servants) with the management of LG affairs until elections are held.

On 13 May 2010, Balochistan province passed its new LG law. The law requires new LG elections within one year of the date of the law. The other three provinces are drafting new LG laws, a process that is subject to considerable negotiation among the various coalition partners in the provinces. This may result in different LG systems in each province. It is not clear when LG elections will be held in these provinces.

It is imperative that elected LGs be established as a regular feature of the democratic system. At the same time the arrangements for LG elections should be in line with international standards for democratic elections. Indeed, Pakistan ratified the International Covenant on Civil and Political Rights (ICCPR) on 23 June 2010, which contains obligations related to democratic elections at all levels. In addition to international standards, the laws and practices at the local level should take into account reform initiatives at the federal level. Holding local elections in line with international standards would underpin the provinces' aspirations of autonomy.

I. THE CONTENTIOUS HISTORY OF LOCAL GOVERNMENT IN PAKISTAN

Pakistan is a federal republic comprised of four provinces: Sindh, Punjab, Balochistan and Khyber Pakhtunkhwa (until recently called North West Frontier Province). The federal republic also includes the Federally Administered Tribal Areas (FATA), the Federal Capital Territory of Islamabad, the Federally Administered Northern Areas (FANA), and the Pakistan-controlled part of Kashmir (Azad Kashmir). In turn, these provinces and areas are divided into some 120 Districts. Under the current administrative set up, the district governments are further sub-divided into 400 Tehsil/Towns (middle-tier administrative units between a Union and the District) and 6,000 Unions (the lowest tier of LG).¹

Elections to local bodies have not been an integral feature of Pakistan, which inherited from the British colonial era a strong bureaucracy that commanded the LGs. This set up was based on the position of the Deputy Commissioner who was in charge of district administration. Even when elected LGs were in place, their functions were limited to development projects and subject to the overall supervision of the Deputy Commissioner. The administrative divisions set up by the colonial system were primarily devised to collect taxes from land use.

General Ayub Khan established the first system of elected LG in 1959, one year after he seized power. The Union Councils were the lowest tier of LG and were comprised of 15 members (10 elected and 5 appointed), all of whom were called “Basic Democrats”. The next tier consisted of the Tehsil Councils, which performed coordination functions. Above them, the District Councils, chaired by the Deputy Commissioner, were composed of nominated officials and the chairpersons of Union Councils.

Basic Democrats also played a role at the federal level in that they constituted the Electoral College for presidential elections and Members of the National Assembly. After Ayub relinquished power in 1969 the Basic Democracies system was abolished.

Zulfikar Ali Bhutto, Prime Minister from 1973 to 1977, continued the administration of local affairs by local bureaucrats. General Zia-ul-Haq, who seized power in 1977, re-established elected local bodies (the Law of 1979). Elections took place in 1979, 1983 and 1987 on a non-party basis. Twenty percent of the seats were reserved for peasants, workers, tenants and women.

The system was characterised by different administrative set ups for rural and urban areas. In rural areas, there were Union Councils at the lowest level, Tehsil Councils at sub-district level and Zila/District Councils at district levels. In urban areas, there were Town Committees at town level,

Municipal Committees for larger cities and Metropolitan Corporations for major cities. Ul-Haq died in 1988 and the LG system was soon abolished after the Pakistan Peoples Party came into power in the general elections in November 1988.

Due to strong political polarisation between 1988 and 1999, local affairs were run and controlled by administrators instead of locally-elected representatives. During the two terms of Benazir Bhutto’s and Nawaz Sharif’s governments, a revival of LG was attempted but never materialized because the federal governments were dissolved in the middle of their tenures. It is also believed that the increased control through the Deputy Commissioners heading District Councils was convenient for those governments. For members of the national and Provincial Assemblies, the system offered leverage over district policies, which was necessary to secure electoral support.

II. THE 2001 MUSHARRAF LG SYSTEM AND ITS SUSPENSION

Less than a year after deposing Nawaz Sharif’s elected government, the military government headed by Pervez Musharraf presented the Local Government Plan in August 2000, often referred to as the “Devolution of Power Plan”. Based on the Local Government Plan of the federal government, all four provinces promulgated largely identical Local Government Ordinances in 2001. In the federally administered areas no local elections were foreseen.

REPRESENTATION UNDER THE LOCAL GOVERNMENT ORDINANCES OF 2001 (LGOS)²

The 2001 system was based on three tiers of LG (Union, Tehsil and Zila/District), which were composed of members who were both directly and indirectly elected.

a.) Union Council

At the grassroots level, each Union Council had 13 members³, who were elected in different categories:

- 1 Nazim (Council president) and 1 Naib Nazim (Council vice president)
- 4 male general members
- 2 female general members
- 2 peasants and workers
- 2 peasants and workers (female)
- 1 minority community (non-Muslim) member

Each voter received six ballots, one for each category. Nazims and Naib Nazims ran on a joint ticket. A voter had

¹ The exact numbers vary slightly depending on the source: the website of the Ministry for Local Government and Rural Development reports figures based on the 2001 Local Government Ordinance, while the Election Commission of Pakistan published figures based on the 2005 local elections. Presumably the latter are more up-to-date.

² For a more detailed overview, see: “Local Government Electoral System in Pakistan” IFES Pakistan, 15 June 2009. DRI is grateful for comments received by IFES Pakistan on this briefing paper.

³ Initially there were 21 members in a Union Council, but this was reduced to 13 before the 2005 elections.

one vote per ballot; the candidates with most votes were elected (Single Non-Transferable Vote System).⁴

b.) Tehsil/Town Councils

At the intermediary level there were Tehsil Councils (in rural areas) and Town Councils (in large urban centres like Lahore and Karachi). The number of Tehsil/Town Council Members was determined by the number of Union Councils in a Tehsil/Town. On average, a Tehsil/Town was comprised of 15 Unions. The Tehsil/Town Councils were composed of a Tehsil/Town Nazim, General Muslim members (who were the Naib Nazims from each Union Council), women members, peasant and worker members and a minority community member.

The Union Council's Naib Nazims were automatically part of the Tehsil/Town Councils' as "general members".⁵ The other members of the Tehsil/Town Councils were elected by the members of all the Union Councils in the Tehsil. The Nazims of the Tehsil/Town Councils were also elected by the Union Council members of the Tehsil.

c.) District/City Councils

There were District/City District Councils across Pakistan.⁶ On average a District/City District Council had 82 members. The members included the general members (Nazims from each of the Union Councils), women members, peasants and workers members and members from minority communities.

By virtue of their office, the Nazims of all Union Councils were general members of District/City Councils. The other members, as well as the Nazims of the Districts and Cities were elected by members of all the Union Councils of the district.

The elected Councils at all three levels received significant powers and the office of Deputy Commissioner was abolished. For the first time, elected officials headed the district administration. Policing became a competence of the District Nazim, with no role for the District Coordination Officer. This differed from the former post of Deputy Commissioner who, prior to 2001, was responsible for maintaining law and order in a district and was simultaneously the designated District Magistrate.⁷ Most administrative and financial powers, which provincial governments previously exercised through the districts bureaucracies, were transferred to the Councils and Nazims.

ASSESSING THE 2001 SYSTEM OF REPRESENTATION:

Officially the devolution plan aimed at decentralising administrative, political and economic authority to LGs.⁸ According to its authors, it was designed to be a departure from the post-colonial system of district and divisional administration to grassroots governance, with power given to locally-elected representatives. Devolution of government was meant to open avenues for accelerating progress in social service delivery and enhancing public sector effectiveness by bringing those responsible for delivering services closer to intended beneficiaries and making them accountable.

According to its critics, the plan was designed to undermine the power of political parties, while increasing control and providing legitimacy to a government that came to power by *coup d'état*.

The LG system of 2001 was not popular with the civil bureaucracy because of the abolishment of the office of Deputy Commissioner, which had been the main institution to control resources at the district level. The abolishment of this office was perceived as a tactical move by Musharraf to undermine the strong civilian bureaucracy.

Beyond its possible design flaws, the LG system suffered from elections that were considered by many observers to be rigged: "The government manipulation of the local polls involved gerrymandering of districts (...) giving direct support to certain candidates in what were supposed to be non-party elections, and direct rigging of the polls (...)"⁹

Finally, the process of adopting the devolution plan lacked inclusiveness and transparency: the National Reconstruction Bureau, which was part of the Prime Minister's Secretariat, drafted the plan without significant consultations with stakeholders. Furthermore, the political context of a military government was not conducive to a genuine debate. Provinces were not involved in the reform process. With the Constitution suspended,¹⁰ the plan did not respect constitutional provisions giving the provinces the power to legislate on LG.

The 2004 constitutional amendments stipulated that until 31 December 2009, provinces could only change the LGOs with concurrence of the President.¹¹ Since 1 January 2010, the four provinces may repeal or amend the LG system without approval of the President.

⁴ In the case of the minority candidate, only one candidate/ticket is elected: the one who received most votes (First-Past-The-Post).

⁵ While the Union Councils were directly elected, the Tehsil/Town Councils and the District/City Councils were indirectly elected. However, given that Nazims and Naib Nazims of all Union Councils were automatically part of the high-level councils, one could argue that there also was an element of direct elections at the higher levels.

⁶ In rural areas, there were District Councils; in urban areas, there were City District Councils.

⁷ Police Order, 2002.

⁸ Functions of local governments included: basic municipal services (sanitation, water supply, parks); education up to the secondary level; preventive and primary healthcare for residents; primary healthcare services for livestock; farm-to-market and intra-city roads; transport stations; spatial planning and building control; and miscellaneous services.

⁹ International Crisis Group: "Pakistan's Local Polls: Shoring Up Military Rule", Asia briefing N°43, Islamabad/Brussels, 22 November 2005, p. 1.

¹⁰ The Constitution was suspended from October 12 1999 until its restoration in December 2003.

¹¹ Article 268 (2) of the Constitution of Pakistan states that: "The laws specified in the Sixth Schedule shall not be altered, repealed or amended, expressly or impliedly, without the previous sanction of the President accorded after consultation with the Prime Minister." The laws regarding local government were automatically to go out of the Sixth Schedule after six years had elapsed.

III. DEVELOPMENTS SINCE JANUARY

While local elections were scheduled to have been held in 2009 (four years after the 2005 local elections), the provincial governments changed in 2008 as a result of the elections that year. The new provincial governments decided to wait for the end of the “constitutional protection” of Musharraf’s LG system in order to change the system and call for new LG elections.

In early 2010 all four provinces passed laws suspending the operation of the existing Councils and putting provincial administrators in their place. While these laws were often described in the media as “new LG laws”, they were merely an interim solution: they suspended the *status quo* while the provinces draft new LG laws. Although the issue is debated in the media and by the parties, only Balochistan has adopted a new LG law at the time of writing.

IV. THE STATUS OF REFORM AND KEY POINTS OF THE DEBATE

The Provincial Assembly of Balochistan adopted a new LG law on 13 May 2010. In other provinces the laws are still being drafted by the provincial governments. There has been no public consultation and only limited involvement of the Provincial Assemblies in these reform efforts.

The Provincial Assembly of Sindh has extended its timeframe for deliberating a new law to October 2010. In Punjab and Khyber Pakhtunkhwa, little is known about either the content or timeline for promulgation.

The main reference points of the public debate are, respectively, the laws of 1979 and 2001. As mentioned above, the 2001 law considerably increased the power of local bodies, including their financial autonomy. In contrast, the 1979 model gave most powers to the Deputy Commissioners who were under the authority of the provincial governments.

Furthermore, the 1979 law differentiated between rural and urban areas: in a district, there was usually one Council Mayor of an urban area and a Chairman of a District Council who represented the rural areas. This division meant that urban and rural planning followed different philosophies. The drafters of the 2001 law indicated that they wished to address the issue of rural migration to cities by creating an integrated system of local governance, where a district had only one Council and one Mayor/Nazim. This system has been criticised by some who believe that the different needs of urban and rural areas should be reflected in the system of local governance.

There appears to be an expectation that the division between urban and rural localities will be reinstated, in a similar way as the 1979 LGOs. The political implications of an urban-rural divide will be greater distinction between rural and urban policies. In all provinces, there is a possibility that the second tier, Tehsil Councils, will disappear in rural areas.

As far as the legislative drafting process is concerned, the civil administration is playing a key role, namely the Secretaries for LGs in the provincial governments. Given the

political interests both of the political parties and public servants, as well as suspicion about the ability of LG to deliver services, it is likely that future LG will have less power than under the current system.

Beyond the future shape of local government, there are a number of key election issues being discussed. These include: whether local Council Members should be elected directly or indirectly; elections of Nazims and Naib Nazims from amongst directly elected Council Members; party/non-party based elections; reserved seats for women and minorities; and responsibility for updating and maintaining the electoral roll.

The provinces should ensure that an inclusive debate takes place on LG reform, involving all relevant stakeholders (i.e. political parties, the administration, civil society organisations, the Election Commission of Pakistan, etc.). An inclusive process of reform would contribute to the acceptance and sustainability of the new LG systems.

KEY ELECTORAL ISSUES IN CURRENT DEBATES

There are five primary issues that reforms must address.

a.) Direct/Indirect Elections

Under the 2001 LGOs, the local bodies were only directly elected in part. In Pakistan, one argument often made against indirect local elections is that they favour corruption. Because only a few persons vote, bribing a small number of people can change the outcome of an election. Generally, direct elections at all levels could increase the democratic accountability of LG.

b.) Non-party Elections vs. Party-Based Elections

The 2001 LGOs stated that “local government elections shall be held on non-party basis”.¹² In practice it was often known which candidates were close to a political party, but the exclusion of parties opened the door for selective application of the law: prohibiting one candidate from contesting elections on the basis of having party affiliation but not another. Furthermore, international human rights obligations provide for citizens’ freedom of association (e.g. Article 22 ICCPR). This includes the formation of political parties and their participation in elections. Candidates must be allowed to declare their political affiliation, if they so wish. Independent candidatures should also continue to be permitted.

c.) The Electoral Administration

The recent 18th Amendment to the Constitution makes the Election Commission of Pakistan (ECP) responsible for

¹² Article 153, NWFP, Sindh, Punjab and Balochistan LGOs 2001.

conducting local elections (Article 140 A, paragraph 2). While the ECP must continue its own reform efforts, it appears to be best suited to holding local elections, given its experience and infrastructure.

Because local elections remain a domain of the provincial governments, it could be assumed that they cover the costs of those elections. However, they may be tempted to argue that the federal state should cover these costs, given that a federal institution will manage the elections and has historically covered the costs of local elections (e.g. 2001 and 2005). This should be clarified soon in order to avoid complications or delays.

The provinces should consult the ECP in the process of law drafting in order to ensure that new provisions are technically feasible for the ECP and to clarify cost implications of new provisions. They should also clarify the extent to which the ECP, a federal body, is bound by provincial legislation.

d.) Which Electoral Roll?

According to the 2001 LGOs, the national electoral rolls were used for local elections.¹³ However, the national electoral roll suffers from shortcomings. The 18th Amendment to the Constitution (Article 219) refers to ECP responsibility for the creation of electoral rolls for elections to the National Assembly and Provincial Assembly, but is silent on the issue of responsibility for the creation of electoral rolls for LG elections. Domestic and international organisations have been advocating for improvements, in particular closer co-operation between the ECP and the National Database & Registration Authority (NADRA). The ECP and NADRA are undertaking pilot testing in order to improve the electoral rolls and intend to sign a Memorandum of Understanding for nationwide collaboration on this issue. Given these efforts, it appears that local elections should continue to be based on the national electoral roll (despite its current shortcomings), rather than separate provincial electoral rolls, which may differ from the national electoral roll and could confuse voters. According to ECP estimates, the nationwide up-date of the electoral rolls will require 6 to 12 months to complete after an MOU is signed with NADRA.

e.) Which Electoral System?

There are no international obligations on which electoral system to use. Many different systems are used around the world. However, it is imperative that the technical feasibility and sustainability of an electoral system is assessed before it is adopted. The type and number of ballots needed, the speed of counting and the complexity

of translating votes into seats are all aspects that must be considered. It is also imperative that the electorate broadly understands the voting arrangements.

ADDITIONAL ELECTORAL ISSUES

There are a number of additional issues that are not much debated but merit careful consideration when reforming the legislation pertaining to local elections, namely:

- Rules for Campaigning

There were no clear rules on campaigning (e.g. financing of campaigns, disclosure, access to public spaces, access to media, etc.) by political parties and candidates in the 2001 LGOs. The new laws should address this.

- Transparency of the Vote

Under the 2001 law, the ballots only showed generic symbols for a candidate or a slate of candidates. A voter could not understand from the ballot alone for whom he or she was voting. While this arrangement made the technical preparations easier – no specific ballots had to be printed – it was not transparent. In the future, ballots should contain the names of candidates and, where relevant, political parties. In order to ease the voting of illiterate persons, symbols and faces could also be displayed.

- Complaints and Appeals

Observer reports from the 2005 LG elections indicate a lack of clarity about the complaints and appeals process. Significant efforts are underway to improve election dispute resolution for federal elections and the same should be done for LG elections. The reform proposals should aim to bring dispute resolution in line with international obligations for an effective remedy.¹⁴

- International Obligations

The Pakistani government ratified the International Covenant on Civil and Political Rights (ICCPR) on 23 June 2010.¹⁵ The ICCPR includes political rights that are relevant for any electoral process, such as the freedom of assembly, association and expression, and in particular the right “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”.

The UN Human Rights Committee monitors the implementation of the ICCPR by state parties and issues general comments, which provide an authoritative interpretation of ICCPR provisions. Its “General Comment 25” explains the meaning of Article 25 in detail.¹⁶ As the General Com-

¹³ Article 157 of NWFP, Sindh, Punjab, Balochistan LGOs noted: “(2) The electoral rolls for local government elections shall be prepared by the Chief Election Commissioner in the manner he may deem appropriate and the electoral rolls shall not be invalid by reason of any erroneous description therein of any person listed or of an omission of the name of any person entitled to be enrolled or of inclusion of the name of any person not so entitled.”

¹⁴ Article 2 of the International Covenant on Civil and Political Rights (ICCPR).
¹⁵ Pakistan entered a reservation against Article 25 (which includes the right to vote and to stand in elections), indicating that the Article should only be applied to the extent that it is “not repugnant to the Constitution of Pakistan”. Similar reservations were registered for other Articles of the Covenant. Such sweeping reservations are unlikely to be permissible under international law.

¹⁶ For an overview of the ICCPR’s relevance for electoral reform in Pakistan, see DRI’s Briefing Paper no.2 “The ICCPR: Pakistan’s New International Obligation for Electoral Reform”, April 2010

ment makes clear, Article 25 also applies to local elections.

The ICCPR strengthens many of the human rights enshrined in the 1948 Universal Declaration of Human Rights (UDHR). Most provisions of the UDHR are considered to be customary law and therefore binding on Pakistan. The UDHR also contains the right to vote and to be elected.

V. CONCLUSIONS

The 2008 general elections saw improvements in electoral practice. Electoral reform is part of the 18th Amendment to the Constitution that was passed in early 2010. The ECP is making efforts to improve election administration. At the same time, Pakistan has adopted the ICCPR, which carries legal obligations that should be reflected in improved electoral laws and practices.

These positive dynamics should not be undercut by establishing electoral arrangements at LG level that fall short of international standards and best practices. So far, the efforts to reform the 2001 LGOs by the provinces lack transparency. The provincial executives, the provincial civil services and the political parties in some provinces lead the reform process with little input from the public, civil society or indeed the Provincial Assemblies. However, the process of adopting these reforms will be important for their acceptance. If smaller parties or the public perceive the new election laws to be designed solely in the interest of governing or larger parties, their confidence in the process of local elections will suffer and eventual results may be less acceptable. Active, engaged consultation is essential for public acceptance and effective implementation of the reforms.

VI. RECOMMENDATIONS

Key recommendations for local election laws include:

- The process of reform should be inclusive and open to input from all stakeholders. The Provincial Assemblies in particular should conduct public consultations, as well as carefully review and, if necessary, amend draft laws before adoption.
- The legislation on local election should be in line with international obligations, namely the ICCPR. Best international practices for democratic elections should also be reflected.
- The legislation on local elections should take into account the need for a system that is manageable for the election administration and in its broad outline be understandable to voters.
- Political parties should be allowed to participate in local elections, while simultaneously retaining the possibility of independent candidatures.
- Direct elections at all levels of LG could increase democratic accountability.
- The new local elections laws should provide for

guarantees of transparency in the administration of elections. In particular, the counting, aggregation and publication of results should be completely transparent, with all stakeholders having immediate access to all relevant information.

- Accreditation of domestic and international observers should be codified.
- The new local election laws should mandate the use of the national electoral rolls managed by the ECP.
- The provinces should seek the ECP's input when drafting new legislation. The ECP, which is tasked to manage the elections, should advise on the feasibility of any new arrangements.

ABOUT DEMOCRACY REPORTING INTERNATIONAL

Democracy Reporting International (DRI) is a non-partisan, independent, not-for-profit group of experts 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.

DRI received 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 EU Election Observation Missions. The grant also includes work with the media on coverage of the anticipated local elections, as well as assessments of the local elections. DRI supports legislatures in various ways, including research, advice, briefing and trainings on:

- ICCPR obligations;
- Electoral matters;
- Cross-party work and stakeholder consultations on election reform;
- Law drafting.

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ABOUT FAFEN

This paper was prepared in collaboration with the Free and Fair Election Network (FAFEN). FAFEN established in 2006, is a coalition of 35 leading civil society organizations, which is working to strengthening all forms of democratic accountabilities in Pakistan. Governed by Trust for Democratic Action and Accountability, FAFEN implements robust programmes in-between elections related to monitoring parliamentary affairs, connecting constituents to their elected representatives, monitoring the performance of public and elected institutions and advocating electoral and democratic reforms. FAFEN is also monitoring political and electoral violence, peace activities and promoting active citizenry through ongoing civic education activities across the country. FAFEN is currently implementing Democratic Governance Programme in 150 National Assembly constituencies in 108 districts across Pakistan.

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