



IP3

Improving Parliamentary
Performance in Pakistan

PUNJAB LOCAL ELECTION FRAMEWORK ASSESSMENT

MARCH 2014

IMPROVING PARLIAMENTARY PERFORMANCE IN PAKISTAN

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PUNJAB LOCAL ELECTION FRAMEWORK ASSESSMENT

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EXECUTIVE SUMMARY

The 18th Amendment to Pakistan's Constitution requires the provinces to devolve powers by introducing local government systems in their respective jurisdiction. Punjab enacted the Local Government Act 2013 (PLGA) following an order from Supreme Court to fulfil the constitutional requirement.

This Local Election Framework Assessment (LEFA) presents an analysis of electoral provisions in PLGA 2013 based on Pakistan's commitments under the International Covenant on Civil and Political Rights (ICCPR) and other international treaties. The main purpose of this document is to help Punjab government bring its local electoral framework in line with Pakistan's commitments under these international laws.

As this report will show, various legal provisions relating to local governments' elections under the PLGA require amendments or clarifications to align them with Pakistan's international obligations under ICCPR and other relevant treaties. This is important not just to meet these commitments but also to provide a more credible legal framework for trustworthy elections. Some of the main issues identified in this study are:

LEGISLATIVE PROCESS The legislative process for formulation and enactment of the PLGA and its amendments was limited in terms of consultations with opposition, civil society and other stakeholders.

LEGAL AMBIGUITY The PLGA shifts regulation of most of the sensitive electoral functions and powers from the constitutionally independent ECP to the provincial government. However, PLGA and the rules refer also to the federal election laws which creates confusion as to which aspects of Local Elections are to be regulated by the Provinces and which come under remit of the ECP.

ELECTION ADMINISTRATION The PLGA provides the Government of Punjab with a

dominant role in the electoral process and denies the constitutionally enshrined functions and independence of the Election Commission of Pakistan (ECP) to issue administrative rules and procedures for the elections for whose conduct it is responsible.

ELECTORAL SYSTEM The PLGA allows for a mix of direct and indirect elections, but both the PLGA and the adjacent rules fail to define the procedures and timeline for the indirect elections. In addition, the PLGA does not account for candidates to contest elections with partisan affiliation, contrary to the judgement of the Lahore High Court.

CONSTITUENCY DELIMITATION The PLGA contains no safeguards against gerrymandering, as there is no provision for an independent body (the ECP or any other) to implement constituency delimitation, contrary to the principle of equality of the vote.

CANDIDACY REQUIREMENTS The PLGA contains vague rules for candidacy registration. According to ICCPR, however, the right to stand for election can only be restricted by justifiable and objective criteria. Multiple candidacies (in more than one constituency) should be barred as they undermine voters' choice and require additional financial resources for by-elections.

PUBLICATION OF RESULTS PLGA and its Rules neither mandate the publication of vote tallies at polling stations, nor at tabulation and aggregation level. Such lack of transparency is bound to erode confidence in the integrity of the process.

ELECTORAL DISPUTE RESOLUTION There are no administrative remedies envisioned in the law nor appropriate independent appellate (second instance) process.

PARTICIPATION OF WOMEN As compared to the previous law, the PLGA cuts reserved seats for women by more than half. In line with CEDAW committee's recommendations,

women's representation should be increased to at least 33 per cent at all levels.

ELECTION OBSERVATION The law does not provide for accreditation of election observers to all stages of the electoral process, contrary to the commitments under the ICCPR.

INTRODUCTION

The Punjab Assembly passed the “Punjab Local Government Act 2013” (PLGA) in August 2013. The Act defines the governance structure and functions of the local government. The mechanisms for holding local government elections are also defined in the Act. To date, four amendments to the Act have also been passed. The Punjab Provincial Assembly adopted the PLGA using powers given to it under the 18th Constitutional Amendment.

The 18th constitutional amendment devolved powers to provinces and was unanimously passed in April 2010. The amendment also binds provinces to introduce local government systems.¹ The enactment of PLGA 2013 was result of Supreme Court order to fulfil the constitutional requirement.

In 2010, Pakistan ratified the International Covenant on Civil and Political Rights (ICCPR), thereby making the commitment to implement the provisions of the covenant. Article 25 of the ICCPR applies to elections both at national and local levels.

This Local Election Framework Assessment (LEFA) assesses compliance of Punjab’s legal framework for Local Government elections with the main documents of international law, or treaties, covering elections. The main treaty referenced here is the ICCPR but the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention on the Rights of Persons with Disabilities (CRPD) and the Convention Against Corruption (CAC) are relevant as well. The assessment is also based on the General Comments on the provisions of ICCPR, issued by the United Nations Human Rights Committee, the body which oversees the implementation of this treaty. General Comments provide an authoritative interpretation of the provisions in ICCPR and what State parties need to do in order to meet their obligations under those provisions. According to the project’s mandate, the present analysis is limited to the PLGA’s provisions that govern electoral processes. Within this ambit, the report endeavours to assess the compliance of the PLGA, its four amendments,² and the adjacent administrative rules with Pakistan’s obligations under those international treaties cited above.

In light of certain gaps in PLGA which have resulted in some areas being unregulated, the study also takes into account the PLGA’s

predecessor (the Local Government Ordinance 2001), applicable national and Punjab jurisprudence and Pakistan’s national framework for elections. This comparative approach serves to identify trends, gaps, and inconsistencies in Punjab’s local election framework that could disrupt electoral processes or call into question their outcome.

The overall purpose of this document is to support the Government of Punjab in its work to incorporate Pakistan’s international obligations into the legal framework for local government elections.

1 Article 140-A

2 These were subsequently passed as bills from the assembly.

POLITICAL BACKGROUND

Punjab is the biggest province of Pakistan by population. Approximately 55 per cent of the country's population lives here. With a land area of 205,344 sq kilometres, Punjab is the second largest province of Pakistan by area. Out of a total of 272 directly elected seats for the National Assembly, 148 are elected from the province.

The 18th constitutional amendment requires devolution of administrative, political and fiscal powers to grassroots through local government system. With Pakistan's recent transition to democracy, the introduction of a local government system could further help in the consolidation of democracy. However, none of the provinces introduced the needed local government system within five-year term which expired in 2013.

Acting on its own initiative (*suo moto*), in response to this violation of the Constitution by the provinces, the Supreme Court directed all provinces to enact local government laws and hold elections. The Punjab government enacted its Local Government Law in August 2013, fulfilling the deadline given by the court. Following further pressure from the court to conduct local government elections, the province agreed to hold them on December 7, 2013. However, as the Election Commission of Pakistan (ECP) considered the timeline unfeasible, given the huge logistical efforts required and without the completion of constituency delimitation, it first rescheduled elections for January 2014 and then cancelled them altogether.

The legislative process has been subject to controversies and litigation. The main opposition parties had filed objections in the Lahore High Court (LHC) challenging non-party elections and delimitations. LHC issued a verdict to hold elections on party basis while initially upholding the delimitations done by the Punjab government. However, a full bench of the court later deemed the delimitation unconstitutional (See section on Delimitations below).

Given the court rulings and other shortcomings in the PLGA, the Act has been amended four times and is expected to undergo further amendments with the recent decision of LHC. At the time of publishing of this report, the elections are postponed indefinitely.

ELECTORAL CONTEXT

THE ELECTION COMMISSION OF PAKISTAN

The Constitution charges the ECP with the holding of general elections at both national and provincial levels.³ Furthermore, the Federal Legislative List⁴ places the *Chief Election Commissioner and Election Commissions* (plural) under the sole domain of Parliament.⁵

However, the PLGA appears to challenge the institutional hierarchy and the role of the ECP with its division of regulatory powers. This in turn creates legal uncertainty and confusion over the division of electoral responsibilities and decision-making which seriously challenge compliance with Pakistan's international commitments.

AMBIGUITY OVER REGULATORY POWERS

PLGA splits regulatory powers between the Punjab government and the ECP by way of a fall-back clause, which empowers ECP to fill legal gaps with *ad hoc* notifications.⁶ Doing so, the Punjab Provincial Assembly may have relied on Article 147 of the Constitution, which provides for the *Power of the Provinces to entrust functions to the Federation*.⁷ It is not clear whether the Punjab Assembly has sought the constitutionally required consent of the Federal Government to do this.

The division of regulatory powers could conflict with the government's *general* power to make rules.⁸ Also, the PLGA's wording suggests that government Rules take precedence over ECP

3 Article 219 of the Constitution states: The Commission shall be charged with the duty of, (...d) the holding of general elections to the National Assembly, Provincial Assemblies and the local governments; and e) such other functions as may be specified by an Act of Majlis-e-Shoora (Parliament).

4 Defines ambits of federation and the provinces.

5 Item 41 of the Federal Legislative List

6 PLGA section 19 (2) The Election Commission may, by order in the Official Gazette, make provisions for the conduct of local government elections if no provisions or no sufficient provisions have been made under this Act or the rules.

7 Article 147: Notwithstanding anything contained in the Constitution, the Government of a Province may, with the consent of the Federal Government, entrust, either conditionally or unconditionally, to the Federal Government, or to its officers, functions in relation to any matter to which the executive authority of the Province extends. The 18th Amendment qualified this power by adding: "Provided that the Provincial Government shall get the functions so entrusted ratified by the Provincial Assembly within sixty days."

8 PLGA, section 144, Power to make rules.-(1) The Government may, subject to previous publication and by notification in the official Gazette, make rules for carrying out the purposes of this Act. Seventh Schedule.

regulation, which clashes with the ECP's regulatory powers derived from the Constitution, as well as from the Electoral Commission Order 2002 and RoPA, further adding to confusion.

The PLGA's division of regulatory powers may also challenge the conduct of elections by leaving too many aspects to be decided by the provincial government, a body which holds a vested interest in the elections rather than the constitutionally independent ECP. A strong argument lies against the subjugation of the ECP to government Rules, as it would defeat the 18th Amendment's intent to entrust the conduct of local elections to the constitutionally *independent* ECP and challenge the principles of parliamentary democracy.

Further uncertainty lingers over the question whether the PLGA effectively empowers the ECP to issue regulations without presidential assent. The requirement for such assent poses a serious challenge to the ECP's independence, as the PLGA appears to presume that neither the federal Election Commission Order 2002, nor RoPA, apply to the conduct of local elections.⁹

The UN Human Rights Committee insists that *an independent electoral authority should be established to supervise the electoral process and to ensure that it is conducted fairly, impartially and in accordance with established laws which are compatible with the Covenant.*¹⁰

The legal uncertainty produced by the lack of clear legislation and the consequent risk to the ECPs independence pose a challenge to Pakistan's compliance with its international commitments.

The United Nations Human Rights Council *calls upon States to make continuous efforts to strengthen the rule of law and promote democracy by ensuring that a sufficient degree of legal certainty and predictability is provided in the application of the law, in order to avoid any arbitrariness.*¹¹

The Human Rights Committee has also noted *with concern that the lack of clarity in the delimitation of the respective competences of the executive, legislative and judicial authorities may endanger*

*the implementation of the rule of law and a consistent human rights policy.*¹²

RECOMMENDATIONS

Uphold ECP's independence and regulatory autonomy from national and provincial government by empowering ECP to issue rules for local elections as well.

Clarify the application of federal electoral law to aspects of local elections that remain unregulated by PLGA.

⁹ The Election Commission Order, 2002 27—35 (Chief Executive's Order No. 1 of 2002), section 9E. Power to make rules.—The Commissioner may, with the approval of the President, make rules for carrying out the purposes of this Order. Also Section 107 of RoPA.

¹⁰ UN Human Rights Committee, General Comment 25, paragraph 20

¹¹ A/HRC/RES/19/36, 2012

¹² CCPR/C/79/Add.79, Slovakia, (1997), p 3

THE ROLE OF ELECTION LEGISLATION

Primary legislation or an act of the assembly on elections should regulate the fundamental issues regarding elections including secrecy, the need for periodic elections, the electoral system, requirements for candidates and voter registration, how *ad hoc* vacancies will be filled, provisions for management of elections, polling procedures including counting and tabulation and removal mandates. More detailed issues can be elaborated in secondary legislation.

Furthermore, electoral legislation should be delineated in clear and unambiguous language, avoiding conflicting provisions with other laws. It should state the legal and institutional hierarchy where relevant. The legal provisions on elections should also define respective roles and responsibilities of relevant bodies so as to avoid overlapping powers being exercised by different bodies. Failure to do so or silence on any of these fundamental issues can result in confusion and inconsistencies, unfair or arbitrary interpretations and ultimately lead to conflict.¹³

PLGA does not include provisions on number of key electoral aspects. Punjab's earlier local election frameworks have largely transposed the federal Representation of the Peoples Act (RoPA) of 1974. RoPA, though not an exemplary law itself, does contain clear provisions on number of key aspects of the elections.¹⁴ However, Punjab severs RoPA's core provisions, and parcels them out between PLGA and Rules issued under it and even to non-binding Guidelines, thus jeopardising legal protection of several electoral rights, which enjoy legal footing on federal level for national level elections. This is a serious challenge to Pakistan's obligations under ICCPR which requires that certain electoral rights are protected by law.

The protection of electoral rights currently contained in lower-ranking rules and guidelines is further weakened because, unlike other common law countries, government rules in Pakistan are neither subject to legislative scrutiny,¹⁵ nor does

¹³ For more detail on the principles of reviewing election legislation, see the IDEA publication International Electoral Standards: Guidelines for reviewing the legal framework of elections: <http://www.idea.int/publications/ies>

¹⁴ Also see section on Electoral Context above

¹⁵ A search of the Punjab Provincial Assembly has yielded no results for either "Negative Resolution Procedure", nor for "Statutory instrument." <http://www.pap.gov.pk/index.php/rop/details/en/27>

On national level, Pakistan does not seem to require Government to lay statutory instruments before Parliament.

PLGA compel Punjab government to consult with ECP when issuing rules.

Interpreting article 25 of the ICCPR, the UN Human Rights Committee states that certain key elements of elections should be protected by law, while other less fundamental aspects may be governed by rules and regulations.

HRC has consistently invoked the distinction between law and rules/regulations: *The rights and obligations provided for in paragraph (b) should be guaranteed by law. In conformity with paragraph (b), elections must be conducted fairly and freely on a periodic basis within a framework of laws guaranteeing the effective exercise of voting rights. Reports should also describe the laws and procedures which ensure that the right to vote can in fact be freely exercised by all citizens and indicate how the secrecy, security and validity of the voting process are guaranteed by law. The exercise of these rights by citizens may not be suspended or excluded except on grounds which are established by law and which are objective and reasonable.*¹⁶

A literal application of PLGA would also be unfeasible and inappropriate in several areas, partly because it overlaps with other laws governing the same area. The Act leaves the fundamental electoral tasks to government rule-making:

- constituency delimitation;
- defining the powers and functions of the Chief Election Commissioner;
- appointment of Returning, Presiding and Polling Officers;
- election schedule;
- candidature fee;
- publication of candidate lists;
- voter registration;
- postponement of polling;
- stopping of poll;
- tendered balloting;
- validity of ballots;
- declaration of results;
- electoral system for reserved seats; and
- powers to suspend

Additional electoral tasks not covered by the Act are:

- inspection of electoral rolls;
- candidate nomination;
- voter identification;
- rights of polling agents;
- polling hours;

¹⁶ UN Human Rights Committee, General Comment 25, paragraph 4

- maintenance of order at the polling station;
- challenge of voters;
- voting after close of poll;
- consolidation of results; and
- restriction and statement of election expenses.

PLGA's legislative gaps directly affect the exercise of fundamental rights. Moreover, it remains doubtful whether government rules can regulate areas that PLGA, as a so-called enabling act, i.e. one which gives authorisation to a given body or individual to carry out certain actions, does not expressly identify.¹⁷

RECOMMENDATION

Review PLGA to ensure inclusion of and clarity in key areas mentioned in this LEFA.

THE LEGISLATIVE PROCESS

The manner in which an electoral framework is enacted or amended is a critical part of ensuring its overall legitimacy. Experience has shown that openness, consultation and inclusiveness are essential features of successful electoral reform that builds understanding, trust and confidence amongst politicians, election administrators, civil society organisations and electors.¹⁸ Elections are the mechanism used to decide on access to positions of power, so any changes to the rules under which they happen should be the result of broad consultative and inclusive process.

The legislative process for PLGA lacked genuine consultation with the political parties. Debate over PLGA divided government and opposition, and even saw dissent from within the ruling party.¹⁹

The debate in the Punjab Assembly aired none of the substantive issues relevant to compliance with Pakistan's obligations and commitments.²⁰ The bill was eventually adopted at a session during which the opposition and a member of the ruling party walked out.

¹⁷ Article 270AA(b) of the Constitution: in respect of notifications, rules, orders and by-laws, the authority in which the power to make, alter, repeal or amend the same vests under the law.

¹⁸ For an analysis of key elements of success in electoral law reform processes see: http://www.democracy-reporting.org/files/dri_briefing_paper_12_-_good_practices.pdf
Also see: http://eeas.europa.eu/human_rights/election_observation/docs/handbook_en.pdf

¹⁹ http://www.dailytimes.com.pk/default.asp?page=2013\08\22\story_22-8-2013_pg13_7

²⁰

<http://www.pap.gov.pk/index.php/business/stn/en/20/574#sop>

The government neither held any public hearing to seek public inputs, nor made efforts to have direct consultation with civil society organisations. Although the ECP had offered support to all provinces in drafting laws for local government, the Punjab government did not benefit from this offer as well.

Given the apparent lack of effective consultation and consideration, it seems the legislative process fell short of the expectations of the ICCPR relating to the right of citizens to take part in public affairs. The UN Human Rights Committee holds that *citizens also take part in the conduct of public affairs by exerting influence through public debate and dialogue with their representatives or through their capacity to organise themselves*.²¹

RECOMMENDATIONS

Open up future amendments of PLGA to timely and inclusive public consultation and debate.

Invitations seeking inputs should be extended to political parties, independent candidates, civil society organizations and general public who should be given reasonable time to submit responses.

TIMELY FRAMEWORK ADOPTION

Timing of electoral law reform is crucial in two ways. First, there is a question about how much time is allotted for conducting a thorough reform process, including broad-based consultation at every stage, before adopting new legislation. Second, timing is relevant in relation to when a reform process is completed with respect to the next election. Successful electoral reform requires adequate time for all of the main stakeholders who are involved and interested to participate in the reform process. The process of developing legislation is also important. Pressure to deliver reform should not be at the expense of the time allowed for the discussion, debate and preparation of legislative proposals.²²

The legislative process by which PLGA was adopted failed to allow adequate time for suitable preparation by stakeholders. This was largely due to pressure from Supreme Court to hold local government elections sooner.²³ While the Punjab Local Government (Delimitation) Rules were gazetted on 25 September 2013, the Punjab Local Government (Conduct of Elections) Rules,

²¹ UN Human Rights Committee, General Comment 25, paragraph 8

²² For more on this see DRI's paper here: http://www.democracy-reporting.org/files/dri_briefing_paper_12_-_good_practices.pdf

²³ See Political Context section above

hereinafter PLGR, were not published until a month prior to first proposed election-day in December 2013.²⁴

Lack of timely adoption and publication of Punjab's 2013 legal framework for local elections has deprived stakeholders—including the ECP—of meaningful participation in debate, and to effectively prepare for elections. Lack of internet publication of Punjab's Gazette further compounds the compressed legislative and regulatory timeline. Through the third amendment, the Punjab government is not obliged to publish rules as it is given power to "dispense with the requirement of previous publication".²⁵

Lack of sufficient time to make all practical preparations for elections greatly increases the costs and workload of all responsible bodies along with the likelihood of negative consequences caused by unexpected events such as adverse weather, transportation and logistical problems which may not be able to be fixed in a short period of time. The Human Rights Committee explains that *voter education and registration campaigns are necessary to ensure the effective exercise of article 25 rights by an informed community. Electors should be fully informed of these guarantees.*²⁶ Without sufficient time to plan and implement voter education and registration, training of polling staff where necessary, there is a greater risk of elections which do not meet Pakistan's international obligations.

RECOMMENDATIONS

Consolidate and publish Punjab's amended local election framework in a timely manner, including on the homepage of ECP, and in all stakeholder languages.

Publish Punjab's Gazette online.

²⁴ In the Supreme Court case cited before Punjab government had initially proposed December 7 for holding elections to the local government.

²⁵ PLGA Section 144(4): Notwithstanding anything contained in subsection (1), the Government may, in an emergency and for reasons to be recorded, dispense with the requirement of previous publication required under subsection

²⁶ UN Human Right Committee, General Comment, paragraphs 12-20

THE ELECTORAL SYSTEM

PLGA repeals its initial proportional election system for multi-member constituencies, but neglects to replace it with a formula to translate votes into general seats for Union Councils. Even if one presumes that the six candidates winning the most votes each take a seat, PLGA does not cover for possibility that fewer than six candidates register—or qualify—in each Union Council.

DIRECT VERSUS INDIRECT ELECTIONS

Chairs and Vice Chairs of Municipal Corporations including Lahore and of District Councils, as well as of all higher level reserved seats are elected by indirect vote,²⁷ from amongst the elected chairs of Union Councils. In the case of Municipal Committees, the Chair and Vice Chairs are also indirectly elected from amongst members of the committee.

One of the challenges to the appropriateness of indirect elections is that it can defeat the purpose of local government, namely to establish direct links between voter and representative in decision-making which affects the local area.

Moreover, PLGA and PLGR lack procedures and timelines for indirect elections,²⁸ leaving it unclear whether they require Electoral College consensus of absolute majority.²⁹ PLGA generally lacks distinction between simple and absolute majority, implying the former, allowing indirect election to be conducted *in a manner to be prescribed*.

More importantly, PLGA, as amended by Ordinance, trims respective Electoral Colleges to Union Council Chairmen or Municipal Committee

²⁷ Writ Petition No.23040-2013 Pakistan People's Party vs. Government of Punjab etc. Lahore High Court, 2013, paragraph 10.5 Significantly certain offices of Local Governments under the PLGA are not elected by adult franchise. The elected representatives of Union Councils, Metropolitan Corporation, Municipal Committee and Municipal Corporation constitute an electoral college for the post of Chairman and Vice Chairman, Mayor and Deputy Mayor, as the case may be, of such Local Governments. The participation of elected representatives in the said indirect election involves the exercise of a political choice. Such choice can be exercised fairly, prudently, and transparently if the electors are imbued with a defined political vision, principles and values. The elected representatives having backing of political party would make their choice without being swayed by influence and other considerations.

²⁸ The Bill provides for appointment of Returning officers and Assistant Returning Officers only for "purpose of direct elections" (section 22 (1)). It remains unclear how indirect elections will be conducted.

²⁹ For instance at indirect elections for head-of-state in Germany.

members, who are elected on a first-past-the-post basis. Electoral Colleges will thus largely exclude women, non-Muslims, and youth. These electoral colleges nominate and elect candidates for reserved seats for women, non-Muslim and youth seats. The amendment thus weakens the link with constituents by removing direct voting relationship between women representatives and women voters, non-Muslims and non-Muslim voters and youth candidates and youth voters.³⁰

The system of indirect elections for reserved seats can be criticized for reducing citizens' power to directly choose their local government, and reducing local councils' accountability to citizens. During interviews with various interlocutors in other provinces it was highlighted that the reserved seats being a vehicle for promotion of party interests rather than actually about representing special interest groups such women, peasants, workers and minorities etc. Likewise, civil society organisations commented that indirect elections are not real political participation as those indirectly elected are under party control. Indirectly elected members have been criticised for being beholden to the elected members who voted for them, rather than to the population, thereby increasing patronage rather than democratic politics.³¹ In the context of perpetuating a system of patronage and reduced ability of indirectly elected councillors to represent electors' views, indirect elections pose a further challenge to consolidating democracy in Pakistan and the state meeting its international obligations.

The Human Rights Committee also requires direct links between voter and representative: "*Where citizens participate in the conduct of public affairs through freely chosen representatives, it is implicit in article 25 that those representatives do in fact exercise governmental power and that they are accountable through the electoral process for their exercise of that power*".³²

The UN Committee's recent jurisprudence leans against indirect elections, exhorting one State Party to introduce *universal and equal suffrage in conformity with the covenant, as a matter of priority. It should outline a clear and comprehensive plan of action and set timelines for the transition to an electoral system based on universal and equal suffrage that will ensure enjoyment by all its citizens of the right to vote*

30 For more discussion, see sections on participation of women, youth and minorities below.

31 For more see DRI's Election Assessment Mission Report on Baluchistan Local Government Elections 2013 http://www.democracy-reporting.org/files/dri-pk_balochistan_local_government_elections_assessment.pdf

32 UN Human Rights Committee, General Comment 25, paragraph 7

*and to stand for election in compliance with article 25 of the covenant, taking due account of the committee's general comment no. 25 (1996).*³³

RECOMMENDATIONS

Amend PLGA to define procedures and timelines for indirect elections.

Consideration to be given to reviewing the electoral system for reserved seats.

PARTY AFFILIATIONS

Article 22 of the ICCPR asserts the rights of all to freedom of association. It recognises the role of political parties and membership of parties for the conduct of public affairs and the election process (see paragraph 26 of General Comment 25). Local governments are inherently political institutions comprised of elected representatives that exercise executive and legislative authority, making it impossible to deny political parties a recognised role in local elections. This is reinforced in article 140A of the Constitution of Pakistan, under whose provisions the provinces are mandated to devolve political, administrative and financial authority to the elected representatives of local governments.

Article 17(2) of the Constitution also guarantees the right to every citizen to form and be a member of a political party. The Supreme Court of Pakistan has consistently held that the right to form or be a member of political party includes the right to contest an election and form a government by a political party commanding the confidence of the majority of the members of National Assembly or a provincial assembly.³⁴ The same argument applies to local government.

In earlier drafts of the PLGA, elections were to be held on a non-party basis. This was challenged in LHC by opposition parties. In its verdict, the LHC directed the Punjab government to amend the Act and permit elections on a party basis.³⁵ The government then issued an ordinance which amended the Act by deleting the words "on non-party basis". The amendment did not, however, explicitly mention that elections may be held on

33 CCPR/C/CHN-MAC/CO/1 (HRC, 2013), China: Macao

34 Muhammad Nasir Mahmood v. Federation of Pakistan (PLD 2009 SC 107) relying upon its earlier judgments; i.e., Benazir Bhutto v. Federation of Pakistan (PLD 1988 SC 416); Muhammad Nawaz Sharif v. Federation of Pakistan (PLD 1993 SC 473); and Benazir Bhutto v. Federation of Pakistan (PLD 1989 SC 66)

35 See Lahore High Court decision in Pakistan People's Party Vs. Government of Punjab etc. <http://lhc.gov.pk/appjudgments/2013LHC2678.pdf>

party-basis although, based on LHC's decision, this should be the case.

RECOMMENDATION

Amend PLGA to clearly specify that candidates with party affiliations are allowed to contest elections.

DISSOLUTION AND FRESH ELECTIONS

The PLGA allows the Punjab Government to dissolve local government without being required to give reasons. The Act also fails to prescribe a procedure which would constitute due process, allow for reasonable challenges and secure the protection of all stakeholders' rights, such as the right to effective remedy, right to appeal, and the right to take part in the conduct of public affairs. The Act thus fails to protect security of tenure. Subordinating elected local government to the provincial executive undermines accountability to the electorate.³⁶

PLGA goes as far as stipulating that *in the performance of their functions, the local governments shall not impede or prejudice the exercise of the executive authority of the Government.*³⁷ In turn, PLGA denies the electorate concurrent power to recall local officials, which would restore accountability of elected local officials to voters, and thus balance PLGA's bias towards empowering executive government authority.

Section 30 of the Act sets a five-year term for LGs, starting from the date of its first meeting, which is to be held within 30 days after notification of the returned candidates. However, the Act does not mention any time-frame for holding fresh elections after expiry of the five years term or in the case of dissolution of local governments. There is a vague provision for appointment of administrator for a maximum period of six months which means elections may be delayed for up to six months.

In this context, the UN Human Rights Committee requires that *the grounds for the removal of elected office holders should be established by laws based on objective and reasonable criteria and incorporating fair procedures. The legal*

36 PLGA section 126. Dissolution of local governments.– (1) Notwithstanding anything to the contrary contained in section 30, where, before the expiry of the term of the local governments, the general elections for National or Provincial Assembly are announced, the Government may, by notification in the official Gazette, dissolve the local governments. (2) On the dissolution of the local governments under subsection (1), all powers and functions of the local governments shall be exercised and performed by such persons or authorities as the Government may appoint in this behalf as Administrators and the funds and properties belonging to the local governments shall vest in Government till such time the elected local governments assume office.

37 PLGA section 4 (2)

grounds and procedures for the removal of elected office holders should be described.³⁸

RECOMMENDATIONS

Amend PLGA to contain clear and objective requirements and timeliness for dissolving councils.

Amend PLGA to specify clear, objective and reasonable criteria for removal of the elected members. This should be complemented by clear provisions on due process in the removal of the local councils.

Amend PLGA to set deadline for holding elections both in cases of dissolution of a local council and after expiry of its term.

Enshrine the cycle of local government elections in Pakistan's Constitution.

CONSTITUENCY DELIMITATION

In order to increase confidence in delimitation and enhancing transparency and accountability, it is usually recommended that delimitation should be done by an independent body.

PLGA tasks the Punjab Government—rather than ECP or an independent body—with delimiting electoral districts. This arrangement was initially accepted by the LHC on the pragmatic grounds that no federal law currently applies.³⁹ The Court had argued that constituency delimitation *precedes* ECP's conduct of elections, which sits in contrast with PLGA's delegation of voter and candidate registration to ECP, tasks that also precede conduct of elections.

Ultimately, the latest ruling from LHC's full bench termed delimitation done under the law as unconstitutional. The court also declared Section 8 and 9 of the PLGA, concerning delimitations, as unconstitutional and ordered that ECP be in charge of delimitations.⁴⁰

The Human Rights Committee in paragraph 20 of the General Comment 25 stipulates that an independent electoral authority should be established to supervise electoral process and ensure that it is conducted fairly and impartially. ECP is constitutionally mandated as independent body for holding elections. In this purview, it is not uncommon for an electoral management body to be involved in delimitation which is an essential part of the electoral process.

Furthermore, a literal reading of the Constitution appears to vest the independent ECP with *general* competence to delimit electoral constituencies—beyond those for national/provincial elections.⁴¹

Although the latest decision of LHC also establishes that delimitation is prerogative of ECP, establishment of a separate independent body, other than ECP, may also be considered.

RECOMMENDATIONS

Amend PLGA to assign boundary delimitation function to an independent body.

39 Writ Petition No.23040-2013 Pakistan People's Party vs. Government of Punjab etc. Lahore High Court, 2013, paragraph 9

40 Lahore High Court judgement (Case No: W.P. No.31986/2013. Arshad Mehmood Versus The Commissioner, etc.)

41 Article 222 of the Constitution: Majlis-e-Shoora (Parliament) may by law provide for: (b) the delimitation of constituencies by the Election Commission;

38 UN Human Rights Committee, General Comment 25, paragraph 16 (b), 18

EQUALITY OF SUFFRAGE

Equality before the law is a cornerstone of the rule of law, affirmed in ICCPR where it is translated into the concept of equal suffrage.⁴² UN Human Rights Committee stated in its General Comment 25: *The principle of one person, one vote, must apply, and within the framework of each State's electoral system, the vote of one elector should be equal to the vote of another. The drawing of electoral boundaries and the method of allocating votes should not distort the distribution of voters or discriminate against any group and should not exclude or restrict unreasonably the right of citizens to choose their representatives freely.*⁴³

PLGA stipulates accordingly that electoral constituencies must be, *as far as possible, uniform* in population size. PLGA does not, however, define uniformity or a variance limit.⁴⁴

The fourth amendment to the PGLA divides a Union Council into six wards for general seats and into two wards *consisting of three adjoining of Union Council, for the election of the two seats reserved for women*. However, criteria to delimit these wards are not included in the amended Act. Since the bulk of higher levels of local government are indirectly elected, voting strength is manifested in:

1) At the UC level with unequal population sizes for the wards. 2) Through UC representation in District Councils and in the Metropolitan Corporation as Union Councils act as ward for the district council. This is also the case in ward representation in Municipal Committees.⁴⁵

The Rules and Guidelines governing UC and ward elections do stipulate a *non-binding +/-20 per cent maximum deviation from unit population averages.*⁴⁶

According to official data, the freshly delimited UC populations in Lahore vary between 3698 and

42 ICCPR article 25: Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (b) to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage.

43 UN Human Rights Committee, General Comment 25, paragraph 21

44 Sections 8 and 9 PLGA

45 PLGA First Schedule: The Government shall, by notification, determine the number of the Union Councils in a District Council on the basis of population of the District Council. It remains unclear who government would thus ensure equal voting strength.

46 Punjab Local Government (Delimitation) Rules, 2013

29180,⁴⁷ the latter having almost 8 times more residents. This level is certainly in breach of the principle of equal suffrage.

The Act gives government discretion to decide number of Union Councils in a district based on the population.⁴⁸ A Union Council acts as a ward for a District Council as the elected Chairmen of the UCs become general members of the district council. This is also the case with Municipal Corporations and Metropolitan Corporations. Similarly, in the case of Municipal Committees, the Act leaves it to the government to decide on number of seats ranging from between 11 to 50 seats.⁴⁹ Punjab government could use this to their favour and establish more UCs in the areas of their support. This could also affect the sizes of the districts which in turn affects equality of suffrage in District Council, Municipal Corporation and Municipal Committees. Excessive latitude given to authorities by the law could be used to consolidate power in a way that seriously undermines representative government and fairness to voters.

Moreover, PLGA grants the Punjab government a blanket waiver for *specific cases*, without defining the term, effectively ousting its self-imposed margin of discretion.⁵⁰ PLGA gives powers to government to set number of indirectly elected seats: women, peasants and non-Muslim for district council, women and non-Muslim for Municipal Corporations, women, workers, and non-Muslim for Municipal Committee.⁵¹

Contrary to article 199 of the Constitution, the Ordinance does not allow jurisdiction of the courts over delimitations once notified by the provincial government. Hence, in theory no effective remedy would be available after delimitations are notified. This is not in line with Pakistan's obligations under ICCPR which requires provision of effective remedies in case of violation of the rights.⁵² Hence, the PLGA should be amended to give right to remedy and upholding judicial jurisdiction over delimitations. The Lahore High Court also judged that Section 8 and 9 of PLGA unconstitutional, hence a reform in the law should be pursued by the Punjab government.

47 UC # 118 (Johar Town) and UC # 90 (Al-Mahtab Park) respectively as indicated in delimitation notification dated 05/12/2013

48 First schedule part II, Constitution of Pakistan 1973

49 Ibid

50 PLGA section 10. Waiver of conditions. – The Government may, in a specific case and for reasons to be recorded in writing, waive the conditions of delimitation mentioned in section 8.

51 PLGA First Schedule on Sections 12, 14, 15 & 17

52 ICCPR Article 2.3.a and b

Lastly, PLGA lacks definition of the term *population*, which, by contrast, the Delimitation of Constituencies Act 1974 includes.⁵³ PLGA does, however, specify that delimitation be based on *last preceding census or a census block and a revenue block, notified as such by the Government*. PLGA's omission of definition of 'population' may invite legal challenges to the choice of statistical basis, the most recent one of which was outdated 1998 census data.⁵⁴

The PLGA fails to mandate preliminary publication of the districting plan, so as to allow and encourage public input, and to guarantee the right to timely remedy against voting inequality.⁵⁵ This issue is deferred to the Rules.

RECOMMENDATIONS

Amend PLGA to require the use of clear and objective criteria for the delimitation of wards and councils.

Uphold PLGA's provision of uniformity of constituency and ensure constituencies have relatively equal population.

Amend PLGA to define "population".

Amend PLGA to give right of complaint on boundary delimitations.

Bring current UCs and wards within that margin, in order to comply with UN Human Rights Committee precedent.

Bar fresh delimitation in election years, so as to guarantee a timely remedy.

53 Delimitation of Constituencies Act 1974, (ACT No. XXXIV OF 1974) definitions, "Population" means the population in accordance with the last preceding census officially published.

54 <http://www.census.gov.pk/census2011.php>

55 Delimitation of Constituencies Act 1974, Article 10

VOTER REGISTRATION

UNCLEAR LEGAL HIERARCHY

There is considerable legal uncertainty over who should be responsible for voter registration. The Constitution vests ECP with the duty of *preparing electoral rolls for election to the National Assembly and the Provincial Assemblies, and revising such rolls annually*. It thus implicitly excludes preparation of electoral rolls for local elections from ECP's constitutional duties. The PLGA on the other hand prescribes that the *electoral rolls for the local government elections shall be prepared, or adapted, or adopted by the Election Commission*.⁵⁶

It is unclear whether the provincial legislation may assign this authority to the Election Commission unless explicitly provided by the Constitution. Furthermore, the PLGA is silent on who has authority to enact rules which will guide voter registration.

RECOMMENDATION

Amend the Constitution to clearly delineate ECP's responsibilities related to voter registration for local elections.

THE RIGHT TO REGISTER

PLGA empowers ECP to specify additional *other conditions* for voter registration. This provision sits uneasy with the Human Rights Committee's interpretation of the right to vote under article 25 of the ICCPR. The Committee insists that *the right to vote at elections and referenda must be established by law and may be subject only to reasonable restrictions, such as setting a minimum age limit for the right to vote*.⁵⁷

On the other hand, PLGA holds that *a person shall be entitled to be enrolled as a voter if he is a citizen of Pakistan and is not less than eighteen years of age*.⁵⁸ PLGA's criteria are thus largely in compliance with UN Human Rights Committee guidance on the universal franchise and in fact less restrictive than the Electoral Rolls Act 1974 which holds that *a person, who is a citizen of Pakistan, is not less than 18 years of age and possess a National Identity Card (CNIC) issued by the National Database and Registration Authority (NADRA), is not declared by a competent court to be of unsound mind and is or is deemed to be a resident of an electoral*

56 Article 21(2) of the PLGA, as amended by Ordinance

57 UN Human Rights Committee, General Comment 25, paragraph 10.

58 Section 21(1) PLGA

area, can get himself enrolled as a voter in that electoral area.⁵⁹

RECOMMENDATION

Amend PLGA to remove ECP's discretion to suggest other conditions for registration of vote. Entrench all voter registration criteria in the Act.

AGE CUT-OFF

The PLGA permits registration for those citizens who are 18 years old. It does not, however, state whether applicants must be 18 years by the time of enrolment, or on election-day, or some other defined point in time, which could lead to disfranchisement of voters who turn 18 shortly before the election day.

RECOMMENDATION

Stipulate in PLGA cut-off date of the age requirement for registration as a voter.

IDENTIFICATION REQUIREMENTS

PLGA requires no particular form of identification to register as a voter for local elections. Yet, the Electoral Rolls Act 1974, as amended in 2011, requires the Computerised National Identity Card (CNIC) for the purpose of registration as a voter,⁶⁰ as do PLGR. The Rules hence curtail rights granted by the parent Act. It is worth mentioning that Pakistani civil society has expressed recommendations to improve synergy by issuing CNICs and registering voters simultaneously.⁶¹

It is also noteworthy that despite federal budget allocation, NADRA is empowered to charge fees for CNIC issuance, which creates hardship for the poorest section of Pakistan's electorate (see also section on Women's participation below). The UN Human Rights Committee has shown little tolerance for the imposition of fees as a precondition to register to vote.⁶²

⁵⁹ Section 6 (2) of the Electoral Rolls Act, 1974

⁶⁰ The 2011 amendment of section 6(2) the Electoral Rolls Act of 1974, stipulates that, A person shall be entitled to be enrolled as a voter in an electoral area if he is (b) not less than 18 years of age and possesses a CNIC issued by NADRA constituted by NADRA Ordinance 2000 (VIII of 2000)

⁶¹ CNIC Card issuance should automatically trigger a voter register update with NADRA. CNIC card registration should gather data like preferred voting location. Source: SAARC Chamber of Commerce and Industry, www.saarcchamber.org

⁶² CCPR/C/BIH/CO/1, Bosnia and Herzegovina, 2006, paragraph 22.

RECOMMENDATION

Harmonise voter ID requirements among all applicable instruments, and ensure that there is no cost associated with pre-requisites for voting.

UNSOOUND MIND

On the issue of mental capacity, PLGA also favours universal franchise by not excluding those citizens declared of unsound mind by a competent court, again improvement compared to federal legislation. PLGA could ultimately allow the residents of Punjab, who are declared of unsound mind, to vote in local elections—while they remain excluded from national elections.

This is in line with the UN Convention Committee on the Rights of People with Disabilities.⁶³

REGISTRATION PROCEDURES

With reference to the Electoral Rolls Act 1974, RoPA requires the ECP to follow *legal* procedures when compiling voter registers. On the other hand, PLGA invites ECP to register voters as *it deems appropriate*. PLGA thus opens a legal vacuum over the following issues that the Electoral Rolls Act covers:

- preparation and computerisation of Electoral Rolls;
- appointment of Registration Officers;
- preparation of preliminary Electoral Rolls;
- meaning of 'resident';
- preliminary publication;
- appointment of revising authorities;
- period for lodging claims and objections;
- transfer of name from one electoral area to another;
- rejection of claims and objections;
- application by the registration officer for inclusion of names;
- enquiry into claims and objections; corrections of electoral rolls;
- final publication;
- annual revision of electoral rolls;
- enrolment and correction at a time other than the annual revision;
- preparation of rolls afresh;
- no correction to be made after constituency called upon to elect;
- maintenance of electoral rolls;
- departure from normal procedure in exceptional circumstances;
- duration of the Electoral Rolls;
- access to register of births and deaths;
- double enrolment;

⁶³ Pakistan is a State Party to CRPD

- Commissioner's power to include a name in an electoral roll;
- power to make rules;
- breach of official duty;
- certain offences triable by Registration Officer.⁶⁴

Lastly, ICCPR's right to privacy⁶⁵ requires protection of voter data stored in the form of electoral rolls. PLGA should incorporate by reference federal law that already protects this data. The UN Human Rights Committee also has a position on this issue.⁶⁶

RECOMMENDATIONS

Amend PLGA to incorporate voting registration procedures by reference to Electoral Rolls Act/rules, while expressly preserving the more inclusive right to register under PLGA.

Amend PLGA to incorporate protection of voters' data by reference to federal law

VOTER EDUCATION AND INFORMATION

In its guidance, the Human Rights Committee insists that *voter education and registration campaigns are necessary to ensure the effective exercise of article 25 rights by an informed community.*⁶⁷

PLGA and PLGR neglect to include voter education and information campaigns. Nor does PLGA task any other body with this.⁶⁸

A legal voter education/information mandate also appears crucial to hold ECP to its own strategic objectives.⁶⁹ Even if national turn-out appears currently on the rise, local government can arguably only be held accountable and legitimately exercise its role if it receives a

⁶⁴ This list does not yet include procedural detail covered by the Rules, promulgated under the Electoral Rolls Act.

⁶⁵ ICCPR article 17 on right to privacy

⁶⁶ General Comment 16 p7. p10. The gathering and holding of personal information on computers, data banks and other devices, whether by public authorities or private individuals or bodies, must be regulated by law. Effective measures have to be taken by States to ensure that information concerning a person's private life does not reach the hands of persons who are not authorised by law to receive, process and use it, and is never used for purposes incompatible with the Covenant.

⁶⁷ UN HRC General Comment 25 Paragraph 11

⁶⁸ Article 19A of the 18th Amendment of the Constitution

⁶⁹ ECP Strategic Objective 2: It will also undertake comprehensive voter education to ensure that eligible voters are registered on time.

sizeable and thus credible mandate from the electorate.⁷⁰

RECOMMENDATION

Amend PLGA to require voter education and information campaigns.

⁷⁰ EU EOM, Final Report 2013, page 41 ECP reports that a total of 46,217,482 voters cast their ballots on 11 May, which makes a turnout of 55% as compared to 35,637,072 million votes cast in the 2008 elections. This is an increase of 30%, over 10 million. However, turnout varied considerably with Islamabad leading with 62%, followed by Punjab with 60%.

ELECTION ADMINISTRATION

PLGA grants ECP discretion and independence in recruiting Returning Officers and in drawing the polling station map, although PLGR in turn imposes recruitment restrictions on ECP that seem to conflict with its independence.⁷¹

The Act opens the door for Punjab Government to further prescribe *functions* of ECP and the *manner* in which to conduct local government elections⁷², although the Constitution expressly reserves the power to prescribe ECP functions to Parliament.⁷³

The Act allows the ECP to appoint District Returning officers (DROs) and Returning Officers (ROs) *from amongst the officers of the Election Commission of Pakistan, the government, a body or entity controlled by the government*. In practice, the DROs and ROs are appointed from the civil servants who are under authority of the provincial government.

Appointment of the ECP's own staff, such as District Election Commissioners, DROs and placing ROs under their authority would strengthen independence of electoral administration

In terms of staffing, PLGA lacks legal timelines for recruitment of Returning Officers by the ECP, although it requires Returning Officers to submit lists of Presiding Officers and Polling Officers 15 days before election-day. Fifteen days seems a short period as it may unnecessarily rush recruiting and training of polling staff.⁷⁴

PLGA is silent about a deadline for publication of polling stations. However, PLGR sets a deadline for the publication of the final polling station list of 15 days before the polls. While this is generally a positive move, it could be further strengthened by being included in the Act itself so as to protect it more robustly.

RECOMMENDATIONS

Publish timely polling station lists on the ECP homepage and locally at Tehsil and UC levels.

Allow sufficient time for recruiting and training of polling staff.

ECP staff (DECs) to be appointed as DROs, and ROs be under the direct control of DROs.

71 Sections 22 to 25 of PLGA

72 Section 26 and 29 of PLGA

73 Article 219(e) of the Constitution

74 Sections 22-24 PLGA

CANDIDACY

Compared to its predecessor, PLGA shifts the burden of proof away from candidates, presuming that they have not been *involved in activities prejudicial to the ideology, interest, security, unity, solidarity, peace and integrity of Pakistan*, unless convicted of such offence by a court of law.⁷⁵ In line with UN Human Rights Committee jurisprudence, PLGA also lifts its predecessor's academic candidacy requirements.⁷⁶

In turn, PLGA has dropped the requirement in Local Government Ordinance 2001 that a candidate *has filed the required return of election expenses or is not convicted for exceeding the limits of election expenses prescribed under the electoral laws*.⁷⁷

The dropping of this requirement may, however, bring PLGA into conflict with the UN Convention Against Corruption, which holds that *each State Party shall also consider taking appropriate legislative and administrative measures, consistent with the objectives of this Convention and in accordance with the fundamental principles of its domestic law, to enhance transparency in the funding of candidatures for elected public office and, where applicable, the funding of political parties* (see Campaign Finance, *infra*).⁷⁸

RECOMMENDATION

Effectively include and enforce strong and fair political finance provisions.

NOMINATION PROCEDURES

PLGA defers candidate nomination procedures to PLGR, although they constitute one of the most sensitive election phases. To align PLGA with Pakistan's commitment under the ICCPR, sensitive aspects of candidate nomination merit inclusion in the Act, these would include:

- an equitable and transparent arbitration system for the assignment of symbols and colours, such as allowing parties to choose symbols or by drawing of lots;⁷⁹
- a minimum period for the filing of candidate nomination papers;

75 PLGA article 27(j)

76 PLG Ordinance 2001, section 152 (e) has academic qualifications of not less than matriculation or secondary school certificate or equivalent from a recognized institution, for contesting the election of a Nazim or a Naib Nazim;

77 Article 27(m) of the 2001 Ordinance

78 UNCAC article 7(3)

79 Writ Petition Pakistan Tehreek-e-Insaf Punjab versus Government of Punjab etc., Lahore High Court, 2013, Petitioner complains of having been assigned a „bat“.

- minimum scrutiny periods for Returning Officers;
- a mandated form and time period for the wide publication of provisionally accepted and rejected candidacies;
- a realistic calendar to challenge decisions of Returning Officers before an independent and impartial tribunal which operates on an expedited timeline in conjunction with the election schedule, in line with the fair trial requirements laid down by the ICCPR.⁸⁰

When it comes to the provision of an effective remedy against candidate rejection, PLGR hold that *an appeal not disposed of within the period as specified by the Election Commission shall be deemed to have been rejected.*⁸¹ The provision of an effective remedy under ICCPR instead requires legal guarantee of due process and fair proceedings.

Further, the list of accepted candidates merits wider publication than in a *conspicuous place inside the office of the returning officer.*⁸² PLGR also defers verification of candidates' voter registration in their respective UCs/wards until three days before the polls, which could entail reprinting of ballot papers.⁸³

Lastly, PLGA allows the candidates to stand for more than one seat in the same or even different councils. On the other hand, it requires those indirectly elected to Municipal Councils to give up their seats in the Union Council. This misleads voters, as they may be voting for a person who will not take up that seat. It also puts burden on other candidates and the budget during re-runs.

RECOMMENDATIONS

Stipulate candidate nomination procedures and timelines in PLGA along with guarantee to a timely remedy in case of preliminary rejection.

Bar candidacies for more than one seat.

⁸⁰ Article 14 of the ICCPR, as interpreted by the UN Human Rights Committee in General Comment 31

⁸¹ PLGR section 14(12)

⁸² PLGR section 15 (1)

⁸³ Section 6 PLGR

CAMPAIGN

When it comes to election campaigns, the UN Human Rights Committee states that: *In order to ensure the full enjoyment of rights protected by article 25, the free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. This implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion. It requires the full enjoyment and respect for the rights guaranteed in articles 19, 21 and 22 of the Covenant, including freedom to engage in political activity individually or through political parties and other organisations, freedom to debate public affairs, to hold peaceful demonstrations and meetings, to criticise and oppose, to publish political material, to campaign for election and to advertise political ideas.*

PLGA limits its campaign framework to two electoral offences: *Assistance by Government servants, which effectively criminalises the use of state resources and personnel;*⁸⁴ and *Prohibition of canvassing, which imposes campaign silence on election-day in the vicinity of polling stations.*⁸⁵

Other than defining these two offences, PLGA refrains from regulating local election campaigns. While RoPA frames certain campaign parameters and the Political Parties Order 2002 empowers the ECP to issue a code of conduct for political parties, application of these laws to local elections remains uncertain. ECP might ultimately need to extend its national/provincial guidelines to local election campaigning, although they remain non-binding.⁸⁶

At the very least, PLGA could ensure guarantee of campaigns in line with constitutionally guaranteed

⁸⁴ Section 59 of PLGA: A person in the service of the Government, a Provincial Government, the Federal Government or a local government or a body owned or controlled by such a Government or a local government is guilty of an offence punishable with imprisonment for a term which may extend to six months or with fine which may extend to twenty thousand rupees, or with both if he, in any manner, gives any assistance to further or hinder the election of a candidate.

⁸⁵ Section 52 of PLGA, A person is guilty of an offence punishable with fine which may extend to two thousand rupees, if he, on the polling day in connection with the election, (a) convenes, calls or organises within a ward any meeting; or (b) within a radius of two hundred meters of the polling station: (i) canvasses for votes; (ii) solicits vote of any voter; (iii) persuades any voter not to vote at the election or for a particular candidate; or (iv) exhibits, except with the permission of the returning officer and at a place reserved for the candidate or his polling agent beyond the radius of one hundred meters of the polling station, any notice, sign, banner or flag designed to encourage the voters to vote, or discourage the voters from voting, for any contesting candidate.

⁸⁶ Code of Conduct for Political Parties 2013

fundamental freedoms of assembly and expression during the relevant period.⁸⁷ Procedures for expedited granting of permits for rallies and other campaign events should also be written into the Act, along with guarantee of timely remedies against denial of campaign-related freedoms.

Lastly, the UN Human Rights Council has called for the right of election contestants to receive a copy of the electoral roll,⁸⁸ which could facilitate door-to-door campaigning, widely considered conducive to local official-constituent relations. PLGA/PLGR so far deny such access.⁸⁹

RECOMMENDATION

Enshrine campaign rights in PLGA.

CAMPAIGN FINANCE

PLGA reserves financial obligations of transparency for PLGR.⁹⁰ However, PLGA does stipulate that failure to *provide statement of election expenses as required under this Act* is an illegal practice.⁹¹ PLGR also mandates Returning Officers to keep records for one year and to make them available to the public for payment of a fee.⁹²

The UN Convention against Corruption requires political finance transparency and effective measures against conflicts of interest, some of which PLGA already implements in its candidacy requirements. Lastly, International IDEA offers a global political finance database that illuminates comparative international practices.⁹³

RECOMMENDATION

Bring PLGA in line with UNCAC by stipulating public campaign account and donor disclosure in law, rather than in Rules. Clarify if offenders may still stand as candidates.

ACCESS TO MEDIA

Freedoms of expression and access to information are protected by article 19(2) of the ICCPR and article 19 of the Constitution of

87 Inter alia section 144 of the Code of Criminal Procedure

88 A/HRC/21/63 (SR Cambodia, 2012), paragraph 78

89 Section 25 PLGA

90 UN Human Rights Committee, general Comment 25, paragraph 19, Reasonable limitations on campaign expenditure may be justified where this is necessary to ensure that the free choice of voters is not undermined or the democratic process distorted by the disproportionate expenditure on behalf of any candidate or party.

91 Section 51(f) of PLGA

92 Section 58 PLGR

93 <http://www.idea.int/political-finance/>

Pakistan. Free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential for the enjoyment of these rights and is protected by article 25 of the ICCPR.⁹⁴ Freedom to debate public affairs, to hold peaceful demonstrations and meetings, to criticise and oppose, to publish political material, to campaign for election and to advertise political ideas are important rights guaranteed under the provisions of the ICCPR.⁹⁵

The European Union Election Observation Mission to Pakistan's general elections 2013 thus observed that *in the absence of a transparent and efficient enforcement mechanism for the otherwise sound Code of Conduct for the Media, state and privately owned broadcasters did not provide the main contestants with equitable coverage.*⁹⁶

Pakistan's Constitution, however, is unclear as to who it empowers to regulate media in the Provinces.⁹⁷ And even though the Constitution appears to mandate ECP to ensure that elections under its authority are to be conducted *fairly*, the same article also insists that ECP must act within the parameters of the *law*.⁹⁸

PLGA does not stipulate any media regulations including restrictions on paid advertisements and fair access to media for all candidates among others. The ECP, however, does issue a code of conduct for the media. It also issued a code of

94 These rights are further elaborated in paragraph 25 of General Comment 25.

95 Article 25 of the ICCPR also provides for free press and other media to be able to comment on issues without censorship or restraint as this is necessary for enabling people to make informed choices in elections.

96 Final Report EU EOM Pakistan 2013, page 5

97 Article 159 of the Constitution: (2) Any functions so entrusted to a Provincial Government shall be exercised subject to such conditions as may be imposed by the Federal Government, including, notwithstanding anything contained in the Constitution, any conditions with respect to finance, but it shall not be lawful for the Federal Government so to impose any conditions regulating the matter broadcast or telecast by, or by authority of, the Provincial Government. (3) Any Federal law with respect to broadcasting and telecasting shall be such as to secure that effect can be given to the foregoing provisions of this Article. (4) If any question arises whether any conditions imposed on any Provincial Government are lawfully imposed, or whether any refusal by the Federal Government to entrust functions is unreasonable, the question shall be determined by an arbitrator appointed by the Chief Justice of Pakistan.

98 Section 218 of the Constitution: For the purpose of (..) election to such other public offices as may be specified by law, (3) It shall be the duty of the Election Commission constituted in relation to an election 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.

conduct for the General Election 2013. The binding nature of the 2013 ECP Media Code of Conduct remains in doubt, although Pakistan Electronic Media Regulatory Authority (PEMRA) has taken some enforcement action.⁹⁹

RECOMMENDATIONS

Amend PLGA to require fair advertisement space for candidates and place restrictions on paid advertisements by the contesting candidate.

Stipulate in PLGA that media, both print and electronic, provide equal and fair coverage to all contesting candidates.

Amend PLGA to require the ECP to notify a Code of Conduct for the Media which includes a monitoring mechanism.

ELECTION OBSERVATION

Independent and neutral observation of elections by non-partisan election observers is an effective mechanism to increase the transparency of an election process.

Non-partisan observer groups can also have an important role to play in educating voters and promoting the rule of law. The UN Human Rights Committee has stated that *there should be independent scrutiny of the voting and counting process (...) so that electors have confidence in the security of the ballot and the counting of the votes.*¹⁰⁰

The right of citizens to observe elections is not legally provided in the federal electoral framework, although the ECP does regularly accredit election observers for national/provincial elections despite not being legally required to do so. PLGA/PLGR do not include protection of citizen observation as a right. PLGA/PLGR instead expect the ECP to regulate this area once again in a legal vacuum, so that observer organisations lack guarantees of legitimate and timely accreditation and access. It should be noted that observer organisations cannot recruit, train, and plan for the deployment of observers until accreditation has been issued.

ACCESS FOR CANDIDATE AGENTS

While RoPA grants candidate agents a legal right of presence in polling stations, PLGA defers this to PLGR,¹⁰¹ which in turn regulates accreditation procedures and the right of candidate agents to be present inside polling stations.

RECOMMENDATIONS

Grant the legal right of candidate agents and citizen observers to accreditation and to access of all steps of the electoral process within PLGA.

Set legal deadlines for accreditation for candidate agents and observers, require reasoned decisions, and designate a timely appeals mechanism in case of rejection.

⁹⁹http://www.pemra.gov.pk/pemra/images/docs/announcements/Violation_of_Media_Code_of_Conduct.pdf

¹⁰⁰ UN Human Rights Committee, General Comment 25, paragraph 20

¹⁰¹ Section 27 PLGR

POLLING PROCEDURES

The UN Human Rights Committee explains that “*participation through freely chosen representatives is exercised through voting processes which must be established by laws that are in accordance with paragraph (b)*” of article 25 of the Covenant.¹⁰²

Further, The United Nations Convention against Corruption (UNCAC) requires transparency in public administration in areas of public interest.¹⁰³ PLGA initially provided publish the final polling station list three days before the polling day, but this was extended to 15 days before the polling day through an amendment ordinance.

The UN Human Rights Council, however, has exhorted UN member states to display and publish polling staff lists and the final electoral roll in a timely fashion.¹⁰⁴

RECOMMENDATION

Ensure sufficiently wide and timely publication of critical polling information, such as on the ECP homepage.

VOTER IDENTIFICATION

Legal framework inconsistencies over ID requirements at polling station level could cause misunderstandings among voters and polling staff. While on the federal level, RoPA was amended to require possession of CNICs to obtain a ballot, PLGA remains silent on what document(s) voters require to vote in local elections.¹⁰⁵

102 UN Human Rights Committee, general Comment 25, paragraph 7

103 UNCAC art10: Taking into account the need to combat corruption, each State Party shall, in accordance with the fundamental principles of its domestic law, take such measures as may be necessary to enhance transparency in its public administration, including with regard to its organization, functioning and decision making processes, where appropriate. Such measures may include, inter alia:(a) Adopting procedures or regulations allowing members of the general public to obtain, where appropriate, information on the organization, functioning and decision-making processes of its public administration and, with due regard for the protection of privacy and personal data, on decisions and legal acts that concern members of the public;

104 A/HRC/21/63, Cambodia, paragraph 78. The electoral process, including the voter registration process, and the manner in which electoral disputes are dealt with should be transparent and conform to international standards. For example, the National Electoral Committee should make public the names of polling officers and make the voter list available to candidates from all political parties upon request, affording them an opportunity to challenge the fraudulent inclusion of names on the list.

105 Section 33 of the 2011 RoPA Amendment

The National Database and Registration Authority Ordinance envisions that *any officer charged with the duty of conducting the poll at an election to the National Assembly or a Provincial Assembly or to a Municipal Committee, Cantonment Board or other local authority or body may, for the purpose of satisfying himself as to the identity of any person, require such person to produce his National Identity Card.*¹⁰⁶ It remains unclear, however, which law would apply in a given instance.

RECOMMENDATIONS

Amend PLGA to include CNICs as a prerequisite to casting a vote.

Ensure that identification requirements do not impose cost on the exercise of the right to vote.

SPECIAL NEEDS POLLING STATIONS

The PLGA should stipulate universal accessibility measures at polling stations to facilitate persons with disabilities in voting, keeping in line with Pakistan’s commitments under CRPD.

BALLOT VALIDITY

The UN Human Rights Committee instructs that *State Party Reports should describe the laws and procedures which ensure that the right to vote can in fact be freely exercised by all citizens and indicate how the secrecy, security and validity of the voting process are guaranteed by law.*¹⁰⁷

Validity criteria are defined in the PLGR. The Rules exclude ballot papers which bear any writing or any mark other than the official mark and the mark of “marking aid rubber stamp”, or to which a piece of paper or any other object of any kind has been attached.¹⁰⁸ These criteria could result in invalidation of clearly expressed voter choices.

RECOMMENDATION

Revise the validity criteria in the PLGR to include in counting any ballot with clearly expressed voter choice.

106 National Database and Registration Authority Ordinance, 2000 (VIII OF 2000), Section 19 (2)

107 UN Human Rights Committee General Comment 25, paragraph 22

108 Section 35 (4)ci of PLGR

COUNTING, TABULATION AND PUBLICATION OF RESULTS

In order to uphold the rights guaranteed by the ICCPR, it is essential that ballots are counted in a transparent manner that creates confidence among all election stakeholders, enhances the credibility of the electoral management body and the electoral process in general. Counting and tabulation procedures must ensure that the will of the electorate is respected. Paragraph 20 of General Comment 25 by the Human Rights Committee stipulates that votes should be counted in the presence of candidates or their agents and that there should be independent scrutiny of the voting and counting process. Paragraph 19 of General Comment 25 asserts that genuine elections require credible publication of voting results. PLGA relegates counting procedures to PLGR.

Given the sensitivity and importance of counting as a part of building trust in an electoral process, it is better to secure them in PLGA. Furthermore, the EU EOM 2013 found out that counting procedures lack reconciliation mechanism such as cross checking votes in ballots boxes against ballots issued.

RECOMMENDATION

Amend PLGA to include counting procedures along with a mandatory mechanism for proper reconciliation of ballots.

TRANSPARENCY

The UN Human Rights Committee requires of State Parties that *measures should be taken to organise free, equitable and transparent elections*.¹⁰⁹ The requirement for transparency entails the obligation to publish results at every step of the process. Such publication should be done immediately.¹¹⁰ PLGA/PLGR imposes no legal deadline on the ECP to announce results.

Transparency of counting, tabulation, and aggregation would be achieved by posting a copy of polling station results on-site, as well as tabulated results at every intermediate aggregation centre. Election transparency is guaranteed by publication of constituency-wide

¹⁰⁹ CCPR/C/79/Add.33, Cameroon, 1994. Paragraph 18.

¹¹⁰ UN Human Rights Committee General Comment 34, paragraph 19. To give effect to the right of access to information, States parties should proactively put in the public domain Government information of public interest. States parties should make every effort to ensure easy, prompt, effective and practical access to such information.

results broken down to each polling station so that interested parties can trace global results back to their polling stations. Most modern results management systems technically allow this to take place.

While PLGA and PLGR grant copies of results sheets to candidate agents, they remain silent on publication of vote tallies at polling stations, as well as at tabulation and aggregation. Moreover, PLGA/PLGR require only the announcement of returned candidates, but not of final tallies. Voters and observers are thus precluded from tracing their polling station results to final results, and candidates cannot contest final tallies, but only returned candidates *per se*.

Such lack of transparency undermines confidence in the integrity of the process. It also affects election petitions.

More importantly, PLGA shifts the power to announce higher elected candidates from the independent ECP to Punjab Government, a measure that could be seen to challenge the ECP's constitutional role in managing all aspects of elections.¹¹¹

Moreover, while RoPA requires ECP to publish election results in the Gazette, PLGA again defers to PLGR, without imposing a timeframe.¹¹² It should be noted that PLGA/PLGR do not distinguish between preliminary and final results.

RECOMMENDATIONS

Legally mandate on-site display of polling station and aggregation centre tallies with specific deadline.

Publication of final tallies disaggregated by polling station all within short timelines to be established in consultation with ECP and stated in the Act.

¹¹¹ PLGA section 37. Notification of election, resignation and removal.– (2) The Government shall notify: (b) election, appointment or vacation of office, owing to any cause, of the Mayor, Deputy Mayor, Chairman or Vice Chairman.

¹¹² PLGR Section 38 (4)

ELECTORAL DISPUTE RESOLUTION

The ICCPR guarantees the right to an effective remedy. It does this by requiring State Parties (a) *To ensure that any person whose rights or freedoms as herein recognised are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;* (b) *To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;* (c) *To ensure that the competent authorities shall enforce such remedies when granted.*¹¹³

STANDING

Contrary to ICCPR's granting of this right to *any person*, PLGA limits the right to remedies to candidates.¹¹⁴ Since, in compliance with the LHC's ruling, the candidates can register partisan affiliations, political parties should be granted standing to file election petitions. Rights of voters may also be violated so it merits to give them right to remedy as well.

RoPA protects the right of interested parties to respond to election petitions,¹¹⁵ a right which the UN Human Rights Committee protects. PLGA nevertheless leaves the protection of such fundamental right to the rules issued under it.

RECOMMENDATIONS

Entrench PLGR's sections on election petitions in law.

Grant election petition standing to stakeholder.

THE SCOPE OF AVAILABLE REMEDIES

ICCPR holds that *any rights or freedoms* guaranteed under the Covenant must be protected by effective remedies, both administrative and judicial.¹¹⁶

Yet, PLGA limits electoral petitions to election *results*, lacking jurisdictions for other election-

113 ICCPR article 2(3)

114 PLGA section 39 (2) A candidate may, in the prescribed manner, file an election petition before the Election Tribunal challenging an election under this Act

115 RoPA section 54 versus PLGR section 60 : Parties to the petition

116 ICCPR article 2(3)

related grievances, notably related to boundary delimitation, voter registration, ballot position, symbol attribution, campaign disputes, media conduct, and political finance compliance.

Moreover, the Election Commission Order of 2002, which could potentially apply to local elections, effectively immunises ECP from judicial review, holding that *no Court shall question the legality of any action taken in good faith by or under the authority of the Commission, the Commissioner, a Returning Officer, Presiding Officer or an Assistant Presiding Officer or any decision given by any of them or any other officer or authority appointed under this order or the rules.*¹¹⁷

PLGR also holds that *the Election Commission, its Officer, District Returning Officer, Returning Officer and a person appointed in connection with conduct of an election shall not be impleaded as parties in the election petition.*¹¹⁸

Lifting ECP above the law by shielding it from timely judicial review conflicts with the fundamental principles of rule of law, with Pakistan's Constitution,¹¹⁹ as well as with UN Human Rights Committee requirements for *access to judicial review or other equivalent process so that electors have confidence in the security of the ballot and the counting of the votes.*¹²⁰

ECP's immunity deprives interested parties of legal remedies against ECP maladministration of election results. It also denies the ICCPR right to effective remedies against *violations committed by persons acting in an official capacity.*¹²¹

PLGA does not include administrative remedies at all.

RECOMMENDATIONS

Allow election petitions on grounds of maladministration.

Provide legal remedies for grievances related to other aspects of elections, including boundary delimitation, voter registration, symbol attribution, ballot position, campaign disputes, media conduct, and political finance compliance.

117 The Election Commission Order, 2002 27—35 (Chief Executive's Order No. 1 of 2002) 9C. Bar of Jurisdiction.

118 PLGR section 60(2)

119 Article 199 of the Constitution

120 UN Human Rights Committee, General Comment 25 paragraph 20

121 ICCPR article 2(3)

Clearly stipulate administrative remedies for all phases of elections.

TRIBUNAL INDEPENDENCE AND IMPARTIALITY

PLGA simply states that *the Election Commission shall, by notification, appoint an Election Tribunal for such local area as may be specified in the notification.*¹²²

ICCPR defines criteria for an effective remedy: *In the determination (...) of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.*¹²³ *The UN Human Rights Committee explains further that the requirement of competence, independence and impartiality of a tribunal in the sense of article 14, paragraph 1, is an absolute right that is not subject to any exception.*¹²⁴

The right to a fair trial is protected by the Constitution under the 18th Amendment.¹²⁵ Furthermore, RoPA also explicitly defines qualifications for appointment of judges to the tribunals. However, PLGA does not include such provisions. Moreover, fair trial also require due process and availability of exhaustive remedies. On positive note, PLGA, grants petitioners the right of appeal to the Lahore High Court.¹²⁶

RECOMMENDATION

Define legal criteria for appointments to election tribunals, in order to ensure ICCPR requirements for independence and impartiality are met.

TIMELINESS

Historically, decisions on election petitions have been subject to extensive delays. RoPA has recently placed a time limit of 120 days for deciding election petitions related to General Elections.¹²⁷ PLGA does not define any timelines for the tribunals to decide election petitions. Thus,

¹²² PLGA section 39. Election Tribunal.– (1)

¹²³ ICCPR article 14(1)

¹²⁴ UN Human Rights Committee, General Comment 32, see also Communication No. 263/1987, Gonzalez del Rio v. Peru, para. 5.2.

¹²⁵ Article 10A of the Constitution. Right to fair trial. For the determination of his civil rights and obligations or in any criminal charge against him a person shall be entitled to a fair trial and due process.

¹²⁶ PLGA section 46. Appeal against the orders of Election Tribunal.– (1) Any person aggrieved by a final order of an Election Tribunal may, within thirty days of the communication of such order, prefer an appeal to the Lahore High Court. (2) The Lahore High Court shall decide an appeal preferred under subsection (1) within three months.

¹²⁷ RoPA section 67(1A)

final appeal decisions could be made many months after results announcement. Wrongfully elected officials may hence *illegitimately* serve a considerable part of the term,¹²⁸ contrary to UN Human Rights Committee guidance and principles of fairness and common sense.¹²⁹

RECOMMENDATION

Set legal deadlines for Election Tribunals to rule in first instance and for the High Court to decide final appeals which fit with the election timetable and do not permit ineligible or disqualified candidates to be sworn in.

EVIDENCE

PLGA lacks procedures for recording polling-station-level complaints, and for their attachment to polling station results sheets. This omission hampers vetting of evidence, and entails reliance on oral testimony, which in turn can drag out adjudication, making it costly and thus less accessible.¹³⁰

RECOMMENDATION

To expedite disclosure and trial procedures, prescribe recording of complaints on polling station results forms, so that election tribunals can readily assess their credibility and weight.

AVAILABLE REMEDIES

PLGA allows Election Tribunals to issue three types of declarations:

- 1) voiding an election of returned candidate
- 2) declaring a person other than a returned candidate elected, and
- 3) voiding elections as a whole.

The first remedy responds to finding a candidate disqualified to stand,¹³¹ a question that should be resolved prior to the election but it is left open

¹²⁸ DRI Pakistan Briefing Paper 35 on Electoral Dispute Resolution, January 2013, A 2009 IFES report expressed concern that the Civil Procedure Code's protocol and the culture of litigation practice before the courts create procedural circumstances that will never enable an Election Tribunal to dispose of an election contest within four months.

¹²⁹ UN Human Rights Committee General Comment 25, paragraph 7: Where citizens participate in the conduct of public affairs through freely chosen representatives, it is implicit in article 25 that those representatives do in fact exercise governmental power.

¹³⁰ IFES FINAL REPORT, Pakistan: Post-Election Community-Based Mediation and Adjudication Program IFES recommendation 2009: Strengthen the complaint handling framework by developing a standard complaint process and procedure jointly by the ECP and judiciary in consultation with relevant stakeholders. Assist in the standardisation of intake, handling, processing and resolution of pre-poll and polling day complaints.

¹³¹ PLGA Section 42

even after the election results are announced. In this scenario, PLGA also lacks provision on whether the runner-up should be declared elected, or whether the election tribunal should call a bye-election.

The second remedy vests the Election Tribunal with the power to overturn election results, by selectively invalidating partial results, and thus overturning the order in which candidates ranked according to initial results, without holding a rerun of invalidated polling stations, or even without conducting a recount.

Lastly, none of the three available remedies defines timelines and procedures for recounts and/or reruns.

RECOMMENDATIONS

Delineate tribunal discretion to overturn an election by mandating rerunning of invalidated polling stations.

Define timelines and procedures for recounts and/or reruns.

PARTICIPATION OF WOMEN

Pakistan ratified the United Nations Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) in 1996, rendering it binding and enforceable at national level. The Convention requires that *States Parties shall 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.*¹³²

The United Nations' CEDAW Treaty Body, the body responsible for implementation of the treaty's provisions, clarifies that *the Convention obliges States Parties in constitutions or legislation to take appropriate steps to ensure that women, on the basis of equality with men, enjoy the right to vote in all elections and referendums, and to be elected. These rights must be enjoyed both de jure (in law) and de facto (in practice).*¹³³

The 18th Amendment harmonises the Constitution with some of Pakistan's commitments under the CEDAW.¹³⁴ It now states that *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.*¹³⁵

The Constitution further instructs that *the State shall encourage Local Government institutions composed of elected representatives of the areas concerned and in such institutions special representation will be given to peasants, workers and women.*¹³⁶

SEATS RESERVED FOR WOMEN

Slashing the earlier 33 per cent women quota, PLGA reserves two of 13 UC seats for women (approximately 15 per cent), from the previously

¹³² CEDAW, Article 3

¹³³

<http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm>

¹³⁴ Article 4(1) of CEDAW: Art4 (1). 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, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.

¹³⁵ Article 25 of the Constitution

¹³⁶ Article 32 of the Constitution

reserved four. For the Metropolitan Corporation of Lahore, PLGA caps the number of reserved women seats at 25 of an estimated 200, or 12.5 per cent. For Metropolitan Committees, PLGA caps the number of women seats at five and for District Councils at 15. It should be noted that Special Temporary Measures under CEDAW aim to ensure *minimum*, rather than *maximum* de facto participation of women.

Overall, PLGA thus more than halves reserved seats for women.¹³⁷ Moreover, PLGA indirectly elects higher level reserved women seats, and its third amendment further restricts Electoral College membership to Union Council Chairmen and Municipal Committee members. With all their members elected first-past-the-post in single member constituencies, Electoral Colleges will largely exclude women. Yet, Electoral Colleges elect—and *nominate*—candidates for reserved seats, severing the link between reserved women seats and women voters by inserting overwhelmingly male Electoral Colleges between them. As aforementioned, indirect elections on reserved seats seriously weaken accountability and transparency as a political party rather than electors has discretion in deciding nomination.

In March 2013, prior to the adoption of PLGA, the UN CEDAW Treaty Body had directly addressed the issue. The CEDAW committee affirmed that the government has the responsibility to implement obligations under the covenant. It has further qualified that these commitments also apply to provincial governments which have been empowered for policy making and legislation after 18th amendment: *the Committee stresses that the Convention is binding on all branches of the State apparatus, and it invites the State party to encourage the National Assembly and the Provincial Assemblies, in line with its procedures, where appropriate, to take the necessary steps with regard to the implementation of these concluding observations and the Government's next reporting process under the Convention.*¹³⁸

The CEDAW committee has particularly taken note of the expiration of the local government system *which used to reserve 33 per cent of seats for women at local government level.*¹³⁹ It has recommended that 33% quota should be reserved for women in new local government systems: *the State party, in accordance with article 4 (1) of the Convention and General Recommendation No. 25 (2004): Ensure consistency in the allocation and implementation of quotas aimed at accelerating*

137 Punjab Local Government Ordinance of 2001

138 www2.ohchr.org/english/bodies/cedaw/cedaws54.htm paragraph 8

139 Ibid paragraphs 11 and 12

equality between women and men across the Provinces, in particular the civil service employment quotas, and use other temporary special measures as part of a necessary strategy to achieve women's substantive equality, in fields such as political participation, with a focus on women belonging to minority communities; and ensure that the local government system is restored, that the 33 per cent reserved seats for women are retained and that women from religious minorities are represented in such a system.

Furthermore, PLGA's decimation of reserved women seats *in real and percentage terms* has already been challenged before the Lahore High Court as repugnant to the spirit of Article 25 of the Constitution.¹⁴⁰

RECOMMENDATION

Implement the United Nations CEDAW Treaty Body recommendations, issued in March 2013.

VOTER REGISTRATION OF WOMEN

The charging of fees by NADRA could constitute indirect economic discrimination against women. This has been denounced by the CEDAW Committee.¹⁴¹

However, NADRA's homepage informs that *to facilitate women in acquiring CNICs, NADRA has established 11 women-only centres with female only staff across the country especially in areas with more traditional mind-set. NADRA is also reaching out to NGOs to help facilitate women in obtaining CNICs and achieve 100 per cent registration of womenfolk across the country.*¹⁴²

Nevertheless, Punjab's 2012 electoral roll still lists 27,697,701 men versus 21,561,633 women. With only 77 women per 100 men registered to vote, Punjab's gender gap continues to trail behind those in Sindh and in the Federal Area. PLGA regrettably includes no measure to improve women registration as voters which is also in line with ECP strategic objectives.¹⁴³

140 Writ Petition Pakistan Tehreek-e-Insaf Punjab versus Government of Punjab etc., Lahore High Court, 2013

141 CEDAW/C/TJK/CO/3 (CEDAW, 2007), Tajikistan

142 <http://www.nadra.gov.pk/index.php/media/news-a-updates/374-96pc-adults-registered-in-pakistan-nadra>

143 Strategic Goal 2: Another important objective is to promote access to the registration process for all eligible voters, particularly women and others, and the Commission will explore engaging female enumerators to better serve the female population.

WOMEN'S TURNOUT

The 2013 EU EOM observed that *as in previous elections, there were credible reports of alleged agreements by political parties, candidates, jirgas and/or local leaders trying to prevent women from voting, mainly in certain parts of KPK and also in Punjab. Prompted by media accounts prior to election-day indicating that women would be banned from voting in the village of Mateela (Punjab), the Ministry of Human Rights requested the DRO to take necessary actions to prevent violations of women's right to vote. The intervention proved successful, although, in several other nearby villages female turnout was zero.*¹⁴⁴

These phenomena have led the UN CEDAW Committee to recommend establishing a *procedure for filing complaints in cases of forced disenfranchisement of women and adopt the draft bill submitted by the Electoral Commission of the State party, advocating re-polling where less than 10 per cent of women's votes were polled; Implement awareness-raising activities about the importance of women's participation in decision-making with the aim to eliminate patriarchal attitudes and stereotypes on the roles of women and men in society.*¹⁴⁵ However, the Punjab government does not appear to have paid attention to the proposed provision of the ECP's bill or the recommendation of the CEDAW Committee.

RECOMMENDATIONS

Amend PLGA to stipulate mechanism to counter forced disenfranchisement of women in line with draft bill by ECP.

Further, consult with ECP to adopt effective measures to boost women voter registration and turn-out particularly addressing forced disenfranchisement of women.

144 EUEOM Final Report page 45

145 CEDAW Concluding Observations, Pakistan 2013

PARTICIPATION OF YOUTH, PEASANTS, WORKERS AND NON-MUSLIMS

Pakistan ratified the International Convention against Racial Discrimination in 1966. The Convention holds that minorities enjoy *political rights, in particular the right to participate in elections-to vote and to stand for election-on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service.*¹⁴⁶

PLGA reserves seats for non-Muslims, workers, peasants and youth. However, higher reserved seats are indirectly elected, severing the link between represented demographic group and its representative (see Women, supra).

As aforementioned,¹⁴⁷ interviews with interlocutors in other provinces suggest that the system of indirect elections for reserved seats reduces citizens' power to directly choose their local government, and reducing local councils' accountability to citizens. Reserved seats are seen as a vehicle for promotion of party interests rather than representation of special interest groups. There is party control of the indirectly elected seats and hardly any real participation.

RESERVED SEATS ON UNION COUNCILS

In union councils, PLGA reserves one of 13 seats each for each youth, peasants or workers, and non-Muslims, while the previous laws reserved four seats for peasants and workers, of which two were reserved for women. PLGA does not elaborate how a single reserved UC seat can accommodate both peasants *and* workers as there could be both peasants and workers in rural as well as urban areas. PLGA's last amendment repealed the threshold of 200 registered minority voters for the creation of a reserved seat, since Pakistan's new voter roll no longer segregates minority voters. The amendment, however, vests government with discretion to set the number of reserved seats.¹⁴⁸

Reservation of one seat for youth does not help to mitigate the fact that cut-off age for all other seats is 25 years. Given Pakistan's youth bulge, cut-off

146 ICERD article 5(c)

¹⁴⁷ See page 12 above

148 <http://www.dawn.com/news/1053358/lacuna-in-lg-law-surfaces-ahead-of-elections>

age for candidacy on openly contested seats limits the possibility of youth participation.¹⁴⁹

RESERVED SEATS ON DISTRICT COUNCILS

The final number of reserved seats remains subject to government discretion which leaves underrepresented groups with little protection. On District Councils, non-Muslim seats are now capped at five, replacing the earlier five per cent quota for minorities. While workers no longer qualify for reserved seats in rural areas, peasants see their earlier five per cent quota converted to a maximum of three seats, leaving one seat for youth.

RESERVED SEATS IN URBAN GOVERNMENT

Worker seats resurface at the newly established Metropolitan Corporation of Lahore. The Corporation is anticipated to comprise up to 200 members, of whom five must be workers. Lahore also reserves ten seats for non-Muslims, which could translate into five per cent of seats, while two seats — or one per cent — go to the youth.

Municipal Committees, which replace the earlier Town Councils, now reserve two seats for workers and three for non-Muslims, replacing the earlier five per cent quotas for both. Each Municipal Committee reserves one seat for the youth.

PLGA omits, however, to establish an electoral system, timeline and procedures for indirect elections of reserved seats.

PLGA does not envision any special measures to facilitate the information,¹⁵⁰ identification,¹⁵¹ registration and polling¹⁵² of minorities, as

149 Section 27 (b) PLGA defines youth as a person between 21 and 25 years of age.

150 CERD/C/64/CO/5 (CERD, 2004), Nepal, r) engage in efforts to promote awareness among general public, as well as among members of disadvantaged communities, of importance of their active participation in public and political life r) continue to enforce special measures to guarantee to members of disadvantaged groups right to participate in elections, to vote and stand for election, and to have due representation in government, legislative bodies and judiciary.

151 CCPR/C/ALB/CO/2, Albania, 2013, (e) Ensure that all Roma people have identity cards so as to facilitate their right to vote.

152 CCPR/C/ 92, the Former Yugoslav Republic of Macedonia, 2008, p 18. The Committee notes with concern alleged irregularities during the local elections in 2005, including the inadequate supply of ballot papers to some minority groups, while noting the efforts of the State party to address these problems (art. 25). The State party should take measures to ensure that future elections are conducted in a manner fully guaranteeing the free expression of the will of the electors.

required by Treaty Body guidance, including those who may be illiterate. Furthermore, the UN Human Rights Committee encourages States Parties to translate electoral law also into minority languages.¹⁵³

Lastly, PLGA stops short of prohibiting racist or otherwise discriminatory election campaigning and related incitement of political violence.¹⁵⁴

RECOMMENDATION

Provide for necessary measures to inform minorities of their electoral rights.

153 UN Human Rights Committee, General Comment 25, paragraph 12: Positive measures should be taken to overcome specific difficulties, such as illiteracy, language barriers, poverty, or impediments to freedom of movement which prevent persons entitled to vote from exercising their rights effectively. Information and materials about voting should be available in minority languages. Specific methods, such as photographs and symbols, should be adopted to ensure that illiterate voters have adequate information on which to base their choice. States parties should indicate in their reports the manner in which the difficulties highlighted in this paragraph are dealt with.

154 CERD/C/ITA/CO/16-18, Italy: p17. The committee is extremely concerned by the prevalence of racist discourse, stigmatisation and stereotypes directed against Roma, Sinti, Camminanti and non-citizens. The committee is concerned that in the few cases where politicians have been prosecuted for discriminatory statements, stays of execution have allowed those prosecuted to continue their political activities and to stand for election. The committee notes that the fundamental right to freedom of expression does not protect the dissemination of ideas of racial superiority or incitement to racial hatred. The committee is also concerned that racial discrimination is increasing in the media and on the internet, particularly on the social networks (arts. 2 and 4). See also CERD/C/NLD/CO/17-18 (CERD, 2010), Netherlands; CERD/C/AUT/CO/18-20 (CERD, 2012), Austria

CONCLUSION

The 18th amendment to the Constitution of Pakistan provides unprecedented autonomy to the provinces and makes significant steps towards restoration of parliamentary democracy. Credible elections at local level will contribute to consolidation of democracy in Pakistan. However, the credibility of the local elections is hampered by unclear and insufficient provisions in PLGA for key electoral aspects. The Punjab government has the opportunity to strengthen the framework for local government elections, in part by strengthening the PLGA. The reform process should take into account developments at national level (e.g. RoPA) and Pakistan's commitment to international treaties, such as ICCPR and CEDAW.

The specific recommendations in this LEFA will enable the Punjab government and the provincial assembly to reform the PLGA thereby further strengthening accountability and transparency measures and other electoral aspects required for holding credible elections. This will also help increase trust in democratic governance at the local level.

LIST OF ABBREVIATIONS

ARO(s)	Assistant Returning Officer(s)
CAC/UNCAC	Convention against Corruption
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CNIC	Computerized National Identity Card
CRPD	Convention on Rights of Persons with Disabilities
DRO(s)	District Returning Officer(s)
DRI	Democracy Reporting International
ECP	Election Commission of Pakistan
HRC	Human Rights Committee
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
IP3	Improving Parliamentary Performance in Pakistan
LEFA	Legal Electoral Framework Assessment
LHC	Lahore High Court
PEMRA	Pakistan Electronic Media Regulatory Authority
NADRA	National Database and Registration Authority
PLGA	Punjab Local Government Act 2013
PLGR	Punjab Local Government (Conduct of Elections) Rules
RO(s)	Returning Officer(s)
ROPA	Representation of the Peoples Act 1974
UC/UCs	Union Council / Union Councils