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Electoral Delimitation in Pakistan: “Formula for Inequality”

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1. Summary

Boundary delimitation, “re-districting” or “delimitation of electoral districts,” is one of the key features and challenges of almost every electoral system. It has profound consequences for the electoral and political systems of the country; shaping constituencies through a delimitation process can affect the fairness of elections and hence political representation.

States establish constituencies in various manners. However, there are fundamental principles which are generally accepted and there are relevant obligations under international treaties, as well as political commitments at the international level and authoritative recommendations of international expert bodies. Because Pakistan has acceded to and ratified a number of relevant treaties, it is obligated to implement their provisions, including principles of equality of the vote, effective remedy, restrictions for non-discrimination, transparency and public participation, permitted derogations, and the periodic nature of the process.

This briefing paper evaluates Pakistan’s process for delimitation of federal constituencies and offers specific recommendations for legislative amendments and administrative actions for yet-to-be-developed regulations by the Election Commission of Pakistan (ECP).

Key Issues with Delimitation in Pakistan

The centrepiece of Pakistan’s legal framework on delimitation, the Delimitation of Constituencies Act of 1974 (DCA 1974), does not provide sufficient guidance on the implementation of key principles for delimitation. In addition, the delimitation process is not formalised in administrative regulations, and the guidelines and policies for its conduct are not published.

The key principle of delimitation, equal suffrage, is only vaguely referenced in the law and it is conditional, resulting in large variations between constituencies.

Pakistan’s young and dynamic population and significant migrations between the provinces lead to shifts in the distribution of voters between elections. As result, the size of constituencies have become unequal and the principle of equal suffrage violated. It is contrary to Pakistan’s obligations under International Covenant on Civil and Political Rights (ICCPR). The legal framework for delimitation connects delimitation of electoral constituencies with the last preceding census. Because the last census was conducted in 1998, and the last delimitation was conducted in 2002, this presents a challenge to the ECP to complement census data with other sources, a task the ECP has so

far been unwilling to carry out. The situation is further complicated because the current legislation does not define delimitation cycles, which means that it is unclear how often the ECP should review boundaries for delimitation.

Weaknesses in the delimitation legislation and processes are even starker in the setup for local elections. Delimitation in the provinces of Punjab and Sindh was so flawed that the High Courts of Lahore and Sindh interrupted the electoral process and ordered new delimitation processes. Even in Balochistan, where the first phase of local elections was conducted, the largest constituency for the Union Council 2 (Shadenzai)¹ had over 100 times more voters than the smallest, in an apparent effort to decrease the power of a specific religious minority.

Key Recommendations for Delimitation Reform

To protect the equality of the vote, it is recommended to amend the law to restrict differences of population across constituencies. The amendment should also regulate the process whereby the Election Commission may deviate from the general principle. Consideration should be given to allow a maximum of 15% deviation in population of the various constituencies.

To ensure accurate figures, the amended legislation should give explicit mandate to the ECP to delimit using voter registration data in case census data are older than 12 years.²

To ensure the regularity of the process, the amended legislation should require the ECP to initiate a review of the boundaries within two years after every general election of the National Assembly and Provincial Assemblies.

To ensure further development of regulatory process, the amended legislation should explicitly require the ECP to develop formal administrative regulations for the schedule of the delimitation process, the criteria and the parameters for delimitation, the manner of publication of delimitation data, and the procedures for appeals on the proposed boundaries.

To protect the contiguity³ of constituencies in the Federally Administered Tribal Areas (FATA), it is recommended to remove special provisions, which allow non-contiguous constituencies for FATA, from the legislation.

Legislative amendments will render the reform of delimitation incomplete if the amendments are not complemented with administrative regulations. The ECP should be required by legislation to issue a schedule for the delimitation process. The schedule should list the main events and link them to specific dates. It is recommended that the ECP include dates for the schedule of public hearings, publication of preliminary data, periods for complaints and appeals processes, and publication of the final data.

¹ A Union Council is a local government unit in the Balochistan, Sindh, and Punjab provinces of Pakistan

² As already stated, the Constitution of Pakistan and primary legislation, link the census as a precondition to delimitation; so addressing unequal constituencies is a big challenge in Pakistan. The Government is not bound by a timeline for conducting fresh a Census; the last census was carried out in 1998. Hence there is a need to allow some alternative at least on temporary basis to ensure protection of equality of suffrage. This recommendation is also in line with the EU Election Observation Mission 2013 which proposed the use of alternate data like voters' list to address unequal constituencies.

³ Uninterrupted, in geographical terms

2. Key Considerations in Electoral Delimitation

Boundary delimitation in the electoral context refers to the establishment of electoral constituencies, sometimes called electoral units or electoral districts.⁴ Boundary delimitation is also called “re-districting” or the “delimitation of electoral districts.” It is one of the key features of almost every electoral system and only countries which elect representatives from a single constituency do not need to conduct delimitation. Delimitation has profound consequences for the electoral and political systems of the country.

2.1. Pillar of Electoral System

The structure of electoral constituencies is one of the three main building blocks of the electoral system⁵ of a country. Pakistan employs the First-Past-the-Post system, where voters elect a single representative from a single-member constituency. This means that delimitation authorities must establish a separate electoral constituency for each contested seat in the national and provincial assemblies; in many cases this also applies to the local councils.⁶ But this situation is somewhat more complex in some provincial laws for local elections,⁷ where attempts are being made to mirror constituencies with the administrative divisions of the local governments.⁸

ALL PAKISTAN'S CONSTITUENCIES

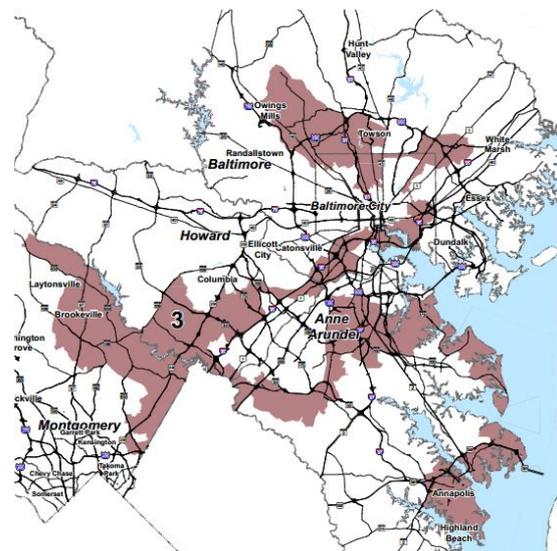
National Assembly: 272

Provincial Assemblies: 577

2.2. Fairness of Elections

Shaping the constituencies through the delimitation process can affect the fairness of the electoral system in two principle ways. First, some constituencies may have less voters or population than others, undermining the idea of the equality of the vote. Second, the shape of a constituency will determine which voter is voting for which seat, and selection of areas with a specific voting pattern will directly influence the result of the election. Such manipulation of the shape of a constituency is called gerrymandering.⁹

WHEN POLITICIANS CHOSE THEIR VOTERS



3rd Congressional District of Maryland, US

Source: Maryland Department of Planning 2011

⁴ Electoral constituencies are a distinct territorial subdivision for holding a separate election for one or more seats in a legislative body

⁵ 1) size of constituency, 2) formula for allocation of seats 3) ballot structure

⁶ Local councils in Pakistan include city, district, union, and village councils

⁷ The main focus of this paper is delimitation process for the National Assembly or Majlis-e-Shoora and Provincial Assemblies of Balochistan, Khyber-Pakhtunkhwa, Punjab and Sindh

⁸ For example, using village councils area as constituency for district council

⁹ The term originates from the delimitation process under Massachusetts Governor Gerry which resulted in some constituencies resembling a shape of a salamander (lizard)

2.3. Administrative vs Electoral delimitation

Some countries match electoral constituencies with the administrative divisions of the country. The administrative borders are in these cases paramount to electoral borders and they do not take into consideration electoral criteria – administrative borders correspond to administrative functions such as taxation, regulation, service delivery, and other functions of governance. One way to reconcile governance and electoral considerations, as some countries do, is to use administrative boundaries within which they have multi-member constituencies.¹⁰ To achieve equality in votes, adjustments are made in the number of seats instead of modifying the electoral constituency.

Considerations on how to reconcile administrative with electoral borders are particularly relevant in some Pakistani provinces, where provincial laws envision the Union Council as a single-member constituency of a higher level administrative unit, the District Council. This type of delimitation is bound to create inequality of the vote in elections for the District Councils, as the population of Union Councils varies significantly.

On the other hand, considerations about equality may be irrelevant when comparing constituencies of different elected councils. For example, it is considered acceptable that the number of voters for electing representatives in different cities varies. So while in one city one constituency includes 10,000 voters, in the other city a single constituency could include 15,000 voters. This would not be acceptable if these two constituencies are electing representatives for the same city council.

2.4. Principles of Delimitation Process

Delimitation of constituencies is not a one-off event. It is a long-term process, which needs continuous attention and resources. Whether the country is delimiting constituencies for the first time, or is adjusting the existing borders to accommodate changes in population or in the electoral system, delimitation requires a long-term engagement by delimitation authorities, but also by other electoral stakeholders.

Countries establish constituencies under different models and under delimitation authorities of different character. Some countries appoint independent, non-partisan commissions, which in turn may engage officers from various governmental agencies, such as statistics and census offices.¹¹ Other countries opt for multi-party commissions, which include representatives from major parties.¹² In some countries this task is delegated to the election management bodies,¹³ and in some cases even legislators have a role in delimitation.¹⁴ And while the delimitation process varies significantly from country to country, as it is closely linked to the specific electoral system and governance model, there are a few fundamental principles, which are generally accepted. These include relevant obligations under international treaties, as well as political commitments at the international level and authoritative recommendations of international expert bodies.

¹⁰ Obviously there are many other considerations behind the choice of electoral systems.

¹¹ Australia, Canada, Palestine, Germany

¹² New Zealand, Albania, Fiji

¹³ Pakistan, Mexico, Poland

¹⁴ Belgium, Bulgaria, Croatia, Finland, Sweden, United States

3. International Obligations and Commitments in Delimitation

Standards for delimitation of constituencies can be found in several sources. The key principles, such as equality of the vote, are part of the international conventions which Pakistan has acceded and ratified. Hence, Pakistan is under obligation to implement these treaties.¹⁵

While the key principles for delimitation are formalised in treaties, these principles are further developed and elaborated by various multilateral instruments, such as political commitments or international expert commissions. They provide useful guidance on how to implement the basic principles of delimitation.

PAKISTAN'S INTERNATIONAL OBLIGATIONS

Pakistan acceded and ratified a number of universal instruments and it is under obligation to implement them. The most relevant to delimitation processes are the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), and the Convention Against Corruption (CAC).

Equality of the vote

A fundamental principle in the delimitation process is enshrined in the Universal Declaration of Human Rights. Article 21(3) explicitly requires that elections be conducted by equal suffrage.¹⁶ This is reaffirmed in the International Covenant on Civil and Political Rights.¹⁷ Both UDHR & ICCPR employ the term *equal suffrage* for equality of the vote, which is defined by the UN Human Rights Committee (UNHRC) as “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.”¹⁸

Effective remedy

Access to justice for those who believe their rights have been violated is another key human right guaranteed of the ICCPR.¹⁹ In the context of delimitation, this means the opportunity to challenge how the constituencies are delimited and access to the formal appeals process in cases where delimitation violates key principles, such as equality of vote.

Discrimination

The International Convention on the Elimination of All Forms of Racial Discrimination²⁰ prohibits discriminatory laws and policies. However, the *Convention* goes beyond the prohibition and allows for special measures such as affirmative action for ethnic minorities who suffer discrimination.²¹

Regarding delimitation, discrimination is interpreted as a prohibition to create constituencies that distort the distribution of voters and discriminate against any group of voters.²² The UNHRC prohibits discrimination on the basis of “race, colour, sex, language, religion, political or other opinion,

¹⁵ For details see DRI paper “Pakistan's new obligations” <http://goo.gl/JdOqe4>

¹⁶ UDHR 21(3)

¹⁷ ICCPR, article 25(b)

¹⁸ UNHRC General Comment 25 (21)

¹⁹ ICCPR, article 2 (3)

²⁰ The ICERD, article 5(c)

²¹ The ICERD, article 1.4

²² UNHRC General Comment 25 (21)

national or social origin, property, birth or other status.”²³ Establishment of constituencies should not be designed to purposely weaken minority representation by increasing the size of constituencies or by distributing them into several constituencies.²⁴

Transparency and Public Participation

The basic principle of democratic governance is confirmed by the United Nations Convention against Corruption, article 5(1).²⁵ The delimitation of constituencies should be done in an inclusive and transparent process. This means that the key aspects of delimitation must be regulated by the law. The law should be drafted with the input of all electoral stakeholders and it should clearly determine the roles of various authorities in the process.²⁶

Derogations

The authoritative interpretations of conventions recognise that challenges and deviations are possible. However, derogations are permitted exclusively on objective and reasonable criteria and not ad-hoc or arbitrarily by officials.²⁷

Establishing the basis for delimitation

Equal suffrage can be implemented through one or a combination of several criteria, which need to be predetermined. The criteria may include the number of resident population or citizens, but can also be based on the number of registered or actual voters. On the other hand, the boundary lines of constituencies may be determined on the basis of geographical criteria.²⁸

Variations in Constituency Magnitude

It is impossible to avoid certain variations in the voting power of each constituency. However, the guiding principles propose that the variations in the size of the constituencies should not exceed 15 percent, except only in exceptional circumstances.²⁹

Delimitation Cycle

Delimitation should be conducted in regular periods to ensure equal suffrage. It should be conducted in advance of elections, but no later than one year before elections.³⁰

Independence of the delimitation body

The institution in charge of delimitation should be independent from political influence and should possess the technical capacity for delimitation.^{31 32}

²³ UNHRC General Comment 18 (1)

²⁴ NDI: Promoting Legal Frameworks for Democratic Elections; OSCE (ODIHR): Guidelines to Assist National Minority Participation in the Electoral Process; OSCE (ODIHR): Existing Commitments for Democratic Elections in OSCE Participating States; UN (Center for Human Rights): Human Rights and Elections; CoE (Venice Commission): Code of Good Practice in Electoral Matters

²⁵ The CAC, article 5(1)

²⁶ OSCE Existing Commitments for Democratic Elections in OSCE Participating States; IDEA International Electoral Standards: Guidelines for Reviewing the Legal Framework of Elections; CoE (Venice Commission): Code of Good Practice in Electoral Matters, sec. I.2.2.vii

²⁷ UNHRC General Comment 25 (4)

²⁸ CoE (Venice Commission): Code of Good Practice in Electoral Matters

²⁹ CoE (Venice Commission): Code of Good Practice in Electoral Matters

³⁰ OSCE (ODIHR): Existing Commitments for Democratic Elections in OSCE Participating States; CoE (Venice Commission): Code of Good Practice in Electoral Matters

³¹ EISA: Principles for Election Management

³² SADC PF: Norms and Standards for Elections in the SADC Region

4. Delimitation issues in Pakistan

4.1. Overview of the Legal Framework

The delimitation of constituencies in Pakistan is regulated primarily by the Delimitation of Constituencies Act of 1974 (DCA 1974). However, the complete regulatory framework also includes provisions from the Constitution of Pakistan, amendments to the Delimitation of Constituencies Act, decisions of the Elections Commission of Pakistan, and statutory interpretations of the higher courts and the Supreme Court (SC).

Constitution

The Constitution of Pakistan prescribes several fundamental principles that guide the delimitation of constituencies.³³ It establishes that each member of the National Assembly be elected in a single member constituency³⁴ and it allocates a specific number of constituencies to each federal unit.³⁵ It also establishes the population criteria according to “the last preceding census officially published” for allocation of seats³⁶ to each federal unit. This is somewhat counter-productive, as it effectively requires constitutional amendments after each census to adjust the number of seats. However, it does not link the population census with the review of the boundaries between constituencies.

Legislative Acts

The centrepiece of Pakistan’s legal framework on delimitation of constituencies is the Delimitation of Constituencies Act of 1974 (DCA 1974), which was amended several times through presidential ordinances and legislative amendments.³⁷

The DCA 1974 assigns the ECP the authority to conduct and regulate delimitation procedures, but also gives it sweeping powers to demand assistance from “any person or authority”³⁸ and “all executive authorities of the Federal Government and each Provincial Government.” The latest amendment by presidential ordinance³⁹ extended the ECP’s authority to delimit constituencies for local government elections.

The Act does not provide sufficient guidance on the implementation of key principles for delimitation. Equal suffrage is only vaguely referenced and conditional: “as far as practicable, be delimited having regard to the distribution of population in geographically compact areas” and “as far as may be the constituencies for election to the same Assembly shall be equal among themselves in population.”⁴⁰ In the case of the Federally Administered Tribal Areas (FATA), the Act even allows for exception in the principle of the geographical contiguity by allowing two or more separate areas to be grouped into one constituency.⁴¹

³³ Article 51, as amended by the article 16 of the Constitution (Eighteenth Amendment) Act, 2010

³⁴ Exceptions are the members who are appointed by political parties to the seats reserved for women and non-Muslims

³⁵ Provinces, Federally Administered Tribal Area and Federal Capital.

³⁶ Article 51(5)

³⁷ Ordinance No. L of 1984, Act No. III of 1989, Delimitation of Constituencies (Amendment) Act 2012, published on 08 May 2012

³⁸ DCA, article 6

³⁹ Ordinance No VII of 2014, 14 October 2014

⁴⁰ DCA, article 9

⁴¹ DCA, article 9(1)

Administrative Acts

Despite explicit authority and the implicit responsibility of the ECP to develop procedures for delimitation,⁴² the ECP has not formalised the process with administrative regulations, nor has it published its guidelines and policies. The list of constituencies is established with the order from 2002. The ECP also publishes maps of the constituencies with basic statistics on voters.

Judicial Decisions

In the past few years, the Supreme Court addressed the delimitation of constituencies for federal and provincial elections in several cases.⁴³ Most notably, the Supreme Court judgment from 2011⁴⁴ explicitly challenged the link between the census and delimitation, which was confirmed by the SC judgment from 2012.⁴⁵ The Supreme Court ruled that the conduct of the census is a requirement for the allocation of seats, but not for the review and drawing of boundaries between constituencies. The SC effectively ordered the ECP to review the borders of constituencies in Karachi and, after considerable pressure from political parties and the Supreme Court, the ECP accepted responsibility for delimitation and initiated a review of Karachi's constituencies.⁴⁶ However, the ECP in practice did not change the borders of the constituencies. Instead, it conducted what they called a "re-description" of constituencies. This exercise simply renamed and consolidated areas within existing constituencies.

4.2. Overview of the Key Issues

In evaluating the regulatory framework and process for delimitation in Pakistan, this briefing paper takes into consideration internationally recognised standards for delimitation in democratic elections. Most of the key issues are also raised by election observers,⁴⁷ international election experts,⁴⁸ the Senate Special Committee on Election Issues, the Election Commission of Pakistan, and National Database and Registration Authority (NADRA).

Inequality of the Vote

The law does not specify a limitation on the amount of variation in the distribution of population between constituencies. "As far as practicable" and "as far as may" grants discretionary powers to the ECP. This results in large variations in the distribution of population between constituencies of the National Assembly.

Pakistan is obligated under ICCPR to ensure equal suffrage, and many election observation missions were critical about the large discrepancies in the size of constituencies. For example, the European Union Election Observation Mission to Pakistan (EUEOM)⁴⁹ cited several examples:

- In Sindh NA 203 there are 228,663 voters, while in NA 253 more than double at 519,854
- In Balochistan NA 267 there are 147,595 voters, while in NA 266 there are 409,664
- In Punjab NA 115 there are 247,582 voters while in NA 106 there are 413,565

⁴² Delimitation of Constituencies Act, article 4(1): "....the Commission shall regulate its own procedure"

⁴³ Since the subject of this paper is not local elections conducted under the provincial laws, actions of the high courts regarding delimitation of constituencies for local elections are omitted

⁴⁴ Watan Party v. Federation of Pakistan (PLD 2011 SC 997) paragraph 131

⁴⁵ CONST. PETITIONS NO.31/2011, 45/2007, 111 & 123/2012

⁴⁶ 21 March 2013

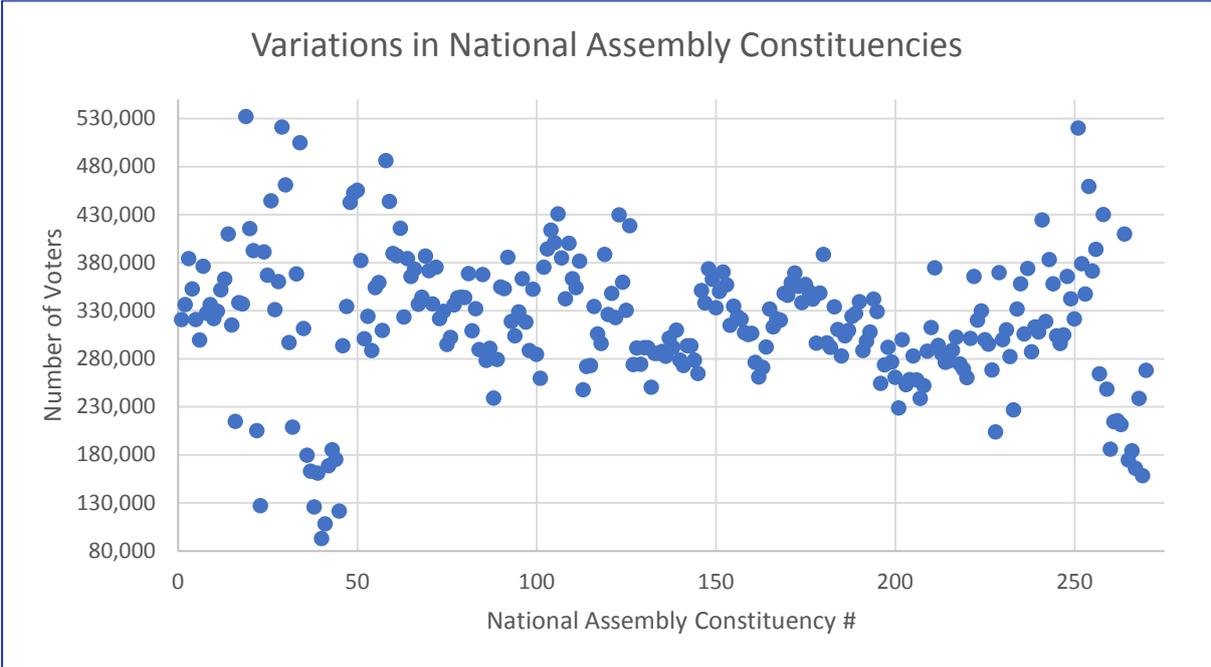
⁴⁷ European Union Election Observation Mission to 2013 General Elections (EU EOM), National Democratic Institute (NDI) and Asian Network for Free Elections (ANFREL) Free and Fair Elections Network (FAFEN) and Pakistani Institute of Legislative Developments and Transparency (PILDAT).

⁴⁸ International Foundation for Electoral Systems (IFES), Democracy Reporting International (DRI)

⁴⁹ EUEOM report, page 17

The National Democratic Institute (NDI) and the Asian Network for Free Elections (ANFREL) were also critical about inequality of the vote. An NDI-ANFREL mission report illustrates an example where the smallest constituency had only 92,719 (NA-41, Tribal Areas-VI) and the largest had 531,685 registered voters (NA-19, Haripur),⁵⁰ which is over 500% difference.

A report by the Pakistani organisation, Free and Fair Elections Network (FAFEN), provides perhaps the most comprehensive overview of the inequality of the vote caused by variations in population. FAFEN focuses on the constituencies for the National Assembly and highlights enormous changes in the number of registered voters (both the increase and the decrease) since the 2008 elections.⁵¹ FAFEN argues that these substantial changes since the last elections suggest the need to conduct a new delimitation of constituencies.



Election results published by the ECP included the number of registered voters. These data are processed into a chart (see one chart above and more in an Annex of this report). The charts reconfirm the inequalities present across various electoral constituencies both at national and provincial levels.

Outdated Population Data

Pakistan has a young and dynamic population and significant migration flows between the provinces. This results in significant shifts in the distribution of voters between elections. While the census data are the best presentation of the distribution of population, the last census was conducted in Pakistan in 1998 and the last delimitation was conducted in 2002. Since 2010, the ECP has been under pressure to review the delimitation of boundaries. The situation was especially tense in Karachi, where delimitation issues were fuelling ethnic strife. The ECP continuously declined to review delimitation, citing the outdated census. The ECP’s position, however, neglects the fact that census

⁵⁰ NDI-ANFREL EOM report, page 24

⁵¹ FAFEN Election Observation Report: Key Findings and Recommendations, page 11

data are only one of the principles of delimitation as defined by the Delimitation of Constituencies Act.⁵²

Unclear Delimitation Cycle

Because of the mentioned shifts in population, delimitation in Pakistan should be reviewed regularly to ensure equality of the vote. Current legislation does not define delimitation cycles and hence allows the ECP to arbitrarily determine whether it should initiate a review process. The ECP has the power to review and change delimitation at any time “of its own motion.”⁵³ The legislation also does not prevent the ECP from reviewing delimitation just before the general elections.⁵⁴ This proved particularly problematic in the case of Karachi, where the late review of constituencies resulted in leading parties objecting to the neutrality and delay of the process.⁵⁵

Lack of Regulations and Procedures

Beyond the very basic provisions in the Delimitation of Constituencies Act, the process of delimitation is largely unregulated. The ECP has not issued formalised regulations which would guide the process and facilitate transparency.

4.3. Challenges in Delimitation for Local Elections

The focus of this paper is elections for the National Assembly and the Provincial Assemblies. However, the weaknesses in delimitation legislation and processes are even starker in the setup for local elections.

The 18th Amendment granted provincial governments the authority to establish constituencies. Soon after the electoral process began, it became apparent that the provinces had invested limited resources in the delimitation process, which made it a key obstacle to holding credible elections. An unclear legal hierarchy allowed the provinces and the ECP to continue to pass on the responsibility of delimitation to each other. Delimitation processes in the provinces of Punjab and Sindh were so obviously flawed that the High Courts of Lahore and Sindh interrupted the electoral process and ordered new delimitation processes. Finally, the responsibility for delimitation was delegated to the Federal Election Commission via Presidential Ordinance.⁵⁶

The only province which finalised delimitation is Balochistan. According to a report by Democracy Reporting International (DRI),⁵⁷ delimitation was problematic in law and practice.⁵⁸ The law did not provide sufficient guarantees for the credible process of delimitation, which resulted in substantial variations in constituencies. DRI’s report revealed cases where the largest constituency for the Union Council had over 100 times more voters than the smallest. In some cases, these anomalies seemed to be targeted efforts to decrease the power of the vote of a specific religious community.⁵⁹

⁵² And confirmed by the Supreme Court, see paragraph 4.1

⁵³ DCA article 10 A

⁵⁴ On this see CoE (Venice Commission): Code of Good Practice in Electoral Matters

⁵⁵ NDI-ANFREL report

⁵⁶ Ordinances are in effect for only 120 days, after which the Parliament has option to pass them as an amendment or extend them for another 120 days

⁵⁷ DRI Balochistan Local Government Elections Assessment, January 2014

⁵⁸ *Ibid.*, page 15

⁵⁹ *Ibid.*, page 37

5. Recommendations

Reform of the delimitation process for federal elections in Pakistan requires legislative intervention. This legislative intervention is relatively simple and would only need amendments to a few articles in the Delimitation of Constituencies Act. However, such reform would significantly strengthen the electoral process.

One of the most significant weaknesses in the regulatory framework for delimitation is the lack of formalised procedures by the ECP. The legislative amendment should require that the ECP publishes official regulations. ECP's regulations would not just provide the necessary transparency in the process, but they would also mitigate grievances by allowing a meaningful and regulated complaints process which would limit frivolous challenges and legal proceedings in the high courts.

Hence, the recommendations presented in this section focus both on amendments to the existing legislation and on yet-to-be-developed ECP regulations.

5.1. Legislative Intervention

Equal Constituencies

To protect the equality of the vote, it is recommended to amend the Delimitation of Constituencies Act, 1974 Section 9 to so that the difference of population in two or more constituencies within a Province, the Federally Administered Tribal Areas, or the Federal Capital, shall not exceed 10%.

The Election Commission may, in case of any hardship and for reasons to be recorded in writing and published on its website, delimit specific constituencies in a way that exceeds a 10% variation between constituencies.

Census and Voter Registration Data

The legislation allows use of any of the population figures for review of delimitation. However, these provisions should be strengthened by giving an explicit mandate to the ECP to delimit, using voter registration data. It is recommended that the delimitation be conducted with voters' registration data if the census data are older than 12 years.

Amendment to the Delimitation of Constituencies Act, 1974, Section 7 could mandate that if the preceding census has been published more than twelve years ago, the Election Commission shall determine the parity of population between constituencies under this section on the basis of population calculated on the basis of voter enrolment data.⁶⁰

Delimitation Cycle

To ensure equality of the vote, delimitation in Pakistan should be reviewed regularly. It is recommended to amend the Delimitation of Constituencies Act, 1974, Section 8 to instruct the ECP to initiate a review of the boundaries of constituencies within two years after every general election of the National Assembly and Provincial Assemblies.

Regulations and Procedures

Current legislation allows the ECP to develop administrative regulations (sometimes called secondary legislation, bylaws, or procedures) for any aspect of the electoral process. This means that legislation

⁶⁰ As already stated, the Constitution of Pakistan and primary legislation, link the census as a precondition to delimitation; so addressing unequal constituencies is a big challenge in Pakistan. The Government is not bound by a timeline for conducting fresh a Census; the last census was carried out in 1998. Hence there is a need to allow some alternative at least on temporary basis to ensure protection of equality of suffrage. This recommendation is also in line with the EU Election Observation Mission 2013 which proposed the use of alternate data like voters' list to address unequal constituencies.

treats development of the regulations as a right of the ECP and not a duty, which results in a lack of formal regulations for virtually every aspect of elections. For the key electoral activities, such as the delimitation of constituencies, the ECP should be explicitly required to develop administrative regulations. It is recommended that this requirement include list of areas which the ECP should regulate:

- Schedule
- Criteria and Parameters
- Publication
- Appeals Procedures

These are further elaborated in the section below on administrative actions and regulations.

Contiguity

Section 9 of the Delimitation Constituencies Act, 1974 allows that constituencies in the Federally Administered Tribal Areas (FATA) are excluded from the key principles defined in the legislation, such as the need for contiguity. It is recommended to remove this special condition and delete section 9(2) from the Act.

Appeals

Validity of the delimitation of any constituency and of any proceedings conducted by the ECP cannot be challenged in court. Since the law allows the ECP to review the delimitation “as it thinks fit,” it essentially gives unchecked power to the ECP. In practice, this means that the ECP can ignore complaints and appeals until they result in tensions and conflicts. While in the case of disputes over election results, the ECP can pass the problem on to the election tribunals, the authority to resolve delimitation disputes is exclusively held by the ECP. Establishing the appeals process should be explicitly required by law and the ECP should develop an appeals procedures.

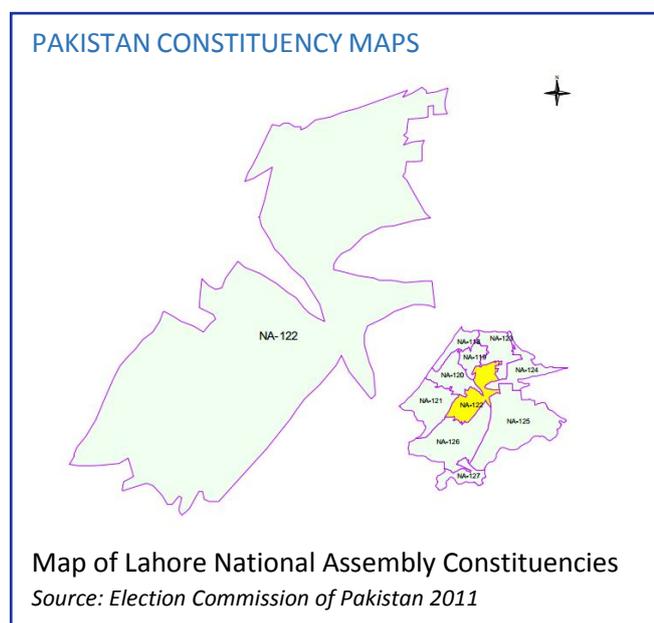
5.2. Administrative Actions and Regulations

Schedule

The ECP is required to publish a schedule of electoral events after the President calls for general elections. In the same manner, the ECP should be required by legislation to issue a schedule for a delimitation process. The schedule should list the main events and link them to specific dates. It is recommended that the ECP includes dates for a schedule of public hearings, publication of preliminary data, periods for complaints and appeals processes, and publication of the final data.

Criteria and Parameters

The existing legislation lays down the key parameters of delimitation: geography, population, administrative units, and facilities of communication and public convenience. In practice, the ECP must decide how to interpret these parameters and to decide on criteria for ranking the priority of the parameters. This is especially important in cases of conflicting parameters. It is recommended that the ECP develops criteria for compliance with the delimitation parameters and that it



elaborates what the key parameters mean in practice.⁶¹

Delimitation Data

The ECP is currently required by legislation to publish the list of areas included in a constituency. It is left to the ECP to decide the format of the list. In practice, the ECP publishes a map, which lacks the details of the geographical references needed to determine the exact borders of constituencies. It is recommended that the ECP publishes data which include detailed geographical coordinates of the boundaries.

Public Input

Under law, public input in the delimitation process is an option given to the ECP rather than a strict requirement. While the amendment to the law should correct that, the ECP should develop procedures under which the public will be allowed to provide input. It is recommended that the ECP's procedures for public input include a timeline for the submission of written proposals (which is linked to the schedule of delimitation), description of the proceedings at the public hearing (including time limits on presentations), and the requirement for burden of proof.⁶²

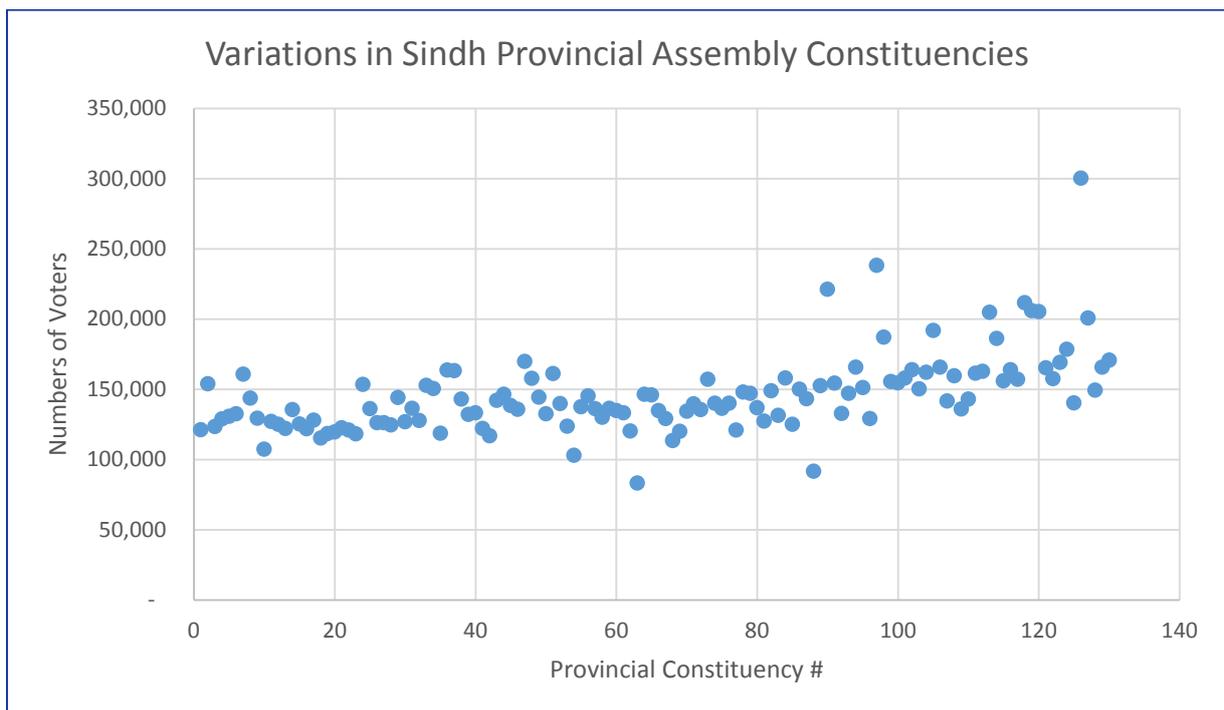
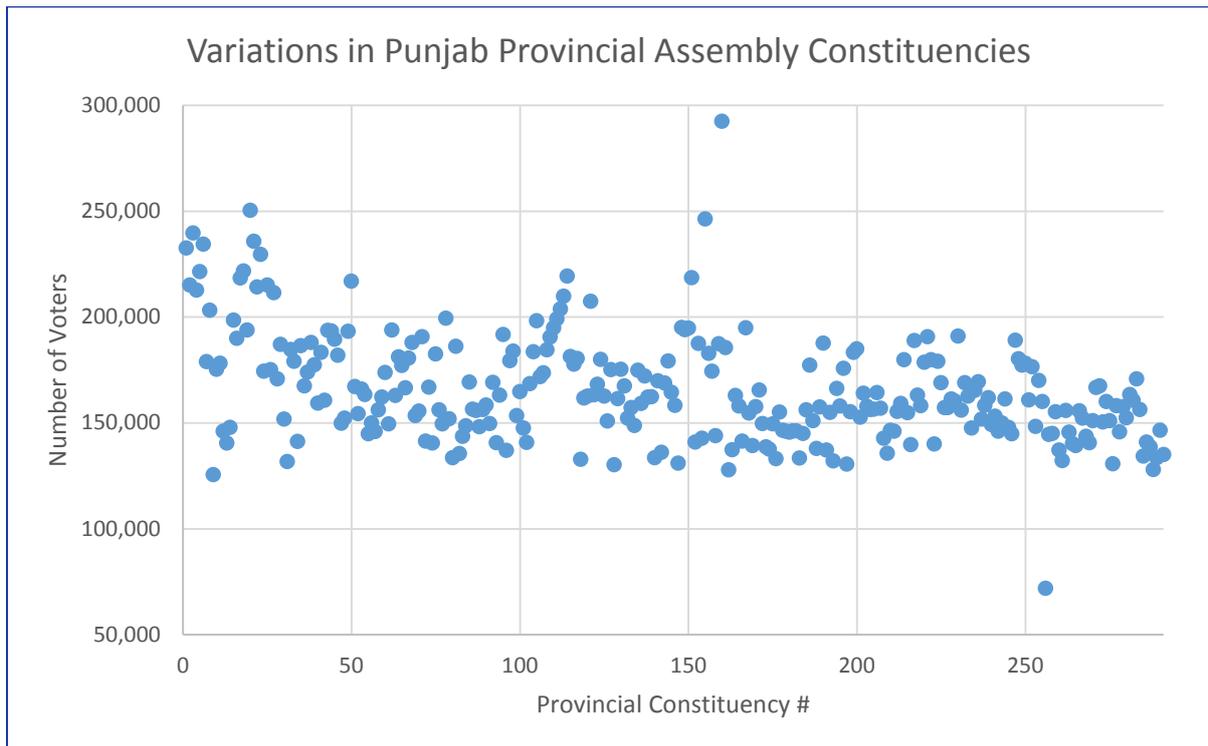
Appeals

It is recommended that the ECP procedures for appeals define the appeals body, the timelines, the criteria for the basis of an appeal, and the burden of proof.

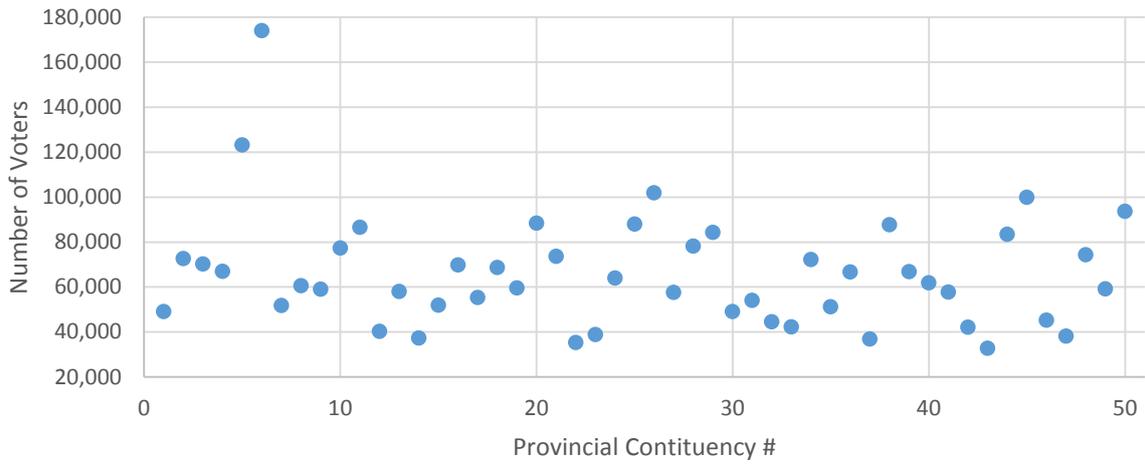
⁶¹ For example, defining administrative unit as district, village council or union council

⁶² For example, if the proposal claims that the number of voters in the constituency is lower than the norm, this should be supported with the data from relevant source

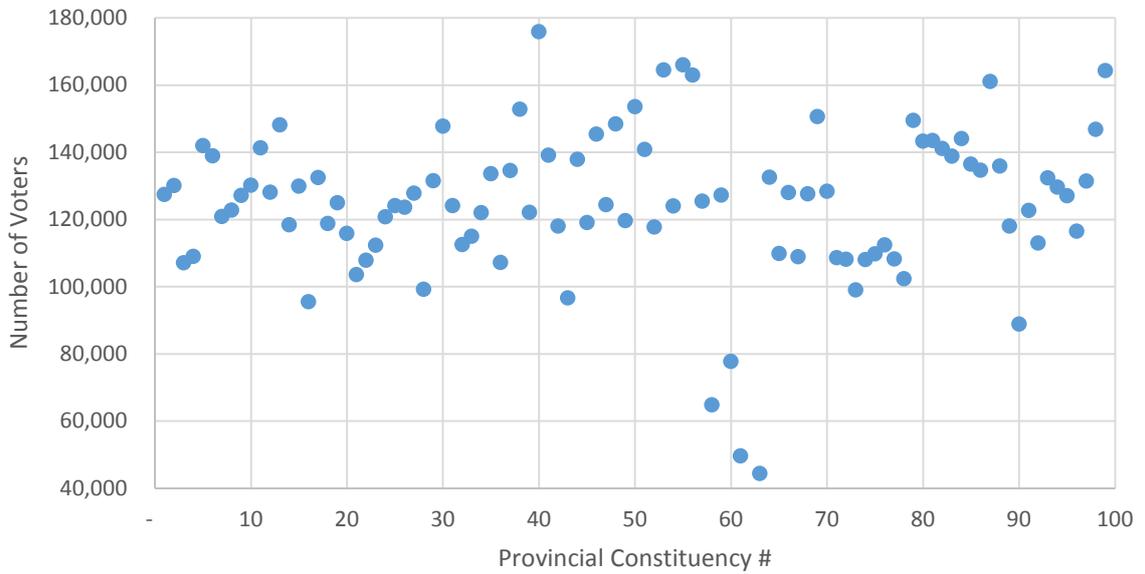
6. Annex



Variations in Balochistan Provincial Assembly Constituencies



Variations in KP Assembly Constituencies



IMPROVING PARLIAMENTARY PERFORMANCE IN PAKISTAN

The Improving Parliamentary Performance in Pakistan (IP3) project is funded by the European Union (EU) and is being delivered by a group of international and local partners led by the British Council. Other partners in the project include Democracy Reporting International (DRI); Westminster Foundation for Democracy; and Research Society of International Law, Pakistan (RSIL).

The main objective of IP3 is to strengthen the parliament as an institution and to support both committees and individual parliamentarians in three main areas of their work: legislation, oversight, representation. The project also aims to build the capacity of parliamentary secretariats so that they are able to provide better support for committee work. IP3 is a non-partisan entity and works with parliamentarians without regard for their political affiliations or whether they are on treasury or opposition benches.

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Performance in Pakistan

DEMOCRACY REPORTING INTERNATIONAL

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

In Pakistan, DRI's work focuses on supporting civil society advocacy on electoral reforms, based on the recommendations of the EU EOM and the International Covenant for Civil and Political Rights (ICCPR). DRI implements the electoral reforms component of IP3.

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