

KEY REFORMS FOR GENERAL ELECTIONS IN PAKISTAN

EXECUTIVE SUMMARY

The upcoming elections in Pakistan provide an opportunity, but also pose a risk. This paper seeks to identify a selection of priority electoral issues that urgently need attention before the next general elections. All recommendations are based on the International Covenant on Civil and Political Rights (ICCPR) which Pakistan ratified in 2010:

1. Reliable inclusive electoral roll

The Election Commission of Pakistan (ECP) immediately establishes an accessible and reliable mechanism for updating and maintaining the electoral roll, in order to provide for universal suffrage.

2. Transparency in the process

The ECP establish working transparency mechanisms, including full access of observers to results aggregations and immediate publication of all polling station results (at the polling station and on the ECP website).

3. Effective system for election dispute resolution

The law be amended to broaden the category of those permitted to file election petitions, to establish the independence of the work of the tribunals, and to set meaningful time limits for the completion of cases. The ECP and judiciary take all possible measures to establish a clear and efficient system for complaints and appeals, with due preparation time and allocation of resources.

4. Participation of women voters

The ECP immediately provide full gender-disaggregated data, recruit and train female polling staff, and respond to instances of women's non-participation including by declaring results void. An inclusive process takes place to reach agreement on a suitable minimum level of female voter participation at polling stations and in constituencies.

5. Neutral state administration

The current government, as well as the care-taker government that will oversee transition during the upcoming election period, make a clear public commitment that all state officials will be proactive and responsive to complaints, and will work impartially including in the application of penalties. Information on the measures being taken is regularly made available to the public. Similar neutrality measures are also be taken by state security services.

6. Out-of-country voting

The ECP undertakes feasibility studies assessing benefits, risks and costs of out-of-country voting procedures. This is followed by a full public discussion with decisions being established in law by the parliament. Given the serious risks involved, the large out-of-country electorate, and the short time available, any decisions may be best postponed until after the next general elections in order not to overburden an already challenging electoral context.

7. Reduced political violence, intimidation and compulsion

Based on consultation with parties, a binding code of conduct is established in law or under ECP regulations. The ECP and other responsible state authorities respond swiftly to complaints, and proactively and publicly enforce the code of conduct. All contesting parties be required to publicly denounce violence, intimidation, and coercion, and demonstrate what measures they are taking in this regard. A system of coordination and mediation for partisan conflicts be established on lowest possible level.

8. Clear legal framework

Parliament immediately begins an inclusive process of legal reform basing legislative proposals on stakeholder consultation, constitutional requirements and international law commitments.

INTRODUCTION

The upcoming general elections pose substantial risk. There has been a history of troubled elections in Pakistan. The political environment is tense. The security situation is difficult. However these elections also bring opportunity as they could contribute to the stabilisation of the political situation and civilian leadership. This requires a positive election process in which there is public confidence.

This paper identifies a selection of priority electoral issues that urgently need attention before the next general elections for national and provincial assemblies, due to be held by May 2013 at the latest. Taking such actions requires political will and commitment to the democratic process. This list is not exhaustive but rather a selection of key critical issues. Other important issues include enforcement and transparency of meaningful campaign finance regulations, full media freedom, and extensive and consistent training of polling staff by the ECP.

All recommendations are based on the International Covenant on Civil and Political Rights (ICCPR), which is binding international law to which Pakistan has committed (along with over 165 other countries).¹ The upcoming general elections are the first to be held since Pakistan ratified the treaty in 2010. Additional information on the various issues outlined below is available from the organizations producing this paper – the Center for Civic Education (CCE), the Aurat Foundation (AF), Free and Fair Election Network (FAFEN), Human Rights Commission of Pakistan (HRCP) and Democracy Reporting International (DRI).

1. RELIABLE INCLUSIVE ELECTORAL ROLL

Under Article 219(a) of the Constitution, the ECP is responsible for preparing the electoral roll for elections of the national and provincial assemblies, and revising them on an annual basis. The preparation of the electoral roll in cooperation with

National Database and Registration Authority (NADRA) and the process of cross-referencing with the civil registry² have helped to decrease the prevalence of duplicates.³ To resolve the problem of registering voters in their proper location⁴, the ECP undertook a door-to-door ‘verification’ exercise to assign voters to their locality. According to the media and observers’ report, this exercise was badly implemented.⁵ In March 2012 the ECP displayed the draft electoral roll in 55,000 locations to provide an opportunity for citizens to come forward to check and correct records. Unfortunately, the turnout was very low. The ECP was supposed to publish the revised electoral roll by the end of May, but it has not done so yet and there is no indication of when the roll will be ready for publication. Furthermore, the current electoral roll is only a snapshot. Updates are needed before the next election to account for people who move location, become 18, or choose to get a Computerized National Identity Card (CNIC), which does not mean that a person is automatically added to the electoral roll. A robust accessible updating mechanism is also needed as there have been some limitations in the process so far. For example, FAFEN have found that, based on sample data, as many as 20 million voters could be missing from the electoral roll and 11.1 million could be registered in the wrong location.

To date, no widely-accessible mechanism⁶ has been established by the ECP for updating the electoral roll, allowing for corrections, additions, and deletions (for deceased voters). A consistent system is needed to avoid allegations of political selectivity. The system also needs to be widely publicised and easy to access. Without this there is a risk of frustration at voters not being on the register or being on the list but in the wrong location.

The ECP needs to undertake proactive measures to provide an opportunity for registration to all eligible

² CNIC database.

³ The ECP collaborated with NADRA and the Pakistan Census Organization to cross-reference voters’ records with CNIC records and census block records.

⁴ Civil registry records include two addresses for every CNIC holder, but those could be different than the address under which the voter was registered in the electoral roll

⁵ For example, see dawn.com/2011/09/30/deadline-for-voters-list-verification-extended

⁶ Currently updating can be undertaken at district offices, but there is no consistent system used throughout the country. Thus some offices reportedly require a higher burden of proof and therefore there is a risk that this is perceived to be politically motivated and applied. Furthermore there are only 124 district offices for an electorate of approximately 86 million, meaning that services are not readily accessible.

¹ www2.ohchr.org/english/law/ccpr.htm. The authoritative interpretations of the treaty by the treaty monitoring body, the Human Rights Committee, are also referred to – see www2.ohchr.org/english/bodies/hrc/.

Pakistani citizens and to extend voting opportunities to communities which face access challenges – including internally displaced persons and prisoners.

ICCPR obligations require that '[e]very citizen shall have the right and the opportunity... without unreasonable restrictions... to vote' and that elections are held by 'universal' suffrage.⁷ The ICCPR treaty monitoring body has authoritatively elaborated that 'states must take effective measures to ensure that all persons entitled to vote are able to exercise that right'.⁸ An accurate electoral roll is also critical for reduced risk of fraud in the polling process. Furthermore a good voter registration process builds confidence in the election administration body and in the election itself.

Key recommendation: *The ECP immediately establishes an accessible and reliable mechanism for updating and maintaining the electoral roll, in order to provide for universal suffrage and make this widely known to stakeholders. Voters are given clear information in good time about the polling station to which they are allocated and its location.*

2. TRANSPARENCY IN THE PROCESS

To date the ECP has not always made critical electoral information public nor opened its actions to scrutiny, particularly in regards to the results process. Currently non-partisan observers have no legal recognition and observer groups have recently reported problems of access to polling.⁹ There have been problems accessing the aggregation of polling station results in the last general elections and in by-elections. After the last general elections, the polling station results were only made available many months later, after the deadline for submission of petitions. Similarly, polling station results for by-elections held in 2012 are still not on the ECP website, despite the ECP's commitment to

publish polling station results in their 2010 strategic plan.¹⁰

Unless the ECP provides the results of each and every polling station in a constituency, the total results cannot be checked, thereby leaving people with room to doubt the announced results and outcome. In a highly contested election, as the upcoming ones are likely to be, such transparency is even more important if disputes and accusations of rigging and bias are to be avoided. The ICCPR treaty monitoring body has recently stated that '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.'¹¹ It has also said that '[t]here should be independent scrutiny of the voting and counting processes'.¹²

Key recommendation: *The ECP establish working transparency mechanisms, including full access of observers to results aggregations and immediate publication of all polling station results (at the polling station and on the ECP website). This can be undertaken for all upcoming by-elections, so that systems can be tried and tested before the general elections and confidence can be built in the work of the ECP. Provisions for observers and requirements for ECP transparency could also be secured in law*

3. EFFECTIVE SYSTEM FOR ELECTION DISPUTE RESOLUTION

Election petitions to tribunals have typically not been undertaken or have been decided so late that their value is rendered negligible. The Parliamentary Committee on Constitutional Reform recommended in 2010 that amendments be made to legislation so that election petitions to tribunals are completed within 90 days. Without complaints and appeals

⁷ ICCPR article 25 requires that '[e]very citizen shall have the right and the opportunity... without unreasonable restrictions... to vote'. It also requires that elections are held by 'by universal and equal suffrage'.

⁸ General Comment 25 by the Human Rights Committee notes that 'States must take effective measures to ensure that all persons entitled to vote are able to exercise that right. Where registration of voters is required, it should be facilitated and obstacles to such registration should not be imposed.'

⁹ For example, FAFEN was denied accreditation for Multan by-elections: www.fafen.org/site/v5/detail-ecp_disallows_fafen_from_monitoring_multan_by-polls!853.

¹⁰ ECP Five -Year Strategic Plan 2010-2014. Objectives of Strategic Goal # 3 'Election Operations' commit to '...compile and release polling station-level election results in the shortest possible time and making it available on the ECP website' ecp.gov.pk/sp/goals-objectives.html.

¹¹ UN Human Rights Committee, general comment 34, paragraph 19. www2.ohchr.org/english/bodies/hrc/comments.htm.

¹² UN Human Rights Committee, general comment 25, paragraph 20. www.unhcr.ch/tbs/doc.nsf/0/d0b7f023e8d6d9898025651e004bc0eb.

being completed in good time, ICCPR obligations to provide an effective remedy are not being met.¹³

There are also concerns about the independence of petition bodies.¹⁴ According to the Constitution, the ECP appoints election tribunals¹⁵ and the President of Pakistan needs to approve them.¹⁶ In Pakistan's highly partisan political environment this process can raise concerns.

There is a lack of clarity on the avenues for complaints and appeals to the ECP and judicial channels. The legal framework does not clearly demarcate which body should be addressed first, how the bodies interact and what the deadlines are. Opportunity for effective remedies is also overly-restricted as currently only candidates may initiate judicial appeals (petitions), leaving voters and other election stakeholders without access to effective remedies.

Key recommendation: *The law be amended to broaden the category of those permitted to file election petitions, to establish the independence of the work of the tribunals, to set meaningful time limits for the completion of cases and to specify that tribunals do not undertake any other work than election petitions until the final disposal of the petitions. The ECP and judiciary take all possible measures to establish a clear and efficient system for complaints and appeals, with due preparation time and allocation of resources.*

4. PARTICIPATION OF WOMEN VOTERS

Cases have regularly arisen in Pakistan of election results being announced and accepted despite negligible numbers of women having voted in the constituency (even though the current legislation allows room for a stronger response by the ECP). Far too few measures have been taken to increase the integrity of women's participation at polling stations, such as increasing the number and training of female officials. There is no provision of full gender-

disaggregated data on the participation of women by the ECP, which is necessary for knowing the extent and nature of the problem.

The legislative framework currently does not require all women to have photographs on their CNICs, as is required for men, so there is increased opportunity for impersonation of female voters.

Political parties have not always been active in taking measures to deter the disenfranchisement of female voters and in taking action against members involved in such practices. Parties have also had lower numbers of agents scrutinising the polling in female polling booths and stations than in male ones.

The lack of practical fulfilment of universal franchise compromises the integrity of the election process and leaves the representativeness of those elected open to question. The lack of measures taken by the state to overcome this problem is not consistent with Pakistan's obligations under the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).¹⁷ The treaty requires state parties to 'take all appropriate measures to eliminate discrimination against women in the political and public life of the country'.¹⁸

Key recommendation: *The ECP immediately provide gender-disaggregated data on the number of men and women who have voted at each polling station, recruit and train female polling staff, and respond to instances of women's non-participation including by declaring results void. An inclusive process takes place to reach agreement on a suitable minimum level of female voter participation at the polling stations and constituencies.*

5. NEUTRAL STATE ADMINISTRATION

Historically there have been problems with holders of executive office being partisan in the electoral process. In response, a care-taker government system has been established in order to try to ensure a level playing field. However care-taker governments have also been subject to controversy,

¹³ Article 2.3 of the ICCPR states that '[a]ll persons whose rights or freedoms are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity.'

¹⁴ The ICCPR treaty monitoring body has said that there should be '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.' General comment 25, paragraph 20.

¹⁵ Constitution, article 219(c).

¹⁶ Appellate tribunals (for hearing appeals related to candidate nomination) require presidential approval. Representation of People Act, section 14.5.

¹⁷ www.un.org/womenwatch/daw/cedaw/cedaw.htm.

¹⁸ CEDAW article 7. The treaty monitoring body has authoritatively elaborated that 'These rights must be enjoyed both de jure and de facto' in general recommendation 23, paragraph 18. www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom23.

accusations of bias, and allegations that they have contributed to election rigging. State security services have also been accused of exerting excessive influence in the electoral process.¹⁹

Pressure on voters and misuse of incumbency compromise the possibility of a genuine election process.²⁰ The ICCPR treaty monitoring body indicated that 'persons entitled to vote must be free to support or to oppose government, without undue influence or coercion of any kind which may distort or inhibit the free expression of the elector's will.'²¹ It also added that 'intimidation or coercion of voters should be prohibited by penal laws and those laws should be strictly enforced.'²² Further measures are needed for establishing the neutrality of the state administration and confidence in its impartiality.

Key recommendation: *The current government as well as the care-taker government that will oversee transition during the upcoming election period make a clear public commitment that all state officials will be proactive and responsive to complaints, and will work impartially including in the application of penalties. Information on the measures being taken is regularly made available to the public. Similar neutrality measures also be taken by state security services.*

6. OUT-OF-COUNTRY VOTING

The Supreme Court and the ECP have both taken steps for the introduction of legislation for out-of-country voting. Thus, the next general elections may be the first in which Pakistani citizens based outside of the country can vote.²³ There are estimated to be 3.7 million²⁴ eligible in 105 countries.²⁵

Out-of-country voting is very difficult in practice as it occurs at a distance, is prone to being less transparent, and integrity can be more difficult to guarantee. These factors make out-of-country voting more liable to manipulation and abuse than in-country voting. There is a risk that public funds are

spent on something that although positive in principle, is in practice a source of dispute and contention, possibly undermining confidence and acceptance of electoral results.

International legal obligations do not contain requirements for states to grant citizens abroad the right and opportunity to vote. Any out-of-country voting procedure must meet the same standards as in-country voting. This requires sufficient electoral safeguards so that states fulfil their obligation of 'guaranteeing the free expression of the will of the electors'.²⁶

Key recommendation: *The ECP undertakes feasibility studies assessing benefits, risks and costs of out-of-country voting procedures. This is followed by a full public discussion with decisions being established in law by the parliament, including in regard to the electoral system to be used. Given the serious risks involved, the large out-of-country electorate, and the short time available, any decisions may be best postponed until after the next general elections in order not to overburden an already challenging electoral context.*

7. REDUCED POLITICAL VIOLENCE, INTIMIDATION AND COMPULSION

Political violence has been a regular feature of elections in Pakistan,²⁷ costing the lives of many and distorting the political process and electoral outcomes. Often the violence occurs between supporters of different political parties. Intimidation and fear is also reportedly used as a means of upholding discipline within parties.

Violence, intimidation and compulsion undermine an election process.²⁸ The ICCPR treaty monitoring body has said that:

'[p]ersons entitled to vote must be free to vote for any candidate for election... without undue influence or coercion of any kind which may distort or inhibit the free expression of the elector's will. Voters should be able to form

¹⁹ See for example, International Crisis Group "Reforming Pakistan's Electoral System" March 2011.

²⁰ ICCPR article 25 requires citizens to have the right and opportunity 'to vote and to be elected at genuine periodic elections'.

²¹ UN Human Rights Committee, general comment 25, paragraph 19.

²² UN Human Rights Committee, general comment 25, paragraph 11.

²³ See ECP Press Release,

²⁴ www.ecp.gov.pk/ViewPressReleaseNotific.aspx?ID=1490&TypeID=0; dawn.com/2012/02/15/overseas-pakistanis-get-right-to-vote/.

²⁵ Ibid.

²⁶ www.ecp.gov.pk/Reports/Minutes%20Overseas%20Pakistanis-6-1-10.pdf.

²⁶ ICCPR article 25.

²⁷ See for example ICG "Political Violence in Pakistan 1988 – 2010: Patterns and Trends". www.theigc.org/sites/default/files/shapiro_fair_and_rais_final.pdf. For FAFEN's reports on electoral and political violence see www.fafen.org/site/v5/page2.php?id=400&projects=Electoral+and+Political+Violence&subProjects=Reports&report=Proceed.

²⁸ ICCPR article 25 requires citizens to have the right and opportunity 'to vote and to be elected at genuine periodic elections'.

opinions independently, free of violence or threat of violence, compulsion, inducement or manipulative interference of any kind.²⁹

It has also said that:

‘any abusive interference with registration or voting as well as intimidation or coercion of voters should be prohibited by penal laws and those laws should be strictly enforced.’³⁰

Key recommendation: *Based on consultation with parties, a binding code of conduct which includes measures related to a peaceful genuine election process, an enforcement mechanism, and penalties is established in law or under ECP regulations. The ECP and other responsible state authorities respond swiftly to complaints, and proactively and publicly enforce the code of conduct. All contesting parties be required to publicly denounce violence, intimidation, and coercion, and demonstrate what measures they are taking in this regard. Contesting parties respond swiftly and publicly to any alleged wrongdoings by their members and supporters. A system of coordination and mediation for partisan conflicts be established on lowest possible level.*

8. CLEAR LEGAL FRAMEWORK

The current electoral legislation – scattered across many legal acts – is in need of a comprehensive overhaul. However, this cannot be accomplished ahead of the next general elections. Nonetheless, there is an urgent need for immediate reform of some key issues before the elections. In particular, the primary legislation is not consistent with the recently amended Constitution and with the commitments contained in the ICCPR. Without reforms to accommodate these new obligations, the legal framework will remain weak and ambiguous, leaving room for malpractice and increased likelihood of legal controversies around the elections.

Changes needed in the primary legislation include:

- The 18th amendment changed the ECP into a collective body of five members, however the primary legislation still refers to power being

vested in one individual, the Chief Election Commissioner.

- In line with the 18th amendment’s limitation of presidential powers and strengthening of the ECP’s independence, further amendments to primary legislation are needed to give the ECP the authority to issue legally binding regulations without presidential approval and to delete the presidential powers for ‘removal of difficulties’.³¹
- Candidacy requirements need to be brought into line with the 18th amendment. Furthermore, the ambiguous language in the Constitution on candidacy qualification and disqualification could be supplemented and tightened in the primary legislation to avoid the risk of accusations of selective application.³²

In addition, the recommendations contained above in this paper need to be addressed in the legal framework.

Key recommendation: *Parliament immediately begins an inclusive process of legal reform basing legislative proposals on stakeholder consultation, constitutional requirements and international law commitments.*

²⁹ UN Human Rights Committee, general comment 25, paragraph 19.

³⁰ UN Human Rights Committee, general comment 25, paragraph 11.

³¹ Election Commission Order (articles 9E and 9F), Conduct of General Election Order (articles 9(1) and 10(1)), Political Parties Order (article 19), Representation of the People Act (section 107), Electoral Rolls Act (sections 28 and 28A), The Delimitation of Constituencies Act (section 10B).

³² The ICCPR treaty monitoring body notes that ‘any restrictions on the right to stand for election, such as minimum age, must be justifiable on objective and reasonable criteria.’ General comment 25, paragraph 15.

BIBLIOGRAPHY

Further information is or will be available from the organisations producing this paper:

Aurat Foundation (www.af.org.pk)

- Women and Politics series of publications.³³

CCE (www.civiceducation.org)

- Civic Briefs on election topics.³⁴

DRI (www.democracy-reporting.org/pakistan)

- Out-Of-Country Voting: Principles and Practices, 2011;
- No Voice: The Exclusion of Women from Voting, 2011.³⁵

FAFEN (www.fafen.org)

- Pakistan General Election 2008: Election Results Analysis;
- Election Observation Summary and Recommendation for Electoral Reform;
- Election Day Process and Analysis;
- A Unification of Pakistan's Election Legislation including Model Provision for Electoral Reform;
- FAFEN Priorities for Reform of Law Governing the Conduct of Election in Pakistan: A Project of Election Reforms, December, 2009;
- FAFEN Recommendation for Electoral Reform (English and Urdu);
- 10 Million Citizens Missing on Draft Election Rolls 2011: Unmarked Houses, Persons without CNIC Major Causes.³⁶

HRCP (www.hrcp-web.org) –

- State of Human Rights, 2010.³⁷

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³³ www.af.org.pk/Publication/Publications/Women%20and%20Politics/Reports%20and%20Books.pdf

³⁴ www.civiceducation.org/downloads

³⁵ www.democracy-reporting.org/programmes/pakistan/publications.html

³⁶ www.fafen.org/site/v5/page2.php?id=400&projects=Election+Observation&subProjects=Electoral+Reforms&report=Proceed

³⁷ www.hrcp-web.org/Publications/AR2010.pdf