

EVENT REPORT
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DEMOCRACY
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PUBLIC FORUM CARETAKER GOVERNMENTS IN PAKISTAN

ISLAMABAD 30 AUGUST 2013

BACKGROUND: DRI WORKING PAPER ON CARETAKER GOVERNMENTS

Caretaker governments ensure administrative continuity during the transition period between elections and the formation of a new government. Usually, the term of the caretaker government starts with the dissolution of the parliament and ends with the formation of new elected government. Pakistan is the only case in the world where caretaker governments are appointed. However, despite of positive improvements in the establishment of clear appointment procedures, the caretaker governments' role, functions and limits are insufficiently defined in Cabinet rules or the law.

Prior to the dissolution of Parliament in March 2013, Democracy Reporting International (DRI) issued a Working Paper on the scope, mandate and role of the caretaker government in Pakistan. The paper includes a comparative study of the role of the governments during the election period in different countries and gives a brief overview of past caretaker experience in Pakistan. The paper discusses the relevant provisions and outlined in Pakistan's constitution and formulates concrete recommendations that could be part of draft legislation to further define the mandate and functioning of the caretaker setup.

** Define the **limits of caretaker policy decision-making authority** by establishing concrete criteria for decisions that go beyond ordinary matters of administration.*

** Define the **restrictions on major appointments and undertakings** by defining qualitative thresholds for the eligible appointments and the maximum value for allowed contracts*

Formulate **guidelines on financial reporting, requiring the caretaker government to disclose all relevant information on resources and expenditures;*

** Set out the requirement for the caretaker government to **submit a performance report at the end of its term.***

OBJECTIVES OF THE FORUM

In collaboration with Dr Sania Nishtar, a minister in the 2013 caretaker cabinet, DRI organized the forum on caretaker government to review the experience of caretaker setup in Pakistan and to discuss a set of recommendations for regulatory framework. The main objective of the forum is to define concrete



measures of improvement which would guide the work of the future caretaker governments. The event took place in Islamabad, on 30 August 2013 and was attended by over 40 political party leaders, legislators, and civil society representatives.

The objectives of the forum were:

- To solicit views of the stakeholders about the roles and limits of caretaker officials in Pakistan in the context of 2013 experience
- To review recommendations of the DRI's working paper
- To review the Handover Papers of Dr Sania Nishtar
- To articulate recommendations for regulatory framework for caretaker setup

CARETAKER EXPERIENCES AND PRESENTATIONS



Opening remarks and caretaker experience by Dr Sania Nishtar- The former Education, Science and Technology and IT Caretaker Minister highlighted the importance of the forum and stressed the relevance of discussing the caretaker government, its neutrality and power, and significance as a constitutional peg in the democratic chain. She also mentioned how the Forum was important to provide substantive feedback for improving caretaker setup, its mandate, and to review the caretaker records for strengthening the process.

She shared that after taking oath, the foremost concern is mandate of the minister. The Caretaker Minister for Law, Ahmer Bilal Soofi, gave a presentation on the constitutional provisions during the first cabinet. He also presented DRI's working paper, discussing the recommendations outlined., concrete recommendations and codification of the caretaker government are required which should be considered by the government institutions and the ECP for ensuring neutrality and mandate of the future caretaker setup.

Sania Nishtar's handover papers aim to set a precedent in transparency in decision-making and self-accountability of the caretaker system. According to Nishtar, accountability is a central thread in governance. By making public handover papers, she wanted to voluntarily submit herself for accountability. Highlighting the limited mandate of caretaker officials, Sania cited the example of not attending the International Conference on Education and MDGs to represent Pakistan, as it would be role of the federal Education Minister to make international and national commitments on long term goals and not work of the caretaker minister. The caretaker government deferred major long-term decisions for the Federal Minister.

Sania Nishtar moderated the proceedings and thanked DRI for organizing this important forum at the right time. She also thanked the caretaker ministers, and the members of Parliament and provincial assemblies present at the forum.



Presentation of DRI Preliminary Recommendations – Vladimir Pran presented DRI's key recommendations concerning the neutrality, transparency, administration and functions of caretaker government; the restrictions on major policy decisions, international commitments and appointments; the need to provide financial reporting and a performance report at the end of tenure. Pran also discussed a number of comparative cases and gave an historic overview of the caretaker governments in Pakistan.

He further mentioned the recommendation formulated by the European Union Election Observation Mission 2013, stressing that 'the mandate, functioning and neutrality of future caretaker government be more clearly defined in the rule of law'. This is in line with the International Covenant on Civil and Political Rights (ICCPR), which Pakistan has ratified. ICCPR stipulates that political authority of government is determined by the right of every citizen "to take part in the conduct of public affairs" as well as right to "vote and be elected". (Art. 25) Furthermore, the 20th Constitutional Amendment outlined inclusive appointment procedures for a neutral caretaker administration.

The main recommendations were:

- The caretaker setup's main condition is neutrality - a provision included in the ECP Code of Conduct for political parties and candidates.
- There is a need for legal framework to indicate clear mandate and functioning of the caretaker administration.
- The gaps in regulations in Pakistan caretaker government should be addressed and how these principles be institutionalized in the new parliament.
- Lacking the legitimacy of an elected institution, the caretaker administration should remain apolitical and maintain policy status quo until the next government is formed.

Caretaker experience by Ahmer Bilal Soofi- The former Caretaker Law Minister highlighted that the major challenge for the caretaker cabinet was the security threats and the related risk that the elections would be postponed on the pretext of law and order situation. To illustrate the situation of uncertainty, he mentioned the accident suffered by the PTI's Chairman in Lahore could have jeopardized the elections, adding that the possibility of postponing elections through a presidential ordinance was discussed in case of any senior candidate would be assassinated of.



However, the May elections turned out to be a democratic success and a verdict against non-state actors. The voters' high turnout was a positive development that strengthened the democratic process.

Ahmer Bilal discussed the legal aspects of a code of conduct for caretaker government, its mandate, functioning and limitations. He said limitations on the role of caretaker government were indicated in the constitution- a few of them mentioned in DRI's Working Paper.

As the Caretaker Minister for Law, he cautioned the caretaker officials against exceeding their mandate by making long-term agreements, appointments, postings and transfers at key positions and departments. He wrote a letter to all ministers, including the office of the Prime Minister, drawing their attention to appointments and transfers carried out while the Parliament had already been dissolved. He further mentioned that all state institutions; the caretaker government, the Election Commission of Pakistan, the Judiciary and the law enforcing agencies have their specific role and responsibilities and should work within their jurisdictions to facilitate a free and fair election process. The Provincial Caretaker Ministers have broader mandate than the federal counterpart in terms of smooth conduct of elections. As an outgoing minister, Ahmer Bilal prepared a 15-point task sheet outlining major law, justice, human rights and parliamentary affairs matters and discussed it with the incoming Federal Ministers.



Caretaker Experience by Arif Nizami –The former Information and Broadcasting Caretaker Minister stressed the challenge that working as a government spokesperson in the caretaker setup meant for him, pointing out the lack of coordination – and at some points complete disconnect– among the key stakeholders, including the Prime Minister, President, Ministers and Chief Election Commissioner. He

also stated the lack of transparency and accountability of these institutions, adding that there is no legal framework and to guide the caretaker administration. He commented that he would like try to place things in proper context after hearing the complaints against the caretaker government for not providing a conducive environment for free and fair elections. He further mentioned how after the announcement of general elections, uncertainty and doubts prevailed over the law and order situation, which spread the fear that elections might be delayed.

Mr Nizami highlighted the important role Caretaker Ministers play to improve and change perception about elections amid security threats, adding that in Pakistan’s political culture, there is a general perception that the election cannot be free and fair because of the political parties’ influences and interference in the administration.

He described how the key players in caretaker system lacked coordination on matters of importance. The Chief Election Commissioner (CEC) had no linkage with the caretaker Prime Minister/Ministers to facilitate the ECP’s work ECP. . He said the Secretary ECP was all the time on the media, eclipsing the CEC presence. Though the people may not take notice of these matters, there is need to review these issues in the context of an autonomous and empowered ECP.

Despite all the challenges, elections took place with largest turnout in the history of Pakistan, and were largely peaceful. The former Caretaker Information and Broadcasting minister highlighted that the caretaker government, along with the ECP and others, deserves credit for this.

Nevertheless, Mr Nizami pointed out that the offices of the highest authority, including the Prime Minister's, were involved and interfering in the appointments, posting and transfers that do not correspond to the jurisdiction of the caretaker government. Mr Nizami went further, highlighting that the role of military once the Parliament is dissolved should be further defined, as even the military secretary was interfering in the fraudulent appointments of civil servants. Finally, Mr Nizami highlighted the positive practice by the caretaker Prime Minister and other ministers (other than information or interior) to avoid appearing on the media.

Concluding his presentation, Mr Nizami underscored DRIs recommendations, encouraging the parliamentarians to take a fresh look on the entire caretaker system and legislate on the mandate and functions of the caretaker government.

Caretaker Experience by Maqbool Rahimtoola—The caretaker Minister for Commerce and Industries shared his experience of the national flag emblem facing wrong directions on the government crests (other than the President office) and that, according to the rules, his Ministry could not do much other than setting up an inquiry committee. Mr Maqbook Rahimtoola went on to suggest that a list of potential ministers' for all provinces should be forwarded by the Parliament to the caretaker PM and CEC. The ministers should fulfill specific criteria to be eligible for caretaker office, such as a restricted political party members from this office.



Mr Rahimtoola suggested that the number of caretaker cabinet members be restricted to 10 or some percentage similar to the constitutional restrictions on the number of ministers in a government. After taking oath the Ministers should be briefed on rules and procedures and the Prime Minister should provide guidelines and directions for the caretaker tenure.

He suggested that specific Standard Operating Procedures (SOPs) and guidelines should be drafted by the Cabinet Division for the coming caretaker setup. For this purpose, the of various relevant orders of the EPC, SC, High Courts, PM Secretariat, and Law division should be gathered and thoroughly examined to avoid any conflicts.

As the Upper House of Parliament is in session during the period the caretaker government is in place, Federal Ministers should regularly report to the Senate. Mr Rahimtoola added that it would be useful if Caretaker Ministers would be required to stop all subsidy payments during the caretaker period and until these policies are reviewed by the incoming government. Moreover, caretaker officials should not allow any of their ministry's entities to hold board meetings during that period nor to make any changes in boards of directors. As the policy status quo is difficult to hold for a longer period, a difference needs to be made between minor and major policies to guide caretaker officials on the eligibility of their decisions. Following clear rules for accountability, Caretaker Ministers should be required to submit a financial and a performance report at the end of their term.

Maqbool shared that at the end of his mandate, and with the help of his Secretary and other senior officers, prepared a 100-day road map for the Ministry along with a policy position paper including concrete suggestions for the new minister. He stressed that such a handover paper should be prepared by all outgoing ministers, whether they were elected or caretaker officials.



Caretaker Experience by Musarrat Qadeem-The Khyber Pakhtunkwa Provincial Minister for Information shared that the provincial caretaker ministers are informed of their selection at the eleventh hour and given short time for seeking their consent. When she was on board as the Caretaker Minister, in the first cabinet meeting, the Ministers knew the mandate of day to day work and to facilitate free and fair elections process. She said the Home Minister in the first meeting gave a grim picture of the security in the province and presented a list of the political leaders who might be targeted. However, she said the Provincial Caretaker Cabinet was determined to hold the elections.

On Election Day, she visited Charsada's sensitive polling stations and observed hundreds of women coming out to vote. Visiting 27 polling stations and observing women's involvement in the elections was matter of satisfaction for the minister. In KPK, there were fears of security, rigging and mismanagement, as out of 9000 polling stations, 6000 were declared sensitive, especially for women voters. However, the people rejected the threats and casted their vote, a success for the democratic process.

She said in Pakistan the caretaker ministers have to be neutral and careful about what they say. After the elections, handing over process was an important matter and smooth transfer a matter of great importance.

She mentioned how, a day after the election, an elected MPA who had not taken oath yet, came to her office and demanded a transfer. His five other colleagues also joined and pressurize her as Caretaker Information Minister to concede that transfer. She said the elected members should respect the caretaker ministers and facilitate the transfer of the office in a systematic way. For this purpose, a handover report is very important, as it could serve as a ground to continue work for the elected members. Concluding her presentation, Ms Qadeem said election administration is not within the scope of the caretaker government, as this is the ECP's mandate. The caretaker government may, however, highlight its structural and administrative deficiencies, as long as there is no interference in the election process.

DISCUSSION AND FEEDBACK

Constitutional provisions on the caretaker government - After the 18th and 20th Constitutional Amendments, the ECP has been empowered to hold the full responsibility over the electoral process and the caretaker governments' role has been limited to keep the state administration running once the Parliament has been dissolved..

Neutrality - There should be criteria defined in the rules for selecting the caretaker ministers. They should not represent any party and not allowed to contest the elections. However, no political affiliation is hard to avoid and technocrats have their political tilts and attachments to political ideologies and parties.

Policy decision making - The caretaker government is not empowered to take any policy decisions save in an absolute necessity or state of emergency.

State resources usage - The practice by the caretaker government to fully use government and semi-government departments and their financial allocations goes against the prerequisite for a free and fair election, as they might divert these resources to favour their preferred candidate. By convention, members of a caretaker government cannot use government facilities or funds. However, in Pakistan the past caretaker governments released funds for different purposes, going beyond their mandate.

Appointment, transfer, posting prohibition- The caretaker should not take any important new initiative and avoid appointments by a government in the period immediately prior to a general election unless it can be publicly justified as necessary or in the national interest.

In the proposed legislation, there should be a clear provision that the PM/CM offices and families should refrain from posting, transfers, and appointments. Major recruitment are not the mandate of the caretaker ministers, Prime Ministers or Chief Ministers. Exceptions to this rule should be clearly laid out in the regulatory framework.

Emergency' based decisions - A section of the regulatory framework may deal with possible issues that may arise during the caretaker period.

Functions and parameters of caretaker setup - As the rules and laws do not define the parameters, duties, functions, business rules should be framed for the caretaker government. The DRI report should also be provided to the parliament to make its recommendations part of the draft legislation. One of the Members of the National Assembly participating at the event agreed to prepare a fundamental and basic law covering the mandate and functions of the caretaker government with DRIs support.

Media projection – To avoid creating political controversies, the caretaker administration, should limit their media appearances and talk to the media only on important issues and when it is necessary. A participant suggested to limit media presence to the Caretaker Information Minister.

Election administration and caretaker' government role - Under the Article 218 of the Constitution, the ECP is responsible for conducting and administering the polls, and not the caretaker government. However, there were complaints that the ECP's role was limited, and the institution need to be fully empowered. ECP should have sufficient trained and responsible staff for election administration.

Strengthening government institutions - Institutional strengthening is essentially required for all government bodies, especially caretaker government and the ECP for successful administration of elections. All government bodies need to work according to their mandate and limitations as per the

rules and regulations. The judiciary and law enforcing agencies should refrain from influencing the election process and the administrative setup should be free from political influences.

Pakistan and foreign caretaker setups – Amongst the forum participants, a consensus emerged that the country has not been able to set up neutral caretaker governments despite the limited legislative development.

Urban versus rural dynamics - The dynamic of elections in rural areas is drastically different from the urban areas. Pitwaris, SHOs, and polling officials have big influence on the electoral process. Thus, the caretaker system should also take into consideration the urban vs. rural divide , other than the day to day work and law and order.

Army and police role - Army and law enforcing agencies should be present during the polling for security purpose. However, the negative role of policeman should also be tackled.

Accountability and evaluation - The performance of the caretaker setup should be evaluated at the end of the tenure. The evaluation procedure and performance reporting format need to be part of the legislative framework.

The caretaker ministers should be subject to accountability, and to put their work in public domain for accountability. Handover paper and reports is a good step towards accountability and for institutional history.

No need for caretaker setup? – Currently in Pakistan the caretaker setup is considered an important chain of democracy. However, a few members discussed that ideally there should be no need for nominating neutral caretaker officials. Supporting this view they said with the development of strong democratic government, the processes to smooth, fair and democratic transfer of power will be ensured.

In his written feedback, a Member of the Provincial Assembly asserted that the caretaker government is not required as it lacks public mandate, constitutional backing, and faces serious limitations in case of an emergency or disaster, or unforeseen situations. He suggested that the ruling government could continue for the interim transition period with constitutional rule, regulations and defined scope of work. He supported the Indian model of transition government system and ECP authority and independence for credibility of elections.

CONCLUSION

The Forum concluded its discussion with an agreement on the need to discuss the prerogatives of caretaker government further, developing a more detailed framework to improve the institution. The participants agreed on the recommendation of DRIs working paper and the shared experiences presented at the event provided further areas for improvement. DRI wishes to thank all participants for their contributions and input into this discussion and will incorporate the recommendations made by

caretaker ministers and others into its working paper.¹ The final version will be made public in order to stimulate the debate in Parliament and beyond.

¹ DRI would also extend its gratitude to those officials who could not attend the event, but shared their experience and suggestions in writing. Their feed-back will also be considered for the updated Briefing Paper.

LIST OF PARTICIPANTS

	NAME	ORGANIZATION/PARTY	TITLE
1	Shafi M. Jamot	PML-N	Member of the Provincial Assembly (MPA), Sindh
2	Mariam Malik	Heartfile	Sr. Research Associate
3	Meraj H. Khan	Qaumi Watan Party	Member CEC, MPA (Khyber Pakhtunkhwa)
4	Senator Jehangir Bader	PPP	Senator, former leader of the House
5	Shafqat Mahmood	PTI	Member of the National Assembly (MNA)
6	Arif Nizami	Former Caretaker Minister	Editor, Pakistan Today
7	Nagina Khan	PTI	MPA (Khyber Pakhtunkhwa)
8	Nasrullah Khan Zayrai	Pakhtoonkhwa Milli Awami Party (PkMAP)	MPA (Balochistan)
9	Engr. Zamark Khan	Awami National Party (ANP)	MPA (Balochistan)
10	Rahmat Baloch	National Party (NP)	MPA (Balochistan)
11	Tufail Anjum	PTI	MPA (Khyber Pakhtunkhwa)
13	Engr Qamar ul Islam	PML-N	MPA (Punjab)
14	Ahmer Bilal Soofi	Caretaker Law Minister	Advocate Supreme Court
15	Ehsan Kazi	ISP	Manager
16	Muhammad Arif	PTI	MPA (Khyber Pakhtunkhwa)
17	Sardar Vickas Mokal	PML-Q	MPA (Punjab)
18	Faiza Ahmed Malik	PPPP	MPA (Punjab)
19	Salman Khan Baloch	MQM	MNA
20	Sharmila Farooqi	PPP	MPA (Sindh)
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29	Muzammil Qureshi	MQM	MNA
30	S.A Iqbal Qadri	MQM	MNA
31	Rubina Khalid	PPPP -	Senator
32	Mohammad Rizwan	Pak Organization of Nation Actuation (P.O.O.NA)	- Executive Director
33	Sania Nishtar	Caretaker Minister	President Heartfile
34	Muhammad Zubair	PODA	
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39	Mossarat Qadeem	Careaker Minister/Paiman Trust	Executive Director, Paiman Trust
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42	Farah Aqil	ANP	- Senator



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