

FIX IT BEFORE IT BREAKS:

What the local elections tell us for the 2018 General Election

SUMMARY

The local government elections were an opportunity to develop electoral practice and to identify where improvements are needed for Pakistan's general elections, which are expected in 2018. These were extremely challenging operations with large numbers of seats and candidates and some problematic security conditions. Positively, the elections were competitive and recently the ECP took some initiative to develop electoral practices. However legal frameworks were inadequate, not sufficiently publicly available and gave excessive discretion to provincial governments. Delimitation was problematic, returning officers were insufficiently managed, there was a lack of transparency and inadequate opportunity for remedy. Results data was not made available and there was weak provision for scrutiny. Women and minority communities remain under-represented, with problematic reserved seat arrangements. Such problems are also characteristic of general elections in Pakistan, hence the need to address such shortcomings promptly. Without fixing these problems there is risk that the next general elections will be even more controversial than the last.

INTRODUCTION

Since the 2013 general elections, local government elections (LGEs) have taken place across the four provinces of Pakistan and the Islamabad Capital Territory (ICT). Democracy Reporting International (DRI) undertook Election Assessment Missions (EAMs) to the four provincial LGEs; the EAMs¹ assessed aspects of the election processes against

Pakistan's international commitments and made recommendations accordingly².

Such recommendations are intended to contribute to development of electoral legislation and practices for future LGEs, but also have applicability to the upcoming general elections, due in 2018. The recommendations complement those made by the 2013 EU Election Observation Mission (EOM). This document provides a summary of key issues recurring across all of the four provinces and identifies priority issues to be considered for the general elections and for future LGEs. It does not compare the LGEs in the four provinces, as the context and timing of elections were different in each³.

CONTEXT AND OVERVIEW OF THE LGES

The 18th amendment to the Constitution established sole responsibility for legislating for local government with the provinces, and also gave the Election Commission of Pakistan (ECP), a federal body, responsibility for administering LGEs. During the series of local elections, the ECP has been under different leadership and has taken varying levels of initiative in the development of electoral practices⁴. The LGEs have been an opportunity for the ECP to develop electoral practices. The LGEs have been large-scale and challenging operations, particularly

² DRI's EAM reports on local elections are available at <http://democracy-reporting.org/publications/country-reports/pakistan.html>

³ Local elections in the provinces were held on the following dates: - 07 December 2013 in Balochistan; 30 May 2015 in Khyber Pakhtunkhwa, 31 October 2015 (phase I), 19 November 2015 (phase II), 05 December 2015 (phase II) in Punjab and Sindh.

⁴ The current Chief Election Commissioner was appointed on 05 December 2014, the four Members of the Commission took oath on 13 June 2012, and the current Secretary took up the post on 01 April 2015.

¹ The EAMs were composed of small teams of international and Pakistani experts.

in view of the local level delimitations needed, the high number of seats and over 241,000 candidates running for office across the four provinces. Furthermore the security situations in some parts of provinces make it especially difficult to implement good electoral practices.

There was a positive appreciation of the long-overdue LGEs taking place. This was in part due to Supreme Court decisions that spurred the passing of necessary provincial legislation. The elections were predominantly competitive with relatively few constituencies proceeding uncontested. None of the main parties boycotted and all overall accepted the results, although there were recurring allegations of rigging leading to post-election disputes. The media contributed to transparency through their keen scrutiny of the process. Civil society was also active, particularly on election days, in particular the Free and Fair Elections Network (FAFEN) and the Human Rights Commission of Pakistan (HRCP)⁵.

Positively the ECP increasingly undertook initiatives to try and strengthen the process. For example to avoid some of the logistical issues that arose in Khyber Pakhtunkhwa (KP), the Punjab and Sindh elections were held in three phases and polling hours were extended. The ECP sent out instructions to Returning Officers (ROs) to try and increase conformity in candidate nomination, and attempted to establish the issuing of party tickets during nomination (not after). The ECP recently removed and replaced some ROs whose performance was seen as problematic and set up an internal monitoring system and some opportunity for lodging complaints. Other positive developments include the ECP using some of its own staff as District Returning Officers (DROs) and ROs and the ECP taking more initiative for training of staff. The ECP also recently consulted with observers over accreditation procedures. The ECP has also taken some initiative in challenging government officials over misuse of positions and resources. Gender-disaggregated data was provided on voter turnout for KP's elections, albeit eight months following the elections. Furthermore during by-elections that have taken place concurrently some further positive practices have been established, including nullifying results where women were barred from voting. Also during

the ICT LGEs, a geographic information system for polling stations and an android-based results management system were piloted.

Election security was a dominant concern with several serious incidents (in KP, Punjab and Sindh) resulting in the loss of life and polls deferred in some locations. After heated accusations of security lapses during the KP elections, the ECP notified for paramilitary Rangers forces to be present both outside and inside of the polling stations for Sindh and some of the Punjab elections. They were granted magisterial powers, which appeared to be consistently positively appreciated by stakeholders, indicating a lack of confidence in the neutrality and effectiveness of the police and in the election staff to manage polling stations.

Provincial governments were accused of retaining their own powers and relegating local councils with limited powers that are subject to provincial government oversight and control. The high proportion of reserved seats (up to approximately 40 percent in total of all seats) for a variety of different categories of traditionally under-represented groups, with weak indirect election systems, reduces the relative power those directly elected.

KEY ISSUES

LEGAL FRAMEWORK

The process for passing LGE legislation within the four provincial assemblies was problematic. In particular there was 1) a lack of consultation (often with the ECP and also with stakeholders, in particular under-represented groups), 2) a lack of consideration of electoral expertise, 3) a lack of consideration of Pakistan's international obligations, and 4) a delayed process. Consequently there were legislative gaps, weak legal provisions and accusations of bias. Excessive discretion was given to incumbent parties, in particular through granting provincial governments regulatory power with authority to make the rules covering elections.

The local government acts omitted provisions for key aspects of an election process, including the system of indirect elections for reserved seats and counting procedures. This leaves these fundamental parts of the electoral process at the discretion of ruling parties, and therefore subject to governmental

⁵ However no scrutiny by citizen observers took place for the Balochistan LGEs.

change, which makes for a less certain legal framework and risks actual and/or perceived partisan interests being served. Furthermore the granting of such rule-making authority to provincial governments diluted accountability for the conduct of the elections and created ambiguous arrangements with responsibility shared between the provincial government and the ECP. While the rules covered some aspects omitted by the acts, critical gaps remained, including in regards to mechanisms for reserved seats and time limits. Major changes to rules continued even after election schedules were announced, including on the electoral system for reserved seats.

A further fundamental problem with the legislation was the lack of public availability of updated laws and rules, particularly on the Internet, which contribute to a lack of understanding about the process among stakeholders. This left electoral staff and stakeholders disadvantaged in not knowing the rules of the game, which was particularly difficult given the various late changes taking place.

DELIMITATION

Delimitation was very problematic with legislation requiring use of highly out-dated census figures from 1998. This fundamentally compromised ability to maintain equality of the vote between constituencies to the same body, and as a result it appeared that some constituency populations varied enormously. It also meant that delimitation was extremely difficult to implement as the 1998 census data uses different units of measure (census block codes) to those used for the current electoral roll. The very small constituencies involved in local elections were therefore hard to arrange.

In Balochistan and KP, the provincial governments were given excessive discretion to demarcate the bigger units and delimit within these, with obvious risk of actual and/or perceived favour to the incumbent. The Supreme Court ruled that delimitation must be conducted by a “neutral and credible” body, resulting in a stronger role for the ECP (in delimitation, not demarcation); with the ruling implemented for Sindh and Punjab. In practice, the ECP was under-resourced and relied heavily on staff from the provincial administrations. There were consequent high numbers of delimitation-related petitions to Tribunals and also

to the superior judiciary, which resulted in identification of some apparent gerrymandering noting that the ECP hadn't sufficiently protected the process, and hence there were subsequent postponements of elections in various constituencies.

A further fundamental problem was the lack of availability of delimitation information resulting in aspirant candidates not knowing which constituency they were eligible to nominate themselves in, where to undertake campaigning and also affecting voters' knowledge of their candidate choices.

ELECTION ADMINISTRATION

As noted above, the ECP has made progressively more efforts to improve the election administration. However fundamental weaknesses persist. In particular there was insufficient information on the process (for example post-election day schedules) and election data (for example results numbers). Responsibility was also dispersed to ROs without instigating checks for accountability, consistency and accuracy. As the judiciary no longer wanted to take on the work of ROs, provincial government staff were predominantly used.

VOTER REGISTRATION

The ECP continued the pragmatic and positive practice of using data from the Computerized National Identity Card (CNIC) database managed by National Database and Registry Authority (NADRA) for the electoral roll. However there is still no legal regulation of this relationship. There was a lack of information about registration services and total and composite numbers of registered voters. To date there is no arrangement determined for maintaining the electoral roll. The sorting of the electoral roll by census block code, rather than alphabetically or by CNIC number, makes the roll unwieldy for polling staff which unnecessarily complicates the voting process.

CANDIDATE NOMINATION AND SCRUTINY

As with the national legislation, the provincial acts included vague conditions for candidacy, which risk arbitrary and inconsistent application. Positively the ECP recently took some steps to try and promote consistency. In KP, in the lowest tier, there was a ban on party affiliation for candidates, restricting freedom of association. In practice, the lack of

delimitation and voter registration information made it problematic for candidates to know in which constituency they should nominate themselves. Only limited statistical information was available from the ECP on the numbers of candidates running. As with the general elections, a high proportion of candidates withdrew after not being awarded party tickets later in the process.

CAMPAIGN

The codes of conduct for the campaign may be seen as overly-restricting fundamental rights. For example rallies and processions were sometimes banned. Questions were raised about the appropriateness of this blanket restriction, with obvious non-compliance risking an undermining of the rule of law for elections. Government officials and parliamentarians were banned from participating in a personal capacity. Enforcement was primarily the responsibility of ROs, with a lack of accountability checks, such as record keeping requirements, or a complaint system.

ELECTION DAYS

Untrained staff working in polling stations, in part due to staff substitutions, was a recurring issue, made more problematic by the lack of manuals available in some stations. Parties continued to have an excessive and sometimes intimidating role in setting up camps near to stations to give voters “*perchis*” containing voter registration information. Over-crowding, particularly in the KP elections (where voters had seven ballots), and the presence and involvement of unauthorised persons were some of the polling issues encountered by DRI and reported by citizen observer groups.

RESULTS

As with the national elections, there is no legal provision or practice of checking polling station results or mechanism for correction of anomalies. Consolidations (tabulation with a checking of invalid ballots) lacked provisions for RO initiative to undertake recounts, and there is a lack of accountability of RO decisions on whether to undertake recounts requested by candidates. The ECP also did not undertake checks of RO tabulations and results announced. Consequently there is risk of results anomalies going unaddressed, and grievances not being speedily resolved, which can lead to protracted disputed election results and

challenged mandates. There is a lack of legal transparency requirements, with no provisions for and only inconsistent practice of posting polling station results. RO consolidation transparency was inconsistent. Winning candidates were centrally notified but without any results data (numbers) which would have allowed for checking, and therefore confidence in, those elected. There was also a general lack of data on turnout, invalid ballots etc. No time limits are specified for results.

ELECTION DISPUTE RESOLUTION

No legislative provisions are made for administrative complaints, and while the ECP took positive initiative in this regard, this was under-regulated and lacked transparency, thus it is not clear if there was opportunity for corrective action. Specialised petition mechanisms are established, but only for certain aspects of the election (delimitation, candidacy nomination and challenging a returned candidate). These tribunal mechanisms lacked independence, do not always offer timely access to remedy with due process, and challenges of a returned candidate were restricted to other candidates only. Consequently there was legal escalation with constitutional writ petitions made to superior courts. The lack of time limits and the volume of cases meant that various High Court judgements inevitably came during the electoral process, making the election less predictable with an increased sense of uncertainty.

SCRUTINY OF THE PROCESS

As independent scrutiny is not secured in legislation, it is left to ECP discretion, which proved to be problematic with no rights for observers established and recurring inadequate accreditation mechanisms. Furthermore some accredited observers were refused access to polling and counting. Lack of protection and provision for independent scrutiny compromises a fundamental check in the election process, which is particularly negative given the culture of accusations of rigging. Weak freedom of information provisions also limit the ability of the public, the media and civil society to access election data. In Balochistan, no observation took place, in nearly one third of the districts insecurity threats reportedly prevented media coverage, and there was limited critical media analysis of the election process.

PARTICIPATION OF WOMEN

Women were under-represented in those elected, as candidates, as voters and in the election administration. There was also a lack of gender-disaggregated information, and groups broadly representative of women do not appear to have been consulted in the development of acts, rules and practices.

Indirectly elected reserved seats for women were criticised as those elected to reserved seats were accountable to parties rather than the public. Also some narrow restrictions on who could nominate women for reserved seats (e.g. only those who were directly elected to general seats), *de facto* limited women's opportunities to run. There was also a lack of information about how to run for reserved seats. Numbers are generally not available on the number of women who ran on general seats, but it appears to be very low, with recurring reports of women being told to run for a woman's seat, rather than take up a general seat that a man could win. No information is available on the number of women who won seats.

Under-registration of women voters has become more pronounced since the general elections in all provinces. Women's polling stations/booths were consistently regarded as easier to manipulate, often with worse conditions, less active agents and reduced observer scrutiny, particularly in rural areas. There were again constituencies where women appeared to be barred from voting (in three provinces). Gender-disaggregated data for KP's elections showed a 27.9 percent turnout for women in contrast to a 50.1 percent turnout for men.

PARTICIPATION OF MINORITIES AND VULNERABLE GROUPS

People from minority religious groups were under-represented in those elected, as candidates, and as voters. There was also a lack of consultation in the development of acts, rules and practices. The indirect election for "non-Muslim" reserved seats is problematic in the same manner as the seats reserved for women. Oaths were sometimes discriminatory in requiring all candidates, including non-Muslim candidates, to strive to preserve Islamic ideology. The Ahmadi community, which boycotted the elections, are discriminated against by having to be on a separate electoral roll. Reportedly the Sikh community in Sindh also boycotted the elections.

Very few minority candidates ran on general seats. Provisions for people with disabilities in the electoral process were generally inadequate. Voters with disabilities had limited options for casting a ballot as there was no braille option and many polling stations were reportedly inaccessible.

PRIORITY RECOMMENDATIONS RELEVANT TO THE GENERAL ELECTIONS

Legal framework

1. Based on meaningful and inclusive consultations, election legislation be amended in good time.

Delimitation

2. Legislation for delimitation be amended to allow for alternative population data to be used when the census is out-dated and to include transparency provisions.
3. The ECP independently conduct fresh delimitations with opportunity for public involvement and full transparency and information available.

Election administration

4. The ECP issue regulations to promote consistency and predictability of implementation of the law, to protect the integrity of the process.
5. The ECP take responsibility for the management and accountability of the work of ROs through for example regulations and instructions, transparency requirements and performance checks.
6. The ECP work transparently, making information easily and promptly available to stakeholders, including on ECP decisions and activities, delimitation, registered voters, candidates nominated and full results data

Voter registration

7. Legal regulation be undertaken of the respective responsibilities of the ECP and NADRA in production and maintenance of the electoral roll.

Candidate nomination

8. Legislation be amended to include objective and non-restrictive criteria for running as a candidate.

Election days

9. The ECP further develop its monitoring initiative and review the performance of polling stations in order to identify locations with staff and/or election materials issues, recorded instances of malpractice, undue influence etc.
10. The electoral roll be ordered in a more searchable sequence, for improved polling station management and reduced dependency on parties on election day.

Results

11. Procedures be secured in law for counting and tabulation of results, to include provisions for robust checks, time limitations, and display of full polling station results data at local and national levels, including online.

Election Dispute Resolution

12. Legislation be amended to include requirements for administrative complaints mechanisms, independent tribunal bodies with a broader remit for the whole election process, and expansion of those eligible to file petitions, to reduce recourse to writ petitions.
13. Election Tribunals be sufficiently established and resourced to be able to decide election petitions with due process within the legal timeframes specified.

Scrutiny of the process

14. Legislation be amended to provide for the rights of observers, including to access the all stages of the electoral process.
15. Freedom of information laws be revised to include proactive transparency requirements for all state bodies, systems for information request, as well as sanction and enforcement mechanisms for non-compliance.

Participation of women

16. In consultation with women's groups, a review be undertaken of the system of reserved seats for women, in line with UN General Assembly resolution 66/130 which calls on countries to review the differential impact on their electoral systems on the political participation of women.
17. Legislation be amended to include requirements for the ECP to produce gender-disaggregated data on candidacy, those elected, and registered and actual voters.

18. Areas where there were signs of no or limited women's voting be investigated to identify and address bans on women's participation.
19. Efforts be continued and expanded to increase voter registration and CNIC-possession among women, and thus reduce the registration gap.

Participation of minorities

20. A review be undertaken of the system of reserved seats non-Muslims.
21. The separate list for Ahmadi voters be abolished, so that all voters are on one unified electoral roll.

ADDITIONAL RECOMMENDATIONS SPECIFIC TO LOCAL ELECTIONS

Legal framework

1. Based on meaningful and inclusive consultations, local government acts be amended in good time to legislate for all aspects of the electoral process (including the system of indirect elections for reserved seats, counting procedures and transparency requirements).
2. The legal framework for local elections in each province be consolidated and made available online.
3. Power to create secondary legislation (administrative regulations) be given solely to the body which is administering the process, the ECP.

The campaign

4. The Code of Conducts be revised, in consultation with political parties, to remove prohibitions on campaigning by government officials in a non-official capacity. Regulations defining acceptable and prohibited behaviour by government officials during campaigns be further elaborated to provide clearer guidance.

Participation of minorities

5. Candidate nomination oaths be amended so that freedom of religion is not compromised during the nomination process.

REFORM AHEAD OF THE GENERAL ELECTIONS

The controversy over the 2013 elections continued well into the term of the new parliament, resulting in the formation of the General Elections 2013 Inquiry Commission, which investigated accusations of

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systematic fraud. The Commission did not find evidence of systematic manipulation of the elections, but its final report released in July 2015 did highlight many shortcomings in the electoral process, including: poor planning, weak oversight of compliance with centrally issued instructions, ineffective results management, inadequate training of ROs and polling personnel, and insufficient coordination among election officials. Observer reports from the 2013 general elections and the LGEs have found comparable problems. Such shortcomings in the general elections expected in 2018 could be further politically divisive and undermine confidence in elected government.

The cross-chamber parliamentary committee on election reform is due to present recommendations for legal reform. This is an increasingly urgent matter given that it is good practice for legal reform to take place a year or more in advance of elections⁶. Realistically more time is warranted given the need for a delimitation process. Developments in the framework and implementation for the general elections would avoid the risk of political instability and further serve to support the development of future LGEs.

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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.

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⁶ See for example the internationally widely respected Venice Commission's Code of Good Practice in Electoral Matters "The fundamental elements of electoral law, in particular the electoral system proper, membership of electoral commissions and the drawing of constituency boundaries, should not be open to amendment less than one year before an election, or should be written in the constitution or at a level higher than ordinary law." Section II2(b). The Venice Commission, formally called the European Commission for Democracy Through Law, has 60 Member States from 4 continents.