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FIX IT BEFORE IT BREAKS: WHAT THE LOCAL ELECTIONS TELL US FOR IMPROVING THE 2018 GENERAL ELECTION

SUMMARY

The local government elections were an opportunity to develop electoral practices and identify where Pakistan can make improvements in advance of its next general elections, which are expected to take place in 2018. The local elections involved extremely challenging operations; they involved a large number of seats and candidates and contended with problematic security conditions. Despite these conditions, the elections were competitive, and the ECP took initiative to improve some electoral practices.

However, the legal frameworks remained inadequate, giving excessive discretion to provincial governments. Information about the frameworks was insufficiently available to the public and other stakeholders. The delimitation process also remained problematic. It appears that the ECP ineffectively managed returning officers. The electoral processes lacked transparency and provisions for the scrutiny of the electoral processes remained weak. Opportunities for remedy remained inadequate and were crucially impaired because the ECP did not make the results data

available. From the limited data that was made available, it is clear that women and minority communities were under-represented and arrangements for reserved seats continued to be problematic. Given that such shortcomings have also emerged in previous general elections in Pakistan, there is a great need to address them before the upcoming 2018 elections. If these problems remain unaddressed, there is a risk that the next general elections will prove even more controversial than the previous polls.

INTRODUCTION

Since the 2013 general elections, local government elections (LGEs) have taken place in the four provinces of Pakistan and the Islamabad Capital Territory (ICT). Democracy Reporting International (DRI) deployed Election Assessment Missions (EAMs) to the four provincial LGEs. The EAMs¹ assessed aspects of these election processes against Pakistan's international commitments and made recommendations accordingly.²

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

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

DRI intends the EAM recommendations to not only contribute to the development of electoral legislation and practices for future LGEs, but also to be applicable to the upcoming general elections. The recommendations complement those of the 2013 EU Election Observation Mission (EOM).

This briefing paper both offers a summary of the key issues that were present in all four provinces and identifies priority issues for policy-makers to consider for the general elections and future LGEs. It does not, however, compare the LGEs in the four provinces, as the context and timing of each election was very different.³

CONTEXT AND OVERVIEW OF THE LGEs

The 18th amendment to the Constitution of Pakistan mandated the provinces with sole responsibility for legislating for local government. At the same time, however, the Constitution of Pakistan gives the federal Election Commission of Pakistan (ECP) responsibility for administering LGEs. During the subsequent series of local elections, different leaderships directed the ECP and took varying degrees of initiative in the development of electoral practices.⁴

The recent LGEs represented an opportunity for the ECP to develop electoral practices. The LGEs also constituted large-scale, challenging operations, particularly due to 1) the need to conduct local level delimitations processes, 2) the high number of seats and 3) the more than 241,000 candidates who ran for office across the four provinces. In addition, the security situations in some parts of provinces made it

especially difficult to implement good electoral practices.

Stakeholders, including political parties and civil society, appreciated the holding of the long-overdue LGEs. This was in part due to the Supreme Court decision that spurred the passing of the necessary provincial legislation. The elections were predominantly competitive, with relatively few constituencies left uncontested. None of the main parties boycotted the process, and each accepted the overall results; however, there were recurring allegations of rigging that led to a number of post-election disputes.

The media contributed to the transparency of the polls through keen scrutiny of the process. Civil society – namely, the Free and Fair Elections Network (FAFEN) and the Human Rights Commission of Pakistan (HRCP) – was also active, particularly on election days.⁵

The ECP undertook positive initiatives to strengthen the process for the later LGEs. To avoid some of the logistical issues that arose in the LGE in Khyber Pakhtunkhwa (KP), for instance, the ECP held the Punjab and Sindh elections in three phases and polling hours were extended.

The ECP also sent out instructions to Returning Officers (ROs) to try to increase conformity in candidate nominations, and it worked to ensure that the issuing of party tickets occurred during nominations (not after). Likewise, the ECP recently

³ Local elections in the provinces were held on the following dates: 7 December 2013 in Balochistan; 30 May 2015 in Khyber Pakhtunkhwa; 31 October 2015 (phase I), 19 November 2015 (phase II), 5 December 2015 (phase III) in Punjab and Sindh.

⁴ The current Chief Election Commissioner was appointed on 5 December 2014. The four Members of the Commission took their oaths on 13 June 2012, and the current Secretary took up the post on 1 April 2015.

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

removed and replaced some ROs whose performance it deemed problematic, and it established an internal monitoring system and some opportunity for lodging complaints. Other positive developments were the ECP's use of some of its own staff as District Returning Officers (DROs) and ROs and its taking greater initiative to train election staff.

The ECP also recently consulted with observers over accreditation procedures and has taken crucial initiative to challenge government officials over the misuse of positions and resources.

The ECP provided gender-disaggregated data on voter turnout for the KP elections, albeit eight months after the elections.

During the bye-elections that took place concurrently, the ECP established a number of further positive practices, including nullifying results in constituencies where women were barred from voting.⁶ During the ICT LGE, moreover, the ECP piloted a geographic information system for polling stations and an android-based results management system.

Election security was a dominant concern, with several serious incidents (in KP, Punjab and Sindh) resulting in the loss of life and deferment of polls in some locations. Following heated accusations of security lapses during the KP elections, the ECP requested that paramilitary Rangers be present both inside and outside of the polling stations for the Sindh elections and for some of the Punjab polls. The Rangers were granted magisterial powers. Stakeholders indicated their appreciation for the deployment of the Rangers,

indicating their lack of confidence in the neutrality and effectiveness of the police and the election staff to manage polling stations.

Several opposition parties and other stakeholders accused provincial governments of protecting their own powers, leaving local councils with limited authority. On top of this, the local councils are subject to provincial government oversight and control. The high proportion of reserved seats (approximately 40% of the total seats) that were set aside for traditionally under-represented groups and filled through weak indirect election systems reduced the power of directly elected representatives.

KEY ISSUES

LEGAL FRAMEWORK

The process for passing LGE legislation in the four provincial assemblies was adversely affected by numerous problems. In particular, there was 1) a lack of consultation (both with the ECP and stakeholders, especially under-represented groups), 2) insufficient consideration of electoral expertise, 3) insufficient consideration of Pakistan's international obligations, and 4) significant delays in the process. Consequently, there remained legislative gaps and weak legal provisions; accusations of bias consequently emerged. The legal framework gives excessive discretion to incumbent parties, in particular by granting provincial governments regulatory power to make rules related to elections.

The local government acts omit provisions for key aspects of the election process, including the system of indirect elections for reserved seats and counting

⁶ Iftikhar Khan, "ECP Voids Dir By-Poll Result over Women Vote Bar," Dawn, 3 June, 2015.

<<http://www.dawn.com/news/1185886>>

procedures. The omissions leave these fundamental aspects of the electoral process at the discretion of ruling parties and, therefore, subject to governmental change. This situation yields a less certain legal framework and risks actual and/or perceived partisan interests being served. The granting of this rule-making authority to the provincial governments dilutes accountability for the conduct of the elections and creates ambiguous arrangements, whereby the provincial government and ECP share responsibility. While the rules cover some aspects that the acts omit, critical gaps remain, including guidance for time limits and mechanisms for reserved seats. Major changes to the rules (including some to the electoral system for reserved seats) continued to take place even after election schedules were announced.

Another fundamental problem with the legislation was the lack of publicly available information about the updated laws and rules, particularly via the internet. This information-deficit contributed to a lack of stakeholder understanding of the electoral process. It also disadvantaged electoral staff and stakeholders, as they were left unaware of the changing rules of the game, which represented a particularly difficult issue because of the various late changes that occurred.

DELIMITATION

The delimitation process proved very problematic, with the legislation requiring the use of highly outdated census figures from 1998. This requirement fundamentally compromised the ability to maintain equality of the vote between constituencies of the same body and, as a result, the populations of some constituencies varied enormously. It also meant that delimitation was extremely difficult to implement, as the 1998 census data uses different units of

measurement (census block codes) than the current electoral roll. It was, therefore, hard to delimit the constituencies for the local elections, as the constituencies were very small.

The legal frameworks in Balochistan and KP give the provincial governments excessive discretion to demarcate the bigger units and delimit within them. This arrangement created an obvious risk of actual and/or perceived favour of the incumbent. The Supreme Court ruled that delimitation must be conducted by a "neutral and credible" body, which resulted in the ECP's conducting delimitation (not demarcation) of electoral constituencies. In practice, the ECP was under-resourced and relied heavily on staff from the provincial administrations. As a result, a high number of delimitation-related petitions were submitted to tribunals and to the superior judiciary. These petitions resulted in the identification of some apparent instances of gerrymandering. As such, it became clear that the ECP had insufficiently protected the process and elections in various constituencies were, therefore, postponed.

A further fundamental problem was the insufficient availability of delimitation information. This dearth of information left aspirant candidates uncertain about which constituency they were eligible to nominate themselves in and where they were able to campaign. It also adversely affected the knowledge of voters about their candidate choices.

ELECTION ADMINISTRATION

Despite the ECP's progressive efforts to improve election administration, fundamental weaknesses persisted. In particular, the ECP did not provide sufficient election data (e.g. results numbers) or information on the process (e.g. post-election day

schedules). The ECP also delegated responsibility to ROs without instigating checks for accountability, consistency and accuracy. Due to judiciary's unwillingness to continue taking on the work of ROs, the ECP predominately used provincial government staff.

VOTER REGISTRATION

The ECP continued the pragmatic and positive practice of using data from the Computerised National Identity Card (CNIC) database, which the National Database and Registry Authority (NADRA) manages, for the electoral roll. However, there remains no legal regulation of this relationship. The ECP also did not provide sufficient information about the registration services or the total and composite numbers of registered voters. To date there is no arrangement for maintaining the electoral roll. The current sorting of the electoral roll by census block code (rather than alphabetically or by CNIC number) renders the roll unwieldy for polling staff and, therefore, unnecessarily complicates the voting process.

CANDIDATE NOMINATION AND SCRUTINY

As with the national legislation, the provincial acts include vague conditions for candidacy that risk arbitrary and inconsistent application. Positively, the ECP has taken some recent steps to enhance consistency. In the lowest tier in KP, there was a ban on party affiliation for candidates, thereby 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. The ECP provided only limited statistical information about the numbers of candidates running. As with the general elections, a high proportion of candidates

withdrew when their parties refused to award them party tickets later in the process.

CAMPAIGN

The codes of conduct for the campaign may be seen as overly-restricting fundamental rights. For example, in some instances, the ECP banned rallies and processions. Stakeholders raised questions about the appropriateness of this blanket restriction, with non-compliance risking the rule of law for elections being undermined. Government officials and parliamentarians were banned from participating in a personal capacity. Enforcement primarily became the *de facto* responsibility of ROs, and accountability checks (such as record keeping requirements, or a complaint system) remained insufficient.

ELECTION DAYS

Untrained staff working in polling stations (due in part to staff substitutions) was a recurring issue that was particularly problematic because of the lack of availability of manuals in some stations.

Parties continued to play an excessive and sometimes intimidating role by setting up camps near to stations to give voters *perchis* (pieces of paper that provide voter registration information).

Issues of over-crowding, particularly in the KP elections (where voters had seven ballots), as well as the presence and involvement of unauthorised persons were among the key polling issues that DRI and citizen observer groups observed.

RESULTS

As with the national elections, there is neither any legal provision or practice in the local elections for checking polling station results nor any mechanism for the correction of anomalies. The consolidation

process (tabulation, including checks for invalid ballots) does not have provisions for ROs to take the initiative to undertake recounts, and there is a lack of accountability for RO decisions on whether to undertake recounts that candidates request. The ECP did not undertake checks of RO tabulations and announced results. Consequently, the process continued to face a significant risk of results anomalies going unaddressed and grievances not being resolved in a timely manner.

Together, these situations yielded protracted disputes over election results as well as challenges to governance mandates. There remains a lack of legal transparency requirements for results posting and this was, therefore, inconsistently practiced.

The transparency of RO consolidation was also inconsistent. Winning candidates were centrally notified by the ECP, but no results data was provided that would have allowed for the checking of results and, therefore, could have yielded confidence in those elected. The ECP also did not provide sufficient data on turnout, invalid ballots and other key issues. There is, moreover, no legal stipulation for a time requirement for the publication of results.

ELECTION DISPUTE RESOLUTION

No legislative provisions are provided for administrative complaints. While the ECP took positive initiative in this regard by creating some opportunities to file administrative complaints, this was under-regulated and lacked transparency. It is, therefore, unclear if it created opportunities for corrective actions. Specialised petition mechanisms are established, but they only cover some aspects of the election (e.g. delimitation, candidate nominations and

challenges lodged against a returned candidate). These tribunal mechanisms lack independence, offering inconsistent access to timely remedy with due process.

Challenges against returned candidates, moreover, can only be submitted by other candidates. Consequently, there was legal escalation with constitutional writ petitions made to superior courts. The absence of time limits and the volume of cases meant that various High Court judgements inevitably came during the electoral process, rendering the election less predictable and increasing uncertainty.

SCRUTINY OF THE PROCESS

Due to the fact that independent scrutiny is not legislatively guaranteed, the ECP wields wide discretion in this regard. This situation has proven problematic, as there are no established rights for observers and there is a continued reliance on inadequate accreditation mechanisms. Furthermore, some accredited observers were denied access to polling and counting processes. The lack of protections and provisions for independent scrutiny compromises a fundamental check in the election process, which is particularly negative given the culture of accusations of rigging. The existence of only weak provisions to protect freedom of information also limited the ability of the public, media and civil society to access election data.

In Balochistan, no observation took place. There was also limited critical media analysis of the election process. In nearly one third of the districts, moreover, the threat of insecurity prevented media coverage.

PARTICIPATION OF WOMEN

Women were under-represented as candidates, returned candidates, voters and election administration staff. Groups broadly representative of women were not consulted in the development of election acts, rules and practices. There was also a lack of gender-disaggregated information. There is very little available data on the number of women who contested the general seats, but it appears to be very low, with recurring reports that political parties told women to run for a woman's seat, rather than competing for a general seat that a man could win. No information is available on the number of women who won seats.

Stakeholders criticised the indirect election process for reserved seats for women, arguing that these members become accountable to their respective parties rather than the public. Narrow restrictions on who could nominate women for reserved seats (e.g. only those who were directly elected to general seats), limited the opportunities available for women to compete. There was also a lack of available information about electoral process for reserved seats and how to become a candidate.

The under-registration of female voters has become more pronounced in all four provinces since the general elections. At the same time, stakeholders regarded women's polling stations/booths as being consistently easier to manipulate, often kept in worse conditions, staffed by fewer active agents, and subject to reduced observer scrutiny (particularly in rural areas). In some constituencies women appear to have been barred from voting (in three provinces). Gender-disaggregated data for the elections in KP shows 27.9% voter turnout for women in contrast to 50.1% turnout for men.

PARTICIPATION OF MINORITIES AND VULNERABLE GROUPS

Minority religious groups were under-represented as candidates, returned candidates and voters. Provincial governments largely excluded these groups from consultation processes during the development of acts, rules and practices. The indirect election for "non-Muslim" reserved seats faces the same problems and criticism as those for reserved seats for women. Oaths sometimes proved discriminatory, requiring all candidates, including non-Muslims, to "strive to preserve Islamic ideology". The Ahmadi community, which boycotted the elections, face discrimination by being placed on a separate electoral roll. 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 possessed 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 a timely manner, at least one year before the next elections.

Delimitation

2. Legislation for delimitation be amended to allow for alternative population data to be used when the census is out of date, and for the inclusion of provisions for transparency.

3. The ECP independently conduct fresh delimitations, providing an opportunity for public involvement as well as offering full transparency and making information available.

Election administration

4. The ECP issue regulations to promote the consistency and predictability of the laws' implementation in order to protect the integrity of the process.
5. The ECP take responsibility for the management and accountability of the work of ROs by, for instance, issuing regulations and instructions that address transparency requirements and performance checks.
6. The ECP work transparently, making information easily available to stakeholders in a timely manner, including information on ECP decisions and activities, delimitation, registered voters, nominated candidates and full results data

Voter registration

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

Candidate nomination

8. Legislation be amended to include objective, non-restrictive criteria for individuals to run as candidates.

Election days

9. The ECP further develop its monitoring initiatives and review the performance of polling stations in order to identify locations with staff and/or election material issues as well as recorded instances of malpractice.

10. The electoral roll be ordered in a more searchable sequence to improve polling station management and reduce dependency on parties on election days.

Results

11. Procedures be secured in primary laws for the counting and tabulation of results to include provisions for robust checks, time limitations and the display (including online publication) of full polling station results data for the local and national levels.

Election Dispute Resolution

12. Legislation be amended to include requirements for 1) administrative complaint mechanisms, 2) independent tribunal bodies with broader jurisdiction for the entire electoral process and 3) the expansion of those eligible to file petitions in order to reduce recourse to writ petitions.
13. Election Tribunals be established and sufficiently resourced to be able to adjudicate election petitions in due process within the legally specified timeframes.

Scrutiny of the process

14. Legislation be amended to provide for the rights of observers, enabling them to have access to all stages of the electoral process.
15. Freedom of information laws be revised to include 1) proactive transparency requirements for all state bodies, 2) systems for information request and 3) enforcement and sanction 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. Arrangements for women's political

participation be made in line with UN General Assembly resolution 66/130, which calls on countries to review the differential impact of their electoral systems on the political participation of women.

17. Legislation be amended to include requirements that the ECP produces gender-disaggregated data on candidacy, returned candidates, and registered and actual voters.
18. Investigations be undertaken in areas where there were signs of an absence of – or limited – women’s voting to identify and, subsequently, address bans on women’s participation.
19. Efforts be continued and expanded to increase voter registration and CNIC possession among women, and thereby reduce the registration gap.

Participation of minorities

20. A review be undertaken of the system of reserved seats for non-Muslims.
21. The separate list for Ahmadi voters be abolished, so that all voters are placed 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 frameworks 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 that is administering the process: the ECP.

The campaign

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

Participation of minorities

5. Candidate nomination oaths be amended so that the 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. This resulted in the formation of the General Elections 2013 Inquiry Commission, which investigated accusations of systematic fraud. The Commission did not find evidence of systematic manipulation of the elections, but its final report, which was 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 further political divisiveness 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 elections⁷. Realistically, more time is warranted because of 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.

ABOUT 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 worldwide. 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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⁷ See, for example, the internationally 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 four continents.