INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS: PAKISTAN’S NEW INTERNATIONAL OBLIGATIONS AND ELECTION REFORM

THE GOVERNMENT OF PAKISTAN SIGNED THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR) ON 17 APRIL 2008 AND IS NOW IN THE PROCESS OF RATIFICATION. THE ICCPR CONTAINS OBLIGATIONS RELATED TO DEMOCRATIC ELECTIONS. THIS BRIEFING PAPER HIGHLIGHTS THE IMPLICATIONS OF SIGNING AND RATIFICATION OF THE ICCPR FOR ELECTORAL REFORM IN PAKISTAN.

Now is a crucial time for electoral reform if Pakistan wants to pursue the obligations contained in the ICCPR, wants elections to meet international standards and wants future governments and parliaments to be accepted by stakeholders as fully legitimate.

1. RELEVANCE OF ICCPR FOR ELECTIONS

The ICCPR strengthens many of the human rights enshrined in the 1948 Universal Declaration of Human Rights (UDHR). It is legally binding on all States that have ratified it (165 to date). While various ICCPR articles refer to fundamental freedoms, which are preconditions for democratic elections, article 25 deals specifically with electoral rights:

“Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

1 http://www2.ohchr.org/english/law/ccpr.htm
(a) To take part in the conduct of public affairs, directly or through freely chosen representatives;

(b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;

(c) To have access, on general terms of equality, to public service in his country. * 

The UN Human Rights Committee monitors ICCPR implementation by state parties and issues general comments, which provide an authoritative interpretation of the ICCPR provisions. Its ‘General Comment 25’ explains the meaning of article 25 in detail.  

2. SIGNIFICANCE OF SIGNING AND RATIFYING THE ICCPR

The time between signing and ratification allows States to progress towards making their domestic legislation and practice compliant with ICCPR obligations. During this time signatory States are obliged not to defeat the object and purpose of the treaty. Once the treaty is ratified, there is a requirement of regular reporting by the State party to the Human Rights Committee on compliance with the treaty obligations.

Aspects of electoral reform concerning the Constitution and legislation relating to local elections are being discussed in Pakistan, but federal legislation related to elections has not yet been amended. At all these levels ICCPR obligations should be taken into account in view of the impending ratification of the ICCPR.  

3. SHORTCOMINGS OF PAKISTAN’S ELECTORAL FRAMEWORK

The 2008 EU Election Observation Mission (EOM) identified various aspects of the electoral process, which were not in line with international obligations:

“The mission concluded that these elections fell short of a number of international standards, including the citizen’s right to take part in the government of his or her country directly, by standing for office or through freely chosen representatives (UDHR Article 21), freedoms of expression (UDHR Article 19) association and assembly (UDHR Article 20), the right to an effective remedy (UDHR Article 8), the right to non-discrimination (UDHR Article 2), and the right to universal and equal suffrage (UDHR Article 21). There was also a lack of transparency, as called for in Article 11(f) of the United Nations General Assembly’s resolution on promoting and consolidating democracy (A/Res/55/96)”.

The 2008 EU EOM made extensive recommendations for electoral reform, to which the main political parties as well as other stakeholders agreed. The Election Support Group (ESG) then compiled all observer group recommendations and identified 32 key recommendations for reform.

Many of these recommendations need to be addressed through constitutional amendments, reform of statutes (ordinary legislation) or changes in the way the law is implemented. The most important areas for reform in light of ICCPR obligations include:

A) CONSTITUTIONAL REFORM

FREEDOM OF EXPRESSION

The EU EOM recommended that “freedom of expression should be subject to ‘necessary’ restrictions, rather than ‘any reasonable restrictions imposed by law’, through amendment of Article 19 of the Constitution.”

This is in keeping with article 19 of the ICCPR, which states that “everyone shall have the right to hold opinions without interference... It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary.”

2 http://www2.ohchr.org/english/bodies/hrc/index.htm
3 http://www.ohchr.org/EN/HRBodies/HRC/Session26/Pages/Ipriorities.aspx
4 Article 18 of the Vienna Convention on the Law of Treaties (1969) determines that: “A State is obliged to refrain from acts which would defeat the object and purpose of a treaty when: (a) it has signed the treaty or has exchanged instruments constituting the treaty subject to ratification, acceptance or approval, until it shall have made its intention clear not to become a party to the treaty; or (b) it has expressed its consent to be bound by the treaty, pending the entry into force of the treaty and provided that such entry into force is not unduly delayed.”
5 The ICCPR applies to all elections of public bodies, including local governments. This is clear from the language of General Comments 25, see for example paragraphs 5 and 6.
APPOINTMENT MECHANISMS TO THE ELECTION COMMISSION OF PAKISTAN (ECP)

The EU EOM recommended that “the law should be amended so that appointments to the positions of Chief Election Commissioner and ECP members are based on stakeholder consultation.”

The Human Rights Committee indicated in General Comment 25 that “an independent electoral authority should be established to supervise the electoral process and to ensure that it is conducted fairly, impartially and in accordance with established laws which are compatible with the Covenant.”

One way of promoting the independence of the electoral authority is through multi-party involvement in the appointment process.

B) REFORM OF STATUTES (ORDINARY LEGISLATION)

CANDIDACY REQUIREMENTS

The EU EOM recommended that “requirements for candidacy for the National and Provincial Assemblies should be brought into line with international standards by removing the requirement for a bachelor degree or an equivalent educational certificate. Vague qualification and disqualification criteria of a moral nature should be revised.”

The UN Human Rights Committee noted in General Comment 25: “Any restrictions on the right to stand for election, such as minimum age, must be justifiable on objective and reasonable criteria. Persons who are otherwise eligible to stand for election should not be excluded by unreasonable or discriminatory requirements such as education, residence or descent, or by reason of political affiliation.”

THE ELECTORAL ROLL

The EU EOM recommended that “The ECP should produce an accurate and complete electoral roll, and consider the possibility of this being subject to continuous updating. The ECP should work with National Database and Registration Authority (NADRA) … The data captured should be subject to a comprehensive nationwide check for duplicates.”

The UN Human Rights Committee noted: “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. If residence requirements apply to registration, they must be reasonable, and should not be imposed in such a way as to exclude the homeless from the right to vote. 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.”

TRANSPARENCY

The EU EOM recommended that “the law should be amended to clearly stipulate the rights and responsibilities of observers and should guarantee unfettered and close access of candidates, their agents and observers to all stages of the electoral process including the aggregation of results.”

It also recommended that “The law should be amended to require detailed polling station results to be swiftly displayed at the constituency and on the internet. All polling station results should be submitted to the ECP for immediate publication on the official website.”

General Comment 25 emphasises the importance of independent scrutiny, stating that “…votes should be counted in the presence of the candidates or their agents. There should be independent scrutiny of the voting and counting process.”

COMPLAINTS AND APPEALS

The EU EOM made a number of recommendations related to complaints and appeals. These include: “A clear structure should be established so that complaints are first filed administratively to the ECP, and upon exhaustion or dissatisfaction, complainants may then appeal to the courts.”

It also stipulates that “Tribunals should be composed of judges, or retired judges, who are independently appointed. A consultation process should be undertaken for appointments to ensure stakeholder confidence. The President and the Chief Election Commissioner should not be involved.”

Article 2.3 of the ICCPR states that “All 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.” General Comment 25 also states that “There should be…

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13 EU EOM recommendation 7.
14 General Comment 25, paragraph 11.
15 EU EOM recommendation 16.
16 EU EOM recommendation 19.
17 General Comment 25, paragraph 20.
18 EU EOM recommendation 39.
19 EU EOM recommendation 44. In addition to ordinary legislation on this matter, article 219 of the Constitution states that one of the duties of the Commissioner is appointing election tribunals.
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.”

C) REFORM IN THE WAYS THE LAWS ARE IMPLEMENTED

EQUALITY OF THE VOTE

While the law requires constituencies to be “as far as may be ... equal among themselves in population”\(^ {25} \), in the last elections the population per constituency varied greatly.

The EU EOM recommended that “during the next delimitation exercise, the ECP should ensure that newly delimited constituencies are approximately equal in size, in order to uphold the principle of equal suffrage.”\(^ {26} \)

General Comment 25 indicates that “The principle of one person, one vote, must apply, and within the framework of each State’s electoral system, the vote of one elector should be equal to the vote of another. The drawing of electoral boundaries and the method of allocating votes should not distort the distribution of voters or discriminate against any group and should not exclude or restrict unreasonably the right of citizens to choose their representatives freely.”\(^ {27} \)

ABOUT DEMOCRACY REPORTING INTERNATIONAL

Democracy Reporting International is a non-partisan, independent, not-for-profit group of experts registered in Berlin since March 2006. 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 UDHR and ICCPR.

DRI received an 18-months grant from the European Commission to work with Pakistani legislatures (federal and provincial) on promoting and realising electoral reform, as a follow-up to the EU Election Observation Missions. The grant also includes work with the media on coverage of the anticipated local elections, as well as assessments of the local elections.

DRI can support legislatures in various ways, including:

- Expertise on ICCPR electoral commitments for advice, briefings, and trainings.
- Information on electoral matters.
- Assistance on cross-party work and undertaking stakeholder consultations on election reform.
- Research assistance time.
- Assistance with law drafting skills.

For more information please contact: officepk@democracy-reporting.org

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\(^ {25} \) General Comment 25, paragraph 20.
\(^ {26} \) The Delimitation of Constituencies Act (1974), section 9 (2).
\(^ {27} \) EU EOM recommendation 27.