

COMPENDIUM: KEY ISSUES FOR LOCAL GOVERNMENT ELECTIONS IN PAKISTAN

INTRODUCTION

In the months of August and October, several provinces in Pakistan tabled or passed legislation on local government elections. In Khyber Pakhtunkhwa, on 7 October 2013 the Khyber Pakhtunkhwa Local Government Bill 2013 was tabled in the Provincial Assembly and is currently being reviewed by a Select Committee of the Khyber Pakhtunkhwa Assembly.¹ On 21 August 2013 the Punjab Assembly passed the Punjab Local Government Act of 2013, and on 19 August 2013, Sindh's Provincial Assembly passed the Sindh Local Government Act 2013.

As part of its regular analysis to increase stakeholder awareness about the electoral environment, DRI's project issued limited circulation briefs to key institutions, local government officials, and civil society. These briefs are intended to provide an overview of the key gaps in the Khyber Pakhtunkhwa Local Government Bill 2013, the Punjab Local Government Act of 2013, and the Sindh Local Government Act 2013. Comprehensive assessments of the Acts, based on Pakistan's international obligations, are forthcoming.

¹ For an extensive assessment of the Khyber Pakhtunkhwa Local Government Act of 2012, which is currently in force, see DRI's Khyber Pakhtunkhwa Local Elections Framework Assessment, available at <http://goo.gl/ho7f1>. An assessment of Balochistan's Election Framework is also available at http://www.democracy-reporting.org/files/dri_balochsitan_lefa.pdf

1. KEY ISSUES: LOCAL ELECTIONS FRAMEWORK OF KHYBER PAKHTUNKHWA

ELECTORAL REFORM PROCESS

When considering reform of the electoral framework, the KP Government should review Pakistan's obligations for elections under the International Covenant on Civil and Political Rights (ICCPR), particularly article 25, which contains provisions related to participation in public life and elections. Pakistan became a state party to the ICCPR in June 2010, thus committing itself to respecting the rights enshrined in the covenant.

Legislators should also take into consideration the guidelines for provincial authorities of the Election Commission of Pakistan (ECP) on how to incorporate the key principles in the legislation and offered cooperation in legal drafting (letter of 18 July, 2013).

Legislative procedure should include public hearing conducted by assembly committee to receive concrete proposals for strengthening the Bill.
A comprehensive mandate

LACK OF CLARITY IN THE BASIC FRAMEWORK

The primary legislation relating to elections should regulate all the fundamental issues including secrecy, the need for periodic elections, electoral system, requirements for candidates and voter registration and provisions for management of elections. This Bill fails to include provisions about a number of key areas like campaign finance and regulation, results announcement deadlines, polling and counting procedures, and provisions for transparency of the process. The Bill also does not spell out appointment criteria for election tribunals or procedures for filing and processing of complaints in the pre-poll period. The candidacy requirements are also not clear.

The Bill seems to have copied qualifications and disqualifications of candidates/members from the LGO 2001 and retains vague and subjective criteria like having "good character" and being a good Muslim with adequate knowledge of Islam. In addition, the Bill makes mandatory for the elected representatives to attend trainings, and failure to attend can lead to disqualification of a council member.

Section 1 (2) of the Bill gives the Provincial Government arbitrary powers to exclude any area from the LG system through a notification in the official gazette but does not articulate conditions for such exclusion.

The Bill does not spell out clear criteria for setting up a town council. Section 9 (1) leaves this to discretion of the provincial government.

ELECTION SYSTEM

The Bill bans partisan affiliation for candidates in village/neighbourhood elections councils which is against the

principles of freedom of political association, but it allows partisan elections for members of Tehsil and District councils.

Reserved seats for women, youth, workers/peasants and non-Muslims in the Tehsil/town and District are assigned through appointments from political parties. While the proportional representation (PR) list systems are legitimate election systems, the legislators should ensure transparency of the candidacy lists prior to elections, rather than keeping the candidates on the lists secret.

CONSTITUENCY DELIMITATION

The structure and functions of the boundary Delimitation Authority should be clearly defined. Section 10 proposes setting up a Delimitation Authority for delimitation of village/neighbourhood councils and territorial constituencies (wards) for general seats to Tehsil, Town and District Councils. However, the Bill is silent about composition and structure of the proposed Delimitation Authority. Section 26 creates further confusion which states that the government, instead of the Delimitation Authority, shall by notification in the official gazette constitute village/neighbourhood councils.

The Bill does not guarantee equal suffrage and it allows the provincial government to waive arbitrarily size of range for village/neighbourhood councils, which can vary as much as from 2,000 to 10,000.

There are no clear criteria about composition and structure of village/neighbourhood councils and the size can vary from ten to fifteen members. On the other hand, the number of women, youth, and workers/peasants seats is fixed which may lead to under-representation of these groups on the councils.

DISSOLUTION AND FRESH ELECTIONS

The draft Bill determines a three years term for local councils but there is no regulation on dissolution of the councils or holding fresh elections in such a case. However, section 81 (1) provides for elections within 90 days in case of casual vacancy. The draft Bill should be reviewed to also set a clear timeline for holding fresh elections after expiry of the term or in case of early dissolution of a local council.

RIGHT TO VOTE - REGISTRATION OF VOTERS

The bill copies criteria for voter registration from the KP LG Act 2012 which are different from the requirements for national and provincial elections (per Electoral Rolls Act 1974). The draft Bill does not mention the new requirement to possess a CNIC, issued by NADRA.

In addition to the vague registration criteria, the rules allow the ECP to prescribe additional criteria for voter registration at ECP's discretion. The registration criteria must be clearly spelled out in the LG law and should not be left to the ECP to define it in administrative rules. [ICCPR art 25 (a, b) and General Comment 25 which state that "the right to vote must be established by law".]

The Bill is silent about transparency and access to the electoral rolls to candidates and the time period between announcements of locations of polling stations and polling day which is against General Comment 25 which states that “voters have to be informed of their rights”.

ELECTION ADMINISTRATION

Section 75 of the Draft Bill reinforces Art 140A (2) & Art. 219 (d) of the constitution according to which the ECP is mandated to conduct LG elections. However, the Bill does not regulate electoral schedule and timelines for specific procedures. There are no provisions in this bill about qualification and timeline for appointment of election staff i.e Returning Officers and Assistant Returning Officers.

CANDIDACY AND THE RIGHT TO STAND FOR ELECTIONS

The Bill allows non-Muslims to be candidates for general seats in a village/neighbourhood council. In the working draft of the Bill only Muslims were allowed to run as candidate on general seats. This is a welcome change and is in line with Article 36 of the Constitution of Pakistan which guarantees the protection of minorities, with the state mandated to safeguard their legitimate rights and interests.

The Bill is not clear about eligibility of women, youth and workers/peasants to be candidates or elected on general seats. If the intention of the legislator is to bar these groups from running for on general seats, such a restriction will be a violation of Pakistan’s international commitments. (Paragraph 3 of General Comment 25).

Criteria for qualifications and disqualifications of candidates are vague and allow for arbitrary and subjective judgement of election administrators. Terms like “good character”, “adequate knowledge of Islam” and “abstaining from sins” should be removed. Possible grounds for disqualification also include utility bills which remain unpaid for six months. This may not be a reasonable ground for disqualification.

According to paragraphs 4 and 15 of the General Comment 25, any restrictions on a citizen’s right to stand for election must be justifiable based on objective and reasonable criteria and be established by law.

There is no mention of publication of provisional list of candidates. [ICCPR art 25(b) Right to be elected]. This draft Bill is also silent about how nomination papers will be processed and there is also no mention of appeal against candidacy rejection. [ICCPR Art 2(3) Effective Remedy]

CAMPAIGN FINANCE AND ACCOUNTING

The draft contains no regulation on campaign finances. It only refers to campaign expenses in Section 92 (f) which defines failure to provide statement of elections expenses as illegal practice. However, election expenses are not defined, limited or regulated in any other way.

MEDIA

There is no regulation of media. The review may consider establishing regulatory framework for media to ensure balanced coverage of elections.

ELECTION OBSERVATION

The draft is contrary to the requirement for “independent scrutiny of the voting and counting process” [ICCPR] and does not provide regulation for non-partisan election observation. Regulation should specify mandate, rights and obligations of election observers, both international and national.

VOTING, COUNTING, TABULATION AND PUBLICATION OF RESULTS

Basic elements of the voting procedures which should be included in this bill are not defined in this draft.

No regulation is provided for basic guarantees for transparency, such as a requirement for immediate display of results at the polling station and immediate publication of results by the polling station on the ECP website, as well as the right for candidates and observers to receive official result sheets.

ELECTORAL DISPUTE RESOLUTIONS

Rules for resolution of election disputes are inadequate. While the Bill empowers the ECP to appoint election tribunal for hearing and deciding elections petitions, this is only limited to challenging of the election results under civil litigation system. Furthermore, there is no formal mechanism for filing complaints relating to pre-election issues, candidacy or Election Day issues.

The Bill is not clear about qualification of judges for the election tribunals. This should be reviewed to set a clear criterion for selection of judges for the tribunals. [ICCPR Art 14, Right to a hearing by an independent and impartial tribunal]

A proper procedure for complaints should be included whereby official complaints may first be investigated and acted upon by the Election Commission. Upon exhaustion of this remedy or dissatisfaction with the response, complaints could then be referred to courts/tribunals who act on appeals. Deadlines should be clearly stated which allow for the prompt resolution of all complaints in an expedited timeline which takes account of the potential impact of the outcome on the election.

Some of the sanctions for different offences appear inconsistent. Section 94 permits a prison sentence up to three months for persistent shouting in a polling station, whereas removal or destruction of a ballot box under Section 92 carries a maximum fine of Rs. 10,000. Consideration should be given to carrying out a review of sanctions to ensure they are proportionate and can serve as a deterrent.

Under section 102, the Returning Officer of a given polling station appears to be the only person who can instigate court proceedings contained in provisions relating to conduct of officials or breach of official duty. This may unduly limit the scope of these provisions and fails to provide for circumstances in which the conduct of the Returning Officer may be called into question.

MINORITIES

Section 32 of the working draft of the Bill barred non-Muslims to be candidate for general seats in a village/neighbourhood council. This is very rightly corrected in the Bill tabled in the provincial assembly, allowing non-Muslims to be candidate on general seats.

PARTICIPATION OF WOMEN

Guaranteed seats for women are restricted to only two seats in the village/neighbourhood councils. The total membership of the village/neighbourhood councils may vary from ten to fifteen members. In case of ten members women will have 20% representation but this will be reduced to a little more than 13% in a council of 15 members. Similarly, this variation in number will also have impact on representations of youth and religious minorities. Article 32 of the constitution of Pakistan provides for special representation of women in addition to special representation of peasants and workers in the local government institutions. The proportion of women at each level should be consistent regardless of the size of the relevant council.

2. KEY ISSUES: LOCAL ELECTIONS FRAMEWORK OF PUNJAB

LEGAL REFORM PROCESS

The Government made public a draft of the Punjab Local Government Bill on 26 July 2013. The Provincial Assembly then formed a 12-member committee to consider the bill. The committee included members from PTI, PPP, JI and PML-Q. However, the opposition members of the PA committee seems not satisfied with the consultation process on the Bill. Some key amendments recommend by a provincial minister were rejected. PPP and PTI have filed separate petitions in the Lahore High Court against the Act. The PA committee government did not hold any public hearing to solicit feedback from various stakeholders.

Some changes including increasing the number of women at union council level and giving representation to the youth were made in the final draft. Review of the Local Government (LG) Act shows that the provincial government has not benefited from the Election Commission of Pakistan's offer of cooperation in drafting the law (made in a letter on 18 July 2013).

Elections are the mechanism used to decide on access to positions of power. Any changes to the law/rules under which elections are conducted should also be the result of an inclusive democratic process. A broader and more open consultation process could increase legitimacy and trust in elections, decision makers and democratic institutions.

ROLE OF ELECTION LEGISLATION

The Punjab LG Act 2013 does not include provisions on a number of key areas such as campaign regulation, results announcement deadlines, polling and counting procedures, and provisions for transparency of the process. The Act also does not spell out qualification/ appointment criteria of the election tribunals. Like in the draft Bill, the LG Act also does not specify procedures for filing and processing of complaints in the pre-poll period. The Act has no provision on by-elections to elect members of the newly created/divided LGs as given in Section 7 (2).

ELECTION SYSTEM

The LG Act does not clearly define the electoral system. It is silent on candidates' election by simple or absolute majority.

The Act does not allow political parties to field candidates for LGs which is in conflict with right of association enshrined in the Constitution of Pakistan and Article 22 of the International Covenant on Civil and Political Rights (ICCPR) which states that every citizen shall have the right to freedom of association. The Act should be reviewed to allow candidates to declare a political party affiliation.

CONSTITUENCY DELIMITATION

The Act does not set out clear criteria for delimitation of Union Councils. Sub-Sections 8(b) and 8(c) appear impossible to

reconcile, unless tax units are already equal in population size. The Act should define minimum and maximum number of voters in the constituency/ward in order to provide for equality of the vote.

Additionally, Section 10 of the Act permits the provincial government to waive this criterion in specific cases without defining "specific cases" and leaving it open to interpretation and possible abuse. Also Section 7 of the Act gives the provincial government discretionary powers to divide an LG or merge two LGs into one. The Act should respect the principle of equality of suffrage enshrined in article 25 (b) of ICCPR and General Comment² 25 paragraph 21 which states 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. This Act should be reviewed in line with article 2(3) of the ICCPR to ensure citizens' right to an effective remedy in case of grievances against delimitation, division or creation of a new Union Council.

To provide adequate safeguards against gerrymandering, boundary delimitation of union councils and wards may be undertaken by an independent body.

DISSOLUTION AND FRESH ELECTIONS

The Act sets a five-year term for LGs, starting from the date of its first meeting. However, the Act does not mention any time-frame for holding fresh elections after expiry of the five years term or in case of premature dissolution of the LGs. There is a vague provision for appointment of administrator for a maximum period of six months which means elections may be delayed for up to six months. The Act may be reviewed to set a clear deadline for holding elections in case of premature dissolution of LG or after expiry of its terms.

RIGHT TO VOTE

Criterion for voter registration given in the Act are different from the registration requirements spelled out in Section 6 of the Electoral Rolls Act 1974 for registration as voter in national and provincial elections. The Act does mentions requirement to possess a CNIC, issued by NADRA. Also the Act [Section 21 (1b)] is not clear whether the applicant must be 18 by the time of enrolment, or on election day. The Act vests the ECP with discretion to established additional requirements for voter registration. This is against General Comment 25 which states: "The right to vote at elections and referenda must be established by law and may be subject only to reasonable restrictions, such as setting a minimum age limit for the right to vote. It is unreasonable to restrict the right to vote on the ground of physical disability or to impose literacy, educational or property requirements. Party membership should not be a condition of eligibility to vote, nor a ground of disqualification."

² General Comment is the authoritative interpretation of the ICCPR.

The Act provides for three days or seventy two hours period instead of 24 hours as stipulated in the draft Bill between announcement of locations of polling stations and election day. This time period is not sufficient and the Act may be reviewed to allow for more time between announcement of locations of polling stations and polling day.

ELECTION ADMINISTRATION

The Election Commission of Pakistan (ECP) is constitutionally mandated to conduct LG elections [Art 140A (2) & Art. 219 (d)]. The Act reinforces these constitutional provisions and empowers the Commission to make additional provisions for conduct of LG elections. However, sections 26 (ECP functions) and 29 (conduct of elections) of the Act leave the role and functions of the ECP to be defined in the rules. This offers a scope for the Punjab Government to prescribe and create additional powers and functions for the ECP, a federal constitutional body. This is confusing and needs to be clarified - how can provincial legislation amend powers and functions of the ECP?

The LG Act does not give advance time period for recruitment of returning officers (ROs) by the ECP. However, the Act requires the ROs to submit to the Commission a list of presiding officers and polling officers 15 days before the E-day. Fifteen days is a very short period for finalization of the polling staff and arranging for their training. The ROs and other polling staff should be recruited much ahead of elections.

Provisions in this Act (Sections 27, 33 and 39-45) confer concurrent jurisdiction on the ECP and Election Tribunal, appointed by the ECP to deal with election petitions and disqualification of candidates without clearly defining their roles and procedures for filing of election petition, hearing and qualification of the tribunal, which could cause difficulties in future.

CANDIDACY AND THE RIGHT TO STAND FOR ELECTIONS

The Act allows women, peasants, workers and non-Muslims to be candidates for general seats. The Act also sets 25 years as the age limit for candidates but does not clearly define this limit for youth members of the councils. However, it defines youth as a person who is between 21 and 25 years of age.

There is also no mention of publication of provisional candidate lists. There is also no provision on candidate's access to electoral roll. The Act may be reviewed to define age limit for candidates on reserved seats for youth and include provisions on publication of provisional candidate lists and candidate's access to electoral roll.

Campaign Finance and Accounting

The Act is silent about campaign finances. It only refers to campaign expenses in Section 51 (f) which defines failure to provide statement of elections expenses as illegal practice. However, election expenses are not defined, limited or regulated by the Act. The Act should include an adequate

regulatory framework for campaign expenses and should define election expenses, reporting requirements and their publications.

ACCESS TO MEDIA

There is no regulation of media. The review may consider establishing regulatory framework for media to ensure balanced coverage of elections.

ELECTION OBSERVATION

The Act fails to provide legal basis for election observation. This Act should be reviewed to provide legal basis for election observations including specifying mandate, rights and obligations of election observers, both international and national.

COUNTING, TABULATION AND PUBLICATION OF RESULTS

The Act is silent on polling and counting procedures. The Act should include basic guarantees for transparency, such as a requirement for immediate display of results at the polling station and immediate publication of results by the polling station on the ECP website, as well as the right for candidates, agents and observers to receive official result sheets.

ELECTORAL DISPUTE RESOLUTIONS

The Act provides limited scope for electoral dispute resolution (sections 38-46). It empowers the ECP to appoint election tribunals for hearing and deciding election petitions, only limited to challenging election results. This remedy is restricted to candidates. There is no formal mechanism for filing complaints relating to pre-election issues of nomination of candidacy or election day issues. There is no mention of appeal against candidacy rejection.

The Act empowers tribunals to modify elections results which may risks to defeat the will of the voter. Can the tribunal ascertain who really won without recounting or rerunning tainted polling stations? [General Comment 25 "elected representatives must exercise their office"]

The Act fails to set legal deadlines to file petitions. Because there are no rules for proceedings of the tribunals, the established time-limit for disposal of petitions will have very little effect. [ICCPR General Comment 9 "remedy must be timely"]

The Act is not clear about qualification of judges of the tribunals. This should be reviewed to set a clear criterion for selection of judges for the tribunals. [ICCPR Art 14, Right to a hearing by an independent and impartial tribunal]

The Act should be reviewed to allow citizens and civil society groups to file election petitions and set a clear procedures for filing complaints at all stages of the election campaign including pre-poll and post-poll periods.

MINORITIES

The Act defines religious minorities, peasants/ workers and youth. However, except at Union Council level, the Act provides for indirect elections on reserved seats. The Government may consider reviewing this Act to allow direct election on reserved seats.

PARTICIPATION OF WOMEN

The Act reserved very limited number of seats for women at Municipal Committee/corporation and district levels of LG (for example maximum 15 in district council and max 25 out in Metropolitan Corporation). The total membership of the LG councils may vary which will have an impact on representations of women. To address the significant under-representation of women it would be appropriate to increase the number of seats reserved for women and to ensure that they are represented at all levels of local government. Article 32 of the constitution of Pakistan provides for special representation of women in addition to special representation of peasants and workers in the local government institutions.

3. KEY ISSUES: LOCAL ELECTIONS FRAMEWORK OF SINDH

LEGAL REFORM PROCESS

The draft of the Sindh Local Government Law 2013 (the Bill) was shared with political stakeholders including MQM, PML-F, PML-N, PTI and other parties. Also the six-member Provincial Government's Ministerial Committee held consultative meetings with the opposition parties. The committee made efforts to have wider consultation with stakeholders. However, various opposition parties and nationalists groups seem not satisfied as they believe that the committee has not properly incorporated their feedback. MQM walked out while the Bill was being passed on August 19, 2013 while PML-N and PML-F supported it but with reservations. Copies of the draft Bill were also sent to writers, academics and civil society organization. However, no public hearing was held to solicit feedback from various stakeholders. It is also not clear how the feedback solicited from individuals and political parties was considered and either made part of the Act or excluded.

ROLE OF ELECTION LEGISLATION

The Act has a positive aspect for promoting party-based elections at grass roots level. It also allows candidates to run independently, without party tickets. However, the election system is a mix of direct and indirect elections. Elections are held directly only for the Union Councils/Committees. The Mayor in Karachi and District Council Chair/vice Chair are indirectly elected by members of the Union Council/Town Committee/Union Committees.

The LG Act fails to include provisions on a number of key areas, including campaign regulation, results announcement deadlines, polling and counting procedures, and provisions for transparency of the process. The Act also does not spell out qualification/appointment criteria of the election tribunals. The law does not specify procedures for filing and processing of complaints in the pre-poll period. The Act needs to define "officer" with regards to appointment as ROs, AROs.

There are also some conflicting provisions in the Act which may create difficulties. For example Section 36 (c) requires a candidate to be enrolled in the electoral rolls of the Union Council or Ward which means that a person cannot be a candidate in any other union council/ward. However, section 38 (2) allows candidates to run for two or more seats in the same council or different councils.

ELECTION SYSTEM

The Act does not clearly define the electoral system. It is silent on whether candidates are elected by simple or absolute majority.

The Act (Section 19) provides for direct election on all seats only at the Union Council/Union Committee level. The reserved seats for women, peasants and non-Muslim, other than in Union Council/Union Committee, are to be filled through indirect elections. Also Mayor/Chairpersons will be elected by

members of the respective councils from among their members. One argument against indirect local elections is that they allow greater scope for corruption as only a few persons vote and bribing a small number of people can change the outcome of an election. Generally, direct elections at all levels could increase the democratic accountability of LGs.

CONSTITUENCY DELIMITATION

The Act gives powers to the provincial government to do the delimitation of union councils, municipal committees, town committees, Municipal Corporations and Metropolitan Corporations. Additionally the LG Act (Section 9) empowers the government to divide a council into two or more councils or reconstitute two or more councils as one by a simple notification without proper safeguard against gerrymandering. Boundary delimitation of the councils and wards could be done by an independent body, however, key elements which should not be compromised are transparency, consistency and objective criteria.

The Act does not guarantee equal suffrage as it allows the provincial government to waive arbitrarily size of population range for councils, which can vary as much as from 5000 to 30,000 for town committee, 30,000 to 300,000 for municipal committee, and 0.3 million to 3.5 for a municipal corporation and above 3.5 million for a metropolitan corporation. The Act should define minimum and maximum number of voters in the constituency/ward of a council.

DISSOLUTION AND FRESH ELECTIONS

The Act (Section 21) sets a four-year term for LGs, starting from the date of its first meeting. The Act provides for appointment of an administrator on the expiry of the term of office. However, it does not mention any time-frame for fresh elections after expiry of the four years term. The Act should be reviewed to set a deadline for holding fresh elections in case of expiry of the term or in case of premature dissolution of a council/committee.

RIGHT TO VOTE

The Act (Section 19) states that there will be five categories of members in Union Council/committee level including chairman and vice chairman as joint candidates, four general members, one woman, one peasant/labourer and one non-Muslims. All of them are elected through direct vote. But section 33 (d) states that every voter within the union councils or ward shall have only one vote irrespective of the number of members to be elected from the Union Council or ward. The Act should be reviewed to clear this confusion.

The criteria for voters' registration in this Act is different from the registration requirements spelled out in Section 6 of the Electoral Rolls Act 1974 for registration as voter in national and provincial elections. The Act does not mention the new requirement to possess a CNIC, issued by NADRA. It is also not clear whether the applicant must be 18 years of age by the time of enrolment, or on Election Day. There is also no mentioned of deadlines for enrolment.

In addition to the vague registration criteria, the rules allow the ECP to prescribe additional criteria for voter registration at the ECP's discretion. The registration criteria should be clearly spelled out in the LG law and should not be left to the ECP to define it in administrative rules. [ICCPR art 25 (a, b) and General Comment 25 which state that "the right to vote must be established by law".]

The Act is silent about transparency and access to the electoral rolls to candidates. The Act should be reviewed for providing legal basis for access to the electoral lists to candidates and voters.

ELECTION ADMINISTRATION

The Act (Section 35) reinforces Art 140A (2) & Art. 219 (d) of the constitution according to which the ECP is mandated to conduct LG elections. However, the Act does not define a time period for recruitment of returning officers by the ECP. The law (Section 43 (3)) requires the ROs to submit to the Commission a list of presiding officers and polling officer 15 days before the polling day. Fifteen days is a very short period for finalization of the polling staff and arranging for their training. The ROs and other polling staff should be recruited much further ahead of elections.

The Act (Sections 26, 36, 37 and 47-55) confer concurrent jurisdiction on the provincial Government, the ECP and Election Tribunals appointed by the ECP, to deal with election disputes and petitions and disqualification of candidates. But their respective roles and procedures for filing of petitions, hearing and qualification of the tribunal's judges are not clearly defined in the LG Act. This is highly likely to cause difficulties in future.

CANDIDACY AND THE RIGHT TO STAND FOR ELECTIONS

On the positive side, the Act allows women, peasants, workers and non-Muslims to stand as candidate for general seats.

The criteria for candidate eligibility refer to an offence involving activities prejudicial to the ideology, and integrity of Pakistan. This is again mentioned in Section 37 (g) which is a repetition (one clause needs to be removed). Also "ideology" is a wide term and may go against the right to be elected enshrined in ICCPR art 25(b) and Art 19's right to freedom of opinion.

There is no mention of publication of the provisional list of candidates. [ICCPR art 25(b) Right to be elected]. The Act is also silent about how nomination papers will be processed and there is no mention of appeal against candidacy rejection. [ICCPR Art 2(3) Effective Remedy]

The minimum age limit for candidate is 21 years, however, there is confusion about this as section 37 (k) states that no person can be a candidate who is disqualified from being a member of the provincial assembly under any law. The legal

age limit for a candidate of the Provincial Assembly is 25 years. This need to be corrected.

CAMPAIGN FINANCE AND ACCOUNTING

The Act is silent on campaign finances. It only refers to campaign expenses in Section 52 (f) which defines failure to provide a statement of elections expenses as illegal practice. However, election expenses are not defined, limited or regulated by the Act.

This Act should be reviewed to include an adequate regulatory framework for campaign expenses and should define election expenses, reporting requirements and their publications, and regulatory body/ies.

ACCESS TO MEDIA

The Act is silent about media regulation. The government of Sindh should review the Act and consider regulating media to ensure balanced coverage of elections, as well as adequate and equitable coverage in state-funded media of all contestants.

ELECTION OBSERVATION

The Act is silent on election observation. The Act should provide a legal basis for election observation including specifying mandate, rights and obligations of election observers, both international and national.

POLLING PROCEDURES

Article 226 of the Constitution of Pakistan provides for secret balloting which is essential to guarantee the free expression of the will of the voters. The Act (Section 33) reinforces this constitutional provision. It could be further improved by including the basic elements of the voting procedure like confirmation of a voter's identity and eligibility, and a receipt of a ballot paper upon such confirmation.

COUNTING, TABULATION AND PUBLICATION OF RESULTS

The Act has nothing on polling and counting procedures. This should include basic guarantees for transparency, such as a requirement for immediate display of results at the polling station and immediate publication of results by the polling station on the ECP website, as well as the right for candidates, polling agents, and observers to receive official result sheets.

ELECTORAL DISPUTE RESOLUTIONS

The Act (Sections 47-55) provides limited scope for election dispute resolution empowering the ECP to appoint election tribunal for hearing and deciding elections petitions, which appear to be limited to challenging election results. This remedy, as in the LG laws of other provinces, is limited to candidates only. There is no formal mechanism for filing

complaints relating to pre-election issues of nomination of candidacy or Election Day issues. There is no mention of appeal against candidacy rejection [ICCPR Art 2(3) Effective Remedy].

The Law should be reviewed to widen the category of those permitted to file election complaints and appeals and should include voters, CSOs and political parties. The Act should also specify a procedure for processing these complaints and appeals.

The Act (Sections 50 and 51) empowers the Election Tribunal to modify the results which may challenge the requirement for elections to be a free expression of the will of the voters. It is questionable that how can the tribunal ascertain who really won without recounting or rerunning tainted polling stations. [ICCPR, Art 25 (b) and General Comment 25 “elected representatives must exercise their office”].

The Act (Sections 47-55) does not set legal deadlines for filing petitions. Because there are no rules for proceedings of the tribunals, establishing a 120-day time limit for disposal of petitions will have very little effect [ICCPR General Comment 9 “remedy must be timely”].

The law is not clear about qualification for judges of the election tribunals. The Act should be reviewed to set clear criteria for selection of judges of the tribunals. [ICCPR Art 14, Right to a hearing by an independent and impartial tribunal]

A proper procedure for complaints should be included where official complaints may first be investigated and acted upon by the Election Commission. Upon exhaustion of this remedy or dissatisfaction with the response, complaints could then be referred to courts who act on appeals. The timeline for handling of complaints should be expedited and allow for resolution within a timeframe which accounts for the impact of a given issue on the elections.

MINORITIES

The Act is an improvement as it provides for direct election of non-Muslim and Peasant members at union council/committee and reserves a quota of 5% for each of these categories in the higher councils/committees or corporations.

The Act defines peasants and Labourers which reduces the chances of abuse of this quota by the affluent classes. Aside the reserved seats, section 20 of the Act also allows Non-Muslim, peasants/workers and women to run as candidates on general seats.

PARTICIPATION OF WOMEN

The LG Act reserved one seat for women at UC/committee level and 22% seats in the higher councils /committees or corporations. This special quota of seats for women is more than allocated in the LG laws of the Punjab and KP but less than the 30% critical mass proposed by the 1995 Beijing Platform for Action. A special quota of seats reserved for

women is essential to address the under-representation of women. This is also in line with Article 32 of the constitution of Pakistan which provides for special representation of women in addition to special representation of peasants and workers in the local government institutions.

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DRI's project in Pakistan is funded by a grant from the European Union.

