

# CARETAKER GOVERNMENT AND ELECTIONS IN PAKISTAN<sup>1</sup>

## EXECUTIVE SUMMARY

The purpose of the caretaker cabinet in Pakistan is to create a conducive environment for genuine elections, ensuring the neutrality of the government to facilitate a smooth transfer of power from one elected government to another. As a non-partisan administration, the caretaker's primary role is to exercise the routine functions of government. The experience of other countries with this institution shows that an efficient caretaker government requires a clear set of rules that define its mandate, function and neutrality.

However, Pakistan represents a unique case: Whereas in other countries usually the government in power changes to "caretaker modus" once Parliament has been dissolved, Pakistan is the only country where non-elected officials are appointed to form a caretaker government.

The 18<sup>th</sup> and 20<sup>th</sup> amendments to Pakistan's constitution had a significant impact on Pakistan's caretaker government, advancing neutral and inclusive appointment procedures for caretaker officials. Also, the *Code of Conduct for Political Parties and Candidates* published ahead of the general elections 2013 by the Election Commission of Pakistan upholds the neutrality of the caretaker government by requiring its officials to abstain themselves from campaigning. This is in line with

Pakistan's international obligations as, in the absence of the representative institutions in the form of the National and Provincial Assemblies, the scope of this provisional administration needs to be limited to ensuring administrative continuity.

Lacking clear legal guidelines, the 2013 caretaker government was marked by the prevailing confusion about its mandate and function. Noting the regulatory vacuum and creating additional legal precedent, in its verdict of 6 June 2013, the Supreme Court of Pakistan declared: "a Caretaker Government possesses limited powers and authority, particularly in view of the fact that when it is appointed, there is no National Assembly in place and thus the all important aspect of accountability is absent."

The European Union 2013 Election Observation Mission to Pakistan recommended in its final report that "the mandate, functioning and neutrality of future caretaker governments be more clearly defined in law".<sup>2</sup>

Following the Supreme Court's verdict and building on the recent improvements, Pakistan now has an opportunity to strengthen this institution further by defining the responsibilities and the authority of caretaker officials within the legal framework. This could be ensured either through legislative action and/or amending the constitution to set out the boundaries of caretaker government authority.

---

<sup>1</sup> This Briefing Paper was drafted by Eva Gil and Quraysh Khattak of Democracy Reporting International. A first version was published as Working Paper and distributed to key stakeholders in March 2013, caretaker government officials included. The paper was updated according to the feed-back received and it was discussed at a public forum with former caretaker ministers and other stakeholders, held in Islamabad on 30 August 2013. The authors wish to extend their gratitude for all the suggestions and comments received.

<sup>2</sup> European Union Election Observation Mission Pakistan 2013: Final Report

A dedicated regulation should provide guidance to caretaker government officials by:

- Establishing clear **eligibility criteria** for caretaker officials.
- Defining caretaker decision-making authority and clarify its position vis-à-vis other state bodies, such as the Senate of Pakistan and the Election Commission.
- Limiting caretaker policy-making competence by defining **qualitative thresholds** for the eligible appointments and **quantitative thresholds** for allowed contracts.
- Formulating **guidelines on financial and performance reporting**, requiring the caretaker government to disclose all relevant information on performance, resources, and expenditures.
- Adapting the **Cabinet Manual** to only allow access the strictly necessary benefits for cabinet members during caretaker term.

## 1. INTRODUCTION: THE BACKGROUND AND FUNCTIONS OF CARETAKER GOVERNMENTS

Caretaker governments are an institutionalised interim government, the constitution of which usually forms part of the electoral arrangements of a country. A caretaker government serves the period of time between the dissolution of parliament and the formation of a new government. The main aim of caretaker governments is to carry on the ordinary business of government and ensure administrative continuity during an electoral period while preventing any major decisions from being taken.

In cases where the parliament is dissolved prior to elections, the government no longer has a legislative body to account to. To deal with this democratic deficit, some countries have developed conventions or codes of conduct to restrain the scope of government actions in this interim phase. There are other circumstances in which other types of caretaker government may be constituted with slightly different mandates. The first type of caretaker government described here is the main focus of this paper.

In most Commonwealth countries, parliament is usually dissolved before elections are held.<sup>3</sup> In these

cases, the government in place turns into caretaker “modus”. In countries like Germany, there is no need for this kind of institution, as the mandate of the parliament extends up to the first session of its successor. Consequently, the government in functions stays in place until the new government is formed. As the parliamentary functions of representation, legislation and oversight are granted in this case, the acting government keeps its full powers.

In addition to ensuring administrative continuity until a new government is formed, the concept of caretaker government is designed to act as safeguard against electoral fraud and misuse of public resources by government officials. In Pakistan, caretaker officials are appointed by the outgoing government and opposition.<sup>4</sup> Normally, the term of the caretaker government starts with the dissolution of the parliament and ends once a new government is formed.<sup>5</sup>

However, in Pakistan the mandate and functioning of caretaker governments are not defined in law. The appointment procedure of the caretaker governments is enshrined in the constitution but neither its neutrality, mandate nor its functioning are laid down in the constitution or any other primary law or regulatory code. The Constitution of Pakistan<sup>6</sup> and the ECP’s Code of Conduct for Political Parties only indicate that the powers of the caretaker government should be restricted. In the absence of a regulatory framework, the caretaker government legally holds the power of an elected government.

There are three mechanisms to define the mandate and the functioning of caretaker governments. The boundaries of caretaker government’s competence may be set through constitutional conventions, a dedicated law or through specific provisions in a related law.

Constitutional conventions are widely understood and accepted as sets of practices or methods which shape the behaviour of political actors on constitutional issues in a given country but which are not stated or defined in written law. In the case of the United Kingdom, where there is no written

and mandate, is currently being discussed. In Bangladesh, the abolishment of the caretaker government provision by the 13<sup>th</sup> Amendment to the Constitution in 2011 is being disputed and the opposition threatens a boycott of elections if the provision is not reinstated. (See section 3 Comparative cases for further details.)

<sup>4</sup> Until 2011, Bangladesh followed this model, but the caretaker provision has been removed by constitutional amendment (see Footnote 1).

<sup>5</sup> In some cases, for example in Belgium after the June 2010 elections, caretaker governments are formed as an interim solution to problems in government formation. Interim governments that are installed in response to problems in government formation, crisis, or any other unforeseen circumstance are therefore not part of this study.

<sup>6</sup> Art. 2A makes preamble substantive part of the constitution which says that “state shall exercise its power and authority through chosen representatives of the people”.

---

<sup>3</sup> The following countries have caretaker setups as part of their electoral arrangements: Australia, The Netherlands, New Zealand, the United Kingdom and Pakistan. In India, the government continues after the dissolution of the Parliament (*Lok Sabha*) and the neutrality of government officials is ensured by a Code of Conduct. In Malaysia, the introduction of a caretaker government, including a Code of Conduct to define its functions

constitution, conventions are considered part of what is understood to be the state's constitution.<sup>7</sup> The conventions dealing with caretaker government usually limit the activities this interim form of government is allowed to undertake, defining the mandate and the basic functioning principles for this institution.

Similar to caretaker conventions, another option to set out the rules and limitations of the interim administration is a code of conduct. For example, the Election Commission of India developed a Code of Conduct for Political Parties and Candidates<sup>8</sup> which includes specific reference to the government officials in power during the period from when the parliament (referring to the lower chamber, the *Lok Sabha*) is dissolved until the new government is formed.

Following this example, and as part of its electoral legislation review, the Malaysian Parliament discussed the introduction of a code of conduct for the caretaker government in 2012, in an attempt to define the mandate and functions of the provisional government in greater detail. However, no improvements were made ahead of the 2013 elections and the Malaysian government continues to enjoy full legal power throughout the campaigning period.<sup>9</sup>

## 2. CASE STUDIES

This section provides a comparative overview of how states have instituted caretaker governments and aims to illustrate the broad lines of what could be contained in a dedicated caretaker government regulation.

Following the model of the Westminster-type democracy, in many of the cases there is no codification of the caretaker mandate in law. Instead, constitutional conventions guide caretaker government officials, recognising that the caretaker executive cannot be held accountable by the parliament in the regular manner, thus requiring the interim government to limit itself to matters of routine administration. The existence of a clear mandate and guidelines can help to increase the level of trust in the institution, keeping caretaker

officials accountable for their performance and limiting the potential for corrupt practice.

In Australia, the government in power switches to caretaker modus once the parliament is dissolved. The original caretaker convention was issued in the form of a letter from the Prime Minister to his ministers, asking them to beware of taking decisions on contentious policy matters. This practice originated in 1951 and it was not until the early 1980s that the mandate and competences of the interim government were codified as part of the manual *Proceedings of the Australian Constitutional Convention* (1983)<sup>10</sup>.

The Department of the Prime Minister and the Cabinet, recognising the need for further clarification of caretaker arrangements, undertook a major review of the existing caretaker arrangements after the 1987 election. A summary of this guidance on caretaker conventions was included into the *Cabinet Handbook*, which is revised and updated after each election.<sup>11</sup>

In New Zealand, the development of caretaker conventions followed a similar path. In this case the codification of caretaker arrangements was triggered by developments in the country, in particular by a constitutional crisis in 1984. The constitutional crisis was exacerbated by uncertainty about the authority and responsibilities of the caretaker government after elections and before it was formally replaced by the new government. An Officials Committee on Constitutional Reforms was set up, and its recommendations were incorporated into the *Cabinet Office Manual*.<sup>12</sup>

In 1993, after a hung parliament and in 1996, when the change to a mixed member proportional electoral system produced no clear result, the *Cabinet Office Manual* was amended. Amendments included further details on how long the caretaker government modus should be in place and to outline procedures in exceptional circumstances requiring urgent decisions to be made by the caretaker administration.

As a result of the evolution of their caretaker conventions, both Australia and New Zealand have codified the mandate, functioning and neutrality of caretaker governments to a relatively high level of detail. They provide guidance for caretaker

---

<sup>7</sup> Other examples of issues that are frequently covered by conventions are the relations between the two Houses of Parliament, ceremonial etiquette and protocols or the relationship between the Prime Minister and the Cabinet.

<sup>8</sup> Election Commission of India 2007: Model Code of Conduct for Political Parties and Candidates.

[http://eci.nic.in/eci\\_main/Model\\_Code\\_Conduct.pdf](http://eci.nic.in/eci_main/Model_Code_Conduct.pdf)

<sup>9</sup> Institute for Democratic and Economic Affairs/Centre for Public Policy Studies 2013: Was GE13 free and fair? An interim observation report of Malaysia's 13<sup>th</sup> General Election.

<sup>10</sup> Proceedings of the Australian Constitutional Convention 266-29 April 1983, Vol. 1 Appendix.

<sup>11</sup> Australian Government, Department of the Prime Minister and the Cabinet 2012: Cabinet Handbook, p. 51 [http://www.dpmc.gov.au/guidelines/docs/cabinet\\_handbook.pdf](http://www.dpmc.gov.au/guidelines/docs/cabinet_handbook.pdf)

<sup>12</sup> Tiernann, Anne/ Menzies, Jennifer 2007: Caretaker Conventions in Australasia, Canberra. p. 21

governments, laying out the limits of caretaker mandate. Recognising that, upon dissolution of parliament, the government cannot be held accountable for its decisions in a normal manner, the *Australian Caretaker Convention 2010* explicitly limits the business of government to ordinary matters of administration.<sup>13</sup>

The chart below summarizes the main areas covered in the Australian Caretaker Convention, which provides clear delimitation of the caretaker mandate, defining the boundaries of its power in precise terms. Still, the Convention leaves room for interpretation, and the application in individual cases is subjective, as the significance of decisions, appointments and undertakings is not specified by concrete qualitative or quantitative thresholds.

Issue <sup>14</sup>	Convention
Major policy decisions	Caretaker governments avoid making major policy decisions, as measured by their significance in terms of policy and resources and if the decision is a matter of contention between Government and Opposition.
Significant appointments	Caretaker governments do not make significant appointments, as measured by the importance of the position and whether the appointment would likely be seen as controversial.
Major contracts or undertakings	Caretaker governments do not enter into major contracts and undertakings, as measured by the monetary value of the commitment and whether the commitment involves a routine matter of administration or rather implements/entrenches a policy/programme which is politically contentious.
International negotiations and visits	Caretaker governments do not enter major commitments.
Avoiding the involvement of the public service in election activities	Advertising and information campaigns, as well as websites of ministries and public bodies must not be used to support any particular political party.

By constitutional convention, in Canada the government acts with restraint during the election period, restricting itself to necessary public

business (either routine or urgent). The Convention of Restraint was first included in the *Manual of Official Procedure of the Government of Canada*, describing how the government switches to caretaker government modus.<sup>15</sup> The term “caretaker” is not used here, but it is clear from the content of this document that the Convention of Restraint is equivalent to caretaker conventions in other countries.

In 2008, the Privy Council Office defined the principle of restraint more detail, issuing the *Guidelines on the Conduct of Ministers, Secretaries of State, Exempt Staff and Public Servants during an Election*.<sup>16</sup> The Guidelines stipulate that during an election, government should restrict itself to activity that is:

- Routine
- Non-controversial
- Urgent and in the public interest
- Reversible by a new government
- Agreed to by the opposition

Recognising that, “following dissolution, there is no elected chamber to which the government can be held accountable” and that the “government cannot assume that it could command confidence in the new parliament”, the Guidelines discuss the role of the Ministers once the parliament has been dissolved. They guide the government on how to apply the Convention of Restraint without detriment to ensuring the continuance of ordinary government business.

In India, a Code of Conduct has been developed to guide the caretaker government. The government in place while the parliament is dissolved is not referred to as caretaker government; however, *de facto* the government is operating under a caretaker modus. Article 75 of the Indian Constitution stipulates that the Prime Minister and all Ministers may continue for a period of up to six months without being members of parliament but the constitution does not mention any separate institution responsible for the administration of the state during the electoral period.<sup>17</sup> Notwithstanding these provisions, in an attempt to provide a framework for fair electoral competition, the Election Commission of India issued a Code of Conduct for Political Parties and Candidates.

<sup>13</sup> Australian Government, Department of the Prime Minister and the Cabinet 2010: *Guidance on Caretaker Conventions*, p. 1 [http://www.dpmc.gov.au/guidelines/docs/caretaker\\_conventions.pdf](http://www.dpmc.gov.au/guidelines/docs/caretaker_conventions.pdf)

<sup>14</sup> Chart: Overview of caretaker convention provisions. Source: Australian Government Department of the Prime Minister and the Cabinet 2010

<sup>15</sup> Privy Office Council 1968: *Manual of Official Procedure of the Government of Canada*. <http://jameswjbowden.files.wordpress.com/2011/09/manual-of-official-procedure-of-the-goc.pdf>

<sup>16</sup> Privy Office Council 2008: *Guidelines on the Conduct of Ministers, Secretaries of State, Exempt Staff and Public Servants during an Election*. <http://jameswjbowden.files.wordpress.com/2011/07/guidelines-cartaker-convention1.pdf>

<sup>17</sup> Constitution of India. <http://lawmin.nic.in/coi/coiason29july08.pdf>



This document sets out the principles that parties in power should follow during the electoral period. Thus, although India does not institutionalise the caretaker modus of the government during the electoral period, a specific set of guidelines apply for this particular phase. The Code of Conduct focuses on the misuse of state resources for campaigning purposes, stipulating that Ministers shall not a) announce official grants, b) initiate projects, c) make any promise for infrastructure projects, or d) make ad-hoc appointments in Government or public institutions.<sup>18</sup>

In Bangladesh, since the introduction of the caretaker provision by constitutional amendment in 1996, the caretaker governments have been disputed. The deliberate extensions of their terms, policy action beyond their mandate and the misuse of state resources to party activities reached its peak during the period between January 2007 and December 2008, when a military-backed government intervened, invoking article 58B of Bangladesh's Constitution.<sup>19</sup> The evident weakness of the caretaker system led the ruling Awami League under Sheikh Hasina to abolish the caretaker provision. This measure has been rejected by the main opposition, the Bangladesh National Party, who threatens to boycott the next elections (scheduled for January 2014).

Clear guidelines for a non-political caretaker government, laying out selection procedures for the caretaker prime minister and the cabinet as well as precise limits for its term and mandate could help to reduce the high level of mistrust amongst the main parties, creating an enabling environment for peaceful elections and regular transfers of power.

### 3. CARETAKER GOVERNMENTS IN PAKISTAN

#### A) LEGAL FRAMEWORK

The International Covenant for Civil and Political Rights (ICCPR), which Pakistan has ratified, stipulates that the political authority of governments is determined by the right of every citizen “to take part in the conduct of public affairs” as well as the right to “vote and to be elected”.<sup>20</sup> This means not only that citizens have the right to exercise political power by holding public office, but also refers to the accountability of those in power to their electorate.

In its General Comment on the provisions of article 25, the United Nations Human Rights Committee elaborates on this: “Where citizens participate in the conduct of public affairs through freely chosen representatives, it is implicit in Article 25 that those representatives do in fact exercise governmental power and that they are accountable through the electoral process for the exercise of that power”.<sup>21</sup>

According to this authoritative interpretation, Article 25 not only guarantees the right of every citizen to participate in public affairs, but also requires elected institutions to have the key role in politics as they represent the electorate. Caretaker governments are instituted to ensure smooth transfer of power from one government to another and they have no independent mandate from the citizens, as they lack the indirect authority through the parliament.

Pakistan's constitution stipulates the timeframe and the appointment procedures for the caretaker government. There is no other legislation providing further details on the mandate and functions of the interim administration. This legal vacuum led the courts in Pakistan to define limits of the caretaker governments' powers and functions in 1988.<sup>22</sup>

During the term of the previous legislature (2008-2013) there have been two significant constitutional amendments affecting the appointment mechanisms of caretaker governments. In 2010, the 18th Amendment added sub-articles 1A and 1B to Article 224. Article 224 (1A) took away the presidential discretion and extended the right to participate in the appointment of the caretaker Prime Minister (or Chief Minister in the provinces) to the Prime Minister and Leader of the Opposition in the outgoing National Assembly or Chief Minister and the Leader of the Opposition in the outgoing Provincial Assembly.

Article 224 (1B) bars members of the caretaker cabinets including the caretaker Prime Minister and the care-taker Chief Ministers and their spouses and children from contesting the next elections.

The 20<sup>th</sup> Constitutional Amendment<sup>23</sup> introduced a further modification on the appointment procedures for the interim administration by inserting a new article, 224A, which gives the parliament a role in appointment of the caretaker government in case

---

<sup>18</sup> Model Code of Conduct for the Guidance of Political Parties and Candidates, p. 6.

<sup>19</sup> International Crisis Group 2012: Bangladesh. Back to the Future, Dhaka. <http://www.crisisgroup.org/~media/Files/asia/south-asia/bangladesh/226-bangladesh-back-to-the-future.pdf>

<sup>20</sup> ICCPR Article 25 a, b.

<sup>21</sup> UN Human Rights Committee General Comment on ICCPR Article 25, Paragraph 7 <http://www.unhchr.ch/tbs/doc.nsf/%28Symbol%29/d0b7f023e8d6d9898025651e004bc0eb?Opendocument>

<sup>22</sup> Supreme Court's verdict in Constitution Petition No. 30 of 2013 and Lahore High Court' decision PLD 1988 Lahore 725.

<sup>23</sup> <http://www.pakistani.org/pakistan/constitution/amendments/20amendment.html>

the Prime Minister and the Leader of the Opposition in the National Assembly cannot agree on the caretaker Prime Minister. Within three days of the dissolution of the National Assembly each will send two nominees each to an eight-member parliamentary committee, which shall have equal representation from both the treasury and opposition benches. At provincial level such a committee shall consist of six members of the outgoing Provincial Assembly, again with equal representation from the treasury and opposition benches.

In case the parliamentary committee cannot agree on a caretaker prime minister within three days of the referral of the matter, then the nominees will be sent to the Election Commission of Pakistan (ECP) who shall take the decision within two days. The same procedure would be followed in the provinces for the appointment of caretaker chief ministers. Both the federal and provincial caretaker cabinets are formed on the advice of the caretaker prime minister and chief ministers, respectively.

The ECP made a positive step to include a provision to ensure the neutrality of caretaker officials into the Code of Conduct for Political Parties and Candidates.<sup>24</sup> The Code bars their participation along with the President and Governors in the election campaign. Section 30 of the Code of Conduct states: *“The President, Prime Minister, Chairman/Deputy Chairman Senate, Speaker /Deputy Speaker of an Assembly, Federal Ministers, Ministers of State, Governors, Chief Ministers, Provincial Ministers and Advisors to the Prime Minister and the Chief Ministers, and other public office holders shall not participate in election campaign in any manner whatsoever. This provision will also be applicable to the Caretaker setup.”*<sup>25</sup>

This first step should be viewed as an opportunity to further develop the legal framework for caretaker government. While the ECP’s Code of Conduct mandates caretaker officials to maintain neutrality, a dedicated law would provide a solid framework for a stable and effective interim government, providing guidance to officials and other stakeholders about the function and mandate of this institution.

## B) HISTORIC OVERVIEW

Contrary to their purpose, caretaker governments in Pakistan (1988 to 2013) have frequently undertaken

major policy reforms, often exerting significant influence on the politics and economy of the country. On several occasions, caretaker officials have overstretched the scope of their neutral office, undertaking substantial reforms, taking advantage of their incumbency and using state resources to finance political campaigning activities. Such actions go against the principles of political participation and accountability established in the international treaties to which Pakistan is a State party.

The more inclusive appointment procedures introduced by the 18<sup>th</sup> and 20<sup>th</sup> amendment to Pakistan’s constitution have reduced the risk of partisan interim governments. Enshrining caretaker government neutrality in the Code of Conduct for Political Parties and Candidates is an additional positive step to encode the requirement of neutrality, in line with the recommendations articulated by the 2008 and the 2013 European Union Election Observation Missions, which suggested that the “mandate, functioning and neutrality should be more clearly defined in law”.

Despite these improvements, made ahead of the 2013 general elections, confusion prevailed about the role and function of the caretaker administration. In this context, some of the caretaker government officials exceeded their mandate by making policy decisions with important implications: A large number of high-ranking public officers were reshuffled and new appointments to higher civil service were made.

The matter was challenged in the Supreme Court, referring to the caretaker government’s limited powers to make appointments and postings, except those relating to day-to-day business of government. The Supreme Court, in its judgment of 6 June 2013, declared all appointments, postings and transfers made by the caretaker government null and void. Referring to Article 2A and 48(5) of the constitution, amongst others, the Supreme Court stated that only elected representatives can run the affairs of state so that major policy decisions, including making major appointments, “should be left to the chosen representatives of the people”.<sup>26</sup>

The Supreme Court, however, noted the absence of guidelines to be observed by the caretaker government and, as a mode of example, referred to some of the cases discussed in section 2 of this paper.

<sup>24</sup> Election Commission of Pakistan (ECP) 2013: Code of Conduct for Political Parties and Candidates.

<http://ecp.gov.pk/ViewPressReleaseNotificDetail.aspx?ID=1841&TypeID=1>

<sup>25</sup>ECP 2013, (op.cit.)

<sup>26</sup> Constitution Petition 30 of 2013, Khawaja Muhammad Asif vs. Federation of Pakistan The verdict also references similar case law (PLD 1988 Lahore 725, Khawaja Muhammad Sharif vs. Federation of Pakistan and PLD 1997 Lahore 763, Tanveer A. Qureyshi vs. Federation of Pakistan, amongst others).

Building on this case law and the positive measures introduced both by the 20<sup>th</sup> Amendment and the ECP's *Code of Conduct for Political Parties and Candidates*, a dedicated law that describes caretaker mandate would further strengthen the institution of the caretaker government.

#### 4. CONCLUSIONS AND RECOMMENDATIONS

The purpose of caretaker governments is to ensure administrative continuity between one government and the next, contributing to a positive environment for elections and facilitating a smooth transfer of power. The key feature of caretaker governments is a limit on their actions.

By law or convention, they are prevented from taking major policy decisions on account of the inappropriateness of decisions with long-lasting consequences being taken by officials with relatively short tenure and corresponding issues of accountability. Lacking the legitimacy of an elected institution, Pakistan's caretaker administration should remain apolitical and maintain policy *status quo* until the next government is formed.

The development of mechanisms to ensure transparency and free access to information on caretaker government administration, such as requiring the caretaker government to publish performance reports, would contribute to a strengthened accountability of caretaker officials towards the citizens, minimising the risk of misuse of state resources.

A possible option to define the mandate and functioning of the caretaker government in Pakistan in more detail is a specific legal act on the institution. This could include:

##### DEFINITION OF THE FUNCTION OF CARETAKER GOVERNMENT AND RELATIONSHIP TO OTHER STATE BODIES

The Cabinet Manual should be updated according to a clear and more appropriate definition of a caretaker government. It should state that the caretaker government is a neutral, interim state administrator for the electoral period. It should state that the purpose of the caretaker government is to ensure administrative continuity once the Parliament has been dissolved, that it is responsible for running the state administration during the electoral period, making sure that state resources are used for their original purpose and preventing office holders to abuse of their position for electoral purposes. It should state that the term of the caretaker government can vary but that it will be in

place from the dissolution of parliament until the formation of the new government.

Benefits and immunities should be restricted to those strictly necessary. For example, caretaker officials should not be eligible for diplomatic passports if they are not travelling. If they are required to travel, the diplomatic passports should expire with the conclusion of the caretaker term.

During its term, the caretaker cabinet should be regularly reporting to and communicating with the Senate, the parliament's upper chamber that is in place while the national and provincial assemblies are dissolved. The caretaker prime minister and the caretaker chief ministers of each province could be required to hold regular meetings and report to a dedicated Senate Committee (and possibly dedicated Committees for each provincial caretaker government), who will review caretaker official's performance according to the criteria which are set out in the regulation.<sup>27</sup>

In accordance with the constitution, while the caretaker government is in place to ensure the neutrality of the state, it is the ECP who has the mandate for holding the elections. The election management body could, however, be requested to provide regular updates on the preparations and the electoral process.

##### REVISING THE APPOINTMENT SCHEDULE

The 20<sup>th</sup> amendment improved the appointment procedures for the caretaker government, extending the right to nominate interim officials to the parties in government and opposition in the parliament or a provincial assembly. In case the parties cannot agree on the list of appointees, the constitution appoints the ECP as the final decision-maker on the composition of the caretaker cabinet.

This blurs the independence of the caretaker government *vis-a-vis* the election management body. Instead, the President and the Governor, respectively, could hold the final authority over the composition of the caretaker government.

The experience during the 2013 elections showed that there can be significant delays in the appointment of caretaker officials, potentially leading to instability. The schedule for appointing caretaker officials should therefore be revised to require a decision on the composition of the caretaker government at least one

---

<sup>27</sup> As the Senate is the only elected institution that is functional during the electoral period, it is the only possible check on federal and provincial caretaker government's adherence to the rules.

month before the National and Provincial Assemblies are dissolved.

## DEFINITION OF CLEAR ELIGIBILITY CRITERIA

Considering the particularity of Pakistan's caretaker government, composed of specifically appointed officials, more detailed selection criteria are necessary to ensure the efficacy and neutrality of this body. The constitution already includes a relevant clause, preventing caretaker officials from being candidates for the next legislature, but more requirements should be defined. Amongst the eligibility criteria could be:

- Relevant professional experience
- Non-partisanship
- No previous convictions for certain types of offences

The members of caretaker governments should be subject to principles similar to other public offices, namely integrity, objectivity, accountability, openness and honesty.

## RESTRICTIONS ON MAJOR APPOINTMENTS AND UNDERTAKINGS

The law could provide guidance to caretaker officials on the criteria for major appointments and undertakings, defining the scope of caretaker mandate more precisely with regards to its authority to make appointments and contracts. This could provide a qualitative threshold for public sector appointments, defining a maximum rank eligible to which appointments could be made under the caretaker setup. Similarly, the regulation or law could provide maximum total value for contracts made during the period the caretaker government is in place.

## REQUIRING THE CARETAKER GOVERNMENT TO SUBMIT A PERFORMANCE REPORT

The caretaker government could be required to submit a report by the end of its term, which would be evaluated by the dedicated senate committee (or committees) against a criteria set out in a regulation.<sup>28</sup>

## REQUIRING THE CARETAKER GOVERNMENT TO SUBMIT A FINANCIAL REPORT

The legal framework should require the caretaker administration to disclose all financial information on expenditures and revenues during the period in office. The framework should reinstate provisions to prevent misuse of state resources for campaigning, including sanctions where misuse has taken place.

All caretaker officials should endorse the International Code of Conduct for Public Officials as standard, making it a reference for the caretaker administration. This would amount to a public commitment that they will be responsive to complaints and will work impartially and make the full information on the measures taken available.<sup>29</sup>

---

<sup>28</sup> A good example was provided by Caretaker Federal Minister for Science and Technology, Education and Trainings and Information Technology and Telcom with additional responsibility for health, Dr. Sania Nishtar. Upon completion of her term, Dr. Nishtar published Handover Papers with the goal of enhancing the efficiency and efficacy of the process of handing over from one government to another. These papers are available to the public here: <http://www.sanianishtar.info/handoverpapers.php>

<sup>29</sup> The United Nations General Assembly, in its 82<sup>nd</sup> plenary meeting in December 1996, adopted the International Code of Conduct for Public Officials, encouraging all member states to use it.<sup>29</sup> This Code of Conduct sets out the basic principles that public officials should follow, ensuring that "the public resources for which they are responsible are administered in the most effective and efficient manner" (Article 2).



## 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 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.

<http://www.democracy-reporting.org>

Or contact:

[info@democracy-reporting.org](mailto:info@democracy-reporting.org)

This publication has been produced with the assistance of the European Union.

