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SINDH LOCAL ELECTION FRAMEWORK ASSESSMENT

JULY 2014



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SINDH LOCAL ELECTION FRAMEWORK ASSESSMENT

JULY 2014

EXECUTIVE SUMMARY

This Local Election Framework Assessment (LEFA) presents an analysis of the electoral provisions in the Sindh Local Government Act 2013 (SLGA), based on Pakistan's commitments under the International Covenant for Civil and Political Rights (ICCPR) and other international treaties. The main purpose of this document is to provide assistance in bringing Sindh's election legislation into line with Pakistan's commitments under international human rights treaties and other international instruments. It includes recommendations for the consideration by the Provincial Assembly, the Government of Sindh and other electoral stakeholders.

This assessment shows that various legal provisions regarding local government elections require modification to align them with Pakistan's international obligations under the ICCPR and other relevant treaties. A review of the law is not just important to meet these commitments, but also to eliminate legal gaps and ambiguities and to provide a more credible legal framework for genuine elections.

Some of the main issues identified in the study are:

ELECTION LEGISLATION AND LEGAL AMBIGUITY: Election laws should establish all the major elements of the election process; the SLGA does not contain provisions on many key issues and procedures. Some of these are left to the rules, to be issued by the Government of Sindh, while others are not covered by either the law or the rules. In addition, the

SLGA states that most provisions of the national election law also apply to the Sindh elections, which creates confusion over the applicable law as there is no clear definition of which one takes precedence when the two are in conflict. The SLGA does not specifically give the power to enact the rules to the Election Commission of Pakistan (ECP), the body which will implement the elections.

LEGAL REFORM PROCESS: It is international good practice that election laws to be adopted through a process of public consultation aiming at the widest possible consensus. The Sindh government carried out limited consultations, but a wider consultative process needs to take place in future to guarantee inclusion and broad-based acceptance of the legislation.

ELECTION SYSTEM: The SLGA does not define the electoral system(s) for local government bodies, leaving uncertainty on how the candidates for Union Councils, Union Committees, Municipal Committees and Town Committees will be elected. The SLGA gives the Government overly broad power to change the number of members of any elected body. No timeframe is specified in the law for the indirect elections of higher level councils, including for reserved seats. This could lead to indirectly elected members taking their seats far later than directly elected members.

CONSTITUENCY DELIMITATION AND EQUALITY OF THE VOTE: The High Court of Sindh suspended the Government's delimitation exercise in December 2013, highlighting the weakness of the SLGA's provisions on delimitation and

their implementation. The law should ensure that the size of electoral units for a given body or post is as uniform as possible, respecting the principle of equality of the vote as enshrined in the ICCPR. Instead of the Government, an independent body should be mandated to delimit electoral units.

CANDIDACY AND THE RIGHT TO STAND FOR ELECTION: According to the UN Human Rights Committee's authoritative interpretation of the ICCPR, key provisions on candidacy, the transparency of procedures and the right to appeal on decisions should be included in the law, and not left to the rules, but the SLGA relegates key provisions on candidacy to the rules. The SLGA only defines the criteria for candidates' qualifications & disqualification; some of these are subjective, for example disqualifying candidates who are "opposed the ideology of Pakistan". Hence SLGA limits candidacies in ways that are contrary to the ICCPR.

RIGHT TO VOTE: The SLGA does not include basic provisions on voter registration procedures, giving the ECP the discretion to set additional conditions for registration. All provisions on voter registration should be set out in the law.

CAMPAIGN AND CAMPAIGN FINANCE: The SLGA would be stronger if it reiterated the rights of candidates, parties and citizens to participate freely in the electoral campaign, under equal conditions and in line with the rights to freedom of expression, assembly, freedom of association and movement. The SLGA could benefit from further provisions on campaign finance, including prohibitions on the use of government funded projects, contracts or hiring during the election period, and penalties for violations of the campaign financing rules.

ELECTION OBSERVATION: Transparency and public confidence in elections could be increased by amending the SLGA to provide a legal basis and rights for election observation.

VOTING PROCEDURES: Some SLGA provisions challenge the principle of the secrecy of the vote. These include, for example, writing a voter's number on the ballot counterfoil so that individual votes can later be identified by an Election Tribunal, since ballots and their counterfoils bear identical numbers.

COUNTING AND TABULATION OF VOTES: Counting and consolidation procedures are not included in the SLGA, but left to the Government's rules. This does not provide sufficient guarantees for timely and transparent counting and tabulation. The law should require that detailed results at every level be publicly posted and made available on the ECPs website as soon as they are completed.

ELECTORAL DISPUTE RESOLUTION: The lack of dispute resolution procedures is a major weakness of the SLGA, falling short of meeting Pakistan's international commitments. According to the right to an effective remedy, as enshrined in Article 2(3)a of the ICCPR, the law should give all citizens, groups or political parties the right to file complaints on any election issue or administrative action, with the possibility of a further appeal to a court.

WOMEN: Taking into account the low political participation of women in Pakistan, the reduction of the quota for reserved seats for women to 22 percent is a step backwards as compared to the previous law. It is also contrary to CEDAW committee's recommendation to have 33 percent quota for women in local governments. The election system for direct elections of women to the Union Councils and Union Committees needs to be defined

as the Sindh High Court had nullified SLGA provisions requiring them to join panels. The reserved seats in Town Committees and other types of bodies are filled through indirect elections; effectively this means that parties control those seats, rather than voters. Consideration should be given to expanding direct election to all seats reserved for women. Additional legal measures, such as requiring gender parity for polling staff, would be beneficial to achieve equal participation of men and women in public affairs.

MINORITIES, PEASANTS AND WORKERS: Sindh High Court struck down clauses of the SLGA, which defined the electoral system for reserved seats of minorities, peasants and workers. In the wake of this decision, the law no longer specifies the electoral system for the reserved seats for minorities, peasants and workers on Union Councils and Union Committees, leaving a vacuum as to how these seats will be filled now. Reserved seats for minorities, peasants and workers on higher level (e.g. district council) are, however, filled on the basis of indirect elections, putting them under political party control instead of being directly accountable to citizens through elections.

INTRODUCTION AND BACKGROUND

The Provincial Assembly of Sindh adopted the Sindh Local Government Act, 2013 (hereafter referred to as SLGA or “the law”) in August 2013; the law came into force in September 2013. The SLGA defines the local governance structure and functions in Sindh and sets out provisions for conducting elections to eight types of local government bodies.¹ Three sets of amendments to the SLGA relating to elections were adopted shortly after the law came into force.² In addition, a set of rules – the Sindh Local Council (Election) Rules, 2013 (hereafter referred to as “the rules”) – was promulgated in November 2013. An amendment to rules was issued in December 2013 (hereafter referred to as “the rules as amended”). In December 2013, the Sindh High Court (SHC) struck down major portions of the third set of amendments as unconstitutional.³

The enactment of the SLGA was a result of Supreme Court orders to the provinces to fulfil the constitutional requirement to introduce local government systems.⁴

The purpose of this Local Election Framework Assessment (LEFA) is to support the Government and Provincial Assembly of Sindh in reforming the legal framework for local elections in the province. This paper also provides

¹ In urban areas: Union Committees, Town Committees, Municipal Committees, Municipal Corporations, District Municipal Corporations, Metropolitan Corporations; and in rural areas: Union Councils and District Councils.

² The Sindh Local Government (Amendment) Act, 2013; the Sindh Local Government (Second Amendment) Ordinance, 2013; and the Sindh Local Government (Third Amendment) Ordinance, 2013.

³ See sections on Role of Election Legislation, “Panel” system (party block vote), and Constituency delimitation and equality of the vote

⁴ Article 140-A of the constitution requires provinces to devolve administrative, fiscal and political powers through local government systems.

assistance and guidance to ensure that the laws, rules and the implementation of the electoral process are fully in line with Pakistan’s obligations under international human rights treaties and other international instruments. The paper also provides information based on widely accepted international good practices in the conduct of elections as they might apply to local elections in Sindh. Although there are many positive aspects of the local election framework in Sindh, this assessment is aimed at assisting with reforms so it concentrates more specifically on provisions of the law that are problematic or that could be improved. In the spirit of co-operation, the LEFA offers for consideration a number of specific recommendations for improving the legal framework.

INTERNATIONAL OBLIGATIONS AND GOOD PRACTICES

This LEFA assesses the extent to which Sindh’s legal framework for local government elections is in compliance with Pakistan’s international obligations, freely undertaken when it ratified various treaties. Foremost among these is the International Covenant on Civil and Political Rights (ICCPR), ratified to by Pakistan in 2010, which protects a broad variety of rights and freedoms related to elections. The ICCPR applies to elections at all levels, including local elections. Pakistan is also a State party to a number of other international treaties relevant to elections, including the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention on the Rights of Persons with Disabilities and the Convention against Corruption (CAC).

The LEFA also draws on General Comment 25 of the United Nations Human Rights

Committee,⁵ the body which oversees the implementation of the ICCPR. General Comment 25 provides the authoritative interpretation of the provisions in the ICCPR as they relate to elections and elaborates what States Parties must do in order to meet their obligations under those provisions. Other United Nations commentaries and documents are also included as references. In addition, the LEFA draws on widely accepted international good practices in election administration, such as those set out by the ACE Electoral Knowledge Network,⁶ the International Institute for Democracy and Electoral Assistance⁷ and the United Nations Development Programme.⁸ In addition, the widely-respected Venice Commission's Code of Good Practice in Electoral Matters has been referred to.⁹

Although the SLGA deals with all aspects of local government, this LEFA, in line with its mandate, analyses only the sections of the SLGA that deal specifically with elections.

POLITICAL CONTEXT

Sindh is Pakistan's second largest province, with a population of 30 million in the 1998 census and approximately 23 percent of the national population. It elects 61 members to the National Assembly. Sindh's economic influence is larger than its population share, as it contributes 33 percent of the national GDP, 70 percent of income taxes and 62 percent of sales taxes. Ethnically, the province is dominated by the Sindhi population but other groups such as Mohajirs and Pashtuns constitute an important part of

⁵ The full text of General Comment 25 is available at: <http://www.unhcr.ch/tbs/doc.nsf/0/d0b7f023e8d6d9898025651e004bc0eb>.

⁶ www.aceproject.org.

⁷ www.idea.int.

⁸ http://www.undp.org/content/brussels/en/home/ourwork/democraticgovernance/in_depth/electoral-assistance.html.

⁹ *Code of Good Practice in Electoral Matters*, European Commission on Democracy through Law (Venice Commission), http://www.coe.am/en/docs/venice/opinion_190_2002.pdf.

the population in many urban centres, including Karachi.

Politics is highly contentious and competitive in Sindh, with divisions apparent especially on ethnic and urban-rural lines. The Pakistan People's Party (PPP) is currently in power for a second consecutive term. The Muthidda Qaumi Movement (MQM) is an important political actor with a high concentration of support in Karachi and other urban areas. The MQM has been part of the ruling coalition in Sindh for much of the past 15 years. It was part of the PPP's coalition government in its previous term and after sitting in opposition for around a year in current tenure, MQM finally joined PPP's coalition in April 2014. Other parties such as the Pakistan Muslim League-Functional, Awami National Party, Awami Tehreek and Sindh United Party have smaller representation in the provincial and national assemblies but they remain important political actors. Nationalists, media and civil society are active, vocal and politically influential.

In 2012, the Sindh Government enacted the Sindh People's Local Government Ordinance 2012 in haste and without any discussion or engagement with the opposition or civil society. This led to large scale agitations among various political parties, civil society and nationalists who perceived the ordinance to be a power-sharing agreement between two ruling parties, the PPP and the MQM. The ordinance was nevertheless adopted as an Act by the Provincial Assembly but it was repealed in early 2013, both as a result of continuous protests and because of emerging differences between the PPP and the MQM.

THE LEGAL REFORM PROCESS

Election laws work best when they are adopted through an open and participatory process seeking consensus among political parties.¹⁰ In Sindh, the draft of the SLGA was shared with political parties and the Provincial Government's six-member Ministerial Committee held consultative meetings with the opposition parties. However, there was only limited debate on the draft in the Provincial Assembly. Opposition parties were not satisfied with the result, considering that their concerns were not sufficiently incorporated into the draft. For the three amendments to the law, there was minimum consultation with the opposition parties who had major reservations on these amendments. The amendments were passed while opposition parties walked out.¹¹

The Ministerial Committee also made efforts to consult with other stakeholders, for example by sending copies of the draft to academics and civil society organizations. However, no public hearings were held on the draft and it is not clear whether or how the feedback received from this outreach was considered. Civil society organizations are often particularly well placed to recommend improvements to election laws since they may not have the same partisan agenda as political parties, and since they may focus on or represent the interests of particular groups that have been

¹⁰ See, for example, *The Role of UNDP in Supporting Democratic Elections in Africa*, UNDP, page 38, <http://www.undp.org/content/dam/undp/library/Democratic%20Governance/Electoral%20Systems%20and%20Processes/UNDP%20Role%20in%20Supporting%20Democratic%20Elections%20in%20Africa%20pdf.pdf>.

¹¹ <http://www.dawn.com/news/1075347/amended-lq-ordinances-passed-amid-opposition-walkout>, also See, for example, MQM Petition to the High Court of Sindh, December 2013,

traditionally disadvantaged, such as women, minorities or persons with disabilities.

The SLGA was adopted on 19 August 2013, just five months before the scheduled election date of 18 January 2014. A set of amendments to the law was adopted by the Provincial Assembly in October 2013, followed by two ordinances issued by the Governor further amending the law, one of which was retroactive to September 2013. Major provisions of the third set of amendments were ruled unconstitutional by the Sindh High Court on 26 December 2013, just three weeks before the anticipated election-day. In addition, an extensive set of rules governing the conduct of local elections was published on 27 November, just seven weeks before the elections were scheduled. Good practice in election administration mandates that election legislation should be adopted well before an election – preferably a year before – to ensure that stakeholders have sufficient time to become familiar with the rules and processes and plan their activities accordingly. Changes to election laws shortly before an election and without broad consensus can reduce public confidence in the election process, including creating an image that changes were made to benefit the party in power.¹²

RECOMMENDATIONS

Any future amendments to the SLGA relating to elections should be adopted

¹² *International Electoral Standards, Guidelines for reviewing the legal framework of elections*, page 15, International IDEA, www.idea.net/publications/ies. Also, the *Code of Good Practices in Electoral Matters* of the European Commission for Democracy through Law (Venice Commission), article II(2)(b) states “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...”. http://www.coe.am/en/docs/venice/opinion_190_2002.pdf.

through an open process including public consultation, and should aim at achieving consensus among the main parties represented in the Provincial Assembly.

Any future amendment to the SLGA relating to elections should be adopted well in advance of anticipated elections to ensure that all stakeholders have time to become fully informed and make necessary preparations.

THE ROLE OF ELECTION LEGISLATION

The principal components of the legislative framework in Sindh which form the basis of this analysis are the SLGA, its amendments and the rules. However, many other laws can directly affect the legislative framework for elections. Laws dealing with citizenship, public demonstrations, media, administrative procedures, gender equality, political parties, corruption, the right to information and many other issues can affect the conduct of elections; a review of every such national and Sindh legislation as it relates to elections is beyond the scope of this analysis. It is important, however, for election laws to be in harmony with other laws in order to avoid confusion or disputes. Moreover, even the best laws will not result in good elections unless they are implemented fairly and effectively.

The Constitution of Pakistan sets out a broad framework of human rights necessary for democratic elections. It should be mentioned, however, that certain articles of the Constitution, which are also relevant to local government elections, may not be fully consistent with Pakistan's obligations under the ICCPR. In particular, the Constitution provides guarantees of rights to freedom of expression, association and assembly, subject to "any reasonable restrictions

imposed by law".¹³ The ICCPR, in contrast, allows only much narrower restrictions on these fundamental freedoms, stipulating, for example, that any restrictions must be "necessary in a democratic society".¹⁴

NATIONAL AND PROVINCIAL LAW

In countries such as Pakistan where there is no unified law governing both national and sub-national elections, the result can be contradictory and confusing provisions from separate pieces of law.¹⁵ This can arise in particular where some aspects of national law apply to local elections and others do not, as is the case in Sindh. The SLGA stipulates that, "Save as provided under this Act, the provisions of the Representation of the Peoples Act 1976 [Pakistan's national election law, hereafter referred to as ROPA] shall be applicable to the elections and the electoral process under this Act" (SLGA 71). An analysis of the ROPA is beyond the scope of this paper.¹⁶ While the provision incorporating the ROPA is apparently intended to fill any gaps in the SLGA, it could also lead to considerable confusion as to which provisions of law apply in various circumstances. This is especially true in the many instances in which the SLGA draws some language directly from the ROPA but does not include other ROPA language. Two examples of this would be that the SLGA language on the appointment of Returning Officers and the creation of polling stations (SLGA 40 and 41) repeats almost verbatim some of ROPA clauses but skips others; so while interpreting them,

¹³ Constitution of Pakistan, Articles 16, 17, 19.

¹⁴ ICCPR Articles 19, 21, 22.

¹⁵ *Promoting Local Election Management as Part of an Electoral Cycle Approach*, UNDP, page 21, <http://www.undp.org/content/dam/undp/library/Democratic%20Governance/Electoral%20Systems%20and%20Processes/Promoting%20Local%20Election%20Management%20as%20Part%20of%20an%20Electoral%20Cycle%20Approach-V2.pdf>

¹⁶ An analysis of ROPA is available in another DRI publication, *Pakistan Election Laws and International Standards, A Reference Guide on Legislative Gaps and Vulnerabilities*, http://www.democracy-reporting.org/files/dri-pk_pakistan_election_laws_and_international_standards.pdf

these provisions are likely to raise questions: 'do the clauses of the ROPA that are not specifically replicated nevertheless apply in line with SLGA 71, or are they excluded by the "save as provided" clause?' More clarity is needed. Several other specific examples of this type of potential confusion regarding the applicability of the ROPA are highlighted in the sections below.

Another important issue is the extent to which a provincial authority can require an independent, constitutionally-mandated body such as the Election Commission of Pakistan (ECP) to abide by provincial laws and rules, particularly if these do not coincide with national laws, rules and procedures. Since the ECP is directed to "organize and conduct" local elections (SLGA 34(3)), this could become a contentious issue if the ECP should ever object to or decline to implement an element of the SLGA or the rules. Any conflict might have to be decided by the courts, although the SLGA does not include provisions for appeal to a court except in regard to election results.

In addition, it is not clear to what extent national laws other than the ROPA may also apply to Sindh local elections, in particular the Electoral Rolls Act 1974. The SLGA relegates the implementation of voter registration to the discretion of the ECP (SLGA 39(1)(c)) without specifying whether the procedures set out in the Electoral Rolls Act apply. Since registration is a prerequisite to exercise the right to vote (SLGA 39(3)), this leaves a substantial legal void over who is entitled to vote in Sindh elections.¹⁷ It also raises the possibility of disputes if, for example, some voters resident in Sindh are included in the electoral rolls for national elections but not in the electoral rolls for local government elections in Sindh. Another national election

¹⁷ SLGA 39 states only that a voter must be a citizen of Pakistan not less than 18 years of age who "fulfills such other conditions as the Election Commission may specify".

law, the Delimitation of Constituencies Act 1974, presumably does not apply to Sindh, since the SLGA gives the Sindh provincial Government the power to delimit constituencies (SLGA 8-14).

Moreover, the Supreme Court of Pakistan declared that in conduct of local government elections, the ECP should have responsibility for all steps of electoral process including delimitations. It declared that ECP has similar roles for local elections as it has for provincial and national elections role¹⁸. An expansive interpretation of the court's ruling could mean that national laws on elections would also apply to local government. This further adds to already complex and cumbersome legal hierarchy in electoral framework for local elections. However, the Supreme Court directed both national and provincial governments to charge ECP with responsibility of doing delimitation for local elections by amending relevant sections in the legal framework.¹⁹

International good practice requires that election laws be objective, clear and transparent.²⁰ The uncertainties cited above challenge these principles.

RECOMMENDATION

Clarify exactly which provisions of the ROPA apply to Sindh local elections, as well as any other national election legislation that may apply to Sindh local elections.

THE LAW VERSUS THE RULES

The provision of law incorporating the ROPA into the SLGA (SLGA 71) refers only to the Act, but does not mention the SLGA rules. This raises the potential for serious legal conflicts over whether the SLGA rules

¹⁸ Constitution of Pakistan sections 218 to 226

¹⁹ See Supreme Court Judgement dated 20 March 2014 in Civil Appeal No 38 to 45 of 2014 & Civil Petition Nos 26-K to 34-K, 164 of 2014

²⁰ See, for example, *International Electoral Standards, Guidelines for reviewing the legal framework of elections*, page 19, International IDEA, <http://www.idea.int/publications/ies/>

take precedence over the ROPA when the two diverge. One example is the important issue of who declares the election results: the ROPA (section 42) states that the ECP declares election results; the SLGA is silent on the issue but rule 41 says the Returning Officers declare the results. This type of conflict could occur on many issues, since the SLGA itself is silent on many election arrangements, leaving them to the rules. A number of other examples of conflicts between the SLGA rules and the ROPA are cited throughout this analysis.

Another area of potential conflict between the local and national legislative framework is the question of who is entitled to make the rules. The SLGA gives the power to make rules to the Government (SLGA 138(1)). This is problematic since the Government is likely to have a profound interest in the election outcome and thus may not be an impartial actor. Under international good practice, an independent election commission should make the election rules.²¹ However, the law (SLGA 34(3)) also empowers the ECP “to make necessary arrangements as are necessary to ensure that the election is conducted honestly, justly, fairly and the corrupt practices are guarded against.” This could be read to suggest that the ECP has the power to make rules, which could set up a conflict between ECP rules and the rules enacted by the Government. If the ECP does not have power to make rules, then the “necessary arrangements” the ECP is required to institute would have a questionable legal basis. Moreover, since SLGA section 71 incorporates the ROPA as part of the SLGA, the ECP could claim the power to make rules in accordance with ROPA section 107, which gives the ECP the power to make rules subject to approval by the President of Pakistan. This would mean that both the Government and the ECP

²¹ See, for example, *International Electoral Standards, Guidelines for reviewing the legal framework of elections*, pages 16-17, International IDEA, www.idea.net/publications/ies/

have the power to make election rules. This is another instance of how the incorporation of the ROPA into the SLGA creates ambiguity and potential confusion, which is both a problem in its own right and contrary to international good practices.²² The potential problem is compounded because the SLGA does not require the Government to consult with the ECP when making rules.

RECOMMENDATIONS

Clarify the application of the ROPA to aspects of local elections that remain unregulated by the SLGA and its rules.

Uphold the constitutionally mandated independence of the ECP by empowering it, rather than the Government, to issue rules for local government elections.

GAPS IN THE LAW

A sound legislative framework is fundamental to a credible electoral process and will help ensure the acceptance and sustainability of the local government system in future. To achieve this, legislation should be comprehensive, clear and have the support of the main election participants. An assessment of an election framework must therefore consider not only what is contained in the laws, but what is not included. A legislative framework that is not comprehensive can result in disputes, abrogation of electoral rights, inconsistent practices and diminution of public confidence in the elections and its results.

The UN Human Rights Committee, in interpreting the obligations under the ICCPR, points to a wide range of election elements that must be protected specifically by law rather than by regulations or rules. These include, among others, the exercise of voting rights, guaranteeing the free expression of the will of the voters, the

²² See, for example, *International Electoral Standards, Guidelines for reviewing the legal framework of elections*, pages 11, 15, International IDEA, www.idea.net/publications/ies/

secrecy of the vote, the voting process, grounds for removal of elected office holders and freedom of expression.²³

The SLGA does not include provisions on a number of key electoral aspects, leaving them to Government rule-making or omitting them entirely. This is a serious challenge to Pakistan's obligations under the ICCPR. Some essential matters which are not covered or not adequately covered in the SLGA include:

- Basic elements of the election system, such as the basis of representation, the system used to elect candidates and the basis of establishing constituencies
- Eligibility to vote
- Voter registration
- Protection of freedoms to conduct an electoral campaign
- Ensuring equal conditions for all candidates
- Voter education
- Election observers

Some key issues that are not included in the SLGA but left to the rules include:

- Candidate nomination and rights of candidates
- Publication of candidate lists
- Election expenses
- The voting process
- Counting and consolidation procedures
- Declaration of election results
- Transparency of election results

These issues are covered in detail in the sections below.

RECOMMENDATION

Review SLGA to ensure inclusion of and clarity in the key areas specified in ICCPR

²³ UN Human Rights Committee, General Comment 25, paragraphs 7, 9, 12, 16, 19, 20 and General Comment 34, paragraph 8.

and General Comments 25 and 34, as mentioned in this LEFA.

ELECTION ADMINISTRATION

Under the SLGA, local elections are to be administered by the ECP (SLGA 34(1)). The law adds that all executive authorities in the province have a duty to assist the ECP in the discharge of its functions (SLGA 38), a clause which replicates the provision in the national Constitution requiring executive authorities to assist the ECP (Constitution, Article 220). Rule 7 states that the ECP "may require any person or authority to perform such functions or render such assistance in connection with the elections as it may direct." Neither the law nor the rules, however, specify what type of assistance is contemplated, e.g., whether this might include such functions as security, logistics, personnel, supplies, printing, offices, transport or other types of assistance.

The SLGA includes some of the same provisions as the ROPA in regard to the powers of the ECP to require assistance, but does not include others. This is another example of an ambiguity in light of section 71 of the SLGA, which says that provisions of the ROPA are applicable save as provided in the SLGA.

Section 40 of the SLGA, as amended, provides for the ECP to appoint a District Returning Officer, Returning Officer and Assistant Returning Officer for each constituency. "Constituency" is not among the terms defined in the law, which creates some confusion. Presumably, the intention is to have a District Returning Officer for each district – rather than each constituency – and Returning Officers for each lower

level electoral unit or group of units. The language in the rules (rule 11) is clearer but is not entirely consistent with the language in the law on this point.

District Returning Officers, Returning Officers and Assistant Returning Officers must be appointed from among officers of the Election Commission, the Government of Sindh, a body or entity controlled by the Government of Sindh or any other Authority (SLGA 40(1)). The rules further specify that District Returning Officers and Returning Officers must be officers not below the grade of 17, while Assistant Returning Officers can be from grades 16 or 17 (rule 11). While it is not contrary to international standards to have government officials involved in administering elections, it only works well if there is broad public confidence that the government officials will act honestly and impartially, otherwise it can challenge the principle of an independent electoral authority as required by the ICCPR.²⁴ In Sindh, it appears that the required public confidence is lacking,²⁵ which could erode confidence in the election process more generally and in the results. Moreover, while most of the SLGA language on Returning Officers and other election officials is taken directly from the ROPA, the article giving the ECP the right to suspend any officer (ROPA 7(6)) has been omitted. It is not clear, therefore, whether the ECP would still have this power by virtue of SLGA 71, which incorporates ROPA provisions into the SLGA.

The Returning Officers, in turn, appoint a Presiding Officer for each polling station, as well as Assistant Presiding Officers and

²⁴ UN Human Rights Committee General Comment 25, paragraph 20.

²⁵ For example, the opposition has written to the ECP asserting that the Deputy Commissioners and Revenue Officers who will conduct the elections were appointed on the basis of loyalty to the government rather than merit.

Polling Officers in the numbers they consider necessary (SLGA 42(1)). The list of these officials must be submitted to the District Returning Officers for approval at least 14 days before the poll (rule 14(2)) and must be submitted to the ECP for approval at least 15 days before the poll (SLGA 42(3)). There appears to be a lack of harmony between the law and the rules on the timing of these appointments, since the law requires the lists to be submitted to the ECP for approval a day earlier than the rules require them to be submitted to the District Returning Officers for approval. The District Returning Officers thus would not have the opportunity to make changes, since changes can only be made with the approval of the ECP once it has received the lists.

A potential timing issue arises in connection with training for polling officials. Finalizing appointments just 15 days before election-day leaves a very short time to organize effective training for polling staff at all levels.

Neither the law nor the rules mention whether specific qualifications are required for polling officials. The law does prohibit any person who has been in the employment of a candidate from serving as a polling official (SLGA 42(2)). It does not, however, extend this prohibition to political party officials, although the elections are to be conducted on a party basis (SLGA 33). There is no requirement that the list of election officials be published in the official gazette, and no provision allowing candidates or others to challenge specific appointments.

The SLGA appears to curtail for provincial elections some of the powers held by the ECP for national elections. For example, the ROPA specifically gives the ECP the power to suspend any electoral officer or other official at any time (ROPA 7(6)) but there is

no similar provision included in the SLGA. The ROPA makes clear that District Returning Officers operate “subject to the superintendence, direction and control” of the ECP (ROPA 7(5)) but there is no such provision in the SLGA. The ROPA (section 8(2)) gives the ECP power to approve any alterations to the list of polling stations, while the SLGA gives this power to the Returning Officers (SLGA 41). The ROPA (section 42) states that the ECP declares election results, while Rule 41 gives this power to the Returning Officers for local elections. On balance, it appears that the power of the ECP to ensure and enforce sound practices and proper behaviour by election officials is constrained under the SLGA compared to its powers under the ROPA. Hence, it gives rise to potential conflict with the ECP’s constitutionally guaranteed independence and to ICCPR’s requirement to have an independent election authority.²⁶

RECOMMENDATIONS

Consider including more specificity in the SLGA in regard to the “duty of all executive authorities to assist” the ECP (SLGA 38 and rule 7(1)).

Consider giving the ECP broader authority over who may be appointed as a District Returning Officer, Returning Officer or Assistant Returning Officer, including persons from outside the government service, in order to increase confidence in the impartiality of senior election administrators. To the extent possible, staff of the ECP should be appointed as District Returning Officers.

Harmonize the language of the law and the rules in regard to the appointment of District Returning Officers and Returning Officers, and of the electoral units for which they are responsible (SLGA 40 and rule 11).

²⁶ ICCPR General Comment 25, paragraph 20

Harmonize the language of the law and the rules in regard to the timing of appointment of various electoral officials (SLGA 42(3) and rule 14(2)).

Consider providing more than 15 days to organize training for all staff by moving forward the deadline for finalizing the appointment of polling staff.

Consider specifying further qualifications for officials involved in elections, including that they not be active officials of political parties.

Consider including in the law a requirement that lists of polling staff be published well in advance of election-day and that citizens or candidates have the opportunity to challenge the appointments.

Ensure that the ECP has the same, unambiguous powers to ensure the conduct of free and fair elections as it does under the ROPA to uphold the ECP’s independence as guaranteed in the constitution of Pakistan and required under the ICCPR.

ELECTION SYSTEM

BASIC ELEMENTS OF THE ELECTION SYSTEM

International standards do not specify the type of election system that a country should adopt, stating only that it must be based on the consent of the people and in conformity with the principles of the ICCPR.²⁷ An appropriate electoral system depends on many factors; there is no single “best” system. Designers of electoral systems need to consider a range of basic issues, such as whether candidates will stand individually or as members on lists;

²⁷ UN Human Rights Committee General Comment 25, paragraph 1.

whether winners will be declared based on a majority or some system of proportionality; how many districts and other electoral units to establish; how many seats to assign to each district or other electoral unit; how many votes each voter is entitled to cast and many other issues. The effects of these choices can be profound, including promoting or diminishing the prospects of conflict or electoral violence.²⁸ Whatever system is adopted, however, the basic elements need to be clearly set out in the election law. The SLGA does not clearly establish some of these fundamental elements of the election system, leaving an unacceptable level of legal uncertainty about which system will be used and how it will operate.

The most glaring gap in the SLGA is that it does not make clear what system or systems are to be used to elect the directly elected candidates for Union Councils, Union Committees, Municipal Committees and Town Committees. Since this is a crucial point, there should be no ambiguity whatsoever in the law.

“PANEL” SYSTEM (PARTY BLOCK VOTE)

A key confusion in the law is about how the system of “panels” of candidates for elections to Union Councils and Union Committees should operate in practice and, in particular, what precise procedures should be used for constituting and electing the panels. There was no mention of panels in the SLGA as originally adopted, but all three sets of amendments to the SLGA include provisions on panels:

²⁸ See, for example, *Elections and Conflict Prevention, a Guide to Analysis, Planning and Programming*, UNDP, pages 9-10, <http://www.undp.org/content/dam/aplaws/publication/en/publications/democratic-governance/dg-publications-for-website/elections-and-conflict-prevention-guide/Elections-Conflict-Prevention.pdf> .

- The Sindh Local Government (Amendment) Act (9(j)) created a new section of the SLGA (18(10)) stating that “where candidates are contesting elections for Union Committee or Union Council as the case may be, as candidates of a political party under a common symbol, they shall contest the election as a panel.”
- The Sindh Local Government (Second Amendment) Ordinance (4(1)) slightly changed the language of SLGA 18(10) to state that independent candidates as well as political parties “shall contest the election under a common symbol as a panel”.
- The Sindh Local Government (Third Amendment) Ordinance (4(c)) created SLGA 18(12) and 18(14), specifying the number of candidates that must make up a panel, that the seats reserved for women, labourers or peasants and non-Muslims would be included in the panels and that if a panel were incomplete then all the candidates on the proposed panel would be rejected.

The new sections SLGA 18(12) and 18(14) were struck down by the Sindh High Court²⁹ because they effectively eliminated the possibility for independent candidates to stand for office. In striking down section 18(12), the High Court also invalidated the clause that included the reserved seats for women, labourers or peasants and non-Muslims on the panels, leaving uncertainty on how these seats would be elected.

The High Court’s decision, however, did not strike down the other references to panels, including SLGA 18(10) as amended, which

²⁹ Sindh High Court ruling of 26 December 2013.

requires independent candidates and political parties to contest as panels for Union Committee and Union Council elections. The election rules define a “panel” as “a group of persons contesting election on a common symbol” (rule (2)(15)). It is not clear, therefore, how a single independent candidate could stand for election, considering the requirement that independent candidates “shall contest...as a panel” (SLGA 18(10)) and the definition of a panel as “a group”. In contrast, rule 24(1) states that Returning Officers should allocate a symbol to each “candidate or panel”, which appears to be in conflict with SLGA 18(10).

In practice, the election of Union Councils and Union Committees are to be conducted under a system known internationally as the “party block vote”.³⁰ This is a type of first-past-the-post system under which a voter is entitled to cast one vote for a list, or panel, of candidates. The number of candidates on a list or panel would correspond to the number of seats being elected. All members of the list that receives the highest number of votes are elected. The system has the advantages of electing unified governments, encouraging strong parties and enabling parties to include minority groups or women among their candidates, which they might be less likely to do in a standard first-past-the-post system. The major disadvantage of the party block vote is that it often results in an elected body with no opposition members, since the winning panel takes all the seats.

The SLGA, however, does not make clear that the “party block vote” is the system to be used in Sindh local elections. Neither the

³⁰ “Party Block Vote”, ACE Electoral Knowledge Network, <http://aceproject.org/ace-en/topics/es/esd/esd01/esd01c> . As of 2004, only four countries worldwide used the party block vote as a significant aspect of their electoral system: Cameroon, Chad, Djibouti and Singapore.

SLGA nor the rules spell out the full details of how the panel system should operate. For example, the law does not specify that all members of a panel winning the most votes are elected. Another crucial gap is the number of votes each voter is allowed to cast: a provision of the SLGA specifying that every voter would have only one vote irrespective of the number of members to be elected from a Union Council or ward (SLGA 32(d)) was deleted from the law by an amendment (Sindh Local Government (Amendment) Act (13)) but was not replaced with other language specifying the number of votes a voter is entitled to.³¹

The Sindh High Court ruling striking down the only provision of the SLGA that specified the required size and composition of panels (SLGA 18(12)) has created a number of further difficulties and uncertainties that need to be resolved. As noted previously, the High Court decision invalidated the requirement that a woman, a non-Muslim and a labourer or peasant must be on each panel, leaving uncertainty over how the seats reserved for these groups would be elected. In addition, since a panel is no longer required to have the same number of seats as a Union Council or Union Committee, there is no explanation in the law regarding what happens to the remaining seats if a panel of less than nine members or an independent candidate receives the highest number of votes.

Another element of confusion in regard to panels relates to candidate nomination procedures. These are contained in the rules rather than in the SLGA itself. The relevant rules (16-19) appear to relate only to individual candidates, with no mention of

³¹ An election system very similar to the “party block vote” is the “block vote”, which differs only in that each voter is entitled to the same number of votes as there are seats to be elected.

how a panel of candidates would be formed or approved. From Union Councils, one member is directly elected for District Councils but it is not clear what election system will be system for election of this member.

It is presumably the intention of the law that elections in single member wards in Town Committees and Municipal Committees will be conducted under a first-past-the-post, or simple majority system. However, the law does not make this clear and does not specify whether successful candidates for single member wards must receive an absolute majority of votes or if a plurality is sufficient.

The SLGA specifies the number of members to be elected to Union Committees and Union Councils, but does not specify the size of the other types of local government bodies to be elected. The SLGA (Schedule-I Part-A) gives the Government unfettered power to determine or change the number of members of elected bodies, without providing guidance or restrictions to ensure this is done on a fair and consistent basis.³² This power appears excessive, while the lack of clarity in the law could prompt legal disputes or open the door for electoral manipulation.

The SLGA states that “Union Councils or Wards may be multi-members or single members” (SLGA 32(c)), but provides no details on which criteria this decision is to be based or on who makes the decision. This wording also seems to be in conflict with other sections of the law, since Town Committees and Municipal Committees require single member wards (SLGA 18(8 and 9)) and the election procedure

³² There is a further technical problem in that SLGA Schedule-I Part-A refers to SLGA 19, when it should refer to SLGA 18.

described for Union Councils does not mention wards at all. Moreover, if the party block vote system is used for Union Council elections, it would not be possible to have single member wards, since the party block vote requires multi-member wards. Additional confusion relates to the law’s failure to define the term “ward” or to explain how or if it differs from other basic electoral units such as Union Councils and Union Committees.

The lack of clarity in the law on all of these basic issues could lead to legal challenges or loss of confidence in the election results. Furthermore, the lack of specificity in the law is in conflict with the ICCPR’s requirement that voting processes must be established by laws.³³

RECOMMENDATIONS

Amend the law to clarify and specify the election system, including the basis of representation, the basis of establishing single or multi-member constituencies, the basis for deciding the number of members of an elected body where this is not specified in the law, the basis on which candidates are elected and the number of votes each voter may cast.

Amend the law to clarify how panels of candidates are formed in light of the High Court decision and how they operate in practice.

Limit the Government’s power to change the number of members of an elected body.

INDIRECT ELECTIONS

Although the purpose of the SLGA is to “establish an elected local government system ... [and] decision making through

³³ UN Human Rights Committee General Comment 25, paragraph 7.

institutionalized participation of the people at local level” (SLGA preamble), the most senior and powerful officeholders are elected indirectly rather than “through institutionalized participation of the people at local level”. Indirectly elected offices include all mayors and deputy mayors, and all council and committee chairmen and vice chairmen.

Of the eight elected bodies set out in the law, only the four lowest levels (Union Committees, Union Councils, Town Committees and Municipal Committees) are directly elected. The system of indirect elections for other bodies puts layers between the voters and their representatives, as well as between voters and higher bodies of governance, making them less directly accountable to the voters through the electoral process. Indirect elections, moreover, can be more susceptible to corruption than direct elections.³⁴ The danger of corrupt practices is even greater when elections are not conducted through a secret ballot, but by show of hands as foreseen here. In addition to the important issues of accountability and potential abuse, indirect elections can diminish public confidence in the electoral system and elected institutions. For example in Balochistan, interlocutors have shown concerns on indirect elections as according to them candidates coming through indirect elections try to please leaders of their respective political parties more than truly representing the constituents.³⁵

³⁴ See, for example, *Designing Inclusive and Accountable Local Democratic Institutions, A Practitioner’s Guide*, UNDP, page 17,

<http://regionalcentrebangkok.undp.or.th/practices/governance/decentralization/documents/LDIbook.pdf>

³⁵ For more see DRI’s Election Assessment Mission Report on Baluchistan Local Government Elections 2013

http://www.democracy-reporting.org/files/dri-pk_balochistan_local_government_elections_assessment.pdf

The specific problems of indirect elections of women, peasants or labourers and non-Muslims to reserved seats are discussed in the final two sections of this analysis.

RECOMMENDATION

Consider establishing direct popular elections for bodies of local governance that are currently elected indirectly.

ELECTION TIMEFRAMES

The SLGA sets the term of office for locally elected bodies and officials at four years (SLGA 21(2)), which is in line with the ICCPR’s requirement for periodic elections. The SLGA is silent, however, on when a new election should take place. Instead, at the end of the four-year term, the Government may appoint an administrator to perform the functions of the council until a newly elected council takes office (SLGA 21(3)). A lengthy gap between the expiry of one council and the election of the next could undermine the principles of democratic governance and periodic elections set out in the ICCPR.

The SLGA does not specify a timeframe for the indirect elections of the seats reserved for women, peasants or labourers and non-Muslims in the various local government bodies. This could result in an indefinite delay in the indirect elections, with the indirectly elected members taking their seats far later than the directly elected members.

SLGA section 34(2) as amended gives the Government full powers to advance or delay elections indefinitely “if the circumstances so warrant”. This vague provision could violate the ICCPR’s requirement to hold

periodic elections at intervals that are not unduly long.³⁶

RECOMMENDATIONS

Specify in the law the maximum timeframe between elections and the timeframe for electing members to reserved seats.

Amend the law to limit and specify circumstances under which the Government can delay or advance elections.

OTHER ISSUES

Section 2 of the SLGA empowers the Government to exclude any area or areas of the province from the operation of the law and to make alternative provisions for such areas by instituting rules. This provision is so broad that it could undermine the entire basis of free elections at the local level. If it is necessary to include such a provision, it should set out specific and narrow limits on the Government's power to exclude areas of Sindh from the operation of the SLGA.

RECOMMENDATION

Amend the law to limit and specify the Government's powers under section 2 of SLGA to exclude any areas of the province from the operation of the law.

CONSTITUENCY DELIMITATION AND EQUALITY OF THE VOTE

CONSTITUENCY DELIMITATION

The delimitation of constituencies can be a crucial aspect of elections since the way in which electoral boundaries are drawn can often determine an election's result. The legal framework, therefore, should spell out

³⁶ UN Human Rights Committee General Comment 25, paragraph 9.

in detail the process and criteria for delimitation. The absence of clear and transparent requirements and procedures can encourage gerrymandering and lead to disputes, as it already has in a major court case in Sindh.³⁷ The decision of the High Court of Sindh to invalidate the entire delimitation exercise undertaken for the local elections originally scheduled for 18 January 2014 underscores the importance of having clear and acceptable laws and rules for delimitation and of implementing them fairly.³⁸ The Supreme Court of Pakistan upheld Sindh High Court's decision. Generally accepted international principles on delimitation include representativeness, equality of voting strength, an independent boundary authority, transparency and non-discrimination.³⁹

The SLGA gives the Government almost unfettered power to establish, merge, abolish or change constituencies, including Districts, Metropolitan Corporations, Municipal Committees, Town Committees, Union Committees, Union Councils and other electoral units. This could easily result in arbitrary decisions or gerrymandering, which could undermine public confidence in the election process, especially since the Government is likely to have a strong political interest in the outcome of local elections. Moreover, the SLGA provides very few criteria to ensure the delimitation process is conducted on a fair and consistent basis. The only limit provided by the law (SLGA Schedule-I Parts-B and C)

³⁷ The law no longer specifies the electoral system for the reserved seats for minorities, peasants and workers on Union Councils and Union Committees.

³⁸ Sindh High Court ruling of 26 December 2013 not only invalidated the delimitation process undertaken, but also struck down certain sections of the Sindh Local Government (Third Amendment) Ordinance (3 and 8) as they apply to delimitation.

³⁹ "Guiding principles of boundary delimitation", ACE Electoral Knowledge Network, <http://aceproject.org/ace-en/topics/bd/bd20>.

specifies the population range for each of the councils. In urban areas, the law empowers the Government to delimit wards “in the prescribed manner” in Municipal Committees, Town Committees and Corporations, but does not spell out what the prescribed manner is, leaving this to the rules established by the Government (SLGA 11(1)). There is only one criterion provided in the law; the statement that in urban areas “a ward shall, as far as possible, consist of a census block or adjoining census blocks”. A similar clause applying to rural areas was eliminated by amendments to the SLGA (first amendment, section 6), but no alternative criteria were substituted.

Chapter III of the rules (rules 8-11) is devoted to delimitation of electoral units, but provides only slightly more detail on the delimitation process. Under the rules, delimitation is carried out not by an independent body, but by delimitation officers and appellate tribunals, both appointed by the Government (rule 8(1)). The rules provide no criteria as to the necessary qualifications or independence of either the delimitation officers or the tribunals. The delimitation officers are to delimit electoral units “having regard to the territorial unity and as far as practicable, to distribution of population and public convenience” (rule 8(3)), but no further criteria are provided.

While the rules do not require public consultations on constituencies, they do stipulate that delimitation officers must publish a preliminary list of electoral units and that any eligible voter may make a representation to the delimitation officer or another authority appointed by the Government (not further specified) (rule 9(2)). Rule 10 gives appellate authorities the power to review representations, hold hearings and make amendments to the proposed electoral units as they deem fit.

However, it is not clear in the rules who is entitled to make a representation or to appeal to such an authority (as opposed to the initial representation to the delimitation officer or authority) or on what basis the tribunal should make its decisions. Moreover, a proviso to the rules (rule 10) states that the delimitation officer or authority may refer the representation to the Government for a decision, leaving confusion as to whether the Government or the appellate tribunal has the final word.

International good practice is for delimitation to be carried out by committees or persons who are independent, non-partisan, impartial and professional.⁴⁰ The High Court of Sindh ruling of December 2013 suggested that “an independent commission or body be formed by the Government of Sindh with proper rules and the procedure to deal with the objections and also provide an independent forum of an appellate authority to hear and decide the appeals in the delimitation cases.”⁴¹ Establishment of such a body could avoid the types of disputes and court cases that forced the delay of the Sindh local elections originally scheduled for 18 January 2014. The Supreme Court of Pakistan ordered that ECP conducts delimitations.

Another weakness of the legislative framework in regard to constituency delimitation is that neither the law nor the rules state how frequently constituencies must be delimited. As the law now stands, the Government has the authority to redraw any constituency at any time and has no obligation to review the delimitation at set

⁴⁰ See, for example, “Guiding principles of boundary delimitation”, ACE Electoral Knowledge Network, <http://aceproject.org/ace-en/topics/bd/bd20>, and *International Electoral Standards, Guidelines for reviewing the legal framework of elections*, page 30, International IDEA, www.idea.net/publications/ies/

⁴¹ Sindh High Court ruling of 26 December 2013.

intervals. The law's silence on timing can also conflict with international good practice that drawing of constituency boundaries should not be open to amendment less than one year before an election.⁴²

RECOMMENDATIONS

Establish an independent, impartial, non-partisan and professional body to delimit electoral units.

If such a body is not established, then specify, restrict and regulate the Government's power to establish electoral units and to change any electoral unit at any time.

Provide clearer criteria in the law and in the rules on the basis upon which electoral units must be delineated.

Clarify the process for public comment and appeal against proposed delimitations, as well as the lines of authority for final decision making on such appeals, ensuring that an independent court or tribunal has the final authority.

Specify in the law the frequency with which electoral units must be delimited and avoid changing constituency boundaries shortly before an election.

EQUALITY OF THE VOTE

One of the electoral principles enshrined in the ICCPR is equal suffrage. The UN Human Rights Committee has elaborated that "...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..."⁴³ Explicit

⁴² See, for example, *Code of Good Practice in Electoral Matters*, article II 2(b), European Commission on Democracy through Law (Venice Commission), http://www.coe.am/en/docs/venice/opinion_190_2002.pdf.

⁴³ UN Human Rights Committee General Comment 25, paragraph 21.

guidelines have been adopted in some regions of the world to elaborate how the size of constituencies should be formulated to ensure the equality of the vote. In the 47 member states of the Council of Europe, the standard is that the maximum difference among the weight of votes should "seldom exceed 10 per cent and never 15 per cent".⁴⁴ To achieve equality of the vote, electoral districts for elections to the same body should be as nearly equal as possible in population. When electoral districts vary greatly in population – a condition referred to as "malapportionment" – it violates a central tenet of democracy, namely, that all voters should be able to cast a vote of equal weight.⁴⁵

Under the SLGA the population of Union Councils and Union Committees in Municipal Corporations may vary between 10,000 and 15,000 (SLGA Schedule I Part-C).⁴⁶ Since these figures are based on total population rather than on eligible voters, it is possible that the disparities among the numbers of voters could be even larger. Still, these disparities among different Councils or Committees would not necessarily violate international standards if the weight of each vote *within* the respective Council or Committee elections were still equal. However, since Union Councils and

⁴⁴ *Code of Good Practice in Electoral Matters, Explanatory Report*, paragraph 15, European Commission on Democracy through Law (Venice Commission), http://www.coe.am/en/docs/venice/opinion_190_2002.pdf. The Code does allow larger discrepancies in "really exceptional circumstances", such as to protect a specific national minority that is geographically concentrated in one area.

⁴⁵ "Guiding principles of boundary delimitation", ACE Electoral Knowledge Network, <http://aceproject.org/ace-en/topics/bd/bd20>.

⁴⁶ The Sindh Local Government (Third Amendment) Ordinance (article 7) changed the range of population for a Union Committee in a Metropolitan Corporation the 40,000-50,000 established in the Sindh Local Government (Amendment) Act (27) to from 10,000-50,000, creating a far larger disparity in the equality of the vote. However, this change was subsequently struck down by the High Court of Sindh as unconstitutional.

Committees are represented equally on higher level councils (District Councils, District Municipal Corporations, Metropolitan Corporations and Municipal Corporations), the result is that some Union Councils or Union Committees may have very substantially less representation per voter in the high level bodies, which would violate the ICCPR's principle of equality of the vote.

The disparities among the size of the vote in the direct elections for ward representatives in Town Committees is 2,000-3,000 (SLGA Schedule I Part-C), which might also challenge the equality of the vote, particularly if the wards were gerrymandered with a view to obtaining a particular election result. Wards in Municipal Committees may vary in size between 4,000 and 5,000 (SLGA Schedule I Part-C) which is a smaller disparity.

RECOMMENDATION

Ensure that the population of electoral units in the direct or indirect election of a council is as nearly equal as possible, in line with ICCPR requirements and international good practice.

CANDIDACY AND THE RIGHT TO STAND FOR ELECTION

The candidacy provisions of the SLGA and the rules include many positive aspects, such as provisions to stand as either an independent candidate or a party member (SLGA 33). However, most aspects of candidacy are governed by the rules rather than the law itself. Relegating these important issues entirely to the rules gives the Government the power to make changes without recourse to the legislature and thus dilutes the protections the law should provide to candidates and prospective candidates. While it is

appropriate to set out specific procedures in the rules, the law itself should include basic provisions guaranteeing the rights of candidacy, the transparency of procedures and the rights to appeal decisions and obtain a timely remedy.

International standards require that any restriction on a citizen's right to stand for election must be justifiable based on objective and reasonable criteria.⁴⁷ The SLGA (35 and 36) provides a long list of conditions for the qualification and disqualification of candidates. Most of these meet the "objective and reasonable" criteria, but two are of particular concern. Section 35(d) disqualifies from candidacy any person who has "opposed the ideology of Pakistan". The language in this provision is identical to language in the Constitution regarding candidacy for the national parliament (Constitution Article 62(g)). Nevertheless, it is contrary to ICCPR's stipulation of equal rights without any distinction based on political opinion (ICCPR 2(1)) and General Comment 25 of the UN Human Rights Committee, which states that "political opinion may not be used as a ground to deprive any person of the right to stand for election".⁴⁸

The other problematic clause restricting candidacy states that "A person shall be disqualified from being elected..." if "...he is certified by his Political Party to have defected from the Party" (SLGA 36(k)). The intention of this clause appears to be to prevent persons who have been certified as defecting from a political party from standing or claiming to stand as a candidate of the party from which they defected. In principle, this would be a reasonable restriction. As

⁴⁷ UN Human Rights Committee General Comment 25, paragraph 15.

⁴⁸ UN Human Rights Committee General Comment 25, paragraph 17.

written, however, the clause would also prevent the person from standing for another party or as an independent, which would not be reasonable and would be inconsistent with the rights guaranteed in the ICCPR.

Aside from the criteria for candidate disqualification, most of the legal framework relating to candidacy is relegated to the rules rather than contained in the SLGA itself. The rules for candidate nomination include positive aspects such as ensuring that the candidate or candidate representative can be present at all stages of the nomination process (rules 16-18); that nominations cannot be rejected on technical grounds (rule 18(3)(d)(ii)); that any voter can object to a candidate and participate in the scrutiny process for that candidate (rules 16(8) and 18(1)); that reasons must be supplied for any rejection (rule 18(4)); and that decisions can be appealed to a court (rule 18(5)). Candidature fees are low (rule 17(1)), ranging from about PKR 2000-5000⁴⁹ depending on the particular office. The rules generally follow the procedures set out for national elections in the ROPA (articles 12-19).

In regard to the timing of candidate nominations, the rules give discretion to each Returning Officer to set the timeframe for nominations (rule 16(1)). This could lead to differing timeframes for candidacy nomination in the same election. The timeframe for other aspects of candidacy are to be set by the ECP in the election schedule. The Returning Officer is required to affix candidate nominations at some conspicuous place in the office (rule 16(8)) and give public notice of a list of final candidates once symbols are allotted (rule 24(6)(b)). But otherwise there is no

⁴⁹ Euros 14-35.

requirement that candidate nominations be published. Thus the law does not secure information of public interest being made easily accessible.⁵⁰

A provision of the law that stipulated that a candidate could stand simultaneously for multiple seats in the same council or different councils (SLGA 37(2)) was deleted by the Sindh Local Government (Second Amendment) Ordinance, and the replacement clause is silent on the issue of multiple candidacies. However, SLGA section 37(3) stipulates that if an individual is elected to more than one seat in the same or different councils, he must resign all but one of his seats. This leaves the presumption that multiple candidacies by the same individual are still permitted, although the law no longer specifies this. In addition to the problem of ambiguity in the law created by the deletion of SLGA section 37(2), the system of multiple candidacies has numerous disadvantages, including increasing “wasted” votes, triggering by-elections and creating voter uncertainty about whether their preferred candidate will represent them if elected.

The allocation of symbols to candidates is covered by rule 20-A⁵¹ and 24(1), which directs the Returning Officer to allocate a symbol to each candidate or panel or political party after the production of party tickets. This system of late allocation of party affiliation has been criticized for undermining internal party building and promoting horse-trading between candidates and parties.⁵²

⁵⁰ UN Human Rights Committee General Comment 34 paragraph 19

⁵¹ Inserted through amendment to rules in December 2013

⁵² For example the EU EOM noted a more than 30% reduction from the number of candidacies accepted for the national assembly elections and commented “This is a result of candidates jostling over party tickets, and negotiations between parties, which leads to a very large number of candidate withdrawals as so-called ‘seat adjustments’ are

RECOMMENDATIONS

Review and reconsider the legal provisions which limit candidacy in ways inconsistent with the ICCPR, in particular SLGA sections 35(d) and 36(k).

Consider moving from the rules to the law provisions which specify the rights of candidacy, transparency procedures and the right to appeal and obtain a timely remedy.

Specify in the rules the timeframe for candidate nominations rather than leaving the decision to each Returning Officer.

Consider the advantages of limiting candidature to one seat in the same body.

Consider requiring party affiliation earlier in the candidate nomination process.

RIGHT TO VOTE

The SLGA specifies that all citizens of Pakistan who are not less than 18 years of age should be enrolled as voters (SLGA 39(1)). The law does not include any further restrictions on a citizen being registered, which should in principle provide for comprehensive registration. However, the law and the rules do not specify that a voter must be a resident of the electoral unit in which he or she is registered to vote; they do not define residency requirements; and they do not prohibit a person from having more than one residence either in Sindh or outside of the province. The law includes a clause giving the ECP the power to specify other conditions for registration (SLGA 39(1)(c)). International standards, however, require that any limits or requirements on

undertaken. Financial pay-offs during this part of the process are widely commented on.”

the right to vote must be established in the law.⁵³

The law gives the ECP the power to prepare or adopt the electoral rolls “in such a manner as it may deem appropriate” (SLGA 39(2)). There is no requirement that the ECP abide by registration procedures prescribed by the Electoral Rolls Act. The procedures for voter registration are not further elaborated in the election rules. This again raises the ambiguity in the SLGA on whether the ECP has the power to make rules for Sindh local elections.

There is no mention in the SLGA of when or how often the voter rolls must be prepared and no transparency requirements. There are no provisions giving a citizen the right to object or appeal their non-registration or seek correction of their registration information. These gaps in the law could threaten the right to vote.

The SLGA requires that citizens must be 18 to be enrolled as voters (SLGA 39(1)). But it does not specify when they should be 18, on election day or some other timeline. This could result in disenfranchising individuals who turn 18 between the time of registration and the date of the election. This could be a very serious omission if registration is not conducted frequently.

The UN Human Rights Committee has emphasized that “States must take effective measures to ensure that all persons entitled to vote are able to exercise that right ... Voter education and registration campaigns are necessary to ensure the effective exercise of article 25 [of the ICCPR] rights

⁵³ UN Human Rights Committee General Comment 25, paragraphs 4, 10 and 11. See also *International Electoral Standards, Guidelines for reviewing the legal framework of elections*, pages 45-46, International IDEA www.idea.net/publications/ies/

by an informed community.”⁵⁴ The SLGA and the rules, however, make no mention of voter education or registration campaigns, or of who is responsible for carrying out these activities.

RECOMMENDATIONS

Clarify voter registration procedures in the law, for example by specifying that the ECP should follow the procedures in the Electoral Rolls Act, explaining the circumstances under which the ECP would “adopt” rather than “prepare” the voter rolls, and clarifying when and how often the rolls should be updated.

Reconsider the language of SLGA section 39(1)(b) to ensure that all citizens who are 18 at the time of elections are able to vote.

Specify in the SLGA all circumstances under which a citizen might be denied registration as a voter.

Provide a legal right for a citizen to check his or her registration and to seek a remedy in case of errors or if they believe they have been unjustly omitted from the voter rolls.

Include provisions in the law to ensure that adequate voter education and registration campaigns are undertaken, and specifying who will be responsible for this.

VOTING PROCEDURES

ESTABLISHED BY LAW

UN Human Rights Committee General Comment 25 states that “Participation through freely chosen representatives is exercised through voting processes which must be established by laws” (paragraph 7). The SLGA does not touch on voting procedures, but leaves these entirely to the rules (rules 30-38). While it can be

⁵⁴ UN Human Rights Committee General Comment 25, paragraph 11.

appropriate to leave detailed voting procedures to the rules, the general requirements and processes for voting should be outlined in the law in order to meet the stipulations of the ICCPR and to provide firm legal guarantees that the required procedures will be followed. The law, however, should be flexible enough to allow for the introduction of new technologies or methods of balloting and counting, if these become appropriate.⁵⁵

Voting procedures are one more issue on which the SLGA rules diverge somewhat from the ROPA, raising again the potential problem of confusion in view of SLGA section 71, which incorporates the ROPA into the SLGA. Most of the language on voting procedures in the SLGA rules is, in fact, identical to the language of ROPA, but some differences exist and the ROPA includes additional provisions on voting procedures that are not included in the SLGA rules, raising questions as to whether they apply. For example, ROPA includes a provision for postal ballots (ROPA 29) but the SLGA rules do not. Under SLGA section 71, the postal ballot requirements of the ROPA should apply to Sindh local elections, but in view of the lengthy SLGA rules on voting procedures that do not include any mention of postal ballots, one could wonder whether the drafters of the SLGA intended there to be voting by post.

RECOMMENDATION

Include the general requirements and processes for voting in the law, in line with the requirements of the ICCPR.

VOTER IDENTIFICATION

The SLGA does not require the production of a Computerized National Identity Card (CNIC) for voting. This is not consistent with new provisions in the ROPA and may create

⁵⁵ *International Electoral Standards, Guidelines for reviewing the legal framework of elections*, page 72, International IDEA www.idea.net/publications/ies/

confusion among voters and polling staff. This is relegated to the rules where CNIC is required for voting (rule 34(1) as amended). This requirement should be mentioned in the law, as this is an important safeguard for voting rights.

RECOMMENDATION

Amend the SLGA to include the requirement of having CNIC as a prerequisite for casting vote.

SECURITY OF THE BALLOT

A secret ballot is required by article 25(b) of the ICCPR and by article 21(3) of the Universal Declaration of Human Rights. The SLGA presents several concerns in light of this obligation. In particular, the SLGA as amended states that mayors and deputy mayors of Metropolitan and Municipal Corporations shall be elected by show of hands (SLGA 18(4) and 18(7)) and that chairmen and vice chairmen of District Municipal Corporations, Union Councils, District Councils and Municipal Committees shall be elected by show of hands (SLGA 18(3), 18(5), 18(6), 18(8)). This procedure may not be consistent with the ICCPR or with the Constitution, which states that “All elections under the Constitution, other than those of the Prime Minister and the Chief Minister, shall be by secret ballot” (article 226).

Another serious secrecy issue concerns the voting procedures at polling stations. Rule 34(2)(e), as amended, stipulates that the “Assistant Presiding Officer shall record on the counterfoil of the ballot paper the number of the elector on the electoral roll, the number of the National Identity Card of the elector” and his or her thumbprint. Since ballots and their counterfoils bear identical serial numbers, it would be possible in principle to determine how any individual voted by comparing the ballot and the counterfoil. Rule 46 stipulates that a Tribunal may actually order this to be done

in case of an election dispute. Although the rules include safeguards against revealing how individuals voted, the very existence of a system that could reveal how individuals voted is contrary to the ICCPR’s obligation of a secret ballot.⁵⁶ The type of system in use was originally developed to guard against impersonation in countries that do not require proof of identity when voting. Since an official identity card is required to vote in Sindh local elections (rule 34(1), as amended and rule 34(3)(a)), the potential for widespread impersonation is limited, making the system unnecessary as well as contrary to Pakistan’s international obligations.

Neither the SLGA nor the rules specify that a voter must vote alone in a voting booth or other private space; although rule 31(6) states that a Presiding Officer should make arrangements that every elector “may” mark the ballot in secret. This omission could open the door to “family voting” (more than one person entering the private voting booth at the same time) or “open voting” (voting outside the private voting booth, in sight of other persons), both of which violate the requirement of a secret ballot and could result in pressure on an individual to cast his or her vote for a certain candidate.⁵⁷ However, assisted voting may be allowed for persons with a disability or the elderly.

RECOMMENDATIONS

Review the requirement for the election of mayors, deputy mayors, chairmen and vice chairmen by show of hands to ensure that procedures for election of all officials are consistent with the secret ballot provisions of the ICCPR and the Constitution.

⁵⁶ “The tear-off part of the ballot should not bear any serial number, while the counterfoil might have these numbers for control purposes.” *International Electoral Standards, Guidelines for reviewing the legal framework of elections*, page 72, International IDEA, www.idea.net/publications/ies/

⁵⁷ European Union Election Observation Mission Final Report, page 33, reports that this was a problem in the 2013 national elections, http://www.eueom.eu/files/pressreleases/english/eu-eom-pakistan-2013-final-report_en.pdf

Ensure the absolute secrecy of the ballot, as required by the ICCPR, by ending the procedure of writing the voter's CNIC number, voter number and thumb print on the ballot counterfoil.

Specify in the law or the rules that a voter must vote alone in a voting booth or other private space, with provisions of assisted voting for persons with special needs.

POLLING STATIONS

The law sets out very few specific requirements in regard to the establishment of polling stations. Unlike in national elections, it is the District Returning Officer, rather than the ECP, who makes the final decision on polling stations (SLGA 41(3)). This is not necessarily unreasonable, but it does remove a safeguard that the decision will be made by an independent and impartial body. The final decision on polling stations does not have to be announced until three days before election-day (SLGA 41(3)) and there is no requirement that voters be informed individually of their polling station. This is an extremely short timeframe and could lead to confusion among voters on election-day. Moreover, it is left to each Returning Officer to decide how to publicize the list of polling stations (SLGA 41(3)), which could lead to wide variations in practice.

The SLGA gives only one stipulation on polling stations: that they cannot be located in any premises which belong to or are under the control of a candidate (SLGA 41(4)). This is a narrow restriction, which would not prevent a polling station being established on premises under the control of a political party or a supporter of some candidate. In contrast, the ROPA specifies that a polling station must be in a government-owned building or on public land (ROPA 8(4)). This is yet another instance in which the SLGA's provision that the ROPA applies "save as provided under this Act" (SLGA 71) could lead to ambiguity or differing interpretations.

There is no requirement in the SLGA or in the rules concerning accessibility of polling stations for disabled persons, in line with Pakistan's obligations as a state party to the United Nations Convention on the Rights of Persons with Disabilities.⁵⁸ The law and the rules are silent on the appropriate number of voters per polling station, the distribution of polling stations for the convenience of voters and when or if there should be separate polling stations for women and men.

RECOMMENDATION

Consider amending the rules to provide greater detail on appropriate premises for polling stations, including accessibility for disabled persons in line with the Convention on the Rights of Persons with Disabilities, as well as such matters as the appropriate number of voters per polling station and when or if there should be separate polling places for women and men.

OTHER ISSUES

Presiding Officers and other polling officers are appointed by the Returning Officers (SLGA 42(3)), but neither the law nor the rules provide guidance on the qualifications or training required for polling staff, except that they cannot be or have been in the employment of any candidate (SLGA 42(2)). This is a narrow prohibition that would not necessarily prevent inappropriate persons from serving as polling officials, for example political party officers or members of the police or security forces.

Neither the law nor the rules specify the format of the ballot, stating only that ballots shall be "in the format prescribed by the Election Commission" (rule 24(3)). There are no specific provisions for ballots to

⁵⁸ Article 29(a)(i). The full text of the convention is available at: <http://www.un.org/disabilities/convention/conventionfull.shtml>

include photographs or symbols to ensure that illiterate voters can vote independently or that information is available in minority languages, as required by General Comment 25 of the UN Human Rights Committee (paragraph 12). There is no requirement in the law or rules protecting the right of persons with disabilities to vote by secret ballot, in line with Pakistan's obligations under the Convention on the Rights of Persons with Disabilities (Article 29(a)(ii)).

Rule 38 requires that no person shall be permitted to vote after the hour fixed for the close of the polls, unless they are within the building, tent or enclosure of the polling station. This provision replicates the language of the ROPA (section 37). It would, however, appear to exclude persons who are standing in line waiting to vote outside the polling premises. International good practice would be to ensure equitable treatment for anyone already in line to vote when the polls close.⁵⁹

Rule 31(3)(c) specifies that the ballot boxes should be sealed but does not give any specifics on what type of seal is appropriate, for example, numbered plastic one-time seals.

RECOMMENDATIONS

Consider establishing clearer rules on the qualifications and training of polling personnel.

Further elaborate rules and procedures for sealing ballot boxes by stipulating the type of seals to be used.

Include in the law or the rules a requirement that ballots include pictures or symbols of candidates and information in minority languages in order to comply with UN Human Rights Committee General Comment 25.

⁵⁹ "Voting", ACE Electoral Knowledge Network, <http://aceproject.org/ace-en/topics/vo/vog>

COUNTING AND TABULATION OF VOTES

The transparency and timeliness of the vote counting process in any election are key elements in building public confidence in the election and acceptance of the election results. Delays in releasing results and lack of transparency in the tabulation of results have been identified as factors that can result in election violence.⁶⁰ The European Union Election Observation Mission for the 2013 national elections concluded that "the lack of availability of crucial data from the ECP on polling stations, numbers of registered voters and individual polling station results, reduced confidence in the process and opportunity for complaints to be lodged and addressed in a speedy manner".⁶¹ The SLGA does not adequately address these shortcomings in the implementation of the ROPA, suggesting that the same problems could arise in Sindh local elections. The process of counting and tabulating votes is not addressed at all in the law, but left entirely to the rules (rules 39-45).

A measure of transparency does exist in the counting rules, since candidates or their agents may be present and are entitled to a reasonable facility for observing (rules 39(1) and 39(2)) and are entitled to receive a certified copy of the statement of the count from the presiding officer (rule 39(11)). However, the law does not provide for any independent, non-partisan observers or media to observe the count, despite the

⁶⁰ *Elections and Conflict Prevention, a Guide to Analysis, Planning and Programming*, UNDP, page 17, <http://www.undp.org/content/dam/aplaws/publication/en/publications/democratic-governance/dg-publications-for-website/elections-and-conflict-prevention-guide/Elections-Conflict-Prevention.pdf>.

⁶¹ European Union Election Observation Mission Final Report, page 5 http://www.eueom.eu/files/pressreleases/english/eu-eom-pakistan-2013-final-report_en.pdf.

stipulation in UN Human Rights Committee General Comment 25 that “there should be independent scrutiny of the voting and counting process...”⁶² Moreover, there is no provision in the rules requiring that the complete results of voting at the polling station be posted publicly at the polling station and also posted on the ECP website. This lack of a requirement for full transparency should be reconsidered in light of the right of access to information contained in the ICCPR.⁶³ General Comment 34 of the UN Human Rights Committee states that “to give effect to the right of access to information, states parties should proactively put in the public domain Government information of public interest. States parties should make every effort to ensure easy, prompt, effective and practical access to such information.”⁶⁴ Detailed information on election results is certainly of public interest and should be made promptly available to comply with the ICCPR’s requirements. International good practice requires full disclosure of results down to polling station level.⁶⁵

Although the consolidation of results must be held “without any avoidable delay as soon as possible after the polling day” (rule 40(2)), neither the law nor the rules provide a specific timeframe for the consolidation. Any delay in consolidating and announcing election results – even if they are only preliminary results – can have a grave negative effect on public confidence in the results.

⁶² UN Human Rights Committee General Comment 25, paragraph 21.

⁶³ ICCPR article 19(2).

⁶⁴ UN Human Rights Committee General Comment 34, paragraph 19.

⁶⁵ “Guiding Principles of Results Management Systems”, ACE Electoral Knowledge Network, <http://aceproject.org/ace-en/topics/vc/vc20/?searchterm=tabulation>.

Candidates and their agents can be present for the consolidation (rule 40(1)) and are entitled to a copy of the result (rule 40(5)) notified to the ECP. Candidates or their agents can request a recount.

Following the consolidation, the Returning Officer must declare by public notice the names of the candidates and the total number of votes received by each (rules 42(1) and 42(2)). There is no requirement, however, for the details of the tabulation to be announced, posted or otherwise made public, although this information is readily available in the consolidation form, Form XIII, which must be completed by the Returning Officer. Transparency would be greatly improved if Returning Officers or the ECP were required to make this form public by posting copies at consolidation centres and posting the information on ECP’s website immediately following the consolidation.

RECOMMENDATIONS

Improve the transparency of counting by requiring in the law that detailed results be posted immediately following the count at each polling station.

Improve the transparency of the consolidation by requiring in the law that the detailed consolidation figures, by polling station, be posted publicly immediately after the consolidation and that they also be posted immediately on the ECP’s website. Ensure that the published results include not only the number of votes received by each candidate at each polling station, but also the number of registered voters and invalid votes and the gender-disaggregated turnout.

CAMPAIGN AND CAMPAIGN FINANCE

THE CAMPAIGN

The SLGA, like the ROPA, is generally silent on issues related to the electoral campaign. The SLGA has no clauses that specifically guarantee candidates and parties the right to campaign freely and on an equal basis. It does, however, include penalties for some campaign malpractices, such as threats of force or violence (SLGA 58(a)(i)); making or publishing false statements about a candidate (SLGA 59(g)(1)); using a vehicle to convey voters to a polling station (SLGA 59(h)); or campaigning near a polling station (SLGA 61).

There is no official campaign period established by the SLGA. The practices of different countries on official campaign periods vary widely and there is no international standard on the length of an election campaign. The duration of a campaign often has a lot to do with the number of voters that are eligible to vote in constituencies. However, the absence of an official campaign period could lead to unequal conditions for candidates if some candidates are registered before others. The absence of an official election period could also raise questions about when it is permissible for candidates to begin campaigning and whether money spent before a candidate is registered is regarded as an election expense.

Under the original election schedule for the Sindh local elections, the final list of candidates was to be published on 13 January 2014, followed by the allocation of symbols on the same day.⁶⁶ With election-

⁶⁶ <http://www.electionpakistani.com/local-government-bodies/sindh/schedule.html>

day originally scheduled for 18 January 2014, this would have left a campaign period of just four full days, a miniscule campaign period by any standard. Four days would not appear to be sufficient time to enable candidates to carry out a reasonable campaign or even to familiarize voters with their symbols, nor would it provide sufficient time for voters to receive and consider sufficient information to make a well-informed choice.

The SLGA deals only briefly with the question of “administrative resources” (the use of public resources or government personnel to support or oppose a particular candidate) by stipulating that any person in the service of the government commits an offence “if he, in any manner, gives any assistance calculated to further or hinder the election of a candidate” (SLGA 67). While this is an important prohibition, it still leaves open the possibility for public resources to be used in favour of a candidate or party. For example, it might not prevent an incumbent from using his office, official vehicle or official telephone to further his or her campaign, and would not prevent incumbents from using government grants, projects, employment or contracts during the campaign to advance their election prospects.

The law and rules do not include a code of conduct for candidates and political parties during the campaign period. Developing a code of conduct – including a voluntary code of conduct – through an open process of consultation and consensus can encourage better and more constructive campaign approaches by candidates, lower tensions and reduce violence.⁶⁷

⁶⁷ “Political Party Codes of Conduct”, ACE Electoral Knowledge Network, <http://aceproject.org/ace-en/topics/pc/pcc/pcc01/default/?searchterm=code%20of%20conduct>

There is no provision in the law for candidates or political parties to obtain a copy of the electoral rolls, which could assist them in verifying the accuracy of the rolls and in conducting a more sophisticated campaign.

RECOMMENDATIONS

Include one or more sections in the SLGA reiterating that candidates, parties and citizens have the right to participate in the electoral campaign freely, under equal conditions, free from any form of intimidation or coercion and enjoying full freedoms of expression, assembly, association and movement, in line with the guarantees in the ICCPR.

Consider adopting a provision of law to guarantee adequate time for candidates to campaign and voters to become informed about the candidates and the issues.

Strengthen and expand the prohibition in the law on use of administrative resources (SLGA 67) to ensure incumbents do not use public resources for their campaigns and to prohibit the opening or issuance of government-sponsored or funded projects, grants, contracts, hiring or construction during the election period.

Consider developing a code of conduct for parties and candidates during the election campaign, recognizing that such codes generally work best when they are developed through an open process of consultation aimed at consensus.

CAMPAIGN FINANCE

The only mention of election expenses in the law is a provision stipulating a penalty for not providing a statement of election expenses “as required under this Act” (SLGA 59(f)), although there is no further language on expenses in the act itself. Aside from this penalty clause, election expenses are relegated entirely to Chapter

VI of the rules (rules 57-60). The issue of campaign expenses is another area in which many but not all of the SLGA rules parallel the provisions of the ROPA (ROPA 48-51). Recalling that SLGA section 71 incorporates the ROPA into the law, this again raises uncertainty and possible confusion as to SLGA rules that do not coincide exactly with provisions of the ROPA and whether Sindh rules take precedence over the ROPA.

The ICCPR permits “reasonable limitations on campaign expenditures”.⁶⁸ The Sindh rules (rule 58(3)) place limits on campaign expenses for Sindh local elections at levels that are quite low compared to those in many other countries and may not be sufficient to conduct an adequate campaign.⁶⁹ Neither the law nor the rules make clear at what point in the election process candidate expenditures start being counted as election expenses, for example, once a person is nominated as a candidate, once the final list of candidates is approved or at some other point.

Candidates must file campaign expenditure reports after the election is over. The reports are available for public inspection, but only for a fee (rule 60(1)). The reports are not publicly posted or placed on the ECP’s website or another website. The UN Convention against Corruption, to which Pakistan is a state party, requires that states “enhance transparency in the funding of candidatures for elected public office and, where applicable, to the funding of political parties” and to take measures such as “ensuring that the public has effective

⁶⁸ UN Human Rights Committee General Comment 25, paragraph 19.

⁶⁹ PKR 50,000 for Union Council, Union Committee, Town Committee and Municipal Committee and PRK 100,000 for District Council and Corporation.

access to information”.⁷⁰ Current practices do not meet this standard.

While the law provides a penalty for failing to provide a statement of expenses (SLGA 59(f)), neither the SLGA nor the rules provide a penalty for exceeding the spending limit. In addition, rule 58(2) states that “no person other than a candidate shall incur any election expenses of such candidate”, but neither the law nor the rules provide a penalty for this offense.

RECOMMENDATIONS

Consider including a provision in the SLGA itself, rather than only in the rules, setting out the key requirements of election financing. Otherwise, modify SLGA section 59(f) to make clear that it applies to the rules rather than to the Act.

Clarify the relationship between the SLGA rules on election expenses and the ROPA provisions on the same issue.

Increase the transparency of election financing by making publicly available at no cost the expense reports submitted by candidates and by posting the reports promptly on the ECP’s website for public review.

Specify the point at which expenditures begin to count as campaign expenses.

Consider instituting appropriate penalties for violation of election expense rules such as exceeding spending limits and making election payments on behalf of others.

ACCESS TO MEDIA

Freedom of expression and right to information are protected by article 19(2) of the ICCPR and article 19 of the constitution

⁷⁰ UN Convention against Corruption, article 7(3) and 13(1)(b). The full text of the Convention is available at: http://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf

of Pakistan. Free communication of information and ideas about public and political issues among citizens, candidates and elected representatives is essential for elections that meet the standards of article 25 of the ICCPR.

The SLGA and the rules – like the ROPA – make no mention of the issue of access to the media by candidates and political parties. This gap in the law could result in an uneven playing field for electoral contestants and in an electorate that does not receive sufficient, varied information to make an informed choice. These dangers are real; in regard to the 2013 national elections, the European Union Election Observation Mission concluded: “In the absence of a transparent and efficient enforcement mechanism for the otherwise sound Code of Conduct for the Media, state and privately owned broadcasters did not provide the main contestants with equitable coverage.” Since there is no code of conduct for the media in Sindh local elections, the problem could be even more acute.

The media, for its part, is constrained from reporting accurately and comprehensively on elections unless journalists are granted access and full information about all elements of the election process, including but not limited to voter registration, candidate registration and scrutiny, the appeals processes, polling stations and vote counting and tabulation.

RECOMMENDATIONS

Consider adding a clause to the SLGA that would require public and private broadcasters to provide equitable coverage for candidates and parties in their news and public affairs programming during an election period, as well as an enforcement mechanism. This might be done by

including the ECP's Code of Conduct for the Media as part of the SLGA rules.

Enshrine legal right for accredited journalist to observe all aspects of the election process.

ELECTION OBSERVATION

Independent and impartial election observation by non-partisan domestic and international election observers can increase the transparency of an election process, reduce fraud, mitigate violence, identify weaknesses in procedures and enhance public confidence in and acceptance of election results. The UN Human Rights Committee has recognized that “there should be independent scrutiny of the voting and counting process ... so that electors have confidence in the security of the ballot and the counting of the votes.”⁷¹ It has become widely accepted as good practice to invite domestic and international observers to observe elections.⁷² International experience shows that election observers are best able to accomplish their goals when there is a legal provision ensuring them access to all phases of the election process – before, during and after elections – including such processes as voter registration, candidate registration, scrutiny, the campaign and the appeals process. It is especially important for observers to have access to observe polling, counting and tabulation venues and to be provided with copies of official protocols of the counts and tabulations they witnessed.

⁷¹ UN Human Rights Committee General Comment 25, paragraph 20.

⁷² See, for example, United Nations General Assembly Resolution 66/163 of 2012; “Independent Observers”, ACE Electoral Knowledge Network, <http://aceproject.org/ace-en/topics/ei/eic/eic06>; and the Declaration of Principles for International Election Observation, page 2, <http://www.cartercenter.org/documents/2231.pdf>

The SLGA includes good provisions for candidate agents to observe many parts of the election process. Like the ROPA, however, the SLGA makes no specific mention of independent, non-partisan observers. Moreover, rule 32 requires Presiding Officers to exclude from the polling station all persons except voters, persons on duty in connection with the election, candidates and candidate representatives, unless instructed otherwise by the ECP or the Returning Officer. While this does not prevent the ECP from accrediting observers for the Sindh local elections, it makes their standing more tenuous and does not provide a legal guarantee that observers will have adequate access to all aspects of the election process or to documentation. Since the SLGA does not mention independent observers, the rules do not refer to a code of conduct for observers, which can help ensure that observers obey national laws and do not interfere in any way in the election process.⁷³

RECOMMENDATIONS

Include a new section in the SLGA providing for accreditation of domestic and international observers and giving them the right to observe all aspects of the election process and to obtain copies of all election documents.

Include a code of conduct for observers in the election rules, based on the codes already in wide use internationally.

⁷³ A widely accepted code of conduct for international observers can be found in the Declaration of Principles for International Election Observation, <http://www.cartercenter.org/documents/2231.pdf> A widely accepted code of conduct for domestic observers can be found in the Declaration of Global Principles for Non-Partisan Election Observation and Monitoring by Citizen Organizations, <http://www.gndem.org/declaration-of-global-principles>

ELECTORAL DISPUTE RESOLUTION

The right to an effective remedy when human rights – including electoral rights – are violated is enshrined in the ICCPR (Article 2(3)(a)). This provision of the ICCPR specifically applies to “any person” whose rights are violated. However, the SLGA provisions on who can file an election complaint or appeal – and on what issues may be contested – are strictly limited, falling short of the requirements of the ICCPR.

Under the SLGA, only a candidate can file a petition challenging an election result. The petition must be filed before an Election Tribunal appointed by the ECP (SLGA 46(2)), which has the powers of a civil court (SLGA 48). The Tribunal is required to rule within 120 days (SLGA 47(4)), which does provide a reasonably timely remedy. Curiously, while only candidates can file a petition challenging the election, “any person aggrieved by the final order of a Tribunal” may appeal the Tribunal’s ruling to the High Court, which must decide the appeal within 90 days (SLGA 54), again providing a timely remedy.

The election rules – but not the law itself – provide the possibility to object to candidate nominations and to appeal decisions on nominations. As part of the nomination process, Returning Officers are required to invite objections from voters of the local area after posting the nomination papers (rule 16(8)). After hearing objections, the Returning Officer makes the determination whether to accept a nomination and must provide reasons if the nomination is rejected. In case of rejection, an appeal can be filed with the District and Session Judge appointed by the Election Commission who must dispose of the appeal either summarily or after a summary enquiry (SLGA 5-6).

Other types of electoral disputes are not specifically covered in the SLGA or the rules. Administrative remedies or other legal remedies are not mentioned in the law. For example, there is no provision allowing complaints and appeals against decisions or implementation of decisions by a Returning Officer or the ECP; no provision allowing a candidate to contest or appeal the allocation of his or her election symbol by a Returning Officer; and no provisions enabling a candidate to contest or appeal unequal treatment, restrictions on freedom to campaign or other campaign disputes. There is no mention in the law or the rules of the possibility of citizens being able to contest their exclusion from the voter rolls, this being left to procedures to be established by the ECP (SLGA 39(2)). International good practice requires a process through which all electoral participants and voters can lodge complaints and appeals arising from the adoption or implementation of election rules.⁷⁴

In practice, it appears that the courts of Sindh are open to certain types of challenges to election legislation other than those specifically mentioned in the law. This was made clear by the High Court’s decision in December 2013 to invalidate the entire delimitation process conducted by the Government. While this willingness of the courts to examine election cases is positive, it is not in itself an adequate substitute for a citizen having a legal right to appeal election matters to a court.

The SLGA also includes a long list of criminal offences in relation to elections (SLGA 55-67), stipulating the penalties to be imposed for each. However, SLGA

⁷⁴ *International Electoral Standards, Guidelines for reviewing the legal framework of elections*, page 17, International IDEA, www.idea.net/publications/ies/.

section 68 states that “a Court shall not take cognizance of an offence under this Chapter except on a complaint in writing by the Election Commission or the Returning Officer.” The criminal penalties provided under the law appear generally reasonable and proportionate, provided they are imposed in a manner commensurate with a particular offence.

RECOMMENDATIONS

Extend the right to file election petitions challenging election results to all citizens or groups with an interest in the election.

Amend the law to give the right to individuals, groups or political parties to file complaints on any election issue to a Returning Officer or the ECP for administrative remedy, with the possibility of further appeal to an independent court.

Provide a legal means of redress to all citizens, groups or parties for criminal offences committed in connection with an election.

MINORITIES, PEASANTS AND WORKERS

The SLGA sets aside reserved seats for non-Muslims and for labourers or peasants in all local legislative bodies (SLGA 18). “Peasant” is defined in the law (SLGA 3(1)(li)), but “labourer” is not, which could lead to confusion. The term “worker” is defined and appears to be used interchangeably with “labourer” in some clauses of the law, although the definition of “worker” is limited to “clerical labour for hire or reward” (SLGA 3(1)(xcviii)).

In Union Councils and Union Committees, one seat out of nine is reserved for a labourer or peasant and another seat is reserved for a non-Muslim. Both seats are

“to be directly elected” by the voters (SLGA 18(2 and 5)).

Under the procedures set out in the first, second and third sets of amendments to the SLGA, candidates for seats in Union Councils and Union Committees would contest as panels of candidates with a common symbol (amendments to SLGA 18). A provision of the third set of amendments (section 4(c)(12), which created a new SLGA 18(12)) made clear that the panels must include candidates for the reserved seats for women, peasants or labourers and non-Muslims. However, the Sindh High Court struck down this article, leaving no legal provision that panels had to include members of these groups or on how the reserved seats for these groups would be directly elected.

There is also one seat reserved for a non-Muslim and one seat for a peasant or labourer in each Town Committee. In five other types of locally elected bodies,⁷⁵ five per cent of the seats are reserved for peasants or labourers and another five per cent for non-Muslims (SLGA 18). The law originally stated that these members were to be indirectly elected, but the provision for indirect election was eliminated by amendments (Sindh Local Government (Third Amendment) Ordinance 4(a), amending SLGA 18), leaving only the statement that the reserved seats should be filled “in the manner as may be prescribed”. Leaving the election system to the rules rather than including it in the law is not in conformity with international standards or good practice.⁷⁶ Rule 47, as amended,

⁷⁵ District Municipal Corporations, Metropolitan Corporations, Municipal Corporations, Municipal Committees, and District Councils.

⁷⁶ “UN Human Rights Committee General Comment 25, paragraph 5; Legal Framework – Guiding Principles”, ACE Electoral Knowledge Network, <http://aceproject.org/ace-en/topics/lf/lf20>.

prescribes that the seats should be filled through indirect elections “through proportional representation system of political parties”. As noted previously, such indirect elections can diminish the accountability, influence and representativeness of those elected. This would diminish their influence in the council and make them accountable not to the groups they are intended to represent or to the electorate in general, but to the political interests that nominated and elected them.

No timeframe is specified in the law for the indirect elections, which could lead to indirectly elected members taking their seats far later than directly elected members.

A positive aspect is that workers, peasants and non-Muslims can also be candidates for general seats in any local body (SLGA 19).

RECOMMENDATIONS

The law and rules should be amended to specify the means of election of the directly elected reserved seats for peasants or labourers and non-Muslims on Union Councils and Union Committees.

Consideration should be given to amend the law to provide for the direct, popular election of the seats reserved for peasants or labourers and non-Muslims in all local government bodies.

The definitions in the law (SLGA (3)(1)) should be reviewed to eliminate any ambiguities in the meaning of “labourer”, “worker” and “council”.

WOMEN

The existence of reserved seats for women on all locally elected bodies in Sindh is consistent with Pakistan’s obligations as a state party to the CEDAW.

Many of the same issues of concern in regard to reserved seats for peasants or labourers and non-Muslims described in the previous section and in the earlier section on indirect elections are applicable also to the seats reserved for women. No specific procedures are provided in the law or in the rules for the direct election of women to the one seat reserved for them in each Union Council and Union Committee after Sindh High Court’s decision as discussed above.

There is also one seat reserved for a woman in each Town Committee. In the five other types of locally elected bodies,⁷⁷ 22 percent of the seats are reserved for women (SLGA 18). However, in Town Committees and other types of locally elected bodies, the seats reserved for women are filled through indirect elections. Candidates are nominated through a party list. The restriction on nominations is also likely to mean that the women nominated for reserved seats are nominated by men rather than by the women they are intended to represent. This would make them accountable not to other women or to the interests of women, but to the political interests that nominated and elected them. The indirect election of mayors and council chairpersons, moreover, would tend to favour males.⁷⁸

⁷⁷ District Municipal Corporations, Metropolitan Corporations, Municipal Corporations, Municipal Committees, and District Councils.

⁷⁸ See “Inclusive Local Governance, Representation and Affirmative Action”, UNDP, http://www.undp.org/content/dam/undp/library/Democratic%20Governance/Electoral%20Systems%20and%20Processes/Human%20Development%20View%20Point_%20Inclusive%20Development.pdf

The previous Sindh election laws (the Sindh Peoples Local Government Act 2012 and Local Government Ordinance 2001) stipulated that 33 percent of seats would be reserved for women, so the SLGA actually represents a step backwards for women's participation. The CEDAW periodic review of 2013 called on the Government to amend the relevant laws to increase the quotas allocated for women to a minimum of 33 percent, in line with international standards.⁷⁹

A positive aspect is that women can also be candidates for general seats in any local body (SLGA 19).

The results of the national elections of 2013 showed that in Sindh, slightly over 42 percent of persons voting were women, compared to over 57 percent men.⁸⁰ The substantially lower voter turnout for women suggests that additional special measures are needed to ensure that women can and do take advantage of their right to vote. The CEDAW periodic review of 2013 recommended establishing a procedure for filing complaints in cases of forced disenfranchisement of women.⁸¹ Such measures could be included in the law or the rules.

The law does not specify that gender-disaggregated statistics must be gathered and disseminated as part of the election process. However, some of the forms provided as part of the rules do require some information to be entered on a

[20Local%20Governance_%20Representation%20and%20Affirmative%20Action_2005_English.pdf](#)

⁷⁹ CEDAW periodic review, paragraph 26, www2.ohchr.org/english/bodies/cedaw/cedaws54.htm.

⁸⁰ The election results are available at <http://election2013.geo.tv/constituency/results/699/PS-130.html#>.

⁸¹ CEDAW periodic review, paragraph 26, www2.ohchr.org/english/bodies/cedaw/cedaws54.htm.

gender-specific basis and some of this information was made publicly available on the ECP's website in past local government elections.⁸² It is international good practice to collect gender-disaggregated statistics on voter registration and other aspects of the election process and to use the data to evaluate women's participation and identify parts of the process that can be improved.⁸³ The CEDAW committee has also required gender-disaggregated data.⁸⁴

There is no mention in the law or the rules of the need to recruit women as polling officials and higher-level election administrators. The law and rules are also silent on whether and under what circumstances there should be separate polling places for women and men.

In general the SLGA uses the term "he" rather than "he or she", although it sometimes uses the latter term.

RECOMMENDATIONS

The law and the rules should be amended to specify the means of election of the directly elected reserved seats for women in Union Councils and Union Committees.

Consideration should be given to amend the law to provide for the direct, popular election of the seats reserved for women in all local government bodies.

The number of reserved seats for women should be increased to at least 33 percent,

⁸² See, for example, <http://www.ecp.gov.pk/LG/LG2005/LGStats2005.aspx>.

⁸³ See, for example, *Women and Elections, Guide to promoting the participation of women in elections*, United Nations, pages 50 and 69, <http://www.un.org/womenwatch/osagi/wps/publication/WomenAndElections.pdf>

⁸⁴ General Recommendation 23, paragraph 48 states that "statistical data, disaggregated by sex, showing the percentage of women relative to men who enjoy those rights."

in line with past practice and the CEDAW Committee recommendations.

Include new measures in the law and the rules to safeguard and promote the participation of more women as voters and candidates.

Include a provision in the law or the rules requiring the recruitment of equitable numbers of women as polling officials.

CONCLUSION

The 18th amendment to the constitution of Pakistan provides unprecedented autonomy to Pakistan's provinces. The devolution of power offers a unique opportunity for Sindh to establish a system of responsible and accountable local government bodies elected by the people, and to fulfil the SLGA's promise of "decision making through institutionalized participation of the people at the local level". The framework for local government elections should be true to Pakistan's obligations under the ICCPR and other international treaties. It should also take into account developments at national level, including especially anticipated reforms of the ROPA.

The recommendations in this LEFA would contribute to making the SLGA a model of an election process that institutionalizes international commitments and internationally recognized good practices. It would help ensure election processes and conditions that are free, fair, credible, equal and transparent. This, in turn, would strengthen democratic governance, bolster popular participation, enhance stability and reduce the likelihood of conflict or violence.

LIST OF ABBREVIATIONS

CAC/UNCAC	Convention against Corruption
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CNIC	Computerized National Identity Card
DRO(s)	District Returning Officer(s)
DRI	Democracy Reporting International
ECP	Election Commission of Pakistan
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
IP3	Improving Parliamentary Performance in Pakistan
LEFA	Local Election Framework Assessment
PEMRA	Pakistan Electronic Media Regulatory Authority
NADRA	National Database and Registration Authority
SLGA	Sindh Local Government Act 2013
ROPA	Representation of the Peoples Act 1976