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KHYBER PAKHTUNKHWA LOCAL GOVERNMENT ELECTIONS ASSESSMENT

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KHYBER-PAKHTUNKHWA LOCAL GOVERNMENT ELECTIONS ASSESSMENT

1. EXECUTIVE SUMMARY

INTRODUCTION AND METHODOLOGY

The 2015 local government elections in Khyber Pakhtunkhwa (KP) were complex and competitive, marked by electoral violence with heated accusations of blame for election-day mismanagement, security lapses and other administrative shortcomings. Delayed and insufficiently transparent results exacerbated post-election tensions.

The difficulty of the Election Commission of Pakistan and KP authorities to smoothly manage the election and post-election challenges was due to systemic weaknesses in electoral process. This assessment seeks to identify these weaknesses, so that Pakistani lawmakers, government officials and the ECP can strengthen the framework and practices for future elections. It is not the intention and mandate of this report to give the KP elections a definitive seal of approval or otherwise.

DRI experts worked in Islamabad and KP and assessed national (federal) and provincial legislation, administrative regulations, executive instructions and implementation practices. All the conclusions and proposed recommendations are made within the framework of international election standards, primarily instruments of international human rights law to which Pakistan has subscribed, including the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), International Covenant on Civil and Political Rights, the Convention against Corruption, the Convention on the Rights of Persons with Disabilities and International Convention on the Elimination of All Forms of Racial Discrimination.

Regrettably, DRI's access to the ECP in Islamabad and the Provincial Election Commissioner was limited. Data has frequently been difficult to obtain, with a lack of publicly available information. When information has not been sufficiently available or is inconclusive, DRI has refrained from assessment.

CONTEXT

Except for Balochistan, the provinces delayed passing the necessary legislation to conduct new local elections. This delay is commonly attributed to a lack of political will to devolve power from provincial level to the local level. The Supreme Court of Pakistan (SC) stepped in and ruled that the provinces were required to hold local government elections, which led to Balochistan local elections on 7 December 2013¹. Preparations for elections were suspended in Punjab and Sindh as delimitation of constituencies was nullified by the high courts until the SC transferred delimitation authority to the ECP. Since delimitation conducted by the KP government was not dismissed by the high courts, on 4 April 2015 the ECP announced the KP election schedule for 30 May 2015.

¹ DRI Assessment of Balochistan elections available at <http://democracy-reporting.org/publications/country-reports/pakistan/local-government-report-december-2013.html>

These developments were unfolding in a tense political environment with the legitimacy of the 2013 general elections challenged. Led by Pakistan Tehreek-e-Insaf (PTI), large demonstrations against “rigging” resulted in the formation of the ‘General Elections 2013 Inquiry Commission’ which is investigating PTI’s accusations of the systematic fraud. PTI is the dominant partner in the KP governing coalition and the key point of its agenda is devolution of power and re-establishment of local governance. However, the reform of the local governance was not finalised by the time of the local elections as the rules of business, which guide operation of local councils, were still under consideration.

The KP local elections resulted in intense partisan conflict in the media and street demonstrations. Opposition parties in KP, as well as some parties in the provincial ruling coalition, levelled allegations of widespread and coordinated “rigging” and “gross mismanagement” against the PTI-led government. On 25 June 2015, the ECP’s notification announced re-polling in 356 polling stations throughout KP on 5 July (see Results section), which was suspended by the Peshawar High Court (PHC) and rescheduled for 30 July.

STRUCTURE OF LOCAL COUNCILS AND THE ELECTORAL SYSTEM

There are three levels of local governance in KP: district, town/tehsil and village/neighbourhood councils. Each level of local council has a distinct electoral system, including general seats as well as reserved seats for four categories of “special interest groups” (women, peasants and workers, youths, and non-Muslims). District and tehsil/town council elections are contested by both independent and party-affiliated candidates, whereas the candidates for village/neighbourhood council elections must contest without party affiliation, which is not consistent with international standards.

The formulae utilised to determine the number of general and reserved seats for local councils at all levels are not defined in law and official population estimates were not factored into determinations regarding the sizes of the district and tehsil/town councils. Thus there are wide variations in the ratios of population to council seats as well as between electoral constituencies (wards). There are also variations in the number of reserved seats (amongst councils which have an equal number of general seats). This undermines equality of the vote and representation. At the village/neighbourhood level, members elected through reserved seats cannot be elected as Mayor and Deputy Mayor, which *de facto* undermines opportunity for women and religious minorities.

LEGAL FRAMEWORK

Primary legislation for elections is weak and it falls short of Pakistan’s international commitments. The Khyber Pakhtunkhwa Local Government Act 2013 (KPLGA) does not sufficiently guarantee fundamental electoral rights and instead relegates key electoral processes to administrative regulations, the Khyber Pakhtunkhwa Local Councils Election Rules (Election Rules) passed by the KP government. Stripping the ECP of the exclusive power to create rules diluted accountability for conduct of the elections and created ambiguous arrangements for shared responsibility between the KP government and the ECP.

Judicial intervention and convoluted developments of the primary and secondary provincial legislation in parallel with the national (federal) legislation, resulted in a legal framework which is at times contradictory or contains an unclear hierarchy of law.

DELIMITATION

The legal framework for delimitation is contradictory on issues such as the authority for delimitation of constituencies. The legal standing of the provincial Delimitation Rules is unclear. Despite the national legislation assigning the authority for delimitation to the ECP, delimitation was conducted by the provincial Delimitation Authority and approved by the Peshawar High Court (PHC).

The key principle of equal suffrage is not sufficiently protected. The main cause of excessive inequality of the vote was establishment of the tehsil/town and district wards according to the lines of the old union councils, which vary substantially in size.

Public consultation and information on delimitation processes and constituency demarcations was very limited. No survey was conducted to determine borders and maps of council and wards borders are not

available. Delimitation was implemented using the old census blocks which are not compatible with the 2010 census blocks used by the ECP in the development of the polling scheme and the electoral roll. This resulted in confusion with aspiring candidates being unclear of the constituency they are registered in, and therefore where to file their nomination.

ELECTION ADMINISTRATION

The lack of an ECP mandate to create regulations places the ECP in a difficult position, but it is also at odds with the executive powers granted to the ECP. Unclear division of responsibilities heightened political tension and undermined confidence in the process and result. Most strikingly there was a lack of clarity over the management of security personnel, ultimately resulting in breakdown of the process in a number of polling stations.

Temporary election officers, primarily the Returning Officers (ROs) have the prime responsibility for implementation of elections. Once appointed, the role of ECP permanent officials is limited, with the ECP lacking systems for oversight and control of temporary officers. Furthermore up to 20 percent of temporary election officers were replaced. DRI interlocutors, including ROs themselves, consistently referred to the lack of understanding of procedures by ROs, reporting that a training and a handbook (in English) were insufficient for them to understand the process.

RO and Presiding Officers (PrOs) reported that polling staff had been appointed to multiple polling stations as there was a lack of coordination between ROs. Both ROs and PrOs complained about the lack of support in recruitment of polling staff, particularly female officers.

VOTER REGISTRATION

Voter registration in practice is managed by the National Database and Registration Authority (NADRA) and linked to the civil registry and Computerised National Identity Cards (CNICs). This arrangement, established after the 2008 elections, has resulted in significantly improved electoral rolls. Yet, the legal framework on the role of NADRA is ambiguous. The lack of arrangements for removal of deceased voters resulted in an inflated register, which increases risk of fraud and distorts turnout figures (turnout appears lower than it is).

Provisions on eligibility of voters in the provincial legislation differ from the national legislation as they give arbitrary power to the ECP to establish additional eligibility conditions for voter registration, allowing the ECP to use its executive discretion to limit enfranchisement. Furthermore, the provincial legislation lacks any regulation of voter registration (or reference to the national legislation) simply giving broad discretionary powers to the ECP to prepare the electoral roll.

More than 1.2 million new voters were reportedly added to the rolls since the 2013 general elections. However there was a lack of any further information. For example the number of registered voters in a constituency can only be deduced by adding up the number of registered voters at each polling station using the polling scheme.

CANDIDATE NOMINATION

Candidate eligibility requirements contain subjective criteria that risk arbitrary application, and other aspects of the legal framework undermine citizens' right to be elected and freedom of association. In particular candidates at the village/neighbourhood level are banned from contesting with partisan affiliation and the Election Rules require some candidates to declare that they are not members of a political party. This violates freedom of association and the right to be elected guaranteed under the ICCPR and the Constitution of Pakistan.

Nomination forms were available in English and Urdu only, which presented some challenge to the majority Pashto-speaking population. A further barrier was the lack of delimitation or polling scheme information which resulted in a large number of aspirant candidates being rejected for mistakenly submitting their nominations in constituencies where they were not registered.

Design and allocation of election symbols was controversial and often deemed biased. Symbols for women candidates were gender-stereotyped. They, included a “baby cot”, “baby feeder”, “broom”, “doll”, “hair brush”, “ladies shoe,” , “lady purse”, and “vacuum”.

The ECP only made available limited statistics on candidates, thereby precluding substantial analysis of electoral participation. No information has been provided on how many constituencies had no candidates, their geographical spread, or what the arrangements will be for such wholly uncontested seats.

THE CAMPAIGN

The ECP’s Code of Conduct overly restricted freedoms of assembly and association, such as banning senior government and elected officials to campaign. This excessive regulation (which raises compliance issues with the ICCPR) is made possible by lack of protection of the rights of freedom of assembly and association in the primary legislation.

The abuse of state resources was of particular concern for opposition political parties as the ECP did not enforce relevant regulations. The ECP summoned various officials for breaking such provisions, however no penalties were issued.

The campaign was characterized by active competition and was largely peaceful. The Pakistani Taliban, which unleashed electoral violence across KP during the 2013 general elections did not appear to engage in electoral violence during the local elections.

ELECTION DAY

Election day was marked by violence with more than a dozen people killed and several dozens injured. Security forces were understaffed and unprepared for partisan clashes as their plans focused on potential disruption of elections by the Pakistani Taliban.

High number of invalid ballots, likely a result of a large number of blank ballots, indicate confusion of voters with the multiple ballots and time-consuming procedures at the polls. Candidates’ names were not printed on the ballot papers for the village/neighbourhood contests nor were they displayed at the polling stations.

Sorting of the electoral rolls made the illegal party-issued “perchi”(a piece of paper with the electoral roll information) a necessity, as otherwise identification of voters in the roll would further extend the polling process. This however affects the secrecy of the vote.

RESULTS

The process and the timelines for transfer of sensitive election materials from polling stations to the ROs are unregulated. Consolidation was demanding because of the sheer volume of forms, which resulted in breach of the 07 June 2015 deadline for announcement of results.

Tabulation fundamentally lacked transparency, as it was mostly undertaken without the presence of observers and candidates’ agents. Furthermore provisional results were published neither in a consistent format nor manner. Accusations of changes between the provisional and final results are one of the concerns raised in the petition to the PHC.

Legislative provisions on final results proved to be inadequate as they only require the ECP to list the winner’s name, without detailing party affiliation or results data such as numbers of votes cast for any of the candidates, invalid votes, total ballots cast, total registered voters, or a breakdown by polling station. When the ECP published the final results on their webpage, 18 days after the legal deadline, it only disclosed the legally required information: a list of returned candidates.

SCRUTINY OF THE PROCESS

Media coverage of the process was vibrant, albeit mostly by the KP-based media. Pre-election reporting was mainly focused on larger campaign events while the challenges and potential shortcomings of the electoral process received limited coverage until election day.

The ECP's communication strategy did not involve active public outreach. They did not organise press briefings, but rather issued press releases with only little opportunity for the media to engage with senior ECP officials.

As in the federal legislation, the KPLGA does not secure the right to observe elections nor does it regulate the accreditation process. The ECP did not fill the gap by creating measures to protect election observation and the process of applying for accreditation and potential rejection lacks accountability and transparency, which DRI experienced when the ECP remained silent to DRI's request for accreditation.

Free and Fair Elections Network (FAFEN) deployed 987 observers to as many as 3,000 polling stations. Smaller efforts were launched by the Human Rights Commission of Pakistan (HRCP) and the Omar Asghar Khan Foundation.

ELECTORAL DISPUTE RESOLUTION

The process of petitions against RO decisions on candidacy is insufficiently regulated and lacks transparency, allowing the Appellate Authority to accept, reject or ignore an appeal without accountability. The information on how many appeals were received and disposed is not available.

The administrative complaints process lacks legal regulation and the ECP did not fill the gap by developing administrative mechanisms. Instead, election officers are granted the status of the magistrate first class, which gives them wide powers to investigate, summon and imprison.

Election petitions filed after the publication of results are comparatively better regulated than in the federal elections. The rules cover many important elements of the process: burden of proof, procedural details and guidance on the process, the form of decisions etc. However there are some shortcomings that warrant review, such as making all candidates respondents in the case.

PARTICIPATION OF WOMEN

There are significantly less women than men registered voters in KP. However since the general elections, registration among women has increased at a higher rate than men. Such increases represent commendable progress towards reducing barriers for women's political participation.

Ground-breaking efforts have been made to counter the practice of local leaders conspiring to bar women from voting. These include explicit provisions in the ECP-issued Codes of Conduct; an ECP press release highlighting the issue, civic group facilitation of political agreements affirming women's right to vote, and a voter education text message sent widely throughout the province before election day noting the illegality of the practice.

Statistics on the participation of women remain problematic. On a positive note, the KP provincial government amended the Election Rules in February 2015 to allow for the collection of gender disaggregated voter turnout data during counting and consolidation of results, which is consistent with the General Recommendation of the CEDAW treaty monitoring body. Disappointingly, multiple preliminary results forms and statement of the count forms received by DRI were improperly completed and did not include gender-disaggregated turnout data, so final data is not expected to provide accurate information.

There is also a lack of data available on how many women contested for general seats - which not a single woman won. With an average of only 1.15 validly nominated women candidates per seat reserved for women at the village/neighbourhood council level, many women candidates at this level contested their elections unopposed, and a high number of contests had fewer candidates than seats.

Although not permitted in the regulations, nomination papers for women candidates were often submitted by their husbands or fathers. It was also a common practice for women candidates to campaign without their faces or names appearing on their advertisements, replaced by husbands' or fathers' faces.

PARTICIPATION OF MINORITIES AND VULNERABLE GROUPS

In contradiction with ICCPR commitments, the Election Rules effectively barred non-Muslims from contesting the elections for seats other than those reserved for them, by including an oath on the nomination form that required candidates to declare belief “in the absolute and unqualified finality of the Prophethood of Muhammad”. All elections in Pakistan, including the 30 May KP local elections, present particular barriers to participation by Ahmadis as they are considered as non-Muslims in the Constitution and are separately registered.

2. INTRODUCTION AND METHODOLOGY

To assess the Khyber Pakhtunkhwa (KP) elections for local councils, Democracy Reporting International (DRI) gathered information and analysed systemic issues within the framework of electoral standards based on Pakistan's international law commitments. Primary relevant instruments of international law are the International Covenant on Civil and Political Rights and its authoritative interpretations (general comments) by the treaty monitoring body. Also the Convention on the Elimination of All Forms of Discrimination Against Women, the Convention against Corruption, the Convention on the Rights of Persons with Disabilities and International Convention on the Elimination of All Forms of Racial Discrimination.

On the basis of DRI's assessment of compliance with international commitments, recommendations have been made accordingly for strengthening processes in the future. The recommendations complement those made by the EU Election Observation Mission (EOM) to the 2013 general elections².

It is important to point out that DRI did not deploy an Election Observation Mission (EOM), which require significant resources (deploying teams across the province promptly upon the scheduling of elections). Instead, DRI deployed an Election Assessment Mission (EAM), which had limited coverage and did not look at all aspects of the election process. DRI therefore acknowledges the limited scope of its assessment.



پاکستان صوبائی وزیر لوکل گورنٹ حمایت اللہ خان سے این ڈی کے وفد کے وفد ہمارا مقابلا کر رہے ہیں
عوام آج بھوک و فرب کی سیاست کو ہمیشہ کیلئے فرنگ لڑنے میں اپنا انتخاب
تحریک انصاف نے سب سے پاکستان اور متحدہ ملی کا جھنڈا لہرا کر عوام کو دھوکہ دیا تاکہ اب ایسا نہیں ہونے دیکھے
کنیٹر ریجنل ماسٹری سیاست کی باتیں کرنے والوں نے بلدیاتی الیکشن میں، وطن پرستی کی صورت میں ہی کر رہی ہے

DRI meeting with the KP Minister of Local Government Inayatullah Khan

Nevertheless, DRI conducted comprehensive analysis of federal and provincial legislation, administrative regulations and executive instructions, and was therefore able to identify systemic strengths and weaknesses.

Regrettably, DRI's access to the Election Commission of Pakistan (ECP) in Islamabad and the Provincial Election Commissioner was limited. The ECP did not accredit DRI to observe these elections. Data has frequently been difficult to obtain, with a lack of publicly available information. Nevertheless, DRI was able to conduct more than 70 interviews with the Returning Officers

(ROs), ECP staff, political parties and candidates, senior provincial officials, Members of the Provincial Assembly (MPAs), journalists and representatives of non-governmental organisations. When information has not been sufficiently available or is inconclusive, DRI has refrained from assessment.

The mission was composed of a small team of Pakistani and international experts working in Islamabad and Peshawar. Meetings were held in the districts of Karak, Kohat, Mardan, Nowshera and Peshawar. The in-country work commenced on 18 May 2015, with the arrival of two international experts upon receipt of visas. This report was finalised on 10 July 2015.

The purpose of this report is not to give the KP elections a definitive seal of approval or otherwise. Rather the aim is to identify strengths and shortcomings in the process, so that Pakistani lawmakers, government officials and the ECP can strengthen the framework and practices for future elections.

² Available in English and Urdu at http://eeas.europa.eu/eueom/missions/2013/pakistan/reports_en.htm

3. CONTEXT

NATIONAL CONTEXT AND THE CALL FOR ELECTIONS

The 18th amendment to the Constitution³ established sole responsibility for legislating the local government structure with the provinces⁴, and also gave the ECP, a federal body, responsibility for administering local government elections⁵. When the term of local governments, elected under Musharraf's tenure, expired in 2010, the elected bodies were dissolved, but except for Balochistan, provinces delayed passing the necessary legislation to conduct new elections. The delay was seen as due to a lack of political will to devolve power from provincial level to the local level⁶.

In April 2012, while hearing the “Balochistan Law and Order” case, the Supreme Court of Pakistan stated “there is a huge gap between the people and the government”⁷. The Chief Justice requested explanation from all the provinces as to why the local elections had not been held on time and ordered them to inform the Court of their planned election schedules by May 2012. The provinces continued to delay legislating for elections, but the Supreme Court maintained the pressure and on 2 July 2013 it ruled that the provinces were required to hold local government elections as early as possible⁸. Only Balochistan replied that it was ready for local elections, which were then held on 7 December 2013⁹.

Following enactment of the necessary legislation in KP, Punjab and Sindh¹⁰, the Supreme Court ruled in March 2014 that elections should be held by November 2014. However, delimitation conducted by Punjab and Sindh was nullified by the high courts and the electoral process was suspended. This was followed by the Supreme Court judgement that the authority to define constituency boundaries should be transferred to the ECP before the process resumes. However, since the delimitation conducted by the KP government was not dismissed by the high courts, on 4 April 2015 the ECP announced the KP election schedule for 30 May 2015¹¹.

These developments were unfolding in a tense political environment challenging legitimacy of the 2013 general elections. Led by Pakistan Tehreek-e-Insaf (PTI), large demonstrations against “rigging” of the 2013 elections resulted in formation of the General Elections 2013 Inquiry Commission which is investigating PTI's accusations of the systematic fraud.

PROVINCIAL CONTEXT

The dominant partner in the governing coalition is Pakistan Tehreek-e-Insaf (PTI), which appointed Pervez Khattak as the Chief Minister. PTI holds 56 out of the coalition's 80 seats, with other seats held by Jamaat-e-Islami (JI), QaumiWatan Party (QWP) and Awami Jamhur ilttehad Pakistan (AJIP). The opposition holds 42 seats and consists of Jamiat Ulema-e-Islam F (JUIF), Pakistan Muslim League N (PML-N), Awami National Party (ANP) and Pakistan Peoples Party (PPP)¹².

A key point of PTI's agenda is devolution of power and re-establishment of local governance, thus after the general elections, the governing coalition debated decentralisation¹³. Not all issues were resolved by the time of the local elections as the rules of business, which guide operation of local councils, were still

³ from 8 April 2010

⁴ Previously, under President Musharraf, the provinces had been required to receive Presidential approval for any amendment in local government legislation.

⁵ Constitution of Pakistan, article 140A: “Elections to the local governments shall be held by the Election Commission of Pakistan.” Article 219D also refers to the Commission's responsibility to hold local elections.

⁶ Many provincial politicians expressed their reluctance to give away their “development funds”, citing lack of capacity on the local level to manage finances.

⁷ Constitution Petition No.77 of 2010

⁸ Civil Misc. Application number 3258 of 2013.

⁹ DRI Assessment of Balochistan elections available at <http://democracy-reporting.org/publications/country-reports/pakistan/local-government-report-december-2013.html>

¹⁰ Islamabad Capital Territory Local Government Bill was drafted in 2013, but is yet to be enacted.

¹¹ Delimitation processes in Sindh and Punjab are expected to be finalised in July 2015 and elections to be held in September.

¹² See Annex for a complete information.

¹³ For example, whether education, conflict resolution, health and other portfolios should be given to the village level; should the MPAs development funds be given to the local councils.

under consideration. A number of senior politicians told DRI that they were unclear about the powers of local councils and their relationship with the existing district governance under civil servants.

There is a lack of up-to-date population information in Pakistan, as the last census took place in 1998. Population composition is controversial especially given the implications of population shifts resulting from conflict in Afghanistan and the Federally Administered Tribal Areas (FATA). The total estimated population of the province (for mid-year 2014) is 27,933,000, with the majority 22,673,000 living in rural areas and an estimated 5,260,000 living in urban areas¹⁴. The 1998 census data indicated that 74 percent of the population considered Pashto to be their mother tongue, and less than 1 percent considered Urdu as such. The 1998 census claimed the male literacy rate to be 52 percent, dropping to 19 percent for women. However, the Pakistan Economic Survey 2012-13¹⁵ claimed the overall literacy rate in KP to be 52 percent, with male literacy at 72 percent and female literacy at 35 percent.

Ongoing conflict in adjacent FATA and experience from the 2013 general elections indicated that there was a risk of violence in the KP local election campaign and that security issues would threaten the electoral process. The 2013 EU report concluded that, "Attacks on the campaigns of political parties, candidates, party supporters, party premises and electoral locations increased significantly as the election date approached," and that, "The majority of the targeted attacks took place in KP and Balochistan."

POST-ELECTIONS DEVELOPMENTS

The electoral violence that flared on election day (see Election Day section) continued in the immediate post-election period, resulting in at least 11 people killed¹⁶. The environment has been characterised by hostility between the ECP and PTI-led KP provincial government, with heated accusations of blame for election-day mismanagement, security lapses and other shortcomings in the elections¹⁷. Delayed and insufficiently transparent results exacerbated these post-election tensions.

The intense partisan conflict continued in the media and with street demonstrations. Opposition parties in KP, as well as some parties in the provincial ruling coalition, levelled allegations of widespread and coordinated "rigging" and "gross mismanagement" against the PTI-led government. The PTI-led government's resignation was demanded, with multiple protests organised across the province, as well as a one-day strike in Peshawar. PTI leaders lodged counter-accusations and led an effort to establish a commission¹⁸ to investigate allegations of rigging, mirroring to some degree the ongoing General Elections 2013 Inquiry Commission. PTI leader Imran Khan publicly expressed a willingness to re-run the entire local government elections in KP. In the heat of the immediate post-election period, alarm was caused by the arrest of the opposition ANP Central General Secretary, Mian Iftikhar Hussain, in connection to the death of a PTI-activist on election day; he was subsequently released and the police have backtracked on their original justification for arrest.

On 25 June 2015, the ECP announced plans to conduct re-polling in 356 polling stations throughout KP on 5 July (see Results section). However, on 3 July, the Peshawar High Court suspended the ECP's notification on re-polling. The situation remained unresolved at the time of this report's publication.

These developments have occurred against the backdrop of Punjab and Sindh's preparations for their own local government elections. At the time of this report's publication, the ECP was consulting with the provincial governments in Punjab and Sindh (and considering seeking permission from the courts) to hold their upcoming local government elections in phases, in part citing the KP elections as an example of why such staggering is necessary¹⁹.

¹⁴ KP Bureau of Statistics. Demography Data 2014. 6 May 2014. p. 270.

¹⁵ Pakistan Economic Survey, p. 130 http://www.finance.gov.pk/survey/chapters_13/10-Education.pdf.

¹⁶ See, for example, <http://www.dawn.com/news/1185499/11-killed-in-kp-as-poll-violence-continues>.

¹⁷ See, for example, ECP press release on 1 June 2015, "ECP has been blamed for violence on the polling day," <http://ecp.gov.pk/ViewPressReleaseNotificDetail.aspx?ID=6419&TypeID=0>; and ECP press release on 8 June 2015, "Regarding the use of biometric machines (Khyber Pakhtunkhwa LG Polls)," <http://ecp.gov.pk/ViewPressReleaseNotificDetail.aspx?ID=6430&TypeID=0>.

¹⁸ The ECP reportedly sent a letter to the KP government on 28 June 2015 which condemned formation of the commission, claiming that only the ECP has the right to conduct investigations.

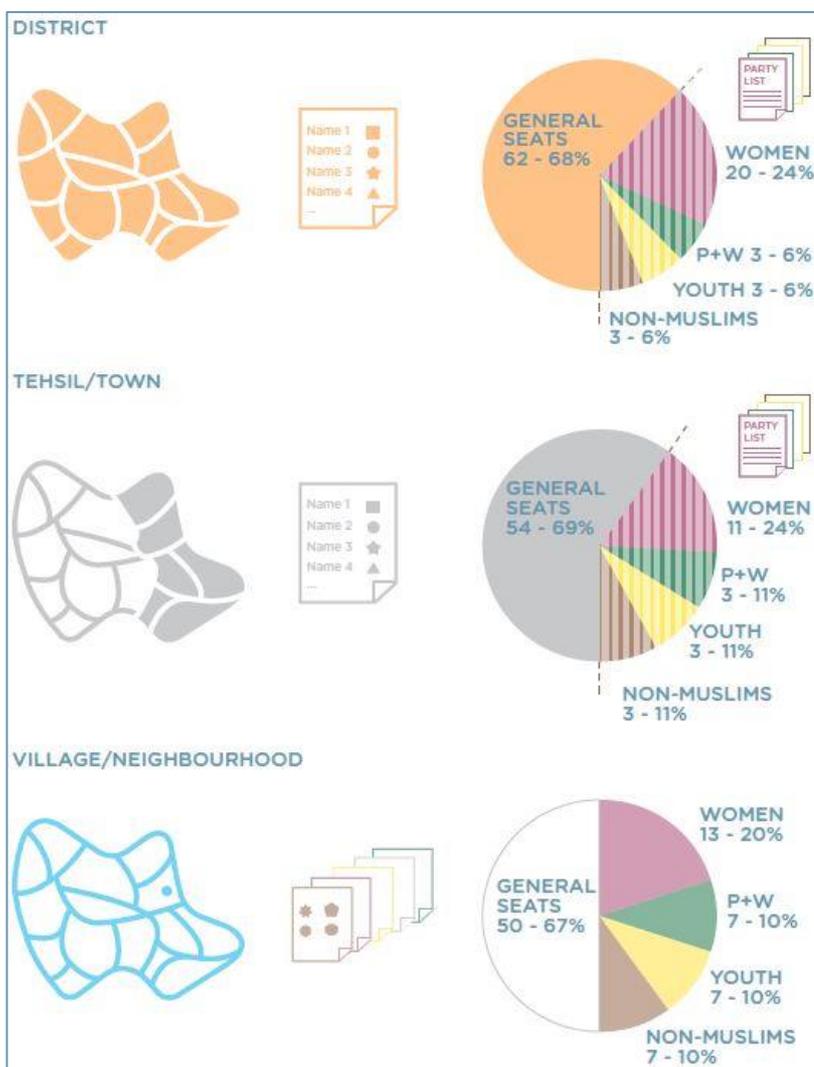
¹⁹ <http://tribune.com.pk/story/903257/upon-ecp-advice-punjab-sindh-open-to-phased-lg-polls/>

4. STRUCTURE OF LOCAL COUNCILS AND ELECTORAL SYSTEM

The KP local government framework is composed three tiers of elected local councils, listed here in descending order:

1. district councils for the province's 26 districts (1,546 total seats);
2. tehsil and town councils for its 73 rural tehsils and four urban towns (1,633 total seats); and
3. village and neighbourhood councils for its more than 2,835 rural villages and 504 urban neighbourhoods (more than 39,806 seats)²⁰.

The electoral systems established to elect members to these local councils, which are described in further detail below, require each voter to cast seven ballots. Each level of local council includes general seats as well as reserved seats for four categories of "special interest groups" defined in the legal framework: women; peasants and workers; youth; and non-Muslims. District and tehsil/town council elections are contested by both independent and party-affiliated candidates, whereas the candidates for village/neighbourhood council elections must contest without party affiliation, which is not consistent with international standards²¹.



²⁰ Note: the figures provided for village and neighbourhood councils and their seats exclude such councils in Kohistan where elections have been delayed and information is not yet available. The district and tehsil/town figures provided directly above, however, do include Kohistan's districts and tehsils and their seats, as outlined in the KPLGA.

²¹ UN Human Rights Committee. ICCPR, general comment 25, paragraph 15: "The effective implementation of the right and the opportunity to stand for elective office ensures that persons entitled to vote have a free choice of candidates. Any restrictions on the right to stand for election [...] must be justifiable on objective and reasonable criteria. Persons [...] should not be excluded by unreasonable or discriminatory requirements such as [...] by reason of political affiliation."

ELECTORAL SYSTEM

The various electoral systems²² are outlined primarily by the Khyber-Pakhtunkhwa Local Government Act 2013 (KPLGA)²³.

DISTRICT COUNCILS

At the district level, which is composed of elections to KP's 25 district councils and the Peshawar city district council, members representing general seats are elected from single-member electoral constituencies known as wards. Voters receive a single ballot and choose from candidates contesting on a party-affiliated or independent basis. The ballot includes the candidates' names and their symbols. As a first-past-the-post (FPTP) system, the candidate who receives the most votes in each ward is elected. The number of general seats in each district council ranges from 16 seats in the smallest districts (e.g. Tank and Torghar) to 92 seats in the largest (Peshawar City District)²⁴.

Within three days of the official publication of results, independent candidates elected to general seats at the district level may choose to join a political party which has obtained seats on the council²⁵. The reserved seats are then awarded proportionally, drawn from ranked party-lists for each category, based on the number of seats obtained by each party on the district council (including independent candidates joining winning parties following the elections). The number of reserved seats in each district council depends on the size of the council and varies by category. Seats reserved for women range from 5 to 31, whereas those reserved for peasants and workers, youth, and non-Muslims range from 1 to 5 each. Once formed, a district council then elects its Nazim and Naib Nazim²⁶ from among its members with the body of its members serving as the electoral college.

TEHSIL AND TOWN COUNCILS²⁷

The tehsil/town level, which includes KP's 73 tehsil councils and 4 town councils within Peshawar District²⁸, utilises the same system as the district level for electing council members to general and reserved seats. The same wards used for electing general seats to a district council are used as wards for tehsil council members²⁹. The ballot structure is also the same, listing candidates' names and symbols.

The number of general seats in each tehsil council ranges from five seats in the smallest tehsils (e.g. Banda Daud Shah and Kulachi) to 46 seats in the largest (Mardan). Seats reserved for women range from 1 to 16, whereas those reserved for peasants and workers, youth, and non-Muslims range from 1 to 5 each³⁰. Tehsil/town councils elect their Nazims and Naib Nazims in the same manner as the district councils.

VILLAGE AND NEIGHBOURHOOD COUNCILS³¹

A different electoral system is used for the lowest level of local government, composed of 504 neighbourhood councils and 2,835 village councils³². All council members in a given village or

²² Electoral systems have three main components: ballot structure, district magnitude, and electoral formula. Ballot structure refers to "the way in which electoral choices are presented on the ballot paper, in particular whether the ballot is candidate-centred or party-centred." District magnitude refers to "the number of representatives to be elected from [an electoral district]." Electoral formula refers to the "part of the electoral system dealing specifically with the translation of votes into seats." International IDEA 2005.

²³ See KPLGA, Chapters VII and XIV, Second Schedule, inclusive of April 2014 and February 2015 amendments.

²⁴ The figures for general and reserved seats in each district council are detailed in the Second Schedule, Part-A, of the KPLGA and its subsequent amendments.

²⁵ KPLGA, section 74(7)(a).

²⁶ Mayor and Deputy Mayor.

²⁷ Tehsil and town councils are identical governmental bodies in terms of powers, responsibilities, elections, etc. The term tehsil is reserved for rural councils, while town indicates an urban area.

²⁸ Note: the four town councils within Peshawar District were not included in the Second Schedule, Part-B, of the KPLGA; instead, they were notified by the ECP on 4 April 2015.

²⁹ Note: this is not specified in the KPLGA or Election Rules.

³⁰ The figures for general and reserved seats in each tehsil council (but not the town councils in Peshawar District) are detailed in the Second Schedule, Part-B, of the KPLGA and its subsequent amendments.

³¹ Village and neighbourhood councils are identical governmental bodies in terms of powers, responsibilities, elections, etc., their only difference being the administrative unit they represent i.e. a village (in rural areas) or neighbourhood (in urban areas).

neighbourhood council – on both general and reserved seats -- are elected from a single multiple-member electoral constituency. Voters each receive five separate ballots and choose from candidates contesting the elections without party affiliation. Given the scale of the election, ballots included candidates' allocated symbols, but not their names³³. The number of general seats in each village/neighbourhood council is determined on the basis of population, ranging from five seats in the smallest councils to ten seats in the largest. The number of seats reserved for women, peasants and workers, youth, and non-Muslims are fixed at two, one, one, and one, respectively, regardless of the size of the population in the neighbourhood or village.

For general seats and seats reserved for women at the village/neighbourhood level, a single non-transferable vote (SNTV) system is used, in which voters mark each ballot once for a single candidate. Those candidates who receive the highest number of votes are elected (the 5-10 highest vote-getters for the general seats, depending on how many general seats the council has; the top two vote-getters for seats reserved for women). For seats reserved for peasants and workers, youth, and non-Muslims, a FPTP system is used, in which voters mark each ballot once for a single candidate, and the candidate who receives the most votes in each contest is elected.

The candidates who receive the highest and second highest vote totals for the general seats in a given village/neighbourhood council are elected as the council Nazim and Naib Nazim, respectively.

COMPOSITION OF LOCAL COUNCILS

The formulae utilised to determine the number of general and reserved seats for local councils at all levels are not defined in the KPLGA. Instead, for district and tehsil councils, the seat totals themselves were simply included in the Second Schedule to the law³⁴, whereas seat totals for town councils were included in an April 2015 ECP notification³⁵. Official population estimates³⁶ do not appear to have factored into lawmakers' and ECP's determinations regarding the sizes of the district and tehsil/town councils, as wide variations exist in the ratios of population to council seats.

For example, Chitral District has roughly 12,579 people per council seat (38 total seats for its estimated population of 478,000), whereas Peshawar District has roughly 25,906 people per council seat (138 total seats for its estimated population of 3,575,500), more than doubling the ratio for Chitral. Governmental officials confirmed to DRI to have simply converted the previously formed union councils (lowest-tier local government units established in the Musharraf era) into wards for the district and tehsil/town councils' general seats (see Delimitation section). This means that no attempt was made to ensure equality of the vote and representation between general seats in each district and tehsil/town council.

The KP Local Government department stated to DRI that women reserved seats are 33 percent of general member seats, whereas other groups have 5 percent seats of general member seats. However, allocation differences appear arbitrary in multiple instances and, some councils which have an equal number of general seats have a different number of reserved seats³⁷.

³² According to information provided on the KP provincial government's website. See: <http://lgkp.gov.pk/lg-elections-2015/>. "District, Tehsil and Village/Neighbourhood Councils in Khyber Pakhtunkhwa (Annex C)" document.

³³ This allowed for a more manageable ballot printing process.

³⁴ KPLGA, Second Schedule, Part-A and Part-B.

³⁵ ECP Notification No. F.8(1)/2015-LGE-KPK, 4 April 2015. <http://ecp.gov.pk/Schedule%20Notification-I.%20dated%2004.04.2015.pdf>

³⁶ KP Bureau of Statistics. Demography Data 2014. 6 May 2014. http://kpbos.gov.pk/prd_images/1399372174.pdf.

³⁷ For example, Peshawar Town-I, Peshawar Town-II, Charsadda Tehsil and Kohat Tehsil all have 25 general seats each, yet Peshawar Town-I has eight, one, one and one seats reserved for women, peasants and workers, youth and non-Muslims, respectively, whereas Peshawar Town-II, Charsadda Tehsil and Kohat Tehsil each have nine, two, two and two seats reserved for women, peasants and workers, youth and non-Muslims, respectively. Similar unexplained reserved seat allocation differences exist among DI Khan, Bannu and Charsadda Districts, between Torghar and Tank Districts, as well as between other districts and tehsils/towns.

Council	Total in KP	Covering	Reserved Seats for Special Interest Groups				
			General seats	Women	Peasants & Workers	Youth	Non-Muslims
District	26 (25 districts 1 city district)	All KP districts, including Peshawar City District	16-92 (62-68% of total seats)	5-31 (20-24% of total seats)	1-5 (3-6% of total seats)	1-5 (3-6% of total seats)	1-5 (3-6% of total seats)
Tehsil and Town	77 (73 tehsils 4 towns)	All KP tehsils (rural) and towns (urban)	5-46 (54-69% of total seats)	1-16 (11-24% of total seats)	1-5 (3-11% of total seats)	1-5 (3-11% of total seats)	1-5 (3-11% of total seats)
Village and Neighbourhood	> 3,339 (> 2835 vill. and 504 neigh.) ³⁸	All KP villages (rural) and neighbourhoods (urban)	5-10 depending on pop. size (50-67% of total seats)	2 (13-20% of total seats)	1 (7-10% of total seats)	1 (7-10% of total seats)	1 (7-10% of total seats)

For village/neighbourhood councils, the number of reserved seats is fixed, and a minimum and maximum are set for the number of general seats with the actual figure to be “determined on the basis of population,” yet no specific formula is provided³⁹.

The lack of defined formulae for determining the allocation of general and reserved seats for all levels of local councils weakens the clarity and predictability of the electoral system, and results in inequality of the vote and representation. Moreover, by not fixing allocation to population at the district and town/tehsil levels, it remains unclear how population changes prior to future local elections would impact the councils’ size and seat allocation. These complications are exacerbated by the lack of official up-to-date population data in KP.

RECOMMENDATION: The formulae utilised to determine the number of general and reserved seats for local councils at all levels be defined in law and applied evenly.

RESERVED SEATS FOR SPECIAL INTEREST GROUPS

The Constitution refers to local government institutions having special representation of peasants, workers, and women⁴⁰. Such special measures for the promotion of women are in keeping with Pakistan’s commitments under CEDAW, if they are temporary and designed to advance *de facto* equality participation.

Reserved seats for non-Muslims (as established by the KPLGA and also in the national and provincial assemblies) are a measure to provide for the constitutional requirement to safeguard minorities’ rights and interests⁴¹. This can be regarded as in accordance with Pakistan’s international commitments under ICCPR⁴² in giving effect to non-discrimination against religious minorities⁴³.

Reserved seats for other demographic groups (e.g. youth) and socio-economic or professional groups (e.g. workers and peasants) may be similarly seen as beneficial in providing for those otherwise

³⁸ Note: figures provided do not include village and neighbourhoods in Kohistan, where elections have been delayed and information is not yet available.

³⁹ KPLGA, section 24(a).

⁴⁰ Constitution of Pakistan, article 32: “Promotion of local Government institutions. The State shall encourage local Government institutions composed of elected representatives of the areas concerned and in such institutions special representation will be given to peasants, workers, and women.”

⁴¹ Constitution of Pakistan, article 36. The Constitution also establishes Islam as a state religion, and that the President and the Prime Minister shall be Muslim (articles 2 and 41).

⁴² ICCPR, article 2: “1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such... religion 2. ... each State Party to the present Covenant undertakes to... adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.”

⁴³ Pakistan is also a State Party to the International Convention on the Elimination of Racial Discrimination (ICERD) and, although religious minorities do not as such fall under the Convention, has reported on the status of religious minorities under the treaty’s auspices.

disadvantaged in their political participation, particularly given the very entrenched systems of work and land-ownership in Pakistan. There are no international legal standards regarding temporary special measures for socio-economic or professional groups. However, some political parties reported to DRI that potential benefits of such a system are outweighed by the disadvantages given the definition of workers and peasants given in the law⁴⁴ is vulnerable to varied interpretation, thus risking inconsistent application and dispute. At the village/neighbourhood level, candidates for general seat who receive the highest and second highest vote totals are elected as the council Nazim and Naib Nazim. This excludes council members elected through reserved seats from serving in these leadership positions, unless a council's general seat members were elected uncontested⁴⁵. This disadvantages village/neighbourhood council members elected through reserved seats, including women and religious minorities.

RECOMMENDATION: Legislation be revised to allow all village and neighbourhood council members the possibility of being elected Nazim and Naib Nazim.

⁴⁴ KPLGA, section 2(u). “‘peasant’ means a person who is a landless farm worker or, one who during the period of five years preceding the year in which election is held, has been the owner of not more than five acres of land and depends directly on it for subsistence living;” and article 2(j) “‘worker’ means a person directly engaged in work or is dependent on personal labour for subsistence living and includes a worker as defined in the Khyber Pakhtunkhwa Industrial Relations Act, 2010 (Act No. XVI of 2010)”; KP Industrial Relations Act, 2010. 2(xxxiii). “‘worker’ and ‘workman’ mean person not falling within the definition of employer who is employed (including employment as a supervisor or as an apprentice) in an establishment or industry for hire or reward either directly or through a contractor whether the terms of employment are express or implied, and, for the purpose of any proceedings under this Act in relation to an industrial dispute includes a person who has been dismissed, discharged, retrenched, laid off, or otherwise removed from employment in connection with or as a consequence of that dispute or whose dismissal, discharge, retrenchment, lay-off, or removal has led to that dispute but does not include any person who is employed mainly in managerial or administrative capacity.”

⁴⁵ KPLGA, section 27(3), as amended in February 2015.

5. LEGAL FRAMEWORK

Primary legislation for local elections in KP are the Constitution of Pakistan and various national (federal) and provincial acts. Secondary legislation are administrative regulations (known as “rules”) and other formal instructions issued by the KP government and the ECP known as “notifications” and “codes of conduct”.

Main Acts	Main Rules	Main Notifications
KP Local Government Act 2013 (KPLGA) KP Delimitation of Local Councils Act 2015 (KPDLCA) KP Right to Information Act 2013 Electoral Rolls Act 1974 Delimitation of Constituencies Act 1974 Political Parties Order 2002 Political Parties Rules Pakistan Penal Code 1860	KP Local Councils (Conduct of Elections) Rules 2014 KP Local Councils (Delimitation) Rules 2013 ECP Delimitation of Constituencies Rules 2015	KP Notification Delimitation Authority 2014 KP Notification Delimitation of Councils and Wards 2014 ECP Notification Election Symbols 2013 ECP Notification D/R/AR officers 2015 ECP KP Elections Schedule 2015 ECP Codes of Conduct for Media, Agents, Security Forces, Polling Staff, Observers and Political Parties 2015 ECP Notification Election Tribunals 2015 ECP Notification Re-polls 2015

Beyond the acts and the regulations, the legal framework for elections was significantly influenced by judicial decisions of the Peshawar, Lahore and Sindh high courts (PHC, LHC and SHC) as well as the Supreme Court of Pakistan (SC) and some aspects in development of the legal framework can only be understood in relations to the decisions of the courts.

ELECTION STANDARDS IN INTERNATIONAL LAW

Pakistan ratified the UN International Covenant on Civil and Political Rights (ICCPR) in June 2010⁴⁶. Pakistan has also ratified or acceded to, and is therefore bound by, the International Convention on the Elimination of Racial Discrimination (ICERD), the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW)⁴⁷, and the recent Convention on the Rights of Persons with Disabilities (CRPD). All of these conventions contain legally binding provisions pertaining to a wide range of civil rights and freedoms, including provisions that obligate the State Party to give effect to such rights under national law. Pakistan has also ratified the Convention against Corruption (CAC), in 2007, which includes commitments related to transparency of government. All of the treaty obligations are applicable to local elections⁴⁸.

DEVELOPMENT OF THE KPLGA AND THE RULES

The KPLGA came into force in November 2013, and was later amended on two occasions, in April 2014⁴⁹ and February 2015⁵⁰. The process for developing and amending the KPLGA included some opportunities

⁴⁶ Currently 168 countries are State Party to the ICCPR. In 2011, Pakistan withdrew or narrowed down most of its reservations. Pakistan has made a reservation to article 25 restricting the eligibility of candidates for the Presidency and for the selection of the Prime Minister by the National Assembly to Muslims.

⁴⁷ Pakistan has declared that its accession to the CEDAW convention is subject to the provisions of the Constitution. See: <http://www.un.org/womenwatch/daw/cedaw/reservations-country.htm>.

⁴⁸ This is clear from the language of General Comment 25, the authoritative interpretation of the ICCPR by the UN Human Rights Committee, see for example paragraph 5: “5. The conduct of public affairs [...] is a broad concept which relates to the exercise of political power, in particular the exercise of legislative, executive and administrative powers. It covers all aspects of public administration, and the formulation and implementation of policy at international, national, regional and local levels.” and paragraph 6: “Citizens may participate directly by taking part in popular assemblies which have the power to make decisions about local issues or about the affairs of a particular community and in bodies established to represent citizens in consultation with government.”. See: <http://www.unhchr.ch/tbs/doc.nsf/0/d0b7f023e8d6d9898025651e004bc0eb>.

⁴⁹ The April 2014 amendment updated seat allocation figures in some districts and tehsils, and added a tehsil council for Jehangira.

for consultation and meaningful engagement by opposition parties, the ECP, technical elections experts, civil society groups, and the broader public⁵¹. The ECP provided some guidance to KP provincial leaders and lawmakers, including through a public letter to all provinces on local elections in July 2013, and organised meetings in Islamabad to facilitate discussion on legal frameworks for local government elections, engaging KP stakeholders. Following the KPLGA's passage, at least two public events were organised in Peshawar⁵² to facilitate discussion on the law.

- 7 Nov 2013 KP Local Government Act 2013
- 17 Dec 2013 KP Local Councils (Conduct of Elections) Rules 2013
- 10 Mar 2014 KP Local Councils (Conduct of Elections) Rules 2014
- 2 Apr 2014 KP Local Government Amendment Act 2014
- 10 Oct 2014 KP Local Government (2nd Amendment) Ordinance 2014
- 30 Oct 2014 KP Local Councils (Conduct of Elections) Rules 2014 (1st Amendment)
- 9 Feb 2015 KP Local Councils (Conduct of Elections) Rules 2014 (2nd Amendment)
- 24 Feb 2015 KP Local Government (2nd Amendment) Act 2015
- 3 Mar 2015 ECP Notification on Code of Conduct for Political Parties and Contesting Candidates
- 30 Mar 2015 ECP Notification on Codes of Conduct for Election Observers, Media, Polling Agents, Polling Staff and Polling Personnel, and Security Personnel
- 4 Apr 2015 ECP Notification on Schedule of Elections
- 1 Jun 2015 KP Local Councils (Conduct of Elections) Rules 2014 (3rd Amendment)

This openness of the KP government to a consultative process, between the ECP and provincial leaders, was a positive development. Nevertheless, this opportunity was not seized by the political parties and civil society organizations, who showed limited capacity to provide qualified inputs in the process⁵³.

The provincial government issued the Khyber Pakhtunkhwa Local Councils Conduct of Elections Rules (referred to henceforth as the Election Rules) and the Khyber Pakhtunkhwa Local Councils Delimitation Rules (referred to henceforth as the Delimitation Rules). The ECP key regulations included the Codes of Conduct for Political Parties and Contesting Candidates, Election Observers, Media, Polling Agents, Polling Personnel and Security Personnel, all issued in March 2015.

The Election Rules were modified on at least four occasions⁵⁴, including two days after the elections, when on 1 June 2015 the KP provincial government surprisingly amended the Election Rules. This late amendment modified the process for parties to provide names for district and tehsil/town council reserved seats, allowing them to submit additional names “if at any time the party list is insufficient or exhausted”⁵⁵. Thus through this amendment, the KP provincial government changed some of the “rules of the game” essentially after the “game” had already been played. For elections to the district and

⁵⁰ The February 2015 amendment further updated seat allocation figures; added a district council for Kohistan (Lower); gave the ECP (as opposed to the KP provincial government) authority for delimitation of village/neighbourhood councils; established a method for electing Nazim and Naib Nazims for village/neighbourhood councils in the case all general seat members are elected unopposed; and defined and authorised the use of biometric machines for authenticating voter identification should they be provided by the ECP.

⁵¹ The KPLGA was developed by a group of KP lawmakers known as the Working Group on Local Government. The group's draft law was introduced in the KP Assembly in October 2013, where it was referred to a newly created Select Committee for review. The committee, comprised of 12 members, including four opposition MPAs, considered amendments proposed by committee members and the ECP, adopting some, according to the Report of the Select Committee on Local Government. 20 November 2013. Opposition MPAs objected strongly to the non-partisan elections for village/neighbourhood councils but their proposed amendments in this regard failed. See, for example: <http://lgkp.gov.pk/khyber-pakhtunkhwa-assembly-on-passed-khyber-pakhtunkhwa-local-government-bill-2013-on-31-october-2013>

⁵² “Forum on Local Elections Framework in KP.” 13 November 2013. Peshawar. <http://democracy-reporting.org/news/press-releases/electoral-reforms-in-pakistan-13-november-2013.html>; and “Public Hearing of the Government of KP on Election Issues.” 4 February 2014. Peshawar.

⁵³ As the KPLGA regulates overall local governance, most of the debates focused on governance, rather than the electoral process.

⁵⁴ A version of the Election Rules dated 10 March 2014, among other changes, removed candidates' names on ballot papers for village/neighbourhood councils; modified the nomination oaths taken by village/neighbourhood candidates; and updated the list of symbols and its division among categories of candidates. An amendment in October 2014, among other changes, defined biometrics and established processes for their use in polling stations should they be provided by the ECP; updated the process for allocation of symbols, including removing the ability for a combination of parties contesting jointly to be issued a joint symbol; elaborated on the process for electing candidates to reserved seats at the district and tehsil/town levels; updated forms for candidate nomination, ballot papers, and results; and created new forms for declaring winners in uncontested elections and recording witnesses of empty ballot boxes before the opening of polling. A later amendment in February 2015 further updated the process for allocation of symbols and updated all Statement of the Count forms to include areas for recording the total voters assigned to the polling station and votes cast by gender.

⁵⁵ Election Rules, 2014. Amendment. 1 June 2015. 42(10)(a).

tehsil/town councils, the amendment altered an aspect of the electoral formula (i.e. how votes are translated into seats), which is a fundamental element of all electoral systems⁵⁶.

In general, electoral stakeholders reported being unaware of any public consultations on the Election Rules. However, interlocutors noted that the KP provincial government engaged external technical elections experts to a limited degree, and that there was some level of collaboration between the provincial government and the ECP, with the ECP driving most of the changes to the Election Rules that occurred after their initial issuance in December 2013. It was also noted that the Election Rules development process benefited from the public consultations held regarding the KPLGA. Given that most of the KP electoral regulation is in the Election Rules and not the KPLGA, the process of development of the Election Rules is equally important as the process of development of the primary legislation.

The late changes to both the KPLGA and Election Rules are in conflict with generally accepted international good practice for elections. According to the Venice Commission, “fundamental elements of electoral law, in particular the electoral system proper and the drawing of constituency boundaries, should not be open to amendment less than one year before an election”⁵⁷.

RECOMMENDATIONS: There be a timely review of legislation and administrative regulations, based on international law commitments, including a meaningful and inclusive consultative process to receive input from the election officials, political parties, civic groups, and the broader public. The fundamental elements of electoral law be in place at least one year ahead of the next round of local elections.

ANALYSIS OF THE LEGAL FRAMEWORK

Convolved developments of the primary and secondary legislation in parallel with the national (federal) legislation resulted in legal framework which is at times contradictory or contains ambiguity in the hierarchy of law. This means that some provisions in the KPLGA are not compatible with the national acts or that it is unclear which legislation takes precedence. This issue proved to be particularly problematic in the legislative arrangements for the electoral administration under which a Constitutional body - the ECP - is stripped from the powers to create electoral regulation and is reduced to the role of implementing agency operating under the rules of KP government. Under these arrangements, administrative regulations can be crafted without full election expertise and experiences, and the ECP can be left operating in an uncertain legal environment as rules can be changed at any time. Thus the ECP is powerless⁵⁸ and accountability for the election is dispersed and weakened. On the other hand, this is at odds with the powers to create rules given to the ECP in national legislation such as Electoral Rolls Act 1974 or Delimitation of Constituencies Act 1974. Other concrete examples are described in the relevant sections of this report.

RECOMMENDATIONS: Comprehensive review of the provincial legal framework to identify inconsistencies between primary and secondary legislation on national and provincial level. Power to create secondary legislation (administrative regulations) be given to the body which is administering the process.

⁵⁶ According to media reports, the ECP has challenged this amendment to the Election Rules with the Peshawar High Court. See: <http://www.dawn.com/news/1193120/ecp-challenges-amendment-to-rules-on-lg-reserved-seats>.

⁵⁷ Note: Good practice in electoral legislative reform includes harmonisation with international law, a consultative process, and changes to be made at least one year before an election. See, for example, the internationally widely respected Venice Commission’s Code of Good Practice in Electoral Matters: “The fundamental elements of electoral law, in particular the electoral system proper, membership of electoral commissions and the drawing of constituency boundaries, should not be open to amendment less than one year before an election, or should be written in the constitution or at a level higher than ordinary law.” Section II2(b). The Venice Commission, formally called the European Commission for Democracy Through Law, has 60 Member States from 4 continents. The February 2015 amendment to the KPLGA created a new district, impacting district magnitude and constituency boundaries. The June 2015 amendment to the Election Rules impacted the electoral formula, as discussed above.

⁵⁸ For the national and provincial assembly elections, the Representation of the People Act (RoPA) section 107 gives the ECP the power to make rules (although approval of the President is required). This is similarly the case in the Electoral Rolls Act (section 28).

PRIMARY LEGISLATION

The KPLGA contains notable gaps and weaknesses that compromise fulfilment of Pakistan's international legal obligations and also undermine legal certainty and the predictability of law⁵⁹ as some necessary provisions are wholly or partially left out of the KPLGA:⁶⁰

- Periodicity of elections⁶¹ - the KPLGA sets a four-year term for the local councils, but no provisions exist mandating new elections upon expiry of the term.
- Electoral system⁶² - key aspects of the electoral system are absent from the KPLGA, such as the formulae used to determine the number of seats per council (i.e. district magnitude). Important components of the ballot structure⁶³ and the electoral formula⁶⁴ (see Composition of Local Councils and Electoral System section) are left out of the KPLGA and, instead, relegated to administrative regulations.
- Grounds for removal of elected officials⁶⁵ - The KPLGA allows the provincial government to suspend and remove council members, however it does not identify grounds for removal based on objective and reasonable criteria.
- "Validity of the voting process"⁶⁶ and "free expression of the will of the voters" through "genuine" elections⁶⁷ - the KPLGA does not provide legal safeguards securing the process, such as election management provisions that empower election officials to facilitate free polling, accurately count ballots, and determine results, as well as transparency measures that provide information to candidates and the broader public at all stages of counting and results consolidation and empower scrutiny of the process. Most such measures, including the rights of election observers, results transparency provisions, and a deadline for publishing results, are absent from the KPLGA; instead, these measures are relegated to administrative regulations.

Other aspects of the KPLGA and additional primary legislation include:

- the absence of equal suffrage guarantees in boundary delimitation provisions (see Delimitation section);

⁵⁹ UN Human Rights Committee, Resolution 19/36, paragraph 16. "[The Human Rights Committee] calls upon States to make continuous efforts to strengthen the rule of law and promote democracy by: (c) Ensuring that a sufficient degree of legal certainty and predictability is provided in the application of the law, in order to avoid any arbitrariness." See: <http://daccess-ods.un.org/access.nsf/Get?Open&DS=A/HRC/RES/19/36&Lang=E>.

⁶⁰ UN Human Rights Committee, ICCPR General Comment 25, paragraph 9: "The rights and obligations provided for in paragraph (b) [of ICCPR article 25] should be guaranteed by law." Also, see paragraphs 4, 10, 11, 16, 19, 20 and 22.

⁶¹ UN Human Rights Committee, ICCPR General Comment 25, paragraph 9: "The rights and obligations provided for in paragraph (b) [of ICCPR article 25] should be guaranteed by law", referencing ICCPR article 25: "Every citizen shall have the right and the opportunity [...]: (b) To vote and to be elected at genuine periodic elections".

⁶² UN Human Rights Committee, ICCPR General Comment 25, paragraph 1: "Although the Covenant does not impose any particular electoral system, any system operating in a State party must be compatible with the rights protected by article 25 and must guarantee and give effect to the free expression of the will of the electors. The principle of one person, one vote must apply, and within the framework of each State's electoral system, the vote of one elector should be equal to the vote of another. The drawing of electoral boundaries and the method of allocating votes should not distort the distribution of voters or discriminate against any group and should not exclude or restrict unreasonably the right of citizens to choose their representatives freely.

European Court of Human Rights: Case of Mathieu-Mohin and Clerfayt versus Belgium (1987) "As regards the method of appointing the "legislature", Article 3 (P1-3) provides only for "free" elections "at reasonable intervals", "by secret ballot" and "under conditions which will ensure the free expression of the opinion of the people". Subject to that, it does not create any obligation to introduce a specific system such as proportional representation or majority voting with one or two ballots."

⁶³ I.e. the absence of candidates' names on village/neighbourhood-level ballots.

⁶⁴ I.e. the process for nominating and party-list candidates for district and tehsil/town reserved seats.

⁶⁵ UN Human Rights Committee, ICCPR General Comment 25, paragraph 16: "The grounds for the removal of elected officials from office should be established by laws based on objective and reasonable criteria and incorporating fair procedures."

⁶⁶ UN Human Rights Committee, ICCPR General Comment 25, paragraph 22: "[State] Reports should also describe the laws and procedures which ensure that the right to vote can in fact be freely exercised by all citizens and indicate how the secrecy, security and validity of the voting process are guaranteed by law."

⁶⁷ UN Human Rights Committee, ICCPR General Comment 25, paragraph 9: "The rights and obligations provided for in paragraph (b) [of ICCPR article 25] should be guaranteed by law", referencing ICCPR article 25: "Every citizen shall have the right and the opportunity [...]: (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors".

- excessive discretion given to the ECP to prescribe voter eligibility criteria (see Voter Registration section);
- unreasonable and arbitrary eligibility criteria for candidates (see Candidate Nomination section);
- nonpartisan elections at the village/neighbourhood level (see Candidate Nomination section);
- the ban on government officials from campaigning (see Campaign section);
- insufficiently established avenues for electoral stakeholders to seek redress for their election-related grievances (see Electoral Dispute Resolution section);
- and the continued existence of a separate electoral roll for Ahmadis (see Participation of Minorities and Vulnerable Groups section).

Recommendations to address these issues are included in the relevant sections of this report⁶⁸.

RECOMMENDATION: The KPLGA be amended to include key provisions which guarantee genuine elections.

SECONDARY LEGISLATION (ADMINISTRATIVE REGULATIONS)

In addition to ambiguity over responsibility to create administrative regulations, aspects of administrative regulations governing the KP local elections also fall short of meeting Pakistan's international commitments. These shortcomings include:

- oaths on nomination forms requiring district- and tehsil/town-level candidates contesting without party-affiliation to declare that they "do not belong to any political party (see Candidate Nomination section);
- oaths on nomination forms that prohibit non-Muslims from contesting for seats other than those reserved for non-Muslims (see Candidate Nomination section); and
- bans on government officials from campaigning (see Campaign section).

Recommendations to address these issues are included in the relevant sections of this report.

AVAILABILITY OF THE LEGAL FRAMEWORK AND INFORMATION

ECP-issued notifications and codes of conduct are published in the *Gazette of Pakistan*, and for the KP elections, were made available on the ECP's website⁶⁹. Laws and rules created by the KP Provincial Assembly and KP provincial government are published in the *Khyber Pakhtunkhwa Government Gazette*. Additionally, the KPLGA and some versions of the Election Rules, as well as some amendments to both, were made accessible on the KP provincial government's website⁷⁰. However, the version of the Election Rules available during the pre-election period⁷¹ was not the most up-to-date version from March 2014. Thus multiple important revisions were not easily publicly available⁷². The post-election amendment to the Election Rules was also not made available online, nor did the KP provincial government announce the change in any way (beyond publication in the *Gazette*). Moreover, no consolidated version of either the KPLGA or the Election Rules with their amendments was made publicly available. Election officials, political parties, journalists, observers, and other electoral stakeholders were disadvantaged by the lack of access to key components of the legal framework. Furthermore, the KPLGA and administrative regulations were made available only in English, thereby making them inaccessible to many electoral stakeholders.

⁶⁸ Additional gaps in the KPLGA and the broader legal framework do not provide guidance to election administrators on scenarios such as: when there are too few candidates on the reserved seat party-lists (e.g. do these seats go to other parties with sufficient lists, or remain vacant?); when no, or too few, candidates contest a particular seat (e.g. should a by-election be held?); and how the need for re-polling or by-elections impacts elections to district and tehsil/town council reserved seats (e.g. must reserve seat elections by party-list wait until all wards are decided?).

⁶⁹ See: <http://ecp.gov.pk/LGEKPK2015.aspx>, and <http://ecp.gov.pk/ViewPressReleaseNotification.aspx?TypeID=1>.

⁷⁰ See: <http://lgkp.gov.pk/lg-elections-2015/>.

⁷¹ The outdated version remained online at the time of this report's publication.

⁷² This includes the absence of candidates' names on ballot papers for village/neighbourhood councils and the updated list of symbols and its division among categories of candidates#. Election Rules, 2014, 10 March 2014. Ballot Papers for General Seats and all Reserved Seats for Village and Neighbourhood Councils (Form X), pp. 79-80; List of Symbols. 101-106.

These limitations to accessibility are not consistent with Pakistan’s ICCPR obligations⁷³, as well as article 19A of the Constitution, which states, “Every Citizen shall have the right to have access to information in all matters of public importance subject to regulation and reasonable restrictions imposed by law.” Similarly, the KP Right to Information Act, 2013, which came into force in November 2013, states that legislation and administrative regulations “shall be duly published by public bodies in an up-to-date fashion and in a manner which best ensures they are accessible to those for whom they may be relevant, including over the internet, subject to reasonable restrictions based on limited resources”⁷⁴.

RECOMMENDATIONS: The KPLGA be consolidated with its amendments and made available online. The Election Rules be consolidated with their amendments and made available online.

The legal framework be revised to require timely online publication of all electoral legislation and administrative regulations. The freedom to seek, receive and impart information be subject to “necessary” restrictions, rather than “reasonable” restrictions.

⁷³ ICCPR article 19 refers to “freedom to seek, receive and impart information.” ICCPR general comment 34, interpreting article 19, note: “State parties should proactively put in the public domain Government information on public interest.”

⁷⁴ Khyber Pakhtunkhwa Right to Information Act, 2013, sections 5(1)(a)., 5(1).

6. DELIMITATION

LEGAL FRAMEWORK

DEVELOPMENT OF THE LEGAL FRAMEWORK

Development of the legal framework for delimitation of local councils and electoral constituencies was a convoluted process which resulted in a problematic and contradictory legal framework.

When the KP Provincial Assembly first passed the KPLGA⁷⁵ in 2013, it included some basic guidelines for delimitation. The KPLGA assigned the delimitation task to the provincial Delimitation Authority, a governmental committee⁷⁶.

Local Councils	vs	Electoral Constituencies
District		multiple wards
Tehsil / Town		multiple wards
Village / Neighbourhood		single ward

However, delimitation in Punjab and Sindh was later dismissed by the Supreme Court⁷⁷, with nation-wide consequences, as the court directed the federal government to “make necessary enactments to empower the Election Commission of Pakistan to carry out the delimitation of constituencies of local governments”. As the Supreme Court stated that delimitation must be conducted by a “neutral and credible” body⁷⁸, the KP Governor⁷⁹ passed an amendment to the KPLGA on 10 October 2014 by ordinance to comply with the new framework. The amendment addressed several key delimitation issues:

- it deleted the Delimitation Authority from the KPLGA;
- the authority for delimitation of villages and neighbourhood councils was transferred to the ECP; however, the ordinance did not mention who has the responsibility for delimitation of district and tehsil/town wards, which was under the responsibility of Delimitation Authority in the original version of the KPLGA; and
- principles of delimitation were deleted from the KPLGA.

After the Governor issued the ordinance, the federal Delimitation of Constituencies Act was also amended with an ordinance⁸⁰, and the ECP issued Rules for Delimitation of Constituencies⁸¹ as the ECP was now in charge of delimitation. This was followed by passing of a new act by the KP Provincial Assembly in January 2015, separating delimitation issues into the Delimitation of Constituencies Act 2015⁸².

Surprisingly, after the new law on delimitation was passed, the Governor’s ordinance from 2014 was *de facto* upheld⁸³ by the Assembly by amending the KPLGA in February 2015, albeit **without** the key article which was in the ordinance: removal of the Delimitation Authority. This way the KPLGA re-established the Delimitation Authority, did not transfer the

- 07 Nov 2013 KP Local Government Act 2013
- 02 Dec 2013 KP Delimitation Rules 2013
- 20 Mar 2014 Supreme Court judgement
- 10 Oct 2014 KP Local Government Ordinance (2nd Amendment)
- 14 Oct 2014 Delimitation of Constituencies Act Amended by Ordinance (federal)
- 01 Jan 2015 ECP Delimitation of Constituencies Rules
- 12 Jan 2015 KP Delimitation of Local Councils Act 2015
- 24 Feb 2015 Local Government Act (2nd amendment)
- 08 Apr 2015 Peshawar High Court judgement

⁷⁵ November 2013

⁷⁶ Members of the committee: Secretary Law, Parliamentary Affairs and Human Rights Department, Director General Local Government, Elections and Rural Development Department, Director Land Records, Board of Revenue and Secretary Delimitation Authority

⁷⁷ 19 and 20 March 2014 CIVIL APPEAL NOs. 38 TO 45 OF 2014 & CIVIL PETITION NOs. 26-K TO 34-K, 163 & 164 OF 2014 which was related to delimitation in Sindh and CIVIL APPEAL NO. 297 OF 2014 which was related to delimitation in Punjab

⁷⁸ See Para 64 & 79 of the judgment for exact instruction of the SC re required amendments

⁷⁹ Appointee of the Prime Minister

⁸⁰ 14 October 2014

⁸¹ 1 January 2015

⁸² January 2015

⁸³ Ordinances expire within ninety days

authority to delimit district and tehsil/town wards to the ECP and was contradictory to the newly established federal and provincial delimitation law.

The end result of these developments is an ambiguous legal framework with inconsistent hierarchy of law, which appears to give the authority for delimitation of villages and neighbourhoods (administrative units) to the ECP, while the authority for delimitation of the wards for districts and tehsils/towns (electoral constituencies) remains the responsibility of the Delimitation Authority⁸⁴. Contrary to the decisions of the Supreme Court to assign the authority for delimitation to the ECP, the final version of the KPLGA gives the government power of “notification”, making the KP government ultimately responsible for the result of delimitation. The role of the KP government was further upheld by the Peshawar High Court (PHC), which determined that since the Supreme Court only dismissed delimitations in Punjab and Sindh, there was no reason to dismiss delimitation conducted by the Delimitation Authority⁸⁵.

RECOMMENDATION: The KPLGA and the Delimitation of Local Councils Act 2015 be reviewed and harmonised with the federal legislation, to respect the hierarchy of law. Role of the Delimitation Authority and Rules for Delimitation of Local Councils be clarified.

ANALYSIS OF THE LEGAL FRAMEWORK

Analysis of the legal framework is made difficult because of ambiguous legal provisions and conflict between the federal and provincial laws, as well as the unclear legality of the delimitation rules. The KPLGA itself does not regulate the delimitation process in detail⁸⁶. The key delimitation issues defined by the KPLGA are:

- definitions of areas for village/neighbourhood councils;
- establishment of districts and tehsils/towns on the basis of West Pakistan Land Revenue Act 1967;
- establishment of the Delimitation Authority⁸⁷; and
- a loose requirement that the electoral constituencies (wards) be of equal population⁸⁸.

The key electoral standard in delimitation is a principle of equal suffrage for citizens⁸⁹, which is part of Pakistan’s international obligations under ICCPR⁹⁰. The KPLGA does not sufficiently protect equal suffrage, nor does the federal Delimitation of Constituencies Act 1947 (DoCA 1947)⁹¹. Neither the KPLGA nor the DoCA 1947 define delimitation cycles, which means that it is unclear how often should the ECP review the boundaries.

The Constitution of Pakistan and the primary legislation make the census a precondition for delimitation. However, the Government is not bound by a timeline for conducting a fresh census; the last census was carried out in 1998. Hence there is a need to allow some alternative at least on temporary basis to ensure protection of equality of suffrage.

RECOMMENDATIONS: The law be revised to introduce mechanism which restrict differences of population across electoral constituencies within the same council. The amendment also to regulate the process whereby the ECP may deviate from the general principle. Consideration should be given to allow 10 percent deviation of population between the constituencies, and only in exceptional cases up to 15 percent.

⁸⁴ To add to the confusion, the KPLGA determines that the areas of tehsils and districts are to be taken from the West Pakistan Land Revenue Act 1967

⁸⁵ April 2015

⁸⁶ Delimitation is mostly regulated by the Rules

⁸⁷ Removed by the 10 October 2014 ordinance, but re-established by 26 February amendment

⁸⁸ KPLGA art 10.3 “As far as may be, the wards for elections to the same council shall be equal among themselves in population”

⁸⁹ ICCPR article 25 defines “equal suffrage” as a basis for elections. The authoritative interpretation of article 25 (general comment 25) by the treaty monitoring body states “The principle of one person, one vote, must apply, and within the framework of each State’s electoral system, the vote of one electoral should be equal to the vote of another. the drawing of electoral boundaries and method of allocating votes should not distort the distribution of voters”

⁹⁰ Also, see CoE (Venice Commission): Code of Good Practice in Electoral Matters: variations in the size of the constituencies should be within 10 percent, and only up to 15 percent in exceptional cases with provided justification

⁹¹ DoCA art 40: “as far as practicable, be delimited having regard to the distribution of population in geographically compact areas” and “as far as may be the constituencies for election to the same Assembly shall be equal among themselves in population.” See DRI’s brief on delimitation: ELECTORAL DELIMITATION IN PAKISTAN: “FORMULA FOR INEQUALITY” <http://democracy-reporting.org/publications/country-reports/pakistan/briefing-paper-february-2015.html>

To ensure accurate figures, the amended legislation to give an explicit mandate to the ECP to delimit using voter registration data in case of outdated census data.

The legislation should establish an independent mechanism for periodic review of boundaries.

The electoral system under the KPLGA includes several types of constituencies which correspond to different levels of local councils. In the case of villages and neighbourhoods, the administrative and electoral units overlap, as the area of the village or neighbourhood council is a single electoral constituency with multiple members. This is not the case in tehsil/town and district councils, which need to be divided into several electoral wards. However, the legal framework does not provide clear distinction between delimitation of administrative units (councils) and electoral constituencies (wards). Furthermore, the laws are ambiguous and appear to assign the task of delimitation of administrative units to the ECP, while the delimitation of electoral units remains the task of the provincial executive authorities.

RECOMMENDATION: Legal framework be revised to include distinctions between local government administrative units and electoral constituencies (wards). Notification of local government administrative units (districts, towns and tehsils, neighbourhoods and villages) to be the authority of the provincial government, whereas electoral constituencies (wards) be defined by the electoral authorities (ECP).

The secondary legislation (administrative regulations) for delimitation includes the Election Rules, Delimitation Rules, the ECP Delimitation of Constituency Rules 2015 and notifications issued by the provincial government⁹². As with the laws, the secondary legislation is convoluted and ambiguous. The Delimitation Rules issued by the provincial Government were not amended after the primary legislation was amended and after the ECP issued its own rules for delimitation in 2015.

RECOMMENDATION: The rules for delimitation be reviewed and revised for compliance with the primary legislation. The authority to create rules be given to the body responsible for the conduct of delimitation.

DELIMITATION IN PRACTICE

The conflicting roles of provincial and federal authorities, laws and rules for delimitation had little influence on the actual conduct of delimitation, as the delimitation had already been finalised⁹³ and recognised by the Peshawar High Court⁹⁴.

Public information on delimitation processes and delimited constituencies is limited. Official information which is published in gazettes at the district level consists of a simple list with description of area belonging to the council or ward, with the number of seats and number of inhabitants, but only of village and neighbourhood councils. No other information was made publicly available⁹⁵ prior to the elections. Thus there was a lack of:

- maps of boundaries of administrative and electoral units;

Final Report and List of Neighborhood Councils in

Tehsil: Peshawar

District: Peshawar Khyber Pakhtunkhwa

S#	Name of the Village / Neighborhood Council	Charge No	Circle No.	Block No.	Name Patwar Circle/ Mauzzia/ Census Block # Included	Population	Population of Village/ Neighborhood Council	Numbers of General Seats.
47	Asia-I. (Neighborhood Council)	12	4	1	Baba Car Parking – Shangrila Hotel, Ghala Mandi.		8306	09
				4	Fatu Mandi – Half Torabaz.			
				5	Haider Manzal.			
				6	Qadri Masjid – Muhallah Barah.			
				7	Muhallah Naqiban, Muhallah Ghori Khan.			
				8	Usama Masjid – Tube Well.			

⁹² such as appointment of delimitation officers and constitution of Delimitation Authority

⁹³ 10 March 2013

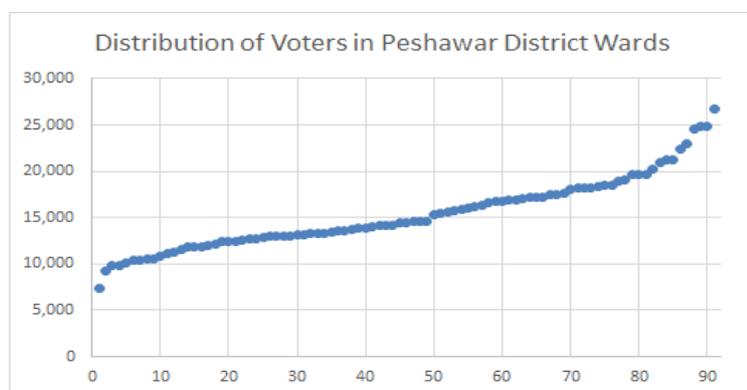
⁹⁴ April 2015; DRI was not able to find the judgement <http://tribune.com.pk/story/866590/petition-restraining-govt-from-holding-polls-dismissed>

⁹⁵ KP officials stated on several occasions to DRI that publishing of this information is not necessary as “the people know where are their constituencies and villages”

- description of the process of splitting union councils⁹⁶ into wards; and
- information on legal challenges and appeals⁹⁷.
- population (or registered voters) of district and tehsil wards

RECOMMENDATION: Delimitation information be released into the public domain with greater detail.

The process of delimitation began on 2 December 2013 and was finalised by notification⁹⁸ on 10 March 2014. It was overseen by the Delimitation Authority, chaired by Secretary of Local Government⁹⁹ with an additional four senior civil administration members. The Chairman of the Delimitation Authority appointed 25 Deputy Commissioners¹⁰⁰ to act as District Delimitation Officers. According to the Delimitation Rules, Delimitation Officers are required to finalise delimitation within 10 days from their appointment and prepare a preliminary report, which is to be made available for public inspection and complaints. Delimitation officers were given powers to propose the number of villages and neighbourhoods, as well as wards in tehsil/town and district councils. Once the list of villages, neighbourhoods and wards is published, voters are entitled to present complaints which delimitation officer adjudicates as “he thinks fit or necessary”¹⁰¹, but the legal framework does not elaborate describe further the complaints process.



Delimitation was conducted using old census block codes, from the 1998 census, which are incompatible with the census codes established in 2011 and used by the ECP in the electoral roll. Use of the old census block codes created problems for delimitation and consequently for electoral roll division, causing complications for candidates as they found themselves assigned to the wrong wards. A number of nominations were rejected as the candidates applied for nomination in wards where they

believed to be, but were not in fact, registered¹⁰². The ECP does not appear to have sufficiently advocated for use of the new census block codes. For example, the ECP’s letter to the provincial governments (Chief Secretaries) on 18 July 2013 makes no reference to census block codes.

In addition to the issues caused by use of old census codes, the major source of inequality of the vote was establishment of the tehsil/town and district wards along the lines of the old union councils¹⁰³.

RECOMMENDATION: Delimitation of wards for district and tehsil/town councils be conducted independently from the redundant boundaries of the defunct union councils.

⁹⁶ Union councils are local government units established under the previous elections and were used as the basis for establishment of district and tehsil wards by Delimitation Authority

⁹⁷ With the exception of the high profile petitions to the PHC on delimitation of Kohistan and to challenge the provincial authority over delimitation

⁹⁸ Issued by the Secretary Local Government

⁹⁹ Secretary Local Government, Elections & Rural Development

¹⁰⁰ Deputy Commissioners are chief civil administrators - head of the executive in the districts

¹⁰¹ KP Delimitation Rules art 10.04

¹⁰² DRI could not independently verify the extent of the problematic allocations. However, this was the most common complaint from political parties and candidates whom DRI met, with numerous reported instances of the members in the same household being registered in two different constituencies.

¹⁰³ KP officials confirmed that most of the wards were simply the old union councils, except in district with less than five union councils. In those district, union councils were partitioned to increase the number of wards to five.

7. ELECTION ADMINISTRATION

LEGISLATIVE ARRANGEMENTS FOR THE ELECTION ADMINISTRATION

While the Constitution assigns responsibility for conducting local elections to the ECP, the KP LGA gives power of secondary legislation (administrative regulations or “rules”) to the provincial government. This arrangement strips the ECP of ability to pass regulations and creates an ambiguous setup under which the provincial government and the ECP effectively share responsibility for the regulation and therefore also the administration of local elections.

The lack of the ECP mandate to create regulations is at odds with the provisions in the KPLGA which give arbitrary executive powers to the ECP so the KPLGA authorises the ECP to “exercise any of its powers to perform any of its functions¹⁰⁴” and to “exercise such other powers and perform such other functions¹⁰⁵”. The KPLGA, however, does not define functions of the ECP, which leads to confusion about the responsibility over certain processes. The most striking example was confusion over the authority to manage deployment of security personnel, which ultimately resulted in breakdown of the process in a number of polling stations. After election day, the KP government and the ECP publicly blamed the other, distancing themselves from the responsibility, which further undermined credibility of the elections.

RECOMMENDATION: Legislation be amended to give exclusive authority to create administrative regulations (rules) to the body administering electoral process. Functions of the election administration and provincial government be defined in the primary legislation.

THE ELECTION COMMISSION OF PAKISTAN

The ECP, a constitutionally mandated independent body, was led by acting Chief Election Commissioner (CEC) from August 2013 to December 2014, when, after due parliamentary process, a new CEC, Justice Sardar Muhammad Raza, was appointed. The electoral process for KP local elections had already started when the new ECP Secretary Babar Yaqoob Fateh Muhammad was appointed on 1 April 2015.

The ECP’s field infrastructure includes offices in every district of the provinces, managed by District Election Commissioners (DECs)¹⁰⁶. DECs are supervised by the Provincial Election Commissioner (PEC). However, instead of appointing its staff as election officers (as has been repeatedly recommended by observers), the ECP appointed temporary officers¹⁰⁷ among the provincial civil administration to serve during the KP local elections.

THE ELECTION OFFICERS

Temporary election officers¹⁰⁸ have prime responsibility for implementation of elections. These are District Returning Officers (DROs), Returning Officers (ROs), Assistant Returning Officers (AROs), and Presiding Officers (PrOs). The RO’s bear most of the responsibility, including in declaring the results, and also the work-load. Once the officers are appointed, the role of the ECP in management of the electoral process is limited, as the ECP has not developed systems for oversight and control of the election officers. Thus responsibility is effectively further diffused, with weakened accountability risking weak processes and increasing opportunity for abuse.

The ECP appointed 24 District Returning Officers and 405 Returning Officers on 4 March 2015. Each RO was assigned an ARO. However, in the following two months, the ECP issued seven modifications, replacing 20 percent¹⁰⁹ of the appointed election officers, as some of them refused the duty or claimed that they were not aware that they had been appointed. The ECP summoned some of the appointed ROs to a hearing at which they apologised to the ECP, which had reportedly been the first time the ECP had

¹⁰⁴ KPLGA, art 75

¹⁰⁵ KPLGA, art 76

¹⁰⁶ Reportedly, the ECP employs total of over 400 staff (including office support staff) in the province

¹⁰⁷ District Returning Officers, Returning Officers and Assistant Returning Officers

¹⁰⁸ Not an official term

¹⁰⁹ 81 out of 405 re-appointments

summoned an election officer for misbehaviour. The ECP accepted the apology and did not press for prosecution of the offenders.

DRI interlocutors, including ROs themselves, consistently referred to the lack of training and understanding of procedures by ROs. Many ROs reported calling DECAs (ECP permanent staff) for support and for interpretation of procedures, even though DECAs have no official role in the process¹¹⁰. The ECP provided¹¹¹ a training and a handbook (in English) for ROs; however, all election officers met by DRI reported that this support was insufficient for them to understand the process. The Handbook for DROs, ROs and AROs appears to be more of a systematised collection of legal provisions, without sufficient guidance on aspects not covered in the KPLGA and the Election Rules.

ROs are in charge of appointing PrOs (and other polling staff) who manage the voting and counting processes. RO and PrOs consistently reported to DRI that polling staff had been appointed to multiple polling stations as there was a lack of coordination between ROs. Both ROs and PrOs complained about the lack of support in recruitment of polling staff, particularly female officers.

RECOMMENDATION: The role of the DRO be given to the ECP's District Election Commissioner. Greater responsibility be given to the DROs, including supervision of ROs. The appointment system for ROs be reviewed, including considerations of mechanisms for long-term appointment of ROs, such as assigning the function of the RO to specific position in the civil administration¹¹².

Handbooks be reviewed and revised to include instruction and guidance for sensitive electoral processes which are not spelled out sufficiently in the primary and secondary legislation. Handbooks for temporary election officers be translated and distributed in Urdu.

¹¹⁰ The role of the DECAs is mostly logistical.

¹¹¹ With the support of IFES

¹¹² Similar to the case of DROs who are appointed among the Deputy District Commissioners

8. VOTER REGISTRATION

Only citizens of Pakistan who are older than 18 are eligible to vote. Only those who are registered in the electoral rolls are allowed to vote. However the KPLGA also allows the ECP to establish additional conditions for voter registration. This is potentially problematic for universality of the vote as it allows the ECP to use its executive discretion to limit enfranchisement.

The KPLGA also gives broad discretionary powers to the ECP to prepare the electoral roll. While electoral rolls for the National and Provincial Assembly elections are regulated by the federal Electoral Roll Act, there are no such provisions in the KPLGA and the Election Rules completely omit the voter registration process.

Legislation remains silent on the issue of residency and it is unclear whether the voter (and the candidate) must be a resident of the constituency where they are registered¹¹³.

RECOMMENDATIONS: The KPLGA amended to formalise authority of the federal Electoral Roll Act over voter registration. Discretionary powers of the ECP to establish additional conditions for voter eligibility in KP elections to be removed from the KPLGA.

The ECP's authority over the voter registration process is nominal, as voter registration in practice is managed by the National Database and Registration Authority (NADRA). NADRA maintains a civil registry which is based on Computerised National Identity Cards (CNICs), and produces the preliminary electoral roll which is delivered to the ECP for a display period. NADRA also produces the final list of voters which is distributed to the polling stations.

This arrangement, established after the 2008 elections, has resulted in significantly improved electoral rolls. However, the present institutional role of NADRA and consequently management of the electoral roll, has no basis in the legal framework. Also, currently there are no arrangements for removal of deceased voters, resulting in a somewhat inflated register which distort turnout figures.

RECOMMENDATION: Federal legislation to be reviewed and revised to formalise the relationship between the civil registry and electoral rolls. A system for updates of the electoral rolls be established.

The ECP displayed the preliminary electoral rolls from 6 to 15 March 2015, three weeks before announcing the schedule for elections. More than 1.2 million new voters were added to the rolls since the 2013 general elections. It is not known whether these were voters who turned 18 or simply obtained the CNIC in the past two years, as beyond the numbers of registered voters per district, no other information was released. Although the total number of new registrants was released, there was a lack of detailed information. For example the number of registered voters in a constituency can only be deduced by adding up the number of registered voters at each polling station using the polling scheme.

According to ECP staff members, the polling scheme was released only two weeks before the elections, being made available at ROs and DROs' offices. Interviewed candidates and civil society representatives reported confusion over where the polling scheme was accessible, and also commented that it was not in a uniform format and that some did not contain figures on registered voters.

RECOMMENDATION: The ECP pro-actively and promptly put detailed voter registration information in the public domain.

¹¹³ Civil registry in Pakistan includes "permanent" and "current" address and voter can be registered on either of them

9. CANDIDATE NOMINATION

LEGAL FRAMEWORK

The KPLGA stipulates candidacy criteria, including being 21 or older, being a citizen of Pakistan, and being registered on the electoral roll in the contesting constituency¹¹⁴. However subjective criteria are also included, which risk perceived or actual selective application. Candidates and elected members are required to be “of good character” and “not commonly known as one who violates Islamic injunctions”. Candidates are also required to have “adequate knowledge of Islamic teachings and practices,” and non-Muslims are required to be “have a good reputation”¹¹⁵. Such vague requirements are not consistent with Pakistan’s ICCPR commitments, with the authoritative interpretation of the treaty referring to “objective” criteria¹¹⁶.

Candidacy disqualification for five years after certain convictions, a prison sentence of more than three months, or removal from public service for moral reasons¹¹⁷ may be regarded as excessively punitive and an unwarranted limitation on the right to stand. Similarly, once elected, if a member of a local council is found to have contravened these qualifications, the council member is removed from office and is disqualified from being a candidate for three years¹¹⁸.

RECOMMENDATION: Candidacy eligibility criteria be revised to remove subjective criteria and to make disqualification terms proportionate.

The KPLGA bans candidates at the village/neighbourhood level from contesting with partisan affiliation¹¹⁹, which undermines the freedom of association, guaranteed under the ICCPR and the Constitution. Nomination forms in the Election Rules require some candidates¹²⁰ to declare that they are not members of a political party, further violating freedom of association and the right to be elected. The December 2013 version of the Election Rules required candidates contesting all seats at the village/neighbourhood level and candidates without a party ticket for district- and tehsil/town-level general seats to take an oath that they “do not belong to any political party”¹²¹. Positively this line in the oath was removed in the March 2014 version of the Election Rules for candidates contesting all village/neighbourhood council seats. However, the line remained in place for district and tehsil/town council general seat candidates without party tickets,¹²² which effectively disenfranchises party members who do not receive party tickets from contesting as independents.

The KPLGA allows women, youth, peasants and workers, and non-Muslims to contest seats beyond those specifically reserved for these “special interest groups.” For example, provided she meets all other eligibility criteria, a 25 year-old woman could choose to contest as a candidate for a general seat, reserved seat for women, or a reserved seat for youth. If she were a worker or peasant and/or a non-Muslim, she could also choose to contest for seats reserved for those “special interest groups” as well. And while the KPLGA allows non-Muslims to contest other seats, the Election Rules contradict this by requiring candidates for all seats (other than those reserved for non-Muslims) to declare an oath that they “believe in the absolute and unqualified finality of the Prophethood of Muhammad”¹²³. This

¹¹⁴ The legal framework appears to allow candidates to contest multiple seats concurrently (Election Rules. 14.6.), but not hold multiple seats if elected to more than one (KPLGA, article 85). However, it is unclear whether this was allowed in practice during the KP local elections. Some electoral stakeholders reported to DRI that multiple candidacies by a single candidate was disallowed in practice, presumably as it would have presented an overwhelming logistical burden; yet, others reported that they simply did not have any aspirant candidates attempt to contest multiple seats.

¹¹⁵ KPLGA, section 78(1)(d).

¹¹⁶ UN Human Rights Committee, ICCPR General Comment 25, paragraph 4: “The exercise of these rights by citizens may not be suspended or excluded except on grounds which are established by law and which are objective and reasonable.”

¹¹⁷ KPLGA, section 78(1)(g), (j) and (k).

¹¹⁸ KPLGA, section 78(2).

¹¹⁹ KPLGA, section 27(2).

¹²⁰ KPLGA, Form III, Declaration and Oath by the Person Nominated for District and Tehsil/Town Council general seats requires candidates to claim that “I belong to ____ and a certificate from the political party showing that I am a party candidate from the above said constituency is attached” or that “I do not belong to any political party.”

¹²¹ Election Rules. 17 December 2013. Form III.

¹²² Election Rules. 10 March 2014. Form III.

¹²³ Election Rules. 10 March 2014. Form III.

effectively creates a barrier for non-Muslims to contest other seats and is thus not consistent with Pakistan's ICCPR commitments as it serves as religious discrimination, contravening non-Muslims' right to be elected¹²⁴.

RECOMMENDATIONS: The KPLGA be revised to allow candidates to contest elections to village/neighbourhood councils with partisan affiliation.

Nomination forms be revised to remove oaths requiring candidates to declare that they “do not belong to any political party.”

Nomination forms be revised to remove or modify oaths in such a way that allows non-Muslims to contest all local council elections.

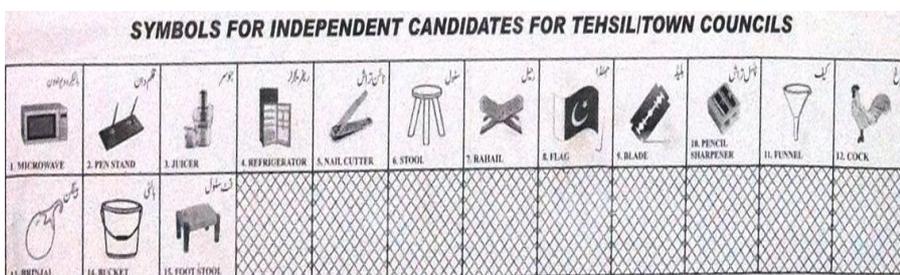
NOMINATION IN PRACTICE

Scrutiny of nomination papers and publication of validly nominated candidates took place from 20 to 25 April 2015. Forms were initially only made available in English, thereby making the process less accessible. Urdu forms were later made available, but still presented some challenge to the majority Pashto-speaking population. A further barrier was the lack of delimitation or polling scheme information, which is fundamental as aspirant candidates need to be able to verify where they are registered given that voter registration within a given constituency is a candidate eligibility criterion. A large number of aspirant candidates were reportedly rejected for submitting nomination papers to constituencies where they believed they were, but were not in fact, registered. Many of these rejections reportedly took place on the last day of candidate nomination scrutiny, which gave the rejected candidates no time to file new nomination papers in their actual constituencies.

Although the ECP has not provided detailed information, overall 10 percent of filed nominations were rejected¹²⁵. No overall information has been made available regarding the reasons for these rejections. Some ROs reported to DRI that most rejections were based on aspirant candidates filing in wrong constituencies (i.e. where they were not registered) and for youth seats were due to age criteria. There were also reports of candidates being requested to provide police-issued “character certificates,” which placed a particular burden on women candidates. Several candidates and ROs also reported that the period for receiving nomination papers from 13 to 17 April was too short and resulted in a chaotic atmosphere at many RO offices with a lack of uniformity in candidate scrutiny processes across the province.

Appeals against nomination decisions had to be filed by 28 April with decisions by 5 May. The ECP appointed 94 Appellate Authorities to adjudicate nomination appeals, but no summary information has been made available regarding how many appeals against candidate acceptance or rejection were filed, and of those how many were successful.

RECOMMENDATIONS: Procedures be established by the ECP to comprehensively collect and publish information on candidate nomination rejections, including the appeals process, in order to monitor and analyse application of candidate scrutiny criteria and provide for their consistent application.



Symbol allocation and the subsequent local publication of the final list of candidates took place on 6 May. Symbols and their process for allocation were specified in the Election Rules¹²⁶. While

¹²⁴ ICCPR, article 2: “Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

¹²⁵ ECP Number of Nominations filed/accepted/rejected against Seats in all three tiers Local Government Institution of Khyber Pakhtunkhwa. 30 April 2015. <http://ecp.gov.pk/Number%20of%20Nominations%20filed-%20accepted%20-rejected%20against%20Seats.pdf>.

¹²⁶ Election Rules. 10 March 2014. Schedule I.

ensuring enough appropriate symbols (in addition to those already allocated to parties) is challenging, the suitability of those used was questioned. For example, symbols included a gun, a combat tank, a syringe, and an ambulance (see Participation of Women section on the gender stereotyping of symbols allocated for village/neighbourhood reserved seats for women). The ROs allocated symbols according to standard ballot designs dependent on the number of candidates contesting and “as far as possible hav[ing] regard for any preference indicated by the candidate”¹²⁷. Multiple ROs reported to DRI that accommodating candidates’ preferences in this regard was challenging. Some candidates alleged being deliberately disadvantaged by being allocated less desirable symbols

RECOMMENDATION: Symbols are reviewed for appropriateness to promote participation and avoid gender-stereotyping. The ECP to consider allowing parties to register their own party logos/symbols. The ECP to consider assigning numbers to independent candidates.

FINAL CANDIDATE NUMBERS

In total there were 41,762 elected seats contested on 30 May 2015¹²⁸, the vast majority of which were for the lowest level village/neighbourhood councils (39,806)¹²⁹. Following nomination, a very large number of candidates withdrew from party-based races, including 24 percent of candidates at the district level and 21 percent of candidates at the tehsil/town level. However, only 8 percent of candidates withdrew from the non-party-based village/neighbourhood councils. Thus it appears that, as with other elections in Pakistan, many candidates withdrew after not being awarded a party ticket (which is given after nominations have been approved by ROs but before symbol allocation). Financial incentives and bargaining are frequently reported during this stage of the process.

In total there were 88,420 candidates contesting the KP local council elections (for seats contested on election day), an average of two per contested seat. While numerically this does not indicate high levels of competition, higher percentages of candidates at the district and tehsil/town levels, as well as the proliferation of diverse party alliances, appear to have created strong contests between opposing political forces across the province. Some unexpected political alliances were clearly made at a local level, resulting in certain candidates being supported locally by parties that are opposed nationally.

There was clearly variation in the number of candidates per contest, with the PEC reporting that 11 percent of constituencies had only the one unopposed candidate for each seat (4,705 in total). This clearly affected the village/neighbourhood council seats reserved for women, which had an average of only 1.15 candidates per seat, and 35 percent unopposed with just one candidate contesting per seat (2,348 in total).

No information has been provided on how many constituencies had no candidates, or their geographical spread, or what the arrangements will be for any such wholly uncontested seats. A large number of elections for reserved village/neighbourhood reserved seats for non-Muslims could not be held, with only 349 candidates contesting for the 3,339 total seats. Some election officials told DRI that wholly uncontested village/neighbourhood seats reserved for women would be contested again in by-elections, while village/neighbourhood seats reserved for non-Muslims would simply not be re-contested, though the legal basis for this distinction is unclear¹³⁰.

RECOMMENDATION: Party tickets are allocated earlier in the process to reduce opportunities for financial incentives and bargaining being part of the process.

¹²⁷ KP Local Councils (Conduct of Elections) Rules, 2013, 22(2)(a) and Schedule I.

¹²⁸ Note: this figure does not include reserved seat candidates for district and tehsil/town councils, nor does it include local council seats in Kohistan, where elections have been delayed.

¹²⁹ Final candidate figures for district and tehsil/town reserved seat had not been made publicly available by the time of this report’s publication, and the post-election change in the Election Rules means these figures may continue to change.

¹³⁰ KPLGA, section 81: “Casual vacancy. (1) If the office of a member or a Nazim and Naib-Nazim for any reason, falls vacant during the term of office of a local council, a new member or a Nazim and Naib-Nazim, as the case may be, shall be elected in the prescribed manner within ninety days from the date such vacancy is notified and he shall hold office for the residue of such term.” This article could be interpreted as meaning that all wholly uncontested seats, which necessarily create council member vacancies upon council formation, would require by-elections, including both those reserved for women and non-Muslims.

10. THE CAMPAIGN

LEGAL FRAMEWORK

Campaign activities were governed primarily by the KPLGA and the ECP-issued Code of Conduct for Political Parties and Contesting Candidates. The KPLGA outlines a series of campaign offenses¹³¹, including bribery of voters, exercising “undue influence,” making or publishing certain “false statements” about candidates, calling or holding meetings election day, “canvassing” and other campaign actions near polling stations on election day, and “assistance by government servants.” The Code of Conduct reiterates and expands on these campaign offences. Among other actions, the Code of Conduct bans: holding meetings within 48 hours of election day; driving voters other than immediate family members to polling stations; holding “political rallies and processions” outside of local government authorized locales; the use of campaign promotional materials larger than the regulated size; carrying and displaying weapons at campaign events and from election day until consolidated results announcement; acts of violence and incitement to violence; deliberate dissemination of false and malicious information; abusive language towards party leaders and candidates; campaigning by government officials, including the announcement of development schemes; and the “propagat[ion of] any opinion, or act[ion] in any manner prejudicial to the ideology of Pakistan, or the sovereignty, integrity or security of Pakistan, or the integrity or independence of the judiciary of Pakistan, or which defames or brings into ridicule the judiciary or the Armed Forces of Pakistan.” The ECP’s 4 April 2015 notification on the schedule of elections also elaborates on prohibited behaviour for government officials¹³².

Most of these campaign regulations, including those that restrict the freedoms of assembly and association, have been issued in secondary legislation (i.e. administrative regulations) as opposed to in primary legislation. Having such matters defined in secondary legislation risks excessive regulation by the election management body (and other administrative regulation-making bodies) and raises compliance issues with the ICCPR.

Additionally, the legal framework is overly restrictive regarding campaigning by government officials. The KPLGA bans “any assistance [by a person in the service of government] calculated to further or hinder the election of a candidate”¹³³, and ECP regulations demand that “the Prime Minister, Governor, Chief Minister, Speaker, Deputy Speaker, Federal and Provincial Ministers, Advisors to the Prime Minister or Chief Minister or any other holder of public office will not visit the area of any local council [...] to canvass or campaign for any candidate or political party”¹³⁴. The Code of Conduct for Political Parties and Contesting Candidates similarly forbids these officials and other government employees from “participat[ing] directly or indirectly in the election campaign of any candidate”¹³⁵. Pakistan’s international obligations, however, contain no provisions that forbid elected or appointed government officials from participating in electoral campaigns; instead, provisions exist to prevent such figures from misusing their governmental resources to advantage or disadvantage parties or candidates and, thus, abusing their official position to create an un-level playing field on which the elections are held¹³⁶.

¹³¹ See: KPLGA, sections 88-100.

¹³² ECP Notification No. F.8(1)/2015-LGE-KPK(1). 4 April 2015. 3.a. to 3.f.

¹³³ KPLGA, section 100: “Assistance by Government servants.---A person in the service of Government, the federal government, a local government, or a body owned or controlled by the Government, federal government, or a local government is guilty of an offence punishable with imprisonment for a term which may extend to six months, or with fine which may extend to twenty thousand rupees, or with both if he, in any manner, gives any assistance calculated to further or hinder the election of a candidate”; article 92(a). “Illegal Practice.---A person is guilty of illegal practice punishable with fine which may extend to ten thousand rupees, if he- (a) obtains or procures, or attempts to obtain or procure, the assistance of any officer or official of the federal government, Government or a local government or authority to further or hinder the election of a candidate”; and article 91(a)(iii) “Undue influence.---A person is guilty of undue influence, if he- [...] in order to compel any person to vote, refrain from voting, or to induce or compel any person to withdraw his candidature at an election, directly or indirectly, by himself or by any other person on his behalf- [...] uses any official influence or governmental patronage.”

¹³⁴ ECP Notification No. F.8(1)/2015-LGE-KPK(1). 4 April 2015. 3.d.

¹³⁵ ECP Code of Conduct for Political Parties and Contesting Candidates. 26.

<http://ecp.gov.pk/Notification%20Code%20of%20Conduct%2003-03-2015%20%20%28updated%29.pdf>.

¹³⁶ UN Convention Against Corruption, article 1: “The purposes of this Convention are: [...] (c) To promote integrity, accountability and proper management of public affairs”; and article 17: “Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally, the embezzlement, misappropriation or other diversion by a public official for his or her benefit or for the benefit of another person or entity, of any property, public or private funds or securities or any other thing of value entrusted to the public official by virtue of his or her position.”

Provisions in the ECP notification that prohibit government officials from using state resources to influence elections or announcing “development schemes” during campaigns¹³⁷ are in line with these obligations, similar to bans in other countries on campaigning by government officials during official hours of government business or using government-owned property. Outright banning of government officials from campaigning goes beyond the intent of these obligations and overly restricts freedom of expression.

RECOMMENDATION: The legal framework be revised to remove prohibitions on campaigning by government officials in a non-official capacity. Regulations defining acceptable and prohibited behaviour by government officials during campaigns be further elaborated to provide clearer guidance to those affected.

ABUSE OF STATE RESOURCES

For most of the campaign, the legal framework effectively prohibited all government officials, including elected MNAs and MPAs as well as provincial government ministers, from campaigning on behalf of their parties’ candidates (or against other parties and candidates) in the local elections. In the weeks leading up to election day, the ECP summoned various elected and appointed government officials, including leaders of prominent political parties in KP, before the Commission for reportedly breaking these and other provisions¹³⁸. Yet, no penalties were issued by the ECP, and reportedly some of those summoned simply issued public apologies for such behaviour.

On 25 May 2015, less than a week from election day, the Lahore High Court reportedly overturned a similar ban against elected officials from campaigning notified by the ECP for National and Provincial Assembly by-elections¹³⁹. One party reported to DRI that it interpreted the judgment to permit its elected leaders and those serving in government to campaign in the KP local elections, which some did in the final week of the campaign. Other parties reported believing that the judgement did not apply to the KP local elections and, as a result, adhering to the previous regulations and ECP instructions. Media reports suggested that the ECP was still seeking clarification from the court on this issue at the time of this report’s publication¹⁴⁰.



Advertisement for program with PTI leader on public radio station

Beyond government officials campaigning on behalf of parties and candidates, political parties and other interlocutors reported to DRI that abuse of state resources was a serious problem during the campaign, including the announcement of development schemes and the use of MPA development funds. DRI directly observed some examples of blurring of the lines between party and state including partisan media reports being published on a provincial government website¹⁴¹ and appearances of ruling-coalition party leaders on public radio stations during the final days of the campaign.

¹³⁷ ECP Notification No. F.8(1)/2015-LGE-KPK(1). 4 April 2015. 3.a. and 3.d. <http://ecp.gov.pk/Schedule%20Notification-1.%20dated%2004.04.2015.pdf>.

¹³⁸ See, for example, media reports: <http://www.dawn.com/news/1184289/ecp-disposes-of-petitions-against-ji-chief-others>; <http://www.brecorder.com/top-stories/0/1189476/>; <http://nation.com.pk/national/26-May-2015/ecp-summons-imam-masjid-for-lb-polls-code-of-conduct-breach>; and <http://tribune.com.pk/story/889279/no-electioneering-ecp-withdraws-notices-after-pti-cancels-rallies/>.

¹³⁹ ECP Notification No. F.8(4)/2013-Cord. 7 May 2015. <http://ecp.gov.pk/ViewPressReleaseNotificDetail.aspx?ID=6386&TypeID=1>.

¹⁴⁰ See, for example: <http://tribune.com.pk/story/917373/code-of-conduct-supreme-court-to-hear-ecp-plea-next-week/>.

¹⁴¹ See, for example, <http://lgkp.gov.pk/cm-asks-lg-polls/>; and <http://lgkp.gov.pk/pti-ji-and-aji-will-jointly-participate-in-the-coming-lb-elections/>.

CAMPAIGN FINANCE

The Election Rules limit campaign expenses to 50,000 rupees (roughly 450 EUR) for candidates for village/neighbourhood council seats and 200,000 rupees for district and tehsil/town council seats¹⁴². All candidates are required to submit reports to their respective ROs on their election expenses, including “bills, receipts, and other documents” to “vouch for every payment made” over 500 rupees, within ten days of the publication of elected candidates¹⁴³. No penalties are prescribed for violating these limits. Provisions included in the Code of Conduct for Political Parties issued for the 2013 general elections requiring candidates to open and use a specific account for election expenses¹⁴⁴ were not included in the Code of Conduct for Political Parties and Contesting Candidates utilised during the 2015 KP local elections.

As reported in the media¹⁴⁵, party representatives and other electoral stakeholders told DRI that campaign finance limits were flagrantly exceeded during the local elections. The EU election observation mission in 2013 noted, “as political parties under the Political Party Order of 2002 are not subject to adherence to a campaign finance ceiling, the regulation regarding candidates’ expenditures has little significance”¹⁴⁶.

Election expense reports are to be “open to inspection by any person” within six months of their submission for a “prescribed fee”¹⁴⁷. The requirement for a fee payment to access candidates’ financial statements does not help “enhance transparency in the funding of candidatures for elected public office” as referred to in the Convention against Corruption¹⁴⁸.

RECOMMENDATION: Information on campaign expenses is made more publicly accessible by removing the requirement for a fee to be paid.

CAMPAIGN PERIOD

The campaign period¹⁴⁹ effectively began on 6 May 2015 when the final lists of validly nominated candidates were published and ended at midnight between 28 and 29 May 2015¹⁵⁰. The campaign period was characterized by active competition¹⁵¹ among a wide range of political parties and candidates (with varied alliances), whose diverse views generally offered voters distinct choices when casting their ballots. No prominent political parties¹⁵² boycotted the elections, further strengthening the pluralism of the exercise.

The campaign period was largely peaceful¹⁵³, though electoral violence flared on election day and in the immediate post-election environment (see Election Day section below). The Pakistani Taliban, which unleashed unprecedented levels of electoral violence across KP and other regions of Pakistan during the 2013 general elections, including targeted killing of candidates and party activists, did not appear to engage in any electoral violence during the local elections.

¹⁴² Election Rules. 43(2).

¹⁴³ Election Rules. 43(3)-(5).

¹⁴⁴ Code of Conduct for Political Parties. 28 January 2013. 21 and 22.

¹⁴⁵ See, for example: <http://www.dawn.com/news/1183909/billions-pumped-into-lg-electioneering>.

¹⁴⁶ EU EOM Final Report. p. 27.

¹⁴⁷ Election Rules. 43(7).

¹⁴⁸ Convention Against Corruption, article 7(3).

¹⁴⁹ The legal framework does not define a specific campaign period, other than requiring the “date or dates on which a poll, if necessary be taken, which of the first of which shall be a date not earlier than the twenty-second day after the publication of the revised list of candidates” (Election Rules 13.g). This publication occurred on 6 May 2015 for the KP local elections, 24 days before election day.

¹⁵⁰ ECP press release “The Election Commission of Pakistan has Fixed the Cut Date for Election Campaign Period of Local Government Elections in Khyber Pakhtunkhwa.” 21 May 2015.

¹⁵¹ Competition was particularly strong at the district and tehsil/town level where a higher percentage of candidates contested the elections. Village/neighbourhood level elections were less competitive, as many candidates won their seats unchallenged and other seats went wholly unchallenged.

¹⁵² to DRI’s knowledge, elections were boycotted by Christian Democratic Party which challenged legitimacy of the on electoral system <http://www.thenews.com.pk/Todays-News-2-321264-CDP-thanks-non-Muslims-for-rejecting-KP-polls>

¹⁵³ Interlocutors reported to DRI only one instance of violence during the campaign period: the killing of a village council candidate in Samandi, LakkiMarwat, reported on 25 May 2015. <http://dailyaaj.com.pk/epaper/epaper-detail.php?image=MTE1Mzgx>.

11. ELECTION DAY

SECURITY

Election day was marked with violence. According to media reports, more than a dozen people were killed and several dozens were injured. Security forces appeared to have been unprepared. In apparent knee-jerk reaction, ANP leader Mian Iftikhar was arrested after a PTI activist was killed, which raised tensions between the provincial governmental coalition and the opposition parties. Reports of violence, as well as removed and damaged or destroyed ballot boxes dominated TV news reports.

“The bottom line is that the elections were mismanaged,” acknowledges KP Chief Minister Pervez Khattak. “It all boils down to one thing, there was no preparation and no management,” he says. “There are lapses on the part of the ECP but then there have been lapses on the part of the district returning officers, who were deputy commissioners and the police. We are looking into it and will take action.” Dawn, 12 June 2015

Prior to election day, more than 60 percent of the polling stations in the province were declared by the police as “sensitive” or “most sensitive” polling stations. Provincial police officials reported to DRI, deployment plans focused on potential disruption of elections by the Pakistani Taliban and “clashes on Election Day were not anticipated”.

Deployment of the police was especially problematic for polling stations for women, as there are only 359 women officers in total, while there are 3059 stations exclusively for women and 4724 combined for women and men. Thus the police resorted to deploying women teachers and nurses to provide security to polling stations for women.

The provincial security establishment reported requesting from the federal ministry of interior for additional security forces from Kashmir and Gilgit Baltistan, but that this was apparently turned down by the respective governments. District police officers report being directed by their supervisors to arrange police meetings of all contesting candidates with the relevant RO and election commission staff; however, no RO reported to DRI having held such a meeting.

RECOMMENDATIONS: ECP, provincial government, and security forces review risk assessment and security planning processes. The provincial government establish election operation centre for coordination of deployment between various security forces and facilitation of rapid reaction deployment. Secure sufficient number of women in security personnel.

VOTING AND COUNTING

More than 98,000¹⁵⁴ polling officers were recruited to administer the local elections in more than 11,000 polling stations. Each station was managed by the PrO and could have had several polling booths. ROs and PrOs reported difficulties in recruitment of women for polling duties and that many polling staff on election day did not turn up to work.

Observers and agents reported that the voting process was time consuming as a result of voters needing to be issued six to seven ballots each¹⁵⁵ and that voters were often confused with the procedures at the polling booth. Since the ECP opted to print uniform ballots throughout the province for elections to village/neighbourhood councils, in many constituencies ballots contained more electoral symbols than contesting candidates¹⁵⁶, which contributed to a high number of invalid ballots. As candidates’ names were not printed on the ballots for the village/neighbourhood contests, the Election Rules stipulated that ROs were to “arrange to exhibit prominently at each polling station the name and symbol of each contesting candidate”¹⁵⁷ None of the polling stations visited by DRI posted information on which

¹⁵⁴ 11,403 Presiding Officers, 55,646 Assistant Presiding Officers and 31,882 Polling Officers.

¹⁵⁵ Most polling stations only issued six ballots, as so few seats reserved for non-Muslims were contested.

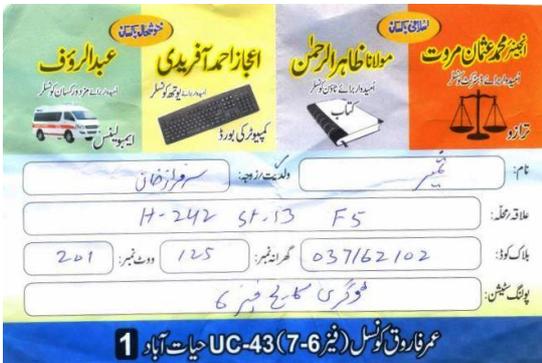
¹⁵⁶ See Election Rules, article 20 and Schedule I. For example, if less than five candidates were contesting a given seat, the corresponding symbols for contests of this size would be issued to the candidates, but the ballot would contain all five symbols regardless of whether there were two, three, four, or five candidates.

¹⁵⁷ Election Rules, article 22(3).

symbols corresponded to which candidates, so the voters in these stations relied exclusively on candidates' campaign materials, including "perchis"¹⁵⁸ distributed on election day.

RECOMMENDATIONS: Consideration be given to invalidating non-assigned symbols on the village/neighbourhood ballots prior to election day, under scrutiny of agents and observers.

All polling booths post information on candidates' names and their corresponding symbols for contests where ballots lack candidates' names.



Sample of "perchi"

As in the 2013 general elections, the ECP choose not to sort the records on the electoral roll alphabetically, or by the CNIC number. This effectively meant that unless a voter hands a perchi (obtained from a party or candidate camp) to the polling staff with the voter registration information, there is processing delay. Without a perchi, polling staff had to browse through the whole electoral roll to verify the registration of a given voter. This undermined the secrecy of voting, as before coming to the polls, voters in effect needed to obtain a perchi, which commonly included partisan insignia, so it was obvious for whom the voter was likely to be voting for¹⁵⁹.

RECOMMENDATION: The electoral roll be sorted to expedite identification of voter. Voter lists be placed outside the polling station, so that voters can find their record before approaching polling staff.

The ECP did not establish a formal complaint mechanism at the polling station. Rather, it provided PrOs with summary trial powers. This means that the PrOs had the power to receive¹⁶⁰ and decide complaints on the spot. Information on how many complaints were received by PrOs is not publicly available. ROs were provided with the form to record any complaints and actions taken, but it is not clear whether or how the ECP utilised this information.

RECOMMENDATION: Legislation be revised to regulate the election day complaints process, including appropriate recording of complaints and opportunity for second instance review, instead of summary trial procedures.

¹⁵⁸ "Perchis" are papers slips with voter registration information, sometimes containing a mock ballot, typically distributed by campaign workers near polling stations on election day.

¹⁵⁹ The Supreme Court prohibited perchis in the 2013 general elections, but this issue is not regulated in the KP elections.

¹⁶⁰ The ECP imposed 50 PKR fee.

12. RESULTS

COLLECTION AND CONSOLIDATION

Following the count at polling stations, results went to ROs, who were responsible for collection and consolidation¹⁶¹. Neither the law nor the administrative regulations define the process and the timelines for transfer of sensitive election materials from polling stations to the ROs. Furthermore, the Rules and the Handbook for ROs provides no instructions on how to handle the sensitive materials and what checks should be made. ROs and the ECP staff reported to DRI that the PrOs simply dropped off the materials and left while some reported that the polling station results were incomplete.

The ROs found the process of consolidation hard and demanding. The sheer volume of the forms meant that the task extended well beyond the 07 June 2015¹⁶² deadline for announcement of results.

The legal framework does not regulate review of tendered and challenged ballots, *de facto* leaving it to the RO's discretion whether such ballots are included in the tabulation or not, thereby risking apparent and/or actual selective use of procedures. Also, the Rules allow the RO to determine "reasonableness of the challenge" submitted by the contesting candidates prior to tabulation process.

The transparency of tabulation was problematic. The ROs reported that the consolidation was done mostly without the presence of observers and candidates' agents, some citing lack of interest¹⁶³, some security concerns¹⁶⁴.

RECOMMENDATIONS: Legislation to be reviewed to regulate transfer and tabulation processes, including in regards to transparency, and to reduce Returning Officers' discretionary powers in tabulation process.

PUBLICATION

Publication of the provisional results (of the count) was particularly problematic. The provisional results were sometimes posted at the ROs' premises, sometimes at DROs', and in some cases the ROs claimed that they reported directly to the ECP and therefore did not publish. Presentation of the provisional results was not in a consistent format, for example some were in Urdu and others were in English. While some included candidates' symbols, many forms omitted this information. Source of the confusion was partially in the fact that the ECP Handbook for ROs introduced additional provisional results form which does not exist in regulatory framework.

Anticipating challenges in publication of the results, the KP government intended to establish a "Control room for consolidation of results", but this plan was abandoned after an ECP's intervention¹⁶⁵. The ECP claimed to have established such centre at the Provincial Election Commissioner office, however, this centre was not operational.

As reported by the ROs, the results were to be sent to the ECP for official gazette notification, however, the ECP

LOCAL GOVERNMENT ELECTIONS KHYBER PAKHTUNKHWA 2014
NAME OF THE RETURNED CANDIDATES
(VILLAGE COUNCIL)

In pursuance of the provisions of Rule 47 sub-rule (1) of the Khyber Pakhtunkhwa Local Councils (Conduct of Elections) Rules, 2014, the names of the candidates returned to the seats in Village Council No. 166-Mauzoo-146 of Tehsil Peshawar District Peshawar are mentioned hereunder for publication in the official Gazette by the Election Commission.

(GENERAL SEATS)

S. No.	No. & Name of Ward	Name of Returned Candidate	Father/Husband Name	Address
1	Village No. 166-Mauzoo-146	Gaber Khan	Yaqub Khan	Behar Khan, Behar Khan, Peshawar.
2		Wazir Khan	Muhammad Khan	Behar Khan, Behar Khan, Peshawar.
3		Mr. Rehman	Yaqub Khan	Maharaj, 61st Street, Peshawar.
4		Basim Gul	Gilani Shah	Maharaj, 61st Street, Peshawar.
5		Sada Muhammad	Yaqub Muhammad	Behar Khan, 61st Street, Peshawar.
6		Said Khan	Said Khan	Behar Khan, 61st Street, Peshawar.
7		Sayid	Sayid Muhammad	Maharaj, 61st Street, Peshawar.

(WOMEN SEATS)

S. No.	Name of Returned Candidate	Father/Husband Name	Address
1	Farida Begum	Muhammad Khan	Behar Khan, 61st Street, Peshawar.
2	Farida Begum	Muhammad Khan	Behar Khan, 61st Street, Peshawar.

(YOUTH SEATS)

S. No.	Name of Returned Candidate	Father/Husband Name	Address
1	Muhammad Khan	Muhammad Khan	Maharaj, 61st Street, Peshawar.

(PEASANTY/WORKER SEATS)

S. No.	Name of Returned Candidate	Father/Husband Name	Address
1	Muhammad Khan	Muhammad Khan	Maharaj, 61st Street, Peshawar.

(NON-MUSLIM SEATS)

S. No.	Name of Returned Candidate	Father/Husband Name	Address
1	Muhammad Khan	Muhammad Khan	Maharaj, 61st Street, Peshawar.

Municipal Officer (MCP),
RETURNING OFFICER-21
District Peshawar

DEPUTY COMMISSIONER
DISTRICT RETURNING OFFICER

Sample of official results

¹⁶¹ Tabulation, aggregation of results from polling stations in constituency

¹⁶² ECP official election schedule/notification

¹⁶³ "Agents collect results from polling stations by themselves"

¹⁶⁴ "We have locked our doors from outside and working inside to compile result"

¹⁶⁵ <http://ecp.gov.pk/ViewPressReleaseNotificDetail.aspx?ID=6409&TypeID=0>

found that it lacked capacity to process the results¹⁶⁶ and it requested D/ROs to prepare district-level gazettes and to publish the final results. Thus D/ROs started posting the final results in their premises as they would finalise tabulation.

Ultimately, the ECP published the final results on their webpage on 24 June 2015, 18 days after the legal deadline. The ECP chose not to disclose any information beyond what is legally obliged - a list of returned candidates. Thus, legal provisions for the publication of the final results proved to be inadequate as they require the ECP to merely lists the winner's name without detailing party affiliation or results data such as numbers of votes cast for any of the candidates, invalid votes, total votes cast, total registered voters, or a breakdown by polling station.

A number of party leaders complained to DRI that the winning candidate changed between provisional and final result, however, without data available, this is impossible to verify¹⁶⁷. However, changes in the results were one of the reasons for the 03 July 2015 petition to the PHC (see post-election developments).

RECOMMENDATIONS: The ECP establish and manage a consistent reporting modality, harmonising the design of results forms used by ROs, to include provision of complete relevant data such as the numbers of registered voters, invalid ballots and ballots for all contesting candidates.

The legislative provisions be amended to include a clear deadline for publication of results and to require a full breakdown of results data. The ECP to publish results on its webpage.

RESULTS ANALYSIS

The ECP published a consolidated list of returned candidates on 23 June 2015. The list indicated wards and councils where the “result held up due to re-poll recommendations by DRO”. On 08 July, the ECP published overview of partisan affiliations for each elected seat in district and town/tehsil ward, allowing for some analysis of performance of parties¹⁶⁸. No other election results data were released, making accurate results analysis virtually impossible.

On 25 June, the ECP notified the list of 356 polling stations¹⁶⁹ where the elections would be repeated¹⁷⁰. The polling stations included in the list were suggested by the DROs.

At the time of writing this report, the turnout figures were not available. According to the Rules, the ROs should report turnout within two months of the elections. On the basis of a number of provisional results from Peshawar District collected by DRI, the estimated turnout ranges from 35-50 percent.

¹⁶⁶ As stated by ECP official

¹⁶⁷ The process of tabulation and announcement of results was similar to the process in Balochistan local elections, with one key difference: for a brief period the ECP published the Balochistan preliminary results on its website, which showed that there were changes between the provisional and official results.

¹⁶⁸ <http://ecp.gov.pk/Party%20position%20Statement%20Tehsil%20and%20Town.pdf> and <http://ecp.gov.pk/Party%20position%20Statement.pdf>

¹⁶⁹ 3 percent

¹⁷⁰ Initially re-polling was schedule for 05 July 2015, which was challenged in the high court

13. SCRUTINY OF THE PROCESS

THE MEDIA

The media coverage of the process was vibrant. Reporters and editors DRI met with in general stated that pressure on the media is low and that journalists covering elections are not threatened and targeted. However, the media paid little attention to the administration of elections before the election day. The pre-election reporting was mainly focused on larger campaign events to which the reporters were invited. Challenges and potential shortcomings in the process (which ultimately resulted in troubled elections) received limited coverage.

The electoral events were mostly reported by the KP based media. National media limited their coverage of the elections to the regional pages, which are published only in the provincial editions¹⁷¹. Reporting on elections increased significantly on election day and in post-election period, covering freely the violence and problematic publication of results.

However, the media had virtually no opportunity to engage with the senior ECP officials, as the ECP has not developed communication strategy to keep the public informed on the developments in the electoral process. The ECP does not organize press briefings and communicated with the media by issuing press releases.

RECOMMENDATION: The ECP to establish media centre which will serve as information hub. The ECP to update the public through the regular press conferences.

ELECTION OBSERVERS

As in the federal legislation, the framework for election observers in KP elections is insufficient. There are no provisions securing the right to observe in the KPLGA. The Rules, which define who can be present at the polling station during the vote count, note that “No person other than the Presiding Officer, Polling Officers and persons on duty in connection with the poll, the contesting candidates, their election agents and polling agents shall be present at the count”¹⁷². It is not clear if observers might be counted as “any other person on duty in connection with the poll.”

In the absence of legal provisions, the ECP did not implement sufficient administrative measures to protect election observation. The power of D/ROs and PEC to accredit national observers is mentioned in the Handbook for D/ROs, which the ECP did not make public. The Free and Fair Election Network (FAFEN) reported to have received accreditations from D/ROs “under the instructions given by the ECP”. The Handbook refers to international observers being accredited by the ECP. However the process of applying for accreditation and potential rejection lacks accountability and transparency, which DRI experienced with the ECP not answering DRI’s request for accreditation¹⁷³.

The ECP issued a Code of Conduct for Election Observers¹⁷⁴ which is effectively a list of restrictions for election observers. The Handbook for D/ROs indicates that “observers may observe polling on Election Day”, but it does not mention other phases of electoral process. The Handbook also does not provide practical guidance to PrOs on how to manage observers.

The most prominent election observation effort was by FAFEN, which reported to have deployed 987 observers to as many as 3,000 polling stations in all KP districts. FAFEN reported that 34 observers were prevented from observing elections, despite having proper accreditations¹⁷⁵. In addition to FAFEN,

¹⁷¹ The national media focused on hearings conducted by judicial commission which investigates fraud allegations at the 2013 General Elections.

¹⁷² art 38(3)

¹⁷³ The ECP officials stated that the “file is sent to the Ministry of Interior for review”

¹⁷⁴ 30 March 2015

¹⁷⁵ Free and Fair Election Network. Khyber Pakhtunkhwa Local Government Elections 2015: Preliminary Observation Findings and Recommendations for Reforms. pp. 8-9.

elections were on smaller scale observed by the Human Rights Commission of Pakistan (HRCP) which issued a statement¹⁷⁶ and Omar Asghar Khan Foundation, which has not issued a public report¹⁷⁷.

RECOMMENDATION: The KPLGA to be amended to protect the rights of observation. The rules be amended to create a clear accountable process for reviewing applications and issuing accreditation for observers and journalists. Training be improved for POs and security personnel to highlight the roles and rights of accredited observers and journalists, including updating the Code of Conduct for security personnel to make specific reference to allowing access to observers and journalists.

CANDIDATES' AGENTS

According to the legal framework, each candidate has the right to deploy an agent at the polling station, to observe the process and represent the candidate. Prior to election day, election officials expressed concerns about the sheer number of candidates' agents and decided that village/neighbourhood councils candidates will not be allowed to the polling station, to reduce the number of agents thereby keeping the polling station manageable. To DRI's knowledge, this policy was not formalised, but was implemented. The polling stations had large presence of agents from all parties, but no agents from candidates for village/neighbourhood councils.

RECOMMENDATION: The ECP to develop procedures for management of overcrowding of polling stations, providing fair access to agents of all candidates.

¹⁷⁶<http://hrcp-web.org/hrcpweb/hrcp-welcomes-polls-in-kp-slams-violence-curbs-on-womens-vote>

¹⁷⁷ OAK foundations however publicly commented on the process in the TV shows

14. ELECTORAL DISPUTE RESOLUTION

The legal framework for Election Disputes Resolution (EDR) recognises implicitly several categories of disputes:

- complaints and petitions to Registration officers related to the individual voter record in the electoral roll
- petitions to an Divisional Appellate Authority on delimitation
- petitions to an Appellate Authority against rejection of nominations by ROs
- complaints to electoral officers on any issue related to electoral process
- election petitions made by a candidate to an Election Tribunal

Petitions to the Supreme Court and high courts related to fundamental constitutional rights are not explicitly mentioned in the KPLGA and the Rules, but are covered with the Constitution.

PETITIONS TO APPELLATE AUTHORITIES ON CANDIDACY

The process of petitions on decision of the ROs to accept or reject application for candidacy are not regulated by the primary legal framework, the KPLGA. There is a lack of the basic principles of transparency and the rule of law, with only a few provisions listed in the Rules. The Rules establish the Appellate Authority (AA), without describing the appointment process or who should carry such positions. The AA may accept or reject an appeal and also has powers to initiate review of an application accepted by an RO, “if it is of opinion” that the candidate may not be eligible for candidacy. However, they may completely ignore the appeal, as “an appeal not disposed off within the specified period shall be deemed rejected”. Beyond definition of these powers, the legal framework remains silent about the process. For example there is no mention of time limits, thus there is a risk of delayed justice.

The void in the legal framework is not addressed by the ECP. The process of appeals to candidacy is in effect outsourced to the judiciary through the AAs which function essentially autonomously from the ECP. The ECP appointed 94 AAs from district and session judges in the province, but has not established any management mechanism, thereby again weakening accountability. For example the ECP has no system for the reporting of information on how many appeals were received and disposed of. This in effect means that no consolidated information on appeals is available¹⁷⁸, thus reducing opportunity for scrutiny and check on the process.

COMPLAINTS TO ELECTION OFFICERS

The legal framework for processing of complaints to the electoral officers (DROs, ROs and PrOs) is inadequate. Neither the KPLGA nor the Rules address the complaints process at all and leave undefined who, how and when a complaint can be lodged. In the absence of the legal provisions, the ECP did not develop administrative mechanisms, so the handbooks for electoral officers also do not establish procedure for complaints. Despite that, the ECP handbooks assigned the responsibility to DROs and ROs to “chalk out complaints resolution mechanism”¹⁷⁹ and to “dispose complaints received from ECP/PEC/REC/DEC promptly”¹⁸⁰.

Election officers are instructed to resolve complaints summarily and the PrOs are granted the status of the magistrate first class, which gives them powers to investigate, summon and imprison. There is no specific complaints form, rather the officers maintain a log of cases. The PrOs use a pro-forma log extracted from the 1898 Penal Code. In practice the majority of election officers likely lack the legal training to enact this complaints mechanism, especially at the polling stations. Candidates mostly lodge complaints at the RO or PEC level rather than at polling stations.

If the the officers refuse to consider the complaint, the legal framework does not provide remedy. Most importantly, there is a complete void in the legal framework, administrative regulations and the ECP practice in regards to opportunity for review of complaints by a higher body, such as a Provincial

¹⁷⁸ The only way to obtain information about the appeals process is to request individual court file from the court registrar.

¹⁷⁹ D/RO handbook, page 15

¹⁸⁰ D/RO Handbook page 16

Election Commissioner or the ECP in Islamabad. In these cases, the only available option (and only for candidates) is to challenge results of election in the Election Tribunal or petition high courts for breach of fundamental rights.

ELECTION PETITIONS

The KPLGA and the Rules restrict the right to file election petitions to candidates only¹⁸¹, which is contrary to the rights guaranteed by the Constitution of Pakistan¹⁸² and the ICCPR obligation “to ensure that any person whose rights or freedoms... are violated shall have an effective remedy”¹⁸³. Election petitions are only adjudicated by the Election Tribunals and the ECP does not assume any role in reviewing them before the trial. This effectively removes the opportunity for a process under which the ECP may provide remedy as the first instance and the Tribunal to serve as an appellate, second instance court. While the KPLGA does not specify how the tribunal officers are selected, in practice the ECP appoints district judges. For the KP elections, the ECP appointed 92 judges on 4 June 2015. The legal framework allows candidates to file petition within 20 days from the notification of the returned candidates.¹⁸⁴

Legal framework for adjudication of election petitions is contradictory. On one hand, the KPLGA gives the authority to appoint the Tribunals and to develop the rules for adjudication to the ECP. On the other hand, the provincial Rules outline the process for submission of the petition and, stripping the ECP of any role in the process. The procedures for adjudication of the petitions, as defined in the Rules, are comparatively better than the framework for adjudication of petitions in the federal elections. The rules include many important elements of the process: burden of proof, guidance on decisions, guidance of the process etc.¹⁸⁵. However there are some shortcomings that warrant review, such as making all candidates respondents in the case.

Judges of Election Tribunals have not received any training on the legal framework for elections or the procedures for resolution of petitions. The ECP produced a Handbook for Tribunals¹⁸⁶ but some of the judges stated to DRI to have never received it.

RECOMMENDATIONS: The KPLGA and the Rules be comprehensively reviewed to establish complaints, appeals and petition process in the legal framework.

The ECP provide clear guidance on transparency and accountability of the election officers in the disposal of complaints. The procedure for collection of results to include review of complaints lodged on election day.

The KPLGA to be amended to assign the responsibility of the first instance review and adjudication of election petitions to the election administration (ECP).

The ECP to provide training to the Tribunals on electoral process and dispute resolution regulations.

¹⁸¹ KPLGA art 87, Rules art 44

¹⁸² art 199

¹⁸³ ICCPR article 2(3)(a) “To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity.”

¹⁸⁴ the fact that the returned candidates were notified twice, once by the ROs and once by the ECP on 23 June 2015, introduces certain ambiguity about the time-line for the petitions.

¹⁸⁵ Resolution of election petitions in Pakistan is based on the Code of Civil Procedures of 1908. This effectively means that the election petitions are not processed under expedite procedures, but are more similar to the civil litigation process which make other candidates respondents in the petition. Coupled with the lack of timelines, the adjudication processes are lengthy and often sometimes render decisions redundant.

¹⁸⁶ With IFES support

15. PARTICIPATION OF WOMEN

Women are underrepresented as voters, candidates, and election officials in KP, and obstacles to their equitable political participation persist.

According to the KP Bureau of Statistics, in 2014 women were estimated to comprise approximately 48.8 percent of the population of KP¹⁸⁷. However, according to data provided by the ECP, women make up only 42.9 percent of voters registered on electoral roll in KP, whereas men make up 57.1 percent, representing a gap between population and registration percentage of roughly 5.8 percent province-wide. This gap is most pronounced in Dir (Upper), Dir (Lower), and Hangu, where the differences between the recorded population and registration percentage are 10.4 percent, 9.9 percent and 9.4 percent, respectively. The gap is least pronounced in D.I. Khan, Tank, and Nowshera, where the differences are 2.5 percent, 3.7 percent, and 3.9 percent respectively.

Since the 2013 general elections, voter registration among men in KP has increased by roughly 4.6 percent (at least 558,235 new registrants), whereas registration among women increased by roughly 8.4 percent (at least 435,833 new registrants)¹⁸⁸. At least nine districts in KP experienced increases in women's registration of 10 percent or higher¹⁸⁹, including three districts which experienced increases of 15 percent or higher: Dir (Upper) at 15.1 percent, Bannu at 15.6 percent, and Torghar at 16.1 percent. While the voter registration gap persists for women in KP and throughout Pakistan, such increases represent commendable progress towards reducing barriers for women's political participation.

RECOMMENDATION: Efforts are continued and expanded to increase voter registration among women, and thus reduce the registration gap.

Men and women vote separately in Pakistan, either in separate polling booths¹⁹⁰ within a “combined” polling station or utilising male- and female-only polling stations. In the KP local elections, 42.1 percent of polling stations were “combined” (4,724), whereas the remaining 57.9 percent were male- (3,428) or female-only (3,059)¹⁹¹. To facilitate women voting, according to the ECP-provided Handbook for DROs, ROs, and AROs, ROs are encouraged to select women to serve as polling staff in female polling stations and booths, and if not then an elderly man with “at least one female [Polling Officer] and [Assistant Presiding Officer] at each booth” in instances “where female staff is not available” in rural areas¹⁹². Moreover, election officials reported to DRI that it is their practice to recruit female security personnel to serve on election day at female polling booths and female-only polling stations. However, these directions and practices are not formalised in law or administrative regulations. Election officials and observers reported to DRI that the lack of female polling staff in some areas¹⁹³ and low numbers of female security personnel throughout the province presented obstacles to women voting. According to the KP provincial police, there are only 359 women serving as constables in KP, which made it impossible to deploy women constables to all female-only polling stations and female polling booths at combined stations.

RECOMMENDATION: Increased efforts are made, including possibly through amendments to the legal framework, to ensure that there is at least one female polling staff member present at all times in female polling booths and stations, and to recruit and train female security personnel to serve on election day.

¹⁸⁷ KP Bureau of Statistics. Demography Data 2014. 06 May 2014. http://kpbos.gov.pk/prd_images/1399372174.pdf.

¹⁸⁸ Note: these percentages exclude registrants in Kohistan and Kohistan (Lower), where elections did not take place and new registration information was not provided by the ECP.

¹⁸⁹ Bannu, Chitral, Dir (Upper), Hangu, Karak, LakkiMarwat, Mansehra, Swabi, and Torghar. Kohistan is unknown, as its 2015 registration data was not provided by the ECP.

¹⁹⁰ The term polling booth in Pakistan refers to a room or area where the polling process takes place, as opposed to the voter screen behind which voters cast their ballots, which is often called a booth in other countries. See: ECP Election Glossary. http://ecp.gov.pk/Misc/Glossary_Final.pdf

¹⁹¹ ECP Statement Showing No. of Polling Stations for Local Government Elections, 2015 Khyber Pakhtunkhwa.

¹⁹² ECP Handbook for DROs, ROs, and AROs. p. 70.

¹⁹³ For example, see FAFEN's “Khyber Pakhtunkhwa Local Government Elections 2015: Preliminary Observation Findings and Recommendations for Reforms.” 31 May 2015. pp. 9-10.

According to media reports, the practice of local leaders conspiring to bar women from voting continued in some areas during the KP local elections, including in Dir (Lower)¹⁹⁴, Hangu¹⁹⁵, Malakand¹⁹⁶, and Swat¹⁹⁷. This practice constituted a serious problem in the 2013 general elections, and efforts since that time have been made to eliminate the practice. These commendable efforts include provisions in the ECP-issued Codes of Conduct for Political Parties and Contesting Candidates, Polling Agents, and Security Personnel¹⁹⁸; the ECP's 27 May 2015 press release highlighting the issue¹⁹⁹; civic group facilitation of political agreements affirming women's right to vote²⁰⁰; and a voter education text message sent widely throughout the province before election day noting the illegality of the practice. Though it is currently under challenge at the Peshawar High Court, the ECP's ground-breaking 2 June ruling to re-poll an entire by-election for a provincial assembly seat (PK-95) as result of the absence of women voting may set a precedent for further interventions of this kind.

In a positive development, the KP provincial government amended the Election Rules in February 2015 to allow for the collection of gender disaggregated voter turnout data during counting and consolidation of results. This is consistent with the General Recommendation of the CEDAW treaty monitoring body which refers to state parties reporting statistical data "disaggregated by sex, showing the percentage of women relative to men who enjoy those [political and public life] rights"²⁰¹. Collection of such data was attempted for the first time in Pakistan during the 2013 general elections, but the data was never publicly released. In its 2014-2018 Strategic Plan, the ECP publicly committed itself to improve this process in future elections²⁰². To strengthen this process during the KP local elections, the ECP-provided Handbook for Presiding Officers instructs polling staff in mixed polling stations to count the thumbprints on the women's electoral roll to determine the figure for women who were issued ballots²⁰³. This serves as a positive example of improving elections in Pakistan through finding a simple administrative solution to a problem.

At the time of this report's publication, the ECP had yet to release official information on turnout for the KP elections, including gender-disaggregated data. Therefore DRI has so far been unable to assess the extent to which women were able to participate as voters in these elections.

Multiple election officials reported to DRI, however, that gender-disaggregated turnout data collection was improved from the 2013 elections and that the ECP would be in a better position to release such data should it choose to do so. Disappointingly, multiple preliminary results forms and statement of the count forms received by DRI were improperly completed and did not include gender-disaggregated turnout data, so it is not expected that the finalised data will include information from all constituencies across the province.

RECOMMENDATION: Gender disaggregated turnout data be made publicly available as soon as possible. Areas where there are signs of no or limited women's participation be investigated to identify and address bans on women's participation.

Women were able to contest the local council elections at all levels, including for seats reserved exclusively for women. However, no data was available regarding how many women contested for general seats, and, according to the PEC, not a single woman candidate was elected to a general seat.

¹⁹⁴ See <http://tribune.com.pk/story/894712/local-body-election-way-k-p/>.

¹⁹⁵ See <http://www.dailytimes.com.pk/national/25-May-2015/women-not-allowed-to-vote-in-tal>.

¹⁹⁶ See <http://www.theguardian.com/world/2015/may/29/women-barred-voting-pakistan-khyber-pakhtunkh>.

¹⁹⁷ See <http://www.dawn.com/news/1184647/jirga-active-in-swat-for-ban-on-women-voters> and <http://www.akhbarekhyber.com/index.php?Issue=&page=9&date=2015-05-27>.

¹⁹⁸ Code of Conduct for Political Parties and Contesting Candidates. 18, 19; Code of Conduct for Polling Agents. 9; and Code of Conduct for Security Personnel. 14.

¹⁹⁹ ECP Press Release. 27 May 2015. <http://ecp.gov.pk/ViewPressReleaseNotificDetail.aspx?ID=6406&TypeID=0>.

²⁰⁰ See <http://tribune.com.pk/story/890256/determined-parties-sign-agreement-over-womens-right-to-vote-in-upper-dir/>.

²⁰¹ General Recommendation 23. UN Committee for the Elimination of Discrimination Against Women.

²⁰² *Ibid.* p. 27.

²⁰³ ECP Handbook for PrOs and APOs. 2015 KP Local Government Elections. p. 47. In 2013, polling staff had instead been instructed to count the ballots cast in female polling booths before mixing the ballots with those cast in male polling booths prior to counting ballots by candidate (ECP Handbook for PrOs and APOs. 2013 General Elections. p. 40)#, which presumably many Presiding Officers in combined polling stations failed to do and subsequently lost the ability to count the female-cast ballots because all ballots had already been mixed together.

With an average of only 1.15 validly nominated women candidates per seat reserved for women at the village/neighbourhood council level, many women candidates at this level contested their elections unopposed, and a high number of contests had fewer candidates than seats.

Several interlocutors reported to DRI that it was common for nomination papers for women candidates to be submitted by their husbands or fathers, despite the Election Rules requiring that candidates deliver their nomination papers in person to ROs²⁰⁴. It was also common for women candidates to campaign without their faces or names appearing on their their advertisements, as reported by the media²⁰⁵ and observed by DRI. Instead, husbands' or fathers' faces would frequently appear on the advertisements, with the candidates referenced simply as "wife of [husband's name]" or "daughter of [father's name]" by their symbol²⁰⁶. These practices raise questions on whether women candidates' freedom of movement²⁰⁷ and right to campaign freely and without intimidation²⁰⁸ were infringed during these elections.

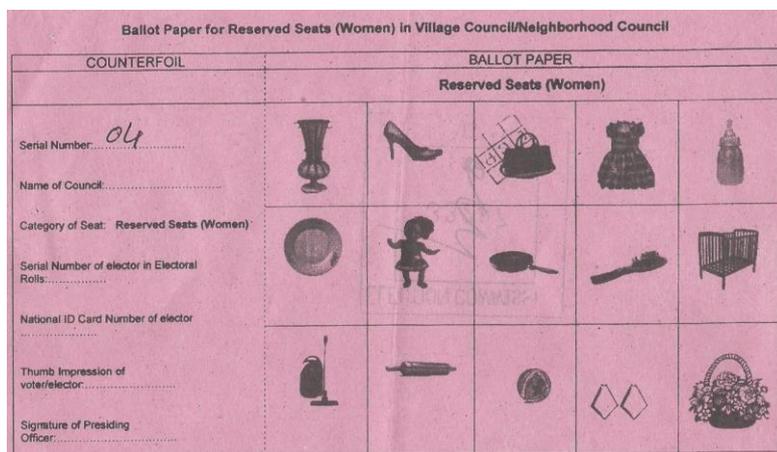
The Election Rules prescribed a fixed set of symbols that women candidates could receive to contest for reserved seats at the



Poster for a woman candidate

village/neighbourhood council level. The symbols included gender-stereotyped images, including "baby cot," "baby feeder," "broom," "doll," "hair brush," "ladies [sic] shoe," "lady purse," "roller of wood," and "vacuum"²⁰⁹. Moreover, the ballot utilised for these seats was coloured pink. Such gender-stereotyping arguably perpetuates reduced women's engagement in the political process and inhibits Pakistanis from viewing women as capable of taking positions of political power and other roles outside of the home.

The KPLGA reserves roughly 20 to 24 percent of district council seats, 11 to 24 percent of tehsil/town council seats, and 13 to 20 percent of village/neighbourhood council seats for women. While it is positive that such special measures exist to ensure some level of women's representation on the local councils, as no women candidates are expected to have been elected through general seats, the current system is unlikely to result in KP meeting the target of 30 percent for women's representation referred to by the Beijing Platform for Action and the



²⁰⁴ Election Rules. 14.5.

²⁰⁵ For example, see <http://tribune.com.pk/story/893408/the-name-game-women-candidates-choose-to-stay-unnamed/>.

²⁰⁶ Many voters in theory could have gone through the entire campaign not knowing the name of the women candidates they were voting for, as women candidates frequently did not campaign using their names, their names did not appear on the ballots, and lists of candidates' names were not posted at many polling stations (at least all those visited by DRI).

²⁰⁷ ICCPR. Art. 12.1.

²⁰⁸ See UN Human Rights Committee, ICCPR General Comment 25, paragraph 25: "In order to ensure the full enjoyment of rights protected in article 25, the free communication of information and ideas about public and political issues between citizens [and] candidates [...] is essential." "It requires the full enjoyment and respect for [...] freedom to engage in political activity [, ...] to hold peaceful demonstrations and meetings[, ...] to publish political material, to campaign for election, and to advertise political ideas."

²⁰⁹ Election Rules. Schedule I. List of Symbols. Group-II (Seats Reserved for Women).

United Nations (UN)²¹⁰. This is particularly worrisome in councils where the reserved percentage of seats is much lower than 30 percent (e.g. only 11 percent in some tehsil councils).

RECOMMENDATION: As temporary special measures consistent with Pakistan’s international legal obligations, reserved seats for women at all village council levels be increased to at least 30 percent of total seats for each council.

According to the PEC, not a single woman served as a DRO, RO, or ARO (of 24, 405, and 405 total, respectively), and only two women served as an election-officer level staff for the Election Commission in KP (of 88 total). Data on women serving as polling station-level election officials were not provided, though women’s participation at this level is commonly much higher in Pakistan, particularly at female polling booths and female-only polling stations. This falls short of Pakistan’s commitment under CEDAW to “eliminate discrimination against women in the political and public life of the country and, in particular [...] ensure to women, on equal terms with men, the right: [...]to participate in the formulation of government policy and the implementation thereof [...] and perform all public functions at all levels of government”²¹¹.

RECOMMENDATION: Meaningful efforts are made to recruit and train women to serve as election officials at all levels of election management, including within the ECP and as returning officers.

²¹⁰GR23, paragraph 16 states that “Research demonstrates that if women’s participation reaches 30 to 35 per cent (generally termed a ‘critical mass’), there is a real impact on political style and the content of decisions, and political life is revitalized.”

²¹¹ CEDAW, article 7.

16. PARTICIPATION OF MINORITIES AND VULNERABLE GROUPS

KP is home to a diverse range of religious, ethnic, and linguistic minorities and otherwise vulnerable or marginalised communities. According to Pakistan's most recent national census in 1998²¹², the vast majority of KP residents at that time were Muslim (99.4 percent) and claimed Pashto as their mother tongue (73.9 percent). Those who speak Pashto as their mother language are referred to as Pashtuns (also known as Pathans or Pashtuns), a term often used to characterize both the ethnicity and linguistic character of the group. Though constituting a majority in KP, Pashtuns can be considered a minority group from a national perspective.

Nearly one-third of the population in KP is estimated to be non-Pashtuns²¹³. Linguistic and ethno-linguistic minorities in KP include those who speak: Dari, including Hazaras and Tajiks; Hindko; Khowar; Kohistani; Punjabi; Saraiki; Urdu; and Wakhi²¹⁴. According to the 1998 census, minority languages claimed by KP inhabitants as their mother tongues included Saraiki (3.86 percent), Punjabi (.97 percent), Urdu (.78 percent), Sindhi (.04 percent), and Balochi (.01 percent), whereas other languages comprised 20.4 percent collectively.

Despite the dominance of the Pashto language and the broad diversity of other languages spoken in KP, all election-related documents and materials used in the KP local elections, ranging from pieces of the legal framework to handbooks for election officers, results forms, and the ballots themselves, were written in either English or Urdu. ROs reported difficulty understanding their handbook, which was written in English. Voter education materials were also only provided in Urdu. To assist illiterate or non-Urdu reading voters, symbols were included on the ballots during the KP local elections, as is common electoral practice in Pakistan.

RECOMMENDATION: Increased efforts be made to support illiterate and non-Urdu or non-English reading stakeholders to understand all stages of the electoral process, including, but not limited to, consideration of publishing laws, administrative regulations, forms, and handbooks in Pashto, as well as providing voter education materials, lists of candidates, and sample ballots in minority languages.

Religious minorities in KP include non-Muslims such as Christians and Hindus, as well as non-Sunni Muslims such as Shiites and Ismailis. Ahmadis, who consider themselves to be Muslims yet are defined by Pakistan's Constitution as non-Muslims²¹⁵, also live in KP. According to the 1998 census, non-Muslims comprised only .56 percent of the population, including Christians (.21 percent), Hindus (.03 percent), others (.08 percent), and -- by the official government definition -- Ahmadis (.24 percent). DRI was unable to receive up-to-date voter registration data for religious minorities, despite NADRA and the ECP publishing such information prior to the 2013 general elections²¹⁶. Only 974 Ahmadis were registered on their separate electoral roll for the 30 May local elections in KP, according to data provided by the PEC.

The Election Rules effectively barred non-Muslims²¹⁷ from contesting the election elections for seats other than those reserved for non-Muslims²¹⁸, by including an oath on the nomination form that required

²¹² See: <http://www.pbs.gov.pk/sites/default/files//tables/POPULATION%20BY%20RELIGION.pdf> and <http://www.pbs.gov.pk/sites/default/files//tables/POPULATION%20BY%20MOTHER%20TONGUE.pdf>.

²¹³ Shaheen Sarhar Ali. *Indigenous Peoples and Ethnic Minorities of Pakistan*. 2013. p. 79.

²¹⁴ See, for example: <http://www.ethnologue.com/country/PK/languages>. Other minority languages spoken in KP include: Badeshi; Balochi; Bateri; Chillisso; Dameli; Gawar-Bati; Gowro; Gujari; Kalami; Kalasha; Kalkoti; Kamviri; Kashmiri; Kati; Khetrani; Palula; Savi; Shina; Sindhi; Torwali; Ushojo; and Yidgha.

²¹⁵ Ahmadis are defined as non-Muslims in the Constitution, Article 260(3). The Pakistan Penal Code makes it a criminal offence for an Ahmadi to call or pose himself directly or indirectly as a Muslim, to preach or propagate his faith or in any manner whatsoever outrage the religious feelings of Muslims, to refer or call his place of worship as Masjid, to call people to prayer by reciting Azan to refer to his mode or form or call to prayer as Azan, among others. Ahmadis have been target of violent attacks.

²¹⁶ NADRA and ECP. *Pakistan Votes*. April 2013. pp. 34-35.

https://www.nadra.gov.pk/docs/NADRA_Electoral_Rolls_Booklet_2012.pdf.

²¹⁷ Election Rules. 2(xvi): "[N]on-Muslim" means a person, who is not a Muslim and includes a person belonging to the Christian, Hindu, Sikh, Buddhist, or Parsi community, a person of the Quadiani group or the Lahori group (who call themselves 'Ahmadis' or by any other name) or a Bahai, and a person belonging to any of the scheduled castes."

²¹⁸ Note: the term "minority" is sometimes used interchangeably with "non-Muslim" in Pakistan, including in relation to reserved seats for non-Muslims in the KPLGA.

aspirant candidates to declare that they “believe in the absolute and unqualified finality of the Prophethood of Muhammad”²¹⁹. Such a barrier was not included in the KPLGA and had even been explicitly removed from an early draft of the KPLGA to ensure non-Muslims had the ability to contest for seats beyond those reserved for them. This barrier is in contradiction to Pakistan’s ICCPR commitments as it serves as religious discrimination, contravening non-Muslims’ right to be elected²²⁰.

The KPLGA reserves roughly 3 to 6 percent of district council seats, 3 to 11 percent of tehsil/town council seats, and 7 to 10 percent of village/neighbourhood council seats for non-Muslims. According to the ECP, only 349 candidates contested for 3,339 seats reserved for non-Muslims at the village/neighbourhood council level²²¹. No data have yet been made available regarding party-list candidates for reserved seats for non-Muslims at the district and tehsil levels.

All elections in Pakistan, including the 30 May KP local elections, present particular barriers to participation to Ahmadis. In contradiction with Pakistan’s obligations under ICCPR²²², Ahmadis are listed on separate electoral rolls and defined as non-Muslims in the Constitution. Voters who identify as Muslims are required to pledge that Muhammad is the last prophet, which is contrary to a central tenet of the Ahmadi faith. As a result, it is a common for Ahmadis to boycott elections in Pakistan, though no information was received by DRI regarding Ahmadi participation in the KP local elections.

RECOMMENDATION: The separate list for Ahmadi voters be abolished, so that all voters are on one unified electoral roll, according to requirements for age and Pakistani citizenship.

KP is also home to many internally displaced persons (IDPs). IDPs are frequently marginalised during elections, as they are typically physically absent from their voting address. PEC interlocutors reported to DRI that no specific measures were employed to assist IDPs in voting during the KP local elections, claiming that the vast majority of IDPs internal to KP province (e.g. those displaced due to flooding in Swat) have returned home and that remaining IDPs in KP have primarily been displaced from the neighbouring Federally Administered Tribal Areas (FATA).

Other marginalised or vulnerable groups in KP include persons with disabilities, who comprised more than 375,000 people in the 1998 census²²³, and the transgender community, for whom there are no official data.

²¹⁹ Election Rules. 10 March 2014. Form III.

²²⁰ ICCPR, article 2: “Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

²²¹ ECP Summary of Contesting Candidates. 19 May 2015.

<http://ecp.gov.pk/Summary%20of%20contesting%20Candidates%20LG%202015.pdf>.

²²² ICCPR article 2: “Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

²²³ See: <http://www.pbs.gov.pk/sites/default/files//tables/DISABLED%20POPULATION%20BY%20NATURE%20OF%20DISABILITY.pdf>.

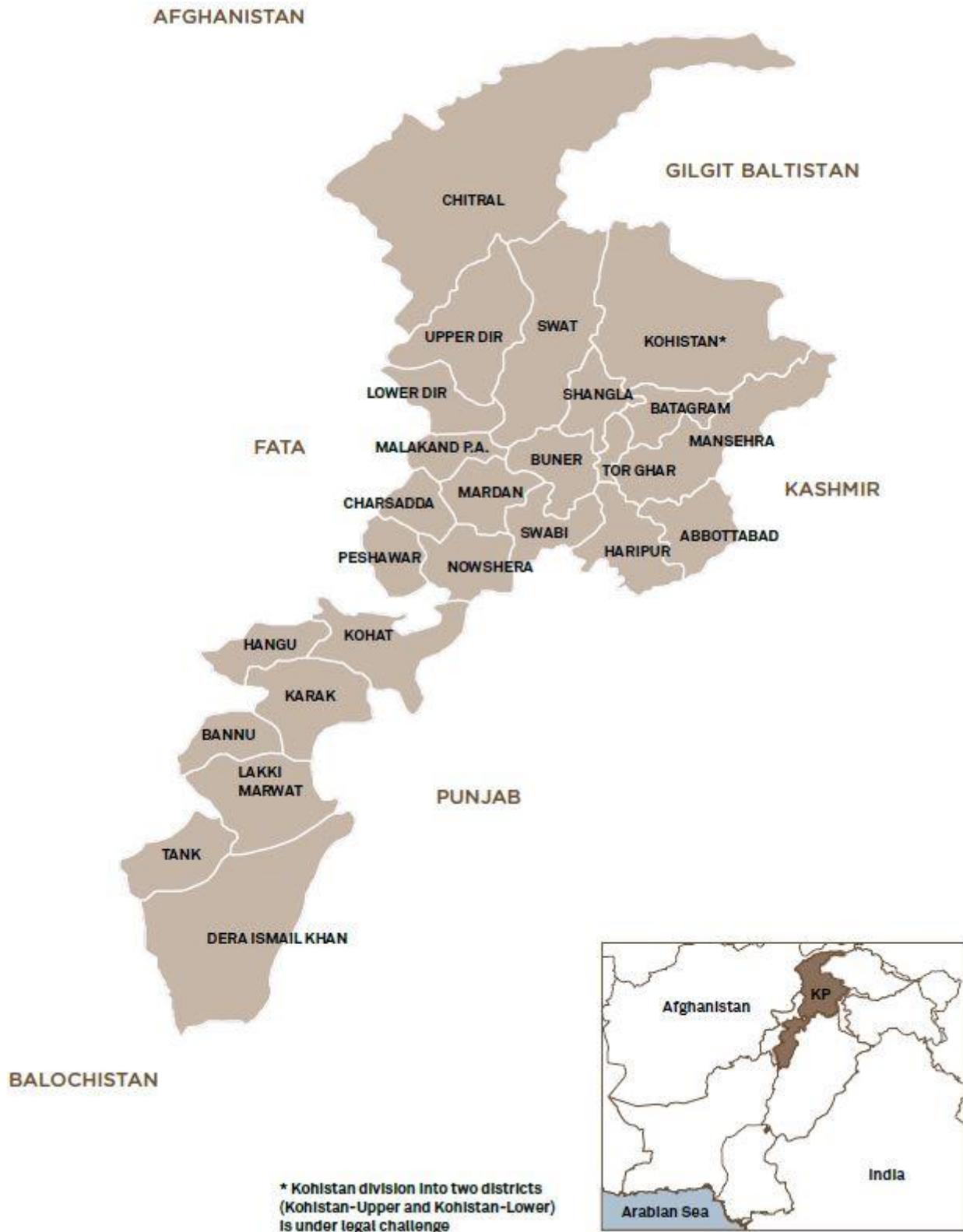
ANNEX 1: CHRONOLOGY

Date	Institution	Action
9 January 2010	local governments	Dissolution of local governments
8 April 2010	Parliament	18th Amendment came into force
2 July 2013	Supreme Court	Provinces were required to hold local government elections as early as possible
31 October 2013	KP Assembly	Pass KP LG bill
November 2013	KP Government	KPLGA came into force and amended on April 2014 & February 2015
December 2013	ECP	Election Rules required candidates contesting all seats at the village/neighbourhood level and candidates without a party ticket for district- and tehsil/town-level general seats to take an oath that they “do not belong to any political party
March 2014	Supreme Court	Ordered elections should be held by November 2014
10 March 2014	KP Government	Changed election rules including the removal of candidate's name on the ballot papers, modified nomination oath taken & updated the list symbols and division among candidates
October 2014	KP Government	Defined biometrics and established process for their use in polling stations
10 October 2014	KPLGA	Removed delimitation Authority
10 October 2014	KP Government	Passed an amendment that delimitation must be conducted by “Neutral & Credible” Body
26 February 2015	KPLGA	Re-establishment of the Delimitation Authority
February 2015	KP Government	The process for the allocation of symbols and upgradation for all statements of count forms were started
March 2015	ECP	Issued Code of conduct for political parties & contesting candidates, Election Observers, Media, Polling Agents, Polling Personnel & Security Personnel
4 March 2015	ECP	Appointed 24 DROs, 405 ROs and replaced 11 DRO's and 81 RO's
30 March 2015	ECP	Issued code of conduct for election observers
4 April 2015	ECP	Announced KP election schedule for 30th May, 2015
4 April 2015	ECP	Notification on the schedule of elections on prohibited behaviour for government officials
1 June 2015	ECP	Been blamed for the violence on polling day
1 June 2015	KP Government	Amendment of Election rule 2014
3 June 2015	PHC	Suspended ECP's Notification
4 June 2015	ECP	Appointed 94 district judges
23 June 2015	ECP	Consolidated list of returning candidates
24 June 2015	ECP	Posted results on the webpage,
25 June 2015	ECP	Announced plans to conduct re-polling in 356 polling stations
28 June 2015	ECP	Condemned the formation of investigation commission stating only ECP has the right to conduct investigation
3 July 2015	PHC	Suspended the notification of ECP on re-polling
5 July 2015	ECP	Re-polling was schedule
10 July 2015	PHC	Held 25 petitions against re-polling at the 256 surveying stations of different union councils.
12 July 2015	PHC	Challenged ECP decision of June 2 to declare the PK-95 by-elections void and its June 5 notification of the schedule of fresh by-polls

ANNEX 2: OFFICIAL ELECTORAL SCHEDULE

	Activity	Date
1	6 April 2015	Notice Inviting nomination papers to be issued by the Returning Officer
2	13 - 17 April 2015	Nomination papers received
3	18 April 2015	Publication of notice of all the nomination papers
4	19 April 2015	Objection to the nomination papers
5	20 - 25 April 2015	Scrutiny of nomination papers and publication of names of validly nominated candidates
6	26 - 28 April 2015	Appeals against acceptance / rejection of nomination papers
7	29 April - 4 May 2015	Disposal of appeals
8	5 May 2015	Withdrawal of candidature and allotment of symbols
9	6 May 2015	Publication of list of contesting candidates with symbols allotted to them
10	30 May 2015 (from 08:00 to 17:00)	Polling day
11	7 June 2015	Declaration of results by the Returning Officer

ANNEX 3: MAP OF KHYBER PAKHTUNKWA



ANNEX 4: POLITICAL COMPOSITION OF THE PROVINCE

PARTIES IN KP PROVINCIAL ASSEMBLY²²⁴

PARTY	GENERAL SEATS	RESERVED SEATS	TOTAL
Pakistan Tehreek-e-Insaf (PTI)	45	11	56
QaumiWatan Party (QWP)	8	2	10
Jamaat-e-Islami (JI)	6	1	7
Awami Jamhur ilttehad Pakistan (AJIP)	4	1	5
Independents	2	0	2
Ruling Coalition			80
Jamiat Ulema-e-Islam (F) (JUI-F)	13	4	17
Pakistan Muslim League (N) (PML-N)	11	4	15
Awami National Party (ANP)	4	1	5
Pakistan Peoples Party (PPP)	4	1	5
Opposition Coalition			42
Vacant	2		2
TOTAL	99	25	124

²²⁴ According to KP Provincial Assembly website, accessed on 9 June 2015, updated to reflect the ECP's order on 3 June to re-poll the KP-95 by-election. <http://www.pakp.gov.pk/2013/members-directory/by-party/>

ANNEX 5: LIST OF ABBREVIATIONS

AA	Appellate Authority	IDPs	Internally Displaced Persons
AJIP	Awami Jamhur ilttehad Pakistan	JI	Jamaat-e-Islami
ANP	Awami National Party	JUIF	Jamaat-e-Islami F
AROs	Assistant Returning Officer	KP	Khyber Pakhtunkhwa
CAC	Convention Against Corruption	KPDLCA	Khyber Pakhtunkhwa Delimitation of Local Councils Act
CEC	Chief Election Commissioner	KPLG	Khyber Pakhtunkhwa Local Government
CEDAW	Convention on Elimination of All Forms of Discrimination Against Women	KPLGA	Khyber Pakhtunkhwa Local Government Act
CNIC	Computerized National Identity Cards	LHC	Lahore High Court
CRPD	Convention on the Rights of Persons with Disabilities	MNAs	Member National Assembly
DECs	District Election Commissioners	MPAs	Member Provincial Assembly
DoCA	Delimitation of Constituencies Act	NADRA	National Database and Registration Authority
DRI	Democracy Reporting International	PEC	Provincial Election Commissioner
DROs	District Returning Officers	PHC	Peshawar High Court
EAM	Election Assessment Mission	PML-N	Pakistan Muslim League N
ECP	Election Commission of Pakistan	PPP	Pakistan Peoples Party
EDR	Electoral Dispute Resolution	PrOs	Presiding Returning Officers
EOM	Election Observation Mission	PTI	Pakistan Tehreek-e-Insaf
FAFEN	Free and Fair Election Network	QWP	Qaumi Watan Party
FATA	Federally Administrated Tribal Area	ROs	Returning Officers
FPTP	First Past the Post	SC	Supreme Court of Pakistan
HRCP	Human Rights Commission of Pakistan	SHC	Sindh High Court
ICCPR	International Covenant on Civil and Political Rights	SNTV	Single Non-Transferable Vote
ICERD	International Convention on the Elimination of Racial Discrimination	UN	United Nations

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



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Democracy Reporting International

Prinzessinnenstraße 30
10969 Berlin, Germany
T / +49 30 27 87 73 00
F / +49 30 27 87 73 00-10
info@democracy-reporting.org
www.democracy-reporting.org

Islamabad GPO-44000 / Pakistan
T / +92 51 8 35 79 72
F / +92 51 8 35 79 73
pakistan@democracy-reporting.org
www.democracy-reporting.org/pakistan