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BALUCHISTAN LOCAL ELECTION FRAMEWORK ASSESSMENT

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BALUCHISTAN LOCAL ELECTION FRAMEWORK ASSESSMENT

BALUCHISTAN WAS THE FIRST PROVINCE TO ENACT A LAW FOR THE RESTORATION OF LOCAL SELF GOVERNANCE IN PAKISTAN. THE BALUCHISTAN LOCAL GOVERNMENT ACT 2010 (HEREAFTER REFERRED TO AS 'THE BLGA' OR 'THE ACT') WAS SIGNED INTO LAW BY THE PROVINCIAL ASSEMBLY ON 13 MAY 2010. PART OF AN OVERALL ELECTORAL REFORM PROCESS FOLLOWING ELECTIONS IN 2008, THE BLGA IS AN IMPORTANT STEP FORWARD FOR PAKISTAN.

EXECUTIVE SUMMARY

The BLGA was drafted before the 18th amendment to the constitution of Pakistan was enacted and before the country ratified the International Covenant on Civil and Political Rights (ICCPR). Both of these developments incorporate into Pakistani law fundamental rights relating to political participation and the holding of elections. Legal frameworks, such as the BLGA, are fundamental to credible electoral processes. Although the BLGA indicates positive progress, its provisions for elections must be amended to better reflect these subsequent developments, as well as clarify important practical and administrative considerations for conducting local government elections.

Importantly, if the BLGA is amended in accord with the issues raised in this Local Election Framework Assessment (LEFA),¹ it will set a sound precedent for legislative reform processes in other provinces.² Moreover, it would be the first legislation in Pakistan to comply with ICCPR obligations, the value of which cannot be over-estimated with respect to guaranteeing democratic elections, especially at the local level.

The following areas of reform are necessary to improve the BLGA:

- **Election System:** The current rules effectively allow the executive to decide which electoral system (i.e., multi-member or single-member systems) is used where and to delimit constituencies as it sees fit. The BLGA contains no safeguards against gerrymandering, which is further exacerbated by the lack of accurate and reliable population data. Lack of clarity about the election system also has an impact on practical issues such as the design of ballot papers, candidate registration, and counting and aggregation of voting results.

¹ Electronic copies of this LEFA can be downloaded from DRI's website. See: www.democracy-reporting.org/pakistan.

² For example, the provincial civil servants who were the primary drafters of the BLGA coordinate informally with their counterparts in other provinces. They have also taken up posts in other provinces; e.g., the Baluchistan chief secretary, who was a key guiding force behind the BLGA, is now the chief secretary of Punjab Province.

- **Multiple Candidacy:** The BLGA allows candidates to stand in more than one constituency. If a candidate wins in two constituencies, s/he must choose a seat. This system undermines voter choice, requires additional financial resources for by-elections and favours wealthy candidates, who can afford to campaign in different constituencies with the hope of winning at least one of the seats.
- **Political Parties:** The BLGA excludes political parties from fielding candidates. This violates the principle of freedom of association, as enshrined in the constitution of Pakistan and the ICCPR.
- **Government Control:** The Government of Balochistan has an overly dominant role in influencing the electoral process and local councils. Beyond its leeway on the question of an election system, under the BLGA, the government has unfettered discretion to delimit wards and dissolve local councils, along with disproportionate powers to remove council members.
- **Candidate Registration:** The BLGA contains vague and restrictive rules for candidate nomination and registration.
- **Counting and Publication of Results:** Provisions relating to vote counting and publication of results are not transparent.
- **Election Administration:** The BLGA provides wide-ranging authority to the Government of Balochistan in electoral matters and consequently does not adequately accommodate the Election Commission of Pakistan (ECP), which is responsible for conducting local government elections.
- **Electoral Dispute Resolution:** The right to file a complaint related to the election cycle (including during the nomination and campaign periods, election day, and with respect to election results) is restrictive. The appeals system does not provide for independent review and adjudication of election petitions; i.e., challenges to election results.

The BLGA also refers extensively to the Representation of the People's Act (RoPA), which is the principle legislation for elections to national and provincial assemblies. This is not unusual: all provinces have a history of invoking the RoPA for local government elections. However, as agreed by all of the major political parties, the ECP, as well as domestic and international observers during the 2008 elections, the RoPA contains numerous shortcomings. Since 2009, the ECP has been working on a reform package to amend the RoPA and related legislation. This package is expected to be presented to the Ministry of Law in spring 2011. Ideally, it would be passed well ahead of the next general elections currently scheduled for early 2013. Provided these reforms are accepted, they can function as a frame of reference for further improvements to the BLGA.

Democracy Reporting International (DRI) recommends that the Baloch institutions involved in the law-making process (the provincial assembly, the Government of Balochistan and the administration) coordinate with the ECP to seek suggestions for elements to be included in the reform of the BLGA. DRI also recommends that the Balochistan authorities request the ECP to review draft amendments. Many of the current BLGA rules and regulations in need of reform address highly technical issues that are best dealt with by the administrative body responsible for elections – the ECP. Coordination with the ECP could better ensure that the legislation in Balochistan is of high quality and can serve as model legislation for other provinces in Pakistan.

INTRODUCTION

At the invitation of the Government of Pakistan, the European Union observed the 2002 and 2008 parliamentary elections. The 2008 EU Election Observation Mission (EU EOM 2008) made 83 recommendations for electoral reforms.³ All of the major political parties agreed to these recommendations. Building on the findings and recommendations of the EU EOM 2008, the Supporting Electoral Reform in Pakistan programme was launched in 2009. Implemented by Democracy Reporting International (DRI), this programme is designed to assist parliament and the provincial assemblies to undertake amendments to election legislation and electoral oversight activities, and to work with Pakistani media to improve their coverage of election-related issues.

The Election Commission of Pakistan (ECP) is preparing a set of proposed legal reforms for the general elections. The main package deals with amendments to the Representation of the People's Act 1976 (RoPA),⁴ the Electoral Rolls Act 1974 and the Delimitation of Constituencies Act 1974. It will take some time to promulgate and implement these legislative reforms. General elections are currently scheduled for 2013, but could be sooner. The proposed amendments to the legislative framework for national elections can provide inspiration for amending the BLGA, which provides the framework and structure for local government, as well as regulates local government elections in the province of Balochistan. Where there are no provisions on aspects of elections, the BLGA invokes relevant provisions in the RoPA. As such, relevant authorities in Balochistan should proactively consult with the ECP as they prepare amendments to the BLGA in order to guarantee that this legislation conforms to Pakistan's commitments for holding democratic elections.

A sound legislative framework is fundamental to a credible electoral process and therefore will help ensure the acceptance and sustainability of the local government system in future. Prepared by DRI, this Local Election Framework Assessment (LEFA) focuses on those sections of the BLGA that pertain to elections.⁵ This LEFA examines the BLGA in the context of Pakistan's on-going electoral reform efforts, including reference to Pakistan's obligations for democratic elections under such instruments as the International Covenant on Civil and Political Rights (ICCPR).⁶ In addition to close legal review, the LEFA is based on various meetings and discussions with

representatives from the Government of Balochistan, the provincial assembly and relevant non-governmental organisations (NGOs).⁷ The LEFA also benefited from presentation of preliminary observations and discussions conducted by DRI with various Balochistan stakeholders from July 2010 to April 2011.⁸ In March 2011, DRI traveled to Quetta to present the draft LEFA to key provincial stakeholders. On the whole, the interlocutors showed appreciation for the recommendations and were keen to amend the BLGA in order to bring it in line with the 18th amendment of the constitution and Pakistan's international obligations for democratic elections. DRI offered the interlocutors an opportunity to provide written and oral feedback on the LEFA following the presentation in Quetta and has strived to reflect the valuable feedback received to the maximum extent possible in this document.

The BLGA mandates that local government elections be held by 13 May 2011. According to provincial interlocutors, this deadline will likely be postponed. This offers an opportunity to undergo an inclusive reform process. Amendments should be dealt with methodically, involve thorough discussion, be politically inclusive and allow for non-governmental actors to be included in the process.

If Balochistan takes up the amendments, it would make the BLGA the first piece of legislation to comply with the new constitutional amendments and the ICCPR with respect to elections. This would provide a solid legal framework for future local government elections in Balochistan. It could also serve as inspiration to the other provinces in Pakistan to finalise their local government laws in accordance with these standards. DRI hopes this report will be useful to the Government of Balochistan, the provincial assembly, civil society groups, the media, the citizens of Balochistan and beyond as the on-going process of contemplating amendments to the electoral sections of the BLGA and the preparation of rules for local government elections continues.

POLITICAL BACKGROUND

Balochistan has experienced on-going political violence for the last decade. The assassinations of two prominent Baloch nationalist leaders, Nawab Akbar Khan Bugti and Mir Balach Marri,⁹ have contributed to an escalation of violence and triggered negative sentiments on the part of ethnic Baloch people against settlers from other provinces. Despite a volatile security situation, this does not receive much coverage in state and private media due to the limited outreach of media and

³ See: <http://www.eueompakistan.org/>. All subsequent references in the text to the EU EOM 2008 Final Report are from this source.

⁴ See: <http://pakistanconstitution-law.org/2010/06/16/the-representation-of-the-people-act-1976/>. All subsequent references to the RoPA are from this source.

⁵ The analysis in this LEFA is structured as follows. Each section generally begins with reference to applicable norms of Pakistani and international law. Analysis then refers to relevant aspects of the BLGA. Finally, it draws conclusions and offers recommendations for reform and amendment. In light of Balochistan's restricted resources, the recommendations herein are intended to be practical.

⁶ Pakistan signed the International Covenant for Civil and Political Rights (ICCPR) in 2008 and ratified it in June 2010. See: http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en#EndDec. All subsequent references to sections of the ICCPR refer to this source (with the exception of extracts from General Comment 25; see footnote 12 below). For Pakistan's current status, see: <http://treaties.un.org>.

⁷ Participant organisations included: Centre for Peace and Development (CPD); Strengthening Participatory Organization (SPO); Peace Balochistan; Institute for Development Studies and Practices (IDSP); Pameer Development Society; Community Uplift Programme (CUP); and Youth Educational Society.

⁸ DRI wishes to thank all of those who participated in these various presentations and discussions.

⁹ Nawab Akbar Khan Bugti was killed on 26 August 2006 and Mir Balach Marri on 21 November 2007.

state authorities in largely underdeveloped parts of the province. Balochistan is the largest geographical province in Pakistan.¹⁰ It is also one of the most under-privileged parts of Pakistan in terms of human and infrastructure development.¹¹

Prime Minister Gilani introduced a legislative reform package, the *Aghaz-e-Haqooq-e-Balochistan* (Initiating the Rights of Balochistan), to address the suffering of the Baloch people. Passed by parliament on 23 November 2009, this package promised constitutional amendments aimed at establishing more provincial autonomy and lessening central government control of the province, including reduced roles for the military and the federal law enforcement agencies present in Balochistan. Subsequently, the Constitution (18th Amendment) Act 2010, recommended by the Parliamentary Committee on Constitutional Reforms, abolished the concurrent legislative list, thereby ending the authority of the federal parliament to legislate on provincial affairs. This is one of the most significant initiatives for fostering provincial autonomy in Pakistan. In addition to enhanced constitutional autonomy and a reduction of security force involvement in the province, prominent political leaders in Balochistan have stated that the full resolution of provincial issues also would depend on the release of political prisoners.

The Constitution (18th Amendment) Act 2010 primarily focuses on removing major past amendments added by military rulers and giving greater autonomy to the provinces. This constitutional amendment mandates the devolution of a number of key federal ministries, including health and education. Devolution of federal ministries to all four provinces formally started in December 2010, with the handover of the ministries of zakat and usher, population welfare, youth affairs, local government, rural development and special initiatives.

Balochistan was the first province to promulgate legislation for restoring local self governance in the form of the BLGA, which provides the basic framework and structure for local government in the province. Devolution of the federal ministries to provincial control mandated by the Constitution (18th Amendment) Act 2010, along with Pakistan's ratification of the ICCPR, has allowed little time for the provincial government to take these important developments into account while drafting and enacting the BLGA.

ELECTION SYSTEM

The International Covenant on Civil and Political Rights (ICCPR) does not impose any particular electoral system. However, any system operating in a state must be compatible with the rights protected by article 25 of the ICCPR, which guarantees

and gives effect to the free expression of the will of the electorate.¹² Elaborating article 25, paragraph 21 of General Comment 25 states:

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.

All signatories to the ICCPR also agree that citizens have the legal right and opportunity to vote or be a candidate in a periodic election, held by secret ballot on the basis of universal and equal suffrage, as specified in article 25(b).

Section 13 of the BLGA empowers the Government of Balochistan both to define ward (constituency) boundaries and to specify a ward of a local council as a single-member or multiple-member constituency. However, this system creates ambiguities because it fails to regulate key features of elections. For example, it does not regulate the requirements for winning a seat. The uncertainty has an impact on the design of ballot papers, candidate registration, and counting and aggregation of results.

The current system includes no safeguards against election engineering. For example, the Government of Balochistan may declare a ward a two-seat constituency where it assumes that the government candidate is likely to come in second. In contrast, a ward may be declared a one-seat constituency where it is believed that a government candidate commands a convincing majority.

Section 13(2) of the BLGA which further explains ward delimitation also does not contain protections against gerrymandering. Primary conditions of census blocks, villages and revenue estates as geographically compact and contiguous areas are missing. The last census was conducted in 1998 and consequently there is no up-to-date data on these key issues for ward delimitation. There is little coordination between the Population Census Organization, the federal body responsible for conducting the census, and the provincial revenue department, which is responsible for determining villages and revenue estates. Rather than having a neutral body conduct such an exercise, under the BLGA the Government of Balochistan is responsible for delimitation. There is likewise no provision for public participation or input in the delimitation of wards. In the end, this exercise should aim to achieve similar sized constituencies (i.e., similar numbers of voters per ward) so as to ensure that each vote has similar weight.

¹⁰ The official website of Government of Balochistan states the total area of the province to be 43.6 percent of the overall territory of Pakistan. This represents approximately 347,190 square kilometres.

¹¹ Balochistan ranks lowest among the provinces of Pakistan in the Human Development Index (HDI) of the UNDP *Human Development Report*, 2005, which is the latest available data.

¹² The provisions in article 25 of the ICCPR are elaborated in General Comment 25. See: <http://www.unhcr.ch/tbs/doc.nsf/0/d0b7f023e8d6d9898025651e004bc0eb?Opendocument>. All subsequent references to General Comment 25 are drawn from this source.

Moreover, the BLGA grants candidates the right to stand in more than one constituency. According to section 29(2) of the BLGA, in case a candidate wins in more than one constituency, s/he chooses which seat to accept. This system undermines voter choice because voters cannot predict whether an elected candidate of their choice will actually take the seat in that voter's constituency. In addition, this system favours wealthy candidates because only candidates with sufficient resources can afford to campaign in multiple constituencies. It also potentially results in a waste of public resources spent on by-elections for seats left vacant by candidates winning two or more seats.

Section 26 of the BLGA does not fix the term of office of a local council. The four-year term of the local council is only *de facto* indicative: under the BLGA, the Government of Balochistan has the authority to extend the term of a local council with virtually unlimited discretion. For example, section 26(1)(b) of BLGA states that, "The term of office of a Local Council shall be four years; or such other period as the Government may specify commencing on the day on which it assumes office; provided that the Government may... on the expiry of such term of office, extend it for such period and appoint any person as Administrator to perform such functions of the local council."

Pursuant to section 129 of the BLGA, the Government of Balochistan may 'dissolve or suspend a Local Council for a period specified in such notification and appoint any person as Administrator if there are reasons to believe that a Local Council is unable to discharge or persistently fails to discharge its duties; or is unable to administer its affairs for meeting its financial obligations; or generally acts in a manner contrary to public interest; or otherwise exceeds or abuses its powers'. According to section 31 of the BLGA, the provincial government also has the power to remove an elected representative on the grounds of some subjective and vague qualifications and misconduct. While a remedy is available to council members to contest dismissal, the criteria for dismissal would benefit from further review and tightening. Chapter 1(2) refers to a 'code of conduct' but does not define this anywhere in the BLGA.

These provisions are at odds with article 25 of the ICCPR, as paragraph 5 of General Comment 25 indicates:

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. The allocation of powers and the means by which individual citizens exercise the right to participate in the conduct of public affairs protected by Article 25 should be established by the constitution and other laws.

Paragraph 5 thus implies that these elected institutions must enjoy a certain degree of independence and stability. The provisions of the BLGA do not meet this standard.

Recommendations:

- Amend the BLGA to specify the election system.
- Amend the BLGA to regulate the number of seats per constituency and majority requirements. Given that these issues have wide ranging implications, it is important that they are clarified in the legislation *per se* rather than in a subsidiary legislation.
- Amend the BLGA to contain clear and objective requirements for extending the term of local councils on the expiry of their tenure. To ensure the independence of local councils, the length of the term in office should not be subject to the unfettered discretion of the provincial government.
- Amend the BLGA to abolish the right of the Government of Balochistan to dissolve local councils in order to enhance the autonomy and independence of local councils.

NON-PARTY BASED ELECTIONS

Article 22 of the ICCPR asserts freedom of association as an important human right. It recognises the importance and significant role of political parties and membership in parties for the conduct of public affairs and the election process (see paragraph 26 of General Comment 25). Local governments are inherently political institutions comprised of elected representatives and exercising executive and legislative authority, making it impossible to deny political parties a recognised role in local elections. This is reinforced in article 140A of the constitution of Pakistan,¹³ whereby the provinces are mandated to devolve political, administrative and financial authority to the elected representatives of local governments.

Article 17(2) of the constitution also guarantees a fundamental right to every citizen to form and be a member of a political party. The supreme court of Pakistan has consistently held that the right to form or be a member of political party includes the right to contest an election and form a government by a political party commanding the confidence of the majority of the members of national assembly or a provincial assembly.¹⁴ The same argument applies to local government.

Section 25 of the BLGA stipulates that election to local councils be held on a non-party basis. This provision apparently has been adopted in an effort to avoid violent contests of party tickets in advance of elections and to ensure that provincial political party authority is not challenged by grassroots political structures. The desire to depoliticise local government has historical roots in Pakistan, but is incompatible with the right

¹³ See: <http://pakistanconstitution-law.org/>. All subsequent references to the constitution are drawn from this source.

¹⁴ Muhammad Nasir Mahmood v. Federation of Pakistan (PLD 2009 SC 107) relying upon its earlier judgments; i.e., Benazir Bhutto v. Federation of Pakistan (PLD 1988 SC 416); Muhammad Nawaz Sharif v. Federation of Pakistan (PLD 1993 SC 473); and Benazir Bhutto v. Federation of Pakistan (PLD 1989 SC 66).

of association as enshrined in the constitution and various international human rights treaties. Furthermore, in past local government elections, in practice this provision has been selectively applied by prohibiting one candidature on the grounds that it is considered partisan, but not another.

Recommendations:

- Amend the BLGA to allow candidates to have a political party affiliation.

CONSTITUENCY DELIMITATION AND EQUALITY OF VOTES

Article 25(b) of the ICCPR guarantees equal suffrage for every citizen. As clarified in paragraph 21 of General Comment 25, the vote of one elector should be equal to the vote of another. Paragraph 21 also goes on to state that the drawing of electoral boundaries and the method for allocating votes should not distort the distribution of voters or discriminate against any group, nor should it exclude or unreasonably restrict the right of citizens to choose their representatives freely.

Section 10 of the BLGA, read with section 13(2), lays out the aggregate population ranges for the delimitation of electoral districts in both rural and urban areas, giving the Government of Balochistan the authority to determine these. Each union council (the lower tier of rural councils) is also a constituency or ward of the district council. The conditions for delimitation of a union council are that it should consist of a village or number of villages with an aggregate population range of 7,000 to 15,000 residents. Thus it is possible that two adjoining union councils in the same district council may have a population difference of more than 50%, which violates the principle of the equality of vote within the district council, as stipulated in article 25(b) of the ICCPR.

According to the BLGA, the Government of Balochistan may declare an urban area with a population exceeding 15,000 but not exceeding 100,000 to be a municipal committee; an urban area with a population exceeding 100,000 but not exceeding 500,000 to be a municipal corporation; and an urban area with a population exceeding 500,000 to be a metropolitan corporation. In a municipal committee, a ward may have a population ranging from 2,000 to 2,500 with a marginal adjustment of 200 at the lower and upper end (i.e., the maximum range is 1,800 to 2,700 which means that the size of a ward could fluctuate by 50%). In a municipal corporation, a ward may have a population between 3,500 and 10,000 with a marginal adjustment of 500 in the lower and upper end (i.e. the maximum range is 3,000 to 10,500 which means that the size of a ward could fluctuate by more than 300%). Similarly, in a metropolitan corporation, a ward may have a population between 10,000 and 20,000 with a marginal adjustment of 1,000 in the lower and upper end (i.e., the maximum range is 9,000 to 21,000 which means that the size of a ward could fluctuate by more than 100%). Again, this is incompatible with the principle of equal suffrage, as laid out in article 25(b) of the ICCPR.

The delimitation of electoral districts is an important component in preparing for elections. The absence of clear criteria for delimitation, particularly as this relates to ensuring equal suffrage, and an independent agency to conduct this exercise, could significantly affect the credibility of the electoral process. Given that the ECP is responsible for administering local government elections, the Government of Balochistan may wish to involve the provincial election commission to assist with delimitation.

Recommendations

- Amend the BLGA to include clear, objective criteria for the delimitation of constituencies (wards) based on the principle of the equality of vote within one local council, whether rural or urban.
- Amend the BLGA to mandate more equal wards in terms of population size within one local council. The boundaries should be clearly defined and publicised.
- Amend the BLGA to give the function of delimitation of wards to an independent agency.

CANDIDACY AND THE RIGHT TO STAND FOR ELECTION

According to paragraph 15 of General Comment 25 of the ICCPR, any restriction on a citizen's right to stand for election must be justifiable based on objective and reasonable criteria. Section 24(1) of the BLGA introduces a long list of requirements for a citizen to be eligible to contest local council elections. Requirements such as 'of good character', 'has not been involved in activities prejudicial to the... interest... of society' are subjective and create scope for misuse. Similarly, permanently barring citizens who were removed from public service or convicted of an offence are unreasonable restrictions on the right to candidacy. Default on taxes and other financial dues likewise should not bar a citizen from contesting elections. An elected representative who is otherwise qualified to contest an election, but has been removed as a member of a local council, should not necessarily be barred from contesting future elections.

Section 24(2)(b) of the BLGA provides that:

Whoever having been elected as a member of a local council or being a holder of an elective office of the local council is found by the Election Commission to have contravened the provisions of sub-section (1) shall cease forthwith to be an elected member or to hold the office of such Local Council and shall also stand disqualified from being a candidate for election to a local council for a period of four years.

For example, a member could lose his/her seat on the grounds that at the time of the election s/he owed financial dues, even if these were subsequently paid. Such members cannot contest an election for four years. Although paying back the loan removes this reason for disqualification, nonetheless such members are barred from contesting an election for four years.

This is an unreasonable obstacle to exercising the right to contest an election. Some of the qualifications and disqualifications for members of local councils are even more stringent than the qualifications/disqualifications prescribed for members of provincial and national assemblies. The constitution provides a timeline for disqualification on the basis of conviction or dismissal from service, while disqualification is permanent under section 24 of the BLGA. Similarly, good character must be presumed under articles 62 and 63 of the constitution of Pakistan until there is a court judgment to the contrary, but no such presumption exists in the BLGA.

Article 19 of the constitution enshrines freedom of speech and expression as human rights, which are also protected in international human rights treaties; namely article 19(2) of the ICCPR. Contravening this, section 65 of the BLGA places unreasonable and vague restrictions on freedom of speech during local council meetings. For example, as section 65 (3 and 4) of the BLGA states, an elected representative may be removed if:

Anything said and any vote given by him in the meeting of Local Council or a committee thereof... undermine the ideology, security, integrity or solidarity of Pakistan; seek to create or excite feelings of enmity, ill will, or hatred among different communities, sects, classes or sections of the citizens of Pakistan; contain any indecent, obscene, scurrilous or ironical expressions or defamatory remarks against or seek to defame any person; and relate to any matter not relevant to or beyond the scope of this Act.

Regressive provisions such as these could prevent potential candidates from contesting elections.

Recommendations:

- Amend the BLGA to abolish the numerous vague restrictions for candidacy.
- Amend the BLGA to ensure that candidacy requirements include only clear, objective and justifiable criteria, such as age, criminal record, domicile and citizenship.
- Amend BLGA to enable the ECP to take action as envisaged by section 24(2).

RIGHT TO VOTE

All citizens have the right, without suffering from discrimination or unreasonable restrictions, to vote and be elected in genuine, periodic elections which are held by universal suffrage, equal suffrage and by secret ballot, and guarantees the free expression of the will of the electorate, according to article 25(b) of the ICCPR. Paragraph 3 of General Comment 25 asserts that:

State reports should outline the legal provisions which define citizenship in the context of the rights protected by Article 25. No distinctions are permitted between citizens in the enjoyment of the right to vote on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Distinctions between those who are entitled to citizenship

by birth and those who acquire it by naturalization may raise questions of compatibility with Article 25. State reports should indicate whether any groups, such as permanent residents, enjoy these rights on a limited basis, for example, by having the right to vote in local elections or to hold particular public service positions.

Paragraph 10 of General Comment 25 indicates that:

The right to vote in elections must be established by law and may be subject only to reasonable restrictions, such as setting a minimum age limit for the right to vote. It is unreasonable to restrict the right to vote on the ground of physical disability or to impose literacy, educational, political affiliation or property requirements.

It is the responsibility of every state to ensure that all persons entitled to vote are able to exercise that right. The state should facilitate registration of voters. If residence requirements apply to registration, they must be reasonable, and should not be imposed in such a way as to exclude certain groups (e.g., homeless people) from the right to vote. Any abusive interference with registration or voting, as well as intimidation or coercion of voters, should be prohibited by penal laws and those laws should be strictly enforced. The state should inform citizens through voter education and registration campaigns so as to enable voters to effectively exercise their right of franchise.¹⁵

Articles 51(2) and 106(2) of the constitution of Pakistan include the following registration requirements for voters: Pakistani citizenship; a minimum age of 18; registration as a voter; and not being a person of unsound mind as declared by an authorised court of law. In addition to these requirements as stipulated in the constitution, section 23(2) of the BLGA introduces 'other conditions specified by the Election Commission'. That is, the BLGA further provides that the ECP may prepare the electoral rolls in the manner it deems appropriate or to use the electoral rolls prepared for provincial assembly elections. The BLGA also does not specify how a citizen registers as a voter or how the electoral rolls will be updated and maintained,¹⁶ nor does it adequately define electoral areas.¹⁷ These provisions are vague and should be further specified in the law.

It also should be kept in mind that the ECP and the National Database Registration Authority (NADRA) are planning to conduct a nationwide update of the computerised electoral rolls in 2011, which is scheduled to be completed in early 2012. Hence elections held before this time would be on the basis of existing electoral rolls.

¹⁵ This paragraph is based on the interpretation of article 25 of the ICCPR, contained in paragraph 11 of General Comment 25.

¹⁶ It can be inferred that the ECP is responsible for updating and maintaining the electoral roll, since the ECP prepares the electoral roll. However, this should be explicit in BLGA.

¹⁷ Section 2(2) of the Electoral Rolls Act 1974 defines the term 'electoral area' in relation to elections for the national assembly or a provincial assembly to mean: (a) in rural areas, a village or a census block; and (b) in urban areas, (i) where there is a municipal ward or census block, such ward or census block; (ii) where there is no municipal ward or a census block, a well-defined Mohallah or a street; and (iii) where the ward or census block, Mohallah or street is too big, a well-defined part thereof; or (c) such other areas as may be determined by the Chief Election Commissioner. See: <http://www.ecp.gov.pk/ElectionLaws/volume3.pdf>.

Recommendations

- Amend the BLGA to expressly state the identification requirements for registration and voting, or include specific reference to the relevant provisions of the Electoral Rolls Act.
- Amend the BLGA to specify which body is responsible for updating and maintaining the electoral rolls for local government elections.

ELECTION ADMINISTRATION

According to paragraph 20 of General Comment 25, an independent electoral authority should be established to supervise the electoral process and to ensure that elections are conducted fairly, impartially and in accordance with established laws that correspond to the ICCPR.

Article 140(A)(2) of the constitution mandates the ECP to conduct local government elections.¹⁸ Section 16(1) of the BLGA reiterates this provision, but lacks clarity regarding the lines of authority and coordination between the ECP and relevant provincial bodies.

Because it is responsible for conducting local elections, the ECP also should have discretion in entrusting other entities to assist in this process, which is reflected in section 18 of the BLGA: “The Government [of Balochistan] shall establish a Local Councils Election Cell in the Local Government Department which shall perform such functions as are entrusted to it by the Government or the Election Commission.” But this is problematic for two reasons. First, the BLGA does not define role of the election cell. Second, the election cell is an arm of the Government of Balochistan, which could cast doubt on the fairness of elections on the grounds of bias. Further, section 21(5) of the BLGA grants the returning officer the right to suspend polling station staff ‘for reasons to be recorded in writing’. Such broad discretion is potentially open for abuse.

Recommendations:

- Amend section 18 of the BLGA to better define the role of election cells or delete it altogether.
- Given that the ECP is responsible for the conduct of local government elections, the Government of Balochistan should consider making returning officers fully accountable to the ECP.
- The BLGA could be amended to give the ECP the option of appointing its own officers as returning officers and assistant returning officers, or to temporarily hire qualified persons for the purpose of conducting elections.

ELECTION CAMPAIGNING, CAMPAIGN FINANCE AND ACCOUNTING

The legislative framework must provide a level playing field to all political parties and candidates. Incumbents or candidates must not be allowed to use public resources or influence for campaign purposes. Reasonable limitations on campaign expenditure may be justified. The disclosure and publication of candidates’ and parties’ assets, campaign income and expenditures increases the transparency of the electoral process. It is good practice that laws make it mandatory for candidates and political parties to disclose sources of income and details of assets. Making such information available to voters through the media or by electronic means prior to elections may also be a legal obligation of the election administrators. Violation or mis-statement should be punishable under the law.

Section 24(1)(m) of the BLGA stipulates that a person is ineligible to contest local council elections, or to remain as a local representative, if s/he fails to file the required return of election expenses or is convicted of exceeding the limits of election expenses. A candidate or incumbent may be fined up to 10,000 rupees for failing to provide a statement of election expenses.¹⁹ However, the BLGA does not define election expenses, spending limits or permissible mechanisms for campaign financing, or accounting and auditing of such expenses. Although these are defined by the RoPA, this terminology is vague.²⁰

Local council members are required by section 27 of the BLGA to submit a written declaration of their properties and the properties of their family members, including assets held outside Pakistan. The Government of Balochistan is entitled to determine the manner of submission of the declaration of properties and such declaration is required to be submitted to an authority mentioned in the rules that will accompany the BLGA. The definition of the term ‘family’ is broad, including adopted children, parents, domestic servants, and relatives living with and wholly dependent upon the elected representative (see explanation under section 27 of the BLGA). Such wide terms of reference renders the system ineffective and opens up opportunities for misreporting on assets.

Paragraph 19 of General Comment 25 states:

Persons entitled to vote must be free to... support or to oppose government, without undue influence or coercion of any kind which may distort or inhibit the free expression of the elector’s will. Voters should be able to form opinions independently, free of violence or the threat of violence, compulsion, inducement or manipulative influence of any kind. Reasonable limitations on campaign expenditure may be justified where this is necessary to ensure that the free choice of voters is not undermined or the democratic

¹⁹ 10,000 rupees is equivalent to €82.44 or US\$117.99 (9 May 2011). Elected representatives receive only a minimal honorarium for their service.

²⁰ Sections 42, 48-52, 96 and 100 of the RoPA deal with election expenses.

¹⁸ Article 219(d) of the constitution also defines this as a duty of the ECP.

process distorted by the disproportionate expenditure on behalf of any candidate or party...

An example of 'undue influence' is offering money or providing other incentives to influence a vote. Such attempts at vote buying are often accompanied by the manipulation of public funds to attract votes, which also gives undue advantage to incumbent candidates.

An effective regulatory framework includes full disclosure, controls on donations, spending limits, independent enforcement with effective and proportional sanctions, and oversight. In most countries, the national election management body is responsible for administration and enforcement of the regulations. However, the BLGA leaves these issues largely unaddressed.

Recommendations:

- Amend the BLGA to close loopholes and clarify ambiguities related to election expenses. In line with good practice, this should include disclosure reporting requirements, public access to records and their publication (e.g., all returns of election expenses, audits of such expenses and investigation reports should be made public, for instance through the internet).
- Amend the BLGA to clearly define contributions and spending limits.
- The Government of Balochistan also should consult the ECP on developing legislation for the administration and enforcement of regulations related to income and asset statements and auditing of campaign finances.

ACCESS TO MEDIA

Freedoms of expression and access to information are human rights, according to article 19(2) of the ICCPR, which is also recognised in article 19 of the constitution of Pakistan. Free communication of information and ideas about public and political issues between citizens, candidates and elected representatives, is essential for the enjoyment of these rights and are protected by article 25 of the ICCPR.²¹ Freedom to debate public affairs, to hold peaceful demonstrations and meetings, to criticise and oppose, to publish political material, to campaign for election and to advertise political ideas are important rights guaranteed under the provisions of the ICCPR.²² During the 2008 elections for the national and provincial assemblies, international and domestic observers highlighted a number of public and private media shortcomings. *Inter alia*, they recommended that the media provide 'proper access to

different stages of an election'²³ and that the 'State media should be neutral towards all parties and candidates' and 'provide equal access to all the contestants'.²⁴ The EU EOM 2008 report recommended that: 'media personnel should also be trained on electoral reporting in order to inculcate professionalism and ethics in election reports and news'; 'State media should be able to distinguish between reporting on activity of an official and campaigning'; and 'media should not give preferential treatment to state authorities or incumbents in office during election campaigns'.²⁵

Since the 2008 elections, the media landscape in Pakistan has continued to expand and diversify, with more information available to citizens through private and public media. However, chapter IV of the BLGA, which covers elections, does not include specific dispositions pertaining to the media. Media coverage of elections also is not specifically addressed in the RoPA, nor has the Pakistan Electronic Media Regulatory Authority framed election-specific regulations.

Recommendations:

- Amend the BLGA to have explicit provision(s) allowing access to media to report each and every stage of local elections, including information about candidates. Media could be required to provide free and balanced airtime and space to candidates.
- The BLGA could place restrictions on paid advertisements by the candidates.

DOMESTIC AND INTERNATIONAL ELECTION OBSERVATION

Independent and neutral observation of elections by domestic and international election observers is an effective mechanism to ensure transparent elections. They are also valuable for reporting whether elections have been conducted in accordance with national and international obligations. In addition, observers can help to mitigate potentials for violence. According to paragraph 20 of General Comment 25, there should be independent scrutiny of voting. However, the BLGA contains no provision for election observers.

It is likely that the ECP's electoral reform package will contain legal rights and responsibilities for domestic and international election observers, as well as regulations for the ECP's accreditation process.

23 National Democratic Institute (NDI), Statement of pre-election delegation to Pakistan, October 2007, page 9, states that media should have right to cover elections. See: http://www.ndi.org/files/2208_pakistan_peam_stam_102107.pdf.

24 PACFREL, How Fair Were Elections 2008? Field Observation Report, July 2008 (recommendations on page 39).

25 Recommendations 59, 61 and 56 (respectively) of the EU EOM 2008.

21 These rights are also further elaborated in paragraph 25 of the General Comment 25.

22 *Ibid.* Article 25 of the ICCPR also provides for free press and other media to be able to comment on issues without censorship or restraint as this is necessary for enabling people to make informed choices in elections.

Recommendations

- The BLGA should offer a legal basis for election observation and should specify the mandate, rights and obligations of election observers. The Act also should entitle observers to access all stages of the electoral process.
- The BLGA should contain clear procedures for registration and accreditation of the election observers, in keeping with national and international standards.²⁶

POLLING PROCEDURES

Secret balloting is essential to guarantee the free expression of the will of electors, according to article 25(b) of the ICCPR, and states are obligated to guarantee the secrecy of the vote. Paragraph 20 of General Comment 25 indicates that in turn this implies electors should be protected from any form of coercion or compulsion to disclose how they intend to vote or how they did vote, as well as be protected from any unlawful or arbitrary interference with the voting process. Paragraph 22 of General Comment 25 goes on to state that the secrecy, security and validity of the voting process must be guaranteed by law. Article 226 of the constitution of Pakistan reflects these requirements by mandating that all elections, other than those of the prime minister and the chief minister, shall be by secret ballot.

The BLGA is largely silent about polling procedures, leaving these to be conducted in accordance with the provisions of the RoPA; e.g., see section 16(4). As noted above, the RoPA is currently under review and several amendments are anticipated. These amendments are unlikely to be in place before the next local government elections, which are scheduled for May 2011. Nonetheless, once they are approved, amendments to the RoPA could be reproduced to constructive effect in the BLGA. Legislation by reference (which is currently the case with the BLGA) could create confusion about polling and other issues on the ground in Balochistan.

Recommendations:

- Amend the BLGA to contain provisions regulating polling procedures, especially those that ensure ballot secrecy. Because amendments to the RoPA are unlikely to be in place before the next local government elections, the necessary changes to the BLGA should be enacted swiftly.
- To avoid potentially conflicting norms, the Government of Balochistan should take account of the process for amending the RoPA.

TRANSPARENCY OF COUNTING AND TABULATION OF VOTES

In order to uphold the rights guaranteed by the ICCPR, it is essential that ballots are counted in a transparent manner which creates confidence among all election stakeholders. Counting and tabulation procedures must ensure that the will of the electorate is respected. Paragraph 20 of General Comment 25 stipulates that votes should be counted in the presence of candidates or their agents, and there should be independent scrutiny of the voting and counting process.

There is no provision in the BLGA guaranteeing transparency of counting and tabulation of votes. Instead, as with other aspects of polling, section 16(4) of the BLGA refers to the RoPA to determine the vote counting processes. The applicable counting and tabulation rules contained therein are generally in line with Pakistan's international obligations. However, it is problematic that the RoPA provides the presiding officer with unfettered discretion to recount votes, such that a recount can be ordered whenever s/he deems this to be necessary.²⁷ At the same time, the RoPA does not require a recount in case of tied votes between two or more candidates, but rather provides for a draw of lots.²⁸ The BLGA also does not provide for any consequences for non-issuance of notice of consolidation of results by the returning officer.

Recommendations:

- Amend the BLGA to regulate the requirements for a recount to ensure clarity and credibility instead of leaving this to the discretion of the presiding officer.²⁹ For example, it could require a recount in case of tied votes cast for two or more contesting candidates.

PUBLICATION OF RESULTS

Paragraph 19 of General Comment 25 indicates that genuine elections require credible publication of voting results. The election results also should be announced in a prompt manner.³⁰ Recommendations 18, 19 and 36 (respectively) of the EU EOM 2008 state that: results from each polling station should be immediately displayed at the polling station; results should

²⁷ Section 38(5) of the RoPA provides that the presiding officer may recount the votes of his/her own motion if s/he considers this necessary; or upon the request of a contesting candidate or an election agent present if, in his/her opinion, the request is not unreasonable.

²⁸ Section 41(1) of the RoPA states: "Where, after consolidation of the results of the count under Section 39, it appears that there is equality of votes between two or more contesting candidates and the addition of one vote for one such candidate would entitle him to be declared elected, the Returning Officer or the Commission, as the case may be, shall forthwith draw a lot in respect of such candidates and the candidate on whom the lot falls shall be deemed to have received the highest number of votes entitling him to be declared elected."

²⁹ Recommendation 42 of the EU EOM 2008.

³⁰ PACFREL, How fair were Elections 2008? Field Observation Report, July 2008, page 39.

²⁶ Recommendation 16 of the EU EOM 2008.

COMPLAINTS AND APPEALS, ENFORCEMENT OF ELECTION RIGHTS

be published on the ECP website and be provided to election agents and observers; and the accuracy of results should be checked at the time of consolidation. Above all, the process of consolidation should be transparent and accessible.³¹

The BLGA is silent about publication of election results, with section 16(4) only referring again to the RoPA for rules about the publication of results of local council elections. Section 38(11) of the RoPA stipulates that the presiding officer must give certified copies of the election result (i.e., the statement of the count) and the ballot paper account (i.e., details of the ballot papers issued at the polling station) to the candidates, their election agents or polling agents, depending on who is present. However, the RoPA does not have any regulations about failure to do so. More importantly, the RoPA does not require the display of results at each polling station and there is no legal requirement to provide election observers with polling station results. Further, the law does not require provision of copies of polling station results at any subsequent stage of declaration of results by the returning officer³² or the election commission.³³

The RoPA requires the returning officer to inform candidates and their election agents of the day, time and place of result aggregation. Section 39(1) of the RoPA states that candidates and their agents are entitled to witness the aggregation of results, but it does not specify the consequences if the returning officer fails to issue notice or to provide an opportunity for candidates and their agents to do so.

The RoPA also requires the returning officer to communicate the consolidated results of the count (or the result of the draw of lots in case of a tied vote) to the ECP; i.e., respectively, see sections 42(1) and 39 of the RoPA. By public notice, the ECP then declares the contesting candidate who has or is deemed to have received the highest number of votes to be elected; also see section 42(1) of the RoPA. Section 42(2) of the RoPA indicates that this public notice is merely required to contain the name of, and the total number of votes received by, each contesting candidate as a result of consolidation proceedings. The ECP, or its designated authority, announces the results of an election but the notification only contains the name of the winning candidate.³⁴

Recommendations:

- Amend the BLGA to require results to be displayed at the polling station upon completion of the count and the hand-over of certified copies of the results and the ballot paper account to the candidates, polling agents and domestic and/or international observers. Consequences for non-compliance should also be regulated.
- Amend the BLGA to require the publication of polling station results on the ECP website.

Voters, candidates, parties and other stakeholders must have access to a mechanism for resolving electoral disputes in an impartial, fair, consistent and expedient manner. Article 2 (3)(a) of the ICCPR states, “All persons whose rights or freedoms are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity.” Paragraph 20 of the General Comment 25 also indicates that, “There should be... access to judicial review or other equivalent process so that electors have confidence in the security of the ballot and the counting of the votes.”

Against this backdrop, the election appeals system of the BLGA suffers from a number of ambiguities. First and foremost, the BLGA creates parallel jurisdictions to deal with election disputes. For example, the ECP has the authority to decide on candidates’ or members’ qualifications during pre-election or post-election periods, under section 24(2) of the BLGA. The Government of Balochistan also may remove a member of a local council on the grounds of disqualification, absence from meetings of the local council, refusal to take the oath of office for members, non-submission of the statement of assets or misconduct during post election period, as specified in section 31(1) of the BLGA.³⁵ An election tribunal³⁶ likewise may remove a member on the grounds of disqualification, corrupt or illegal practice, or failure of any person to comply with the provisions of the BLGA or related rules, as defined in section 44 of the BLGA. The ECP is similarly empowered to appoint any officer as the election tribunal for an area.³⁷

As such, the BLGA grants concurrent jurisdiction to the Government of Balochistan, the ECP and the election tribunal without specifying the hierarchy of their powers. It is not clear whether all three bodies can simultaneously assume jurisdiction, nor is it clear whose decision prevails. The BLGA contains no guidance on how to determine responsibilities. The BLGA does not specify, for instance, that a body is barred from deciding a case if the same case is pending with one of the other two authorised bodies.

Any interested person, including political parties, civil society organisations and voters, should have the right to call into question an election or any aspect of an election. However, the BLGA does not grant the right to appeal to voters. According to section 37 of the BLGA, only candidates are entitled to

31 According to section 31(2) of the BLGA, in those cases where a local council member has been removed by the Government of Balochistan, the member may only file an appeal before the government, and not before an independent forum.

32 Section 38(1) of the BLGA empowers the ECP to appoint an officer to be the election tribunal for a specified area for hearing an election petition. There is no other qualification for appointment of an election tribunal, except that a person should be an ‘officer’. The word ‘officer’ has not been defined but it is generally understood to mean an officer of the Government of Balochistan, which raises questions about the neutrality of any such tribunals.

33 See Section 38 of the BLGA. The word ‘area’ has not been defined in the BLGA but in order to give a reasonable definition, it has to be taken as a local area that has been defined to mean an area of a local council under section 2(1)(xxiv) of the BLGA.

31 Democracy International, US Election Observation Mission to Pakistan, Final Report, May 2008, page 41, recommendation 11. See: <http://www.democracyinternational.com/wp-content/uploads/docs/2008-DI-Pakistan-Election-Observation-Report.pdf>.

32 The returning officer consolidates the results under Section 39 of the RoPA.

33 The ECP declares and publishes the results under section 42 of the RoPA.

34 Section 36 of the BLGA, read in conjunction with section 42(4) of the RoPA.

query an election before the election tribunal. Neither voters nor political parties are entitled to file appeals.

Sections 46 through 58 of the BLGA make punishable a number of specific offences relating to elections, including: corrupt practice (i.e., bribery, impersonation or undue influence); illegal electoral practices; canvassing on polling day; disorderly conduct near a polling station; tampering with election material; interference with or failure to maintain the secrecy of the vote; and delinquent conduct by electoral or government officials. However, the BLGA does not provide for a formal complaint mechanism for such violations. Rather, it only includes a formal mechanism for challenges to elections results, but does not identify any mechanisms to deal with other violations related to the nomination period, campaign period or election day.

Recommendations:

- The BLGA should be amended to clearly regulate the mandate and responsibilities of the institutions involved in adjudicating election appeals, as well as establish a timeframe for resolving disputes.
- Amend the BLGA to entitle any interested person to file election related complaints and appeals.
- The BLGA should clearly define those deeds that are subject to penalties and fines. Penalties and fines should be proportional to the offenses committed.

MINORITIES, PEASANTS AND WORKERS

Minority populations have equal rights to participate effectively in cultural, religious, social, economic and public life.³⁸ Article 36 of the constitution of Pakistan guarantees the protection of minorities, with the state mandated to safeguard their legitimate rights and interests. Although sections 11 and 12 (respectively) of the BLGA create special seats for minorities, and peasants and workers, there is no specific method for determining how these reserved seats are to be filled. Moreover, there is no rigorous mechanism for verifying the qualifications of candidates contesting these special seats, which is particularly the case for peasants and workers.

Section 2(xli) of the BLGA defines the term 'member of a minority community' as 'a person other than a Muslim as defined in the Constitution of Islamic Republic of Pakistan'. However, the term 'minority' does not subsequently appear in the body of the text of the BLGA. Instead, the word 'non-Muslim' is repeatedly used (e.g., see sections 10, 11, 24 and 26). Section 11 of the BLGA indicates that the Government of Balochistan has the authority to determine the number of non-Muslim members in a local council, bearing in mind the population of non-Muslims in any given local area. These special seats are over and above

the general seats of the local council,³⁹ but the BLGA does not specify provisions for the election of non-Muslim members to the reserved seats of a local council.

Recommendations:

- Amend the BLGA to specify the mode of election of minority, and peasant and worker members.
- Amend the BLGA to ensure that candidates are genuine representatives of their respective communities (i.e., minorities, peasants and workers).

WOMEN

Articles 25 and 26 of the constitution of Pakistan call for special protection for women, encouraging the state to take such measures. Article 32 of the constitution also provides that the state encourages local government institutions to be composed of elected representatives of the areas concerned and having special representation of peasants, workers and women. Article 34 further mandates the full participation of women in all spheres of national life. Pakistan also ratified the Convention on the Elimination of Discrimination Against Women (CEDAW) on 12 March 1996, which indicates that states can adopt temporary special measures aimed at accelerating *de facto* equality between men and women (see article 4.1 of CEDAW). Articles 51, 59 and 106 of the constitution of Pakistan further stipulate that there be reserved seats for women in parliament and the provincial assemblies.

Section 12 of the BLGA reserves special seats for women, with section 12(1) providing for women members to be elected to the local council 'whose number shall be 33% of the total number of general members subject to a minimum of one such member'. Importantly, however, as in the case of other reserved seats, the BLGA does not specify the mode of election or allocation of seats.

Recommendations:

- Amend the BLGA to specify the mode of election of women for reserved seats in a manner that is consistent with the letter and spirit of the constitution of Pakistan, as well as reflects Pakistan's international obligations.

38 Article 2.2 of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities adopted by the UN General Assembly resolution 47/135 of 18 December 1992. See: <http://www.un.org/documents/ga/res/47/a47r135.htm>.

39 Section 11 of the BLGA states that the number of seats for non-Muslims in a local council shall be over and above the number of general seats and the number of members representing special interest groups (i.e., women and workers). Section 12 indicates that there must be women members equal to 33% of the number of general members and 5% of the number of general members who are peasants and workers. Hence, all of these special seats are in addition to the number of general seats.

CONCLUSION

The 18th amendment to the constitution of Pakistan provides unprecedented autonomy to the provinces. The devolution of key ministries will impact on federal-provincial dynamics and provincial-local (district) dynamics alike. The BLGA was drafted before approval of the 18th amendment and Pakistan's ratification of the ICCPR. The provincial governments must now amend their laws to bring them in line with these developments.

This review of the BLGA is an opportunity to address deficiencies and make improvements according to international standards and obligations. A first step is to clarify all of the ambiguities therein and minimise legislation by reference, especially to the RoPA. Indeed, the BLGA applies a number of provisions from the RoPA to local government elections, insofar as these are not inconsistent with the BLGA.

In order to strengthen local councils, the BLGA should contain clear and objective requirements for dissolving local councils, rather than leaving this to the discretion of the provincial government. The right of political affiliation should be available to all citizens and as such the BLGA should be amended to allow candidates to have a political party affiliation when contesting elections. The criteria for delimiting constituencies (wards) are neither clear nor detailed. These criteria should be revised to mandate clearly defined boundaries of equal population sizes, which should be publicised. Candidacy requirements should be simplified to avoid any ambiguities. Similarly, the identification requirements for the voters should also be clearly spelled out.

According to article 140A of the constitution of Pakistan, the ECP is responsible for conducting local government elections. In order to avoid any conflicts or confusion, the BLGA should clearly state that the provincial authorities will be subordinate to the ECP in matters related to election administration. The role of non-partisan domestic and international election observers also should be clarified and accredited observers should have access to all stages of the election process, including the counting and tabulation of results.

Historically, special seats on local councils have been open to misuse due to vague qualification criteria. As such, the BLGA should specify the mode of election to reserved seats in a manner that is consistent with the letter and spirit of the constitution of Pakistan and Pakistan's international obligations, in particular the ICCPR. The BLGA should also specify the mode of election of minority members, peasants and workers and ensure that candidates are genuine representatives of these communities.

With these amendments, the BLGA would provide the framework for a credible electoral process at the local government level. Importantly, these amendments would establish the BLGA as model legislation for other provinces. They also would mark the first step by a province to comply with Pakistan's international obligations.

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