



# KHYBER PAKHTUNKHWA LOCAL GOVERNMENT ELECTIONS 2015

## PRELIMINARY OBSERVATION FINDINGS AND RECOMMENDATIONS FOR REFORMS

### KHYBER PAKHTUNKHWA VOTES IN LARGEST EVER ELECTION

#### Executive Summary

An impressive number of voters in Khyber Pakhtunkhwa (KP) turned out to elect their local council representatives in the largest ever electoral exercise in the province on May 30, 2015. The election was competitive, election campaign relatively peaceful but culminating in an Election Day that was marred by administrative mismanagement, extremely slow processing of voters, procedural irregularities and confusions, obstacles for women voters and widespread incidents of violence.

The election was distinct in its scale. Polling was held in 3,339 neighborhood and village councils of 978 wards in 24 districts of the province, with the exception of Kohistan where the elections were stayed by the Peshawar High Court on a petition challenging the bifurcation of the district

As many as 39,079 candidates contested for 23,111 general seats in neighborhood and village councils, 7,681 candidates for 6,678 reserved seats for women, 15,700 candidates for 3,339 seats reserved for peasants and workers, 14,224 candidates for 3,339 seats reserved for youth and 349 candidates for 3,339 seats reserved for minorities. As many as 5,480 candidates contested the polls in 978 wards for 24 district councils and 5,907 candidates in 978 wards for 70 tehsils councils. Elections to neighborhood and village councils were held on a non-party basis, while those for tehsil and district councils were held on a party basis.

By far this election superseded the local government election in the province in 2005 in its scale when direct election was held in 986 union councils for 12,818 seats as compared to a total of 41,762 in 2015 around 4,000 wards - a plausible reason for some of the mismanagement observed on Election Day.

There was an 8% increase in the number of total registered voters in the province compared to the 2013 General Elections. There were 13,387,234 voters (7,636,462 male and 5,750,772 female) registered in the province. As many as 11,211 polling stations (3,428 male, 3,059 female and 4,724 combined) were set up. A total of 2,022 additional polling stations were setup in 24 districts as compared to 9,189 polling stations setup in these districts for the 2013 General Election. However, ECP did not make a detailed district-wise polling scheme available to public on its website.

Despite the scale and evolving legislation and regulatory framework, the ECP managed to conduct the polls on the date assigned by the Supreme Court of Pakistan in its order on March 6, 2015. Many of the issues observed through the electoral process were due to lack of clarity of the new local government system among stakeholders involved in the conduct of these elections - voters, candidates, election/government officials in addition to the polling staff. Equally critical have been the legislative areas with respect to the rights and entitlement of voters and the responding mandate of the ECP to protect them. This remains a point of contention after the 18<sup>th</sup> Constitutional Amendment, which under Article 140A (2), has assigned the responsibility of conducting the elections to the local government to the ECP, which is subject to provincial legislation.

Held under the Khyber Pakhtunkhwa Local Government Act 2014 (amended in 2014) and its subordinate election rules - the Khyber Pakhtunkhwa Local Government Elections Rules 2013; the elections to local councils heralded the first step to deepening of democracy in the province. The last elections to the local government in the province were held in 2005, under the now defunct Provincial Local Government Act 2000 enacted by the then government led by General Pervez Musharraf.

The federal and provincial governments elected after the general elections in 2008 rendered the Musharraf-designed local government system dysfunctional and procrastinated the enactment of an alternative system on various legal and political pretexts despite desires and directions of the Supreme Court for more than three years. The first democratic transition of power after the 2013 General Election also could not yield the local government elections until a full and final ruling by the apex court that local government elections in cantonment boards, KPK, Islamabad Capital Territory (ICT), Sindh and Punjab be held on April 25, May 30, July 25 and September 30, 2015, respectively. Subsequent to the court direction on March 6, 2015, the ECP had only a month to announce the schedule for an electoral exercise of such scale on April 4, 2015.

## Scale and Scope of Observation by Free and Fair Election Network (FAFEN)

In line with its mandate to observe the elections and advocate for electoral reforms for transparent, accountable and responsive elections which can enable voters and candidates to exercise their electoral rights without any inducement and fear, FAFEN conducted an assessment of the pre-election processes in 19 districts and observed the elections in all 24 where the polls were held.

### List of Districts Covered by FAFEN

Pre-Election Processes	Kohat, Bannu, Lakki Marwat, D.I.Khan, Swat, Buner, Shangla, Chitral, Haripur, Abbottabad, Mansehra, Battagram, Tor Ghar, Peshawar, Nowshera, Charsadda, Swabi, Mardan and Malakand
Election Day Observation	Kohat, Karak, Hangu, Bannu, Lakki Marwat, D.I.Khan, Tank, Swat, Buner, Shangla, Chitral, Upper Dir, Lower Dir, Haripur, Abbottabad, Mansehra, Battagram, Tor Ghar, Peshwar, Nowshera, Charsadda, Swabi, Mardan and Malakand

**Pre-Election Observation:** Twenty-three trained FAFEN observers conducted interviews with District Returning Officers (DROs), Deputy Election Commissioners (DECs), district office-bearers of contesting political parties and contesting candidates (with a focus on women, peasant, workers, youth and minority candidates). Group interviews with voters were also held during the pre-election phase. Qualitative tools were developed to gather information and perception on critical electoral areas - such as the respondents' understanding of election laws, ECP's support and facilitation, electoral rolls and voter registration, delimitation of wards and smaller electoral units, polling schemes, ECP's responsiveness to complaints (if any), allocation of election symbols, campaign environment and the role of provincial government etc.

**Election Day Observation:** FAFEN deployed 987 trained citizens (503 male and 484 female) to observe as many as 3,000 out of 11,221<sup>1</sup> polling stations. All observers were issued accreditation cards by the DROs under the instructions given by the ECP through a letter issued on May 21, 2015. The KPK Chief Minister Secretariat had also reinforced the ECP's instructions through a letter to the Chief Secretary dated May 25, 2015 seeking the Deputy Commissioners to support independent observation by FAFEN to further the ECP's resolve for electoral transparency. This coordination between the ECP and the provincial government was unique and ensured timely accreditation of all FAFEN observers.

FAFEN observers were trained in 41 trainings across the province on technical aspects of the voting and counting process based on the Khyber Pakhtunkhwa Local Government Act 2014 amended in 2014 and its subordinate elections rules Khyber Pakhtunkhwa Local Government Elections Rules 2013. Each observer was required to observe at least three polling stations in 987 wards to ensure optimum outreach and in-depth assessment of the quality of the electoral process.

The observers were trained to fill out standardized checklists based on laws and rules to optimize objectivity and ensure uniformity of observations. The following table provides a district-wise breakdown of accredited FAFEN observers:

Sr. No.	District	Male Observers	Female Observers	Total Number of Observers
1	Abbottabad	26	25	51
2	Bannu	25	24	49
3	Battagram	10	10	20
4	Buner	15	14	29
5	Charsadda	25	24	49
6	Chitral	12	12	24
7	D.I.Khan	25	24	49
8	Hangu	10	9	19
9	Haripur	23	22	45
10	Karak	11	10	21
11	Kohat	16	16	32
12	Lakki Marwat	17	16	33
13	Lower Dir	21	20	41

<sup>1</sup> Cited at <http://lgkp.gov.pk/lg-elections-2015/Summary-of-Polling-Station-in-KPK-LG-Elections-2015.jpg> on May 30, 2015. The ECP's website didn't give any details of polling stations by districts.

Sr. No.	District	Male Observers	Female Observers	Total Number of Observers
14	Malakand	14	14	28
15	Mansehra	30	29	59
16	Mardan	38	37	75
17	Nowshera	24	23	47
18	Peshawar	48	44	92
19	Shangla	14	14	28
20	Swabi	28	28	56
21	Swat	34	33	67
22	Tank	8	8	16
23	Tor Ghar	13	12	25
24	Upper Dir	16	16	32
Total		503	484	987

A call center was also set up for observers to report issues of urgent nature - such as restrictions on observation, incidents of violence, capture of polling stations or booths and suspension in polling etc. In addition, trained call agents contacted as many as 462 observers and obtained information on the details of the voting process. FAFEN conducted the exercise with the support of nine of its member organizations which were assigned the task of observation in various districts/tehsils as given below:

Sr. No.	Organization	Areas Covered
1	ACE	Peshawar - Town 1
2	AWARD	Peshawar - Town 4
		Upper Dir
		Lower Dir
		Malakand
3	CARAVAN	Chitral
		Shangla
		Swat
4	CDP	Lakki Marwat
		Hangu
		Karak
		Kohat
		Bannu
5	IRSP	Mardan
6	KK	Tank
		D.I.Khan
7	PAIMAN	Peshawar - Town 2
		Charsadda
8	SUNGI	Battagram
		Mansehra
		Abbottabad
		Tor Ghar

Sr. No.	Organization	Areas Covered
		Haripur
9	URDO	Peshawar - Town 3
		Buner
		Nowshera
		Swabi

## Preliminary Findings of Election Day Observation

The preliminary findings are based on reports received from at least one polling station of 462 wards in 24 districts of the province, making up for almost 50% of a total of 978 wards. These findings, however, may not be generalized to reflect an overall picture of the quality of the elections. However, these findings are instructive and show an authentic trend about critical aspects of the voting process observed on the Election Day. The following table shows the district-wise coverage of Election Day reporting<sup>2</sup>:

District	Total Number of Wards	Reporting from Wards	Percent Coverage
Peshawar	92	48	52%
Mardan	75	31	41%
Lakki Marwat	33	20	61%
Bannu	49	24	49%
Haripur	45	23	51%
Swabi	56	42	75%
Nowshera	47	25	53%
Abbottabad	51	31	61%
D.I.Khan	49	27	55%
Mansehra	59	23	39%
Buner	29	10	35%
Swat	67	27	40%
Charsadda	49	20	41%
Malakand	28	11	39%
Kohat	32	22	69%
Karak	21	12	57%
Battagram	20	11	55%
Chitral	24	11	46%
Shangla	28	6	21%
Lower Dir	41	12	29%
Upper Dir	32	18	56%
Tank	16	8	50%
<b>Total</b>	<b>943</b>	<b>462</b>	<b>49%</b>

<sup>2</sup> No prompt reporting from Tor Ghar and Hangu

The key findings include:

## 1. Campaigning and Canvassing near Polling Stations

Political parties and contesting candidates, particularly for tehsil and district councils, were freely breaching the legal restriction of no canvassing within a 200 meters radius around polling stations. Most political parties had set up camps very close to the polling stations across the province. Although the Code of Conduct for Political Parties and the Contesting Candidates authorizes Returning Officers (ROs) to grant permission for the setting up of these camps, most camp-holders were unaware of any such provision. Campaigning and canvassing of voters went on freely at these camps, with no action reported from anywhere to curb these activities.

## 2. Polling Station Management

Nearly 13% of the polling stations were reported to have opened after the official voting time of 8am. Reports of delayed start in polling were received from at least one polling station in 6% of the 978 wards in the province. District-wise, these delays were reported from 14 out of 24 districts where the elections were held. Most instances of delayed start were reported from Mardan, followed by Peshawar, Lakki Marwat, Swabi, Bannu, Swat and Karak.

The delay in opening was caused by various reasons, such as non-arrival of polling officials on time which was reported from 4.3% of the polling stations. Other reasons included logistical arrangements such as setting up of polling stations on the morning of election instead of the night before; unavailability of essential election material (voters' lists, stationary, ballot boxes etc.) and erroneous printing of ballot papers in some cases. Essential material such as counting forms and ballot account forms were observed to be provided at polling stations through the day.

Polling was also delayed due to overzealous voters and polling agents who interfered with the work of polling officials. In many cases, the polling staff did not have adequate furniture to set up the polling stations (such as three tables and chairs for polling officers in a booth and lack of adequate number of chairs for polling agents etc.).

At least five incidents of polling officials attempting to influence voters' choice were also observed by FAFEN in Peshawar, Charsadda, Kohat, Mardan and Chitral.

## 3. Slow Processing of Voters

The polling scheme was not finalized to accommodate the increase in voters as well as the complex ballot processing requirements envisaged by the KP Local Government Act. Although three assistant presiding officers were deployed at every polling booth to process six to seven (in case of a minority seat) ballot papers, the arrangement remained inadequate as long queues were observed inside and outside most polling stations. The time to process a voter varied considerably, depending on the procedure adopted by the polling staff. However, it took more than four minutes for each voter to get six to seven ballot papers, mark them and put them in the ballot box. The issuance of six ballot papers to a voter required as many as 42 entries on the counterfoils and back of the issued ballot papers, which not only slowed down the voting process but also led to brawls and scuffles in many cases. The slow processing of voters, in many cases, prolonged voting beyond polling hours as voters were present inside polling stations after the scheduled closing time of 5pm. There

were also reports of voting being continued well after 8pm in some polling station in Abbottabad and Battagram.

Another reason for overcrowded polling stations, as reported by FAFEN observers, was the breaks in polling for food and prayers, presence of unauthorized personnel at the polling stations, shortage of election material and violence etc. Unauthorized breaks in polling were reported from at least one polling station in 106 wards covered by FAFEN on Election Day. The following table gives the district-wise breakdown of these incidents:

District	Incidents of Breaks in Voting
Peshawar	18
Mardan	6
Lakki Marwat	13
Bannu	9
Haripur	8
Swabi	8
Nowshera	8
Abbottabad	6
D.I.Khan	2
Mansehra	2
Buner	7
Swat	1
Charsadda	6
Malakand	2
Kohat	4
Karak	1
Battagram	3
Chitral	1
Lower Dir	1
<b>Total</b>	<b>106</b>

#### 4. Election Day Violence

A total of 81 incidents of violence were reported from 18 districts, indicating a highly tense political environment on the Election Day. Incidents of violence were reported from Kohat, Karak, Bannu, Lakki Marwat, D.I.Khan, Swat, Shangla, Upper Dir, Lower Dir, Haripur, Abbottabad, Mansehra, Battagram, Peshawar, Nowshera, Charsadda, Swabi and Mardan.

FAFEN observers reported clashes between supporters of contesting candidates, incidents of aerial firing, brawls among supporters of contesting parties and scuffles between voters and polling/security officials. Violence incidents were also reported from female polling stations. A number of incidents of violence were due to alleged interference of election officials in the polling process. According to media reports, more than 10 people were killed in election-related violence and more than 80 others injured.

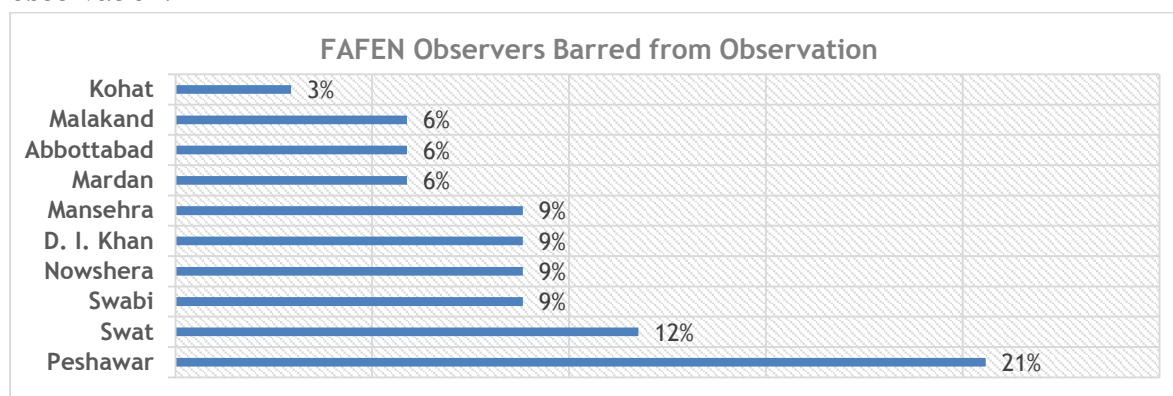
Most violent districts, according to FAFEN, were Bannu and Peshawar, each accounting for 15% of the violence incidents reported on Election Day. The following table gives the district-wise breakdown of violence incidents:

Sr. No.	District	Violence
1	Peshawar	15%
2	Bannu	15%
3	Mardan	10%
4	Swabi	9%
5	D.I.Khan	9%
6	Nowshera	6%
7	Haripur	5%
8	Charsadda	5%
9	Battagram	5%
10	Abbottabad	4%
11	Mansehra	4%
12	Malakand	4%
13	Lakki Marwat	2%
14	Swat	2%
15	Shangla	2%
16	Kohat	1%
17	Lower Dir	1%
18	Upper Dir	1%

## 5. Obstacles to Election Observation

Despite a relatively-improved accreditation process by the ECP and better coordination between the ECP and the KP government on the issue, FAFEN observers faced obstacles in their work and were stopped from observing the voting and counting process in many areas. As many as 34 of FAFEN observers faced restrictions, either by the polling officials or by security personnel deployed at the polling stations. Six female observers were also barred from observation.

Restrictions on observation were reported from at least one polling station in 34 wards of 11 districts. At least one observer in Peshawar was taken into custody when he tried to persuade the security officials to let him talk to the presiding officer. However, he was shortly released. Another observer was injured in Peshawar during a violence incident. The following figure gives the district-wise breakdown of the incidents of obstacles to FAFEN observation:

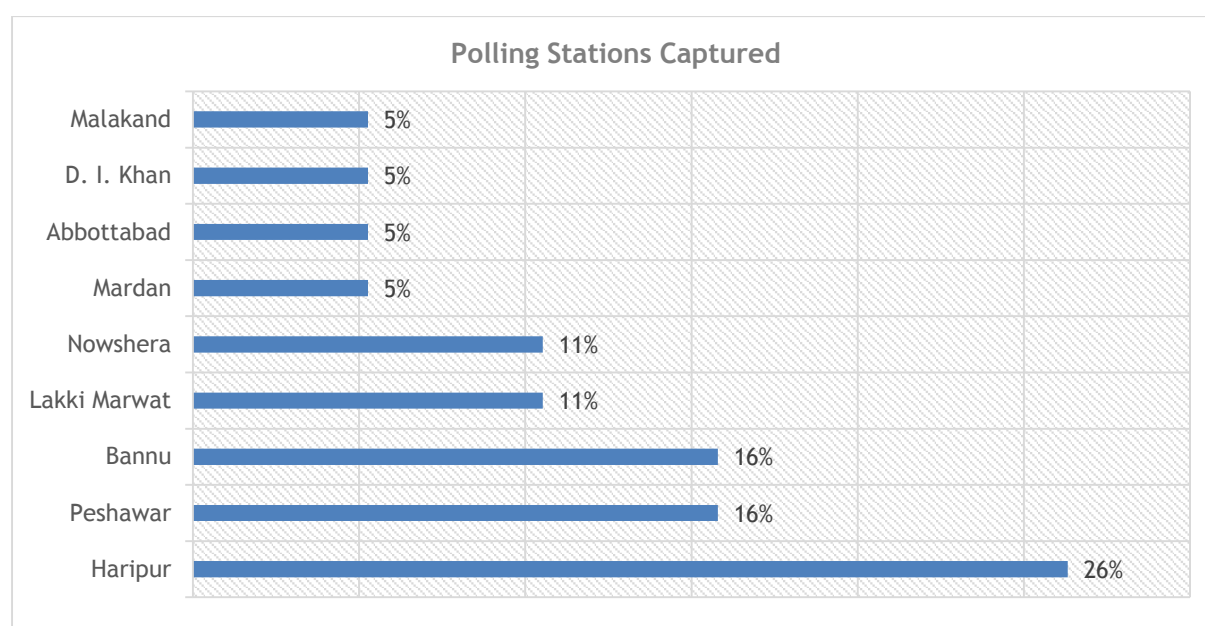




The obstacles were primarily due to unclear instructions provided to the polling officials by the ECP or their designated officials in the districts. Many polling and security officials who stopped FAFEN observers said they were not informed about the observers' presence inside the polling stations neither during their training nor through any directive by the relevant ROs/AROs.

## 6. Polling Station Capture

FAFEN observers reported 19 incidents of polling stations being captured by the supporters of contesting candidates and political parties in nine districts. Around 26% of such incidents were reported from Haripur, followed by 16% each from Peshawar and Bannu. The following figure gives the district-wise breakdown of the captured polling stations:



## 7. Obstacles to Women Voting

Although the participation of women voters improved considerably compared to previous polls in the province, obstacles to women's voting were, nevertheless, prevalent in several areas.

Incidents of systemic and traditional barriers to women voting were reported from at least one polling station in 80 out of 462 wards. A detailed assessment of the nature and scale of barriers to women voting will be made public as part of the detailed report to be made available by the end June 2015.

Although women were seen voting at some polling stations in Lower Dir (where they were barred in a recent by-election), incidents of barring women from voting were reported from at least one polling station in 17 wards.

In the other 63 wards, women were disenfranchised in at least one polling station due to systematic or institutional issues, such as absence of female polling staff, presence of male staff at female polling stations, absence of female polling stations/booths or shared entrance for both men and women at combined polling stations.

The highest number of incidents was reported from Swabi, followed by Upper Dir, Lakki Marwat and Shangla. The following table gives a district-wise breakdown of incidents of barring women from voting:

District	No. of Incidents
Swabi	15
Upper Dir	9
Lakki Marwat	8
Mardan	7
Shangla	7
Haripur	6
Abbottabad	4
Mansehra	4
Kohat	4
D.I.Khan	3
Lower Dir	3
Bannu	2
Swat	2
Chitral	2
Nowshera	1
Buner	1
Charsadda	1
Karak	1

## Preliminary Findings of Pre-Election Assessment

### 1. Voter and Candidate Education

Increasing voters' awareness on electoral laws, rules and procedures is the sole responsibility of the ECP. With respect to the local government elections, the issue of voters' awareness becomes even more essential, given the complexity of the polling process.

However, FAFEN's observation of the pre-election period showed that the ECP did not give any guidelines to the voters or the candidates, reflecting its lack of commitment towards voter education and mobilization to encourage citizens' participation in public affairs.

The majority of the voting population and contesting candidates were unaware of the electoral laws/procedures, particularly the multi-colored ballot system.

The candidates also expressed their reservations with the ECP's lack of efforts to educate voters, alleging that the situation has negatively affected their campaigns and created confusion among voters.

The lack of information also obstructed the nomination process, as candidates were unaware of the eligibility criteria for seats reserved for different communities. For instance, not a single woman contested the seats reserved for peasants in various parts of Abbottabad, as they believed women were only eligible to contest the polls on general seats.

A large number of candidates were unaware of their motivation behind contesting the polls, saying that they were mostly mobilized by friends/relatives to submit their nominations. They also expressed dissatisfaction with the ECP, saying that they hadn't been given any instructions on the Code of Conduct or the Khyber Pakhtunkhwa Local Government Bill.

## 2. Election Management

### a. Communication and Coordination

Effective coordination and communication between the election administration and government institutions is extremely crucial to ensure smooth and peaceful elections. Yet FAFEN observed various instances of weak coordination between the ECP, government departments and political parties/candidates.

For instance, the DRO in D.I.Khan complained of not having sufficient resources to conduct the polls in a smooth manner. He said he was supposed to deploy 9,000 polling officials at 673 polling stations in the district but did not possess the adequate resources to carry out the assigned task. He also complained about the list of polling officials, saying that the school teachers assigned to work as polling staff were either retired or had passed away.

Most of the candidates were also dissatisfied with the security arrangements, demanding that the security should be tightened given the scale and sensitivity of the local government elections.

### b. Weak Enforcement of Laws/Code of Conduct

In Peshawar, PTI candidates were seen holding a rally despite the imposition of Article 144, indicating weak enforcement of the law and political parties' complete disregard towards cooperation with government departments.

Similarly, posters/banners of contesting candidates were also seen on the walls of government schools and electricity poles in the entire district of Malakand and parts of Peshawar.

An MPA belonging to PTI was also seen at a mass gathering in Charbagh Village Council (VC), Malakand where the candidates of tehsil and district councils were also present. The observer also saw a PTI candidate's vehicle in the same area which was carrying a PTI flag and a picture of the party chief instead of a registered number plate.

## 3. Polling Scheme

A number of candidates complained that the voters in their union councils had been transferred to other localities. These incidents were reported from Marmandi Azim area in Lakki Marwat and from various parts of Bannu district. The candidates in Peshawar Town-1 and VC Charbagh in Malakand also expressed similar reservations. Some of the candidates in Town-1 also said that the ECP had not finalized the polling scheme, once again reflecting the lack of coordination between the election administration and the contesting candidates. The candidates in one of the village councils in Peshawar Town-2 also claimed that the number of polling stations were insufficient to handle the number of voters. PTI candidates in several areas of Dargai tehsil, Malakand also expressed dissatisfaction with the polling

scheme, saying that the number of polling booths were not sufficient to accommodate the voting population.

#### **4. Allocation of Election Symbols**

Another issue observed by FAFEN was the allocation of inappropriate election symbols, which adversely affected their candidates' election campaigns. Candidates expressed reservations with their allocated symbols (such as banana, shoe box, bath tub and feeder) from across the province.

One of the candidates also told a FAFEN observer that the candidates contesting the polls on minority seats were deliberately given derogatory symbols - such as mouse, snake and *dhol* to disrupt their campaign. Candidates contesting the polls on youth seats were also complained of receiving inappropriate symbols, which resulted in quarrels among opponents in several areas.

#### **5. Infringement of Rights of Voters and Candidates**

Article 25 of the International Covenant on Civil and Political Rights (ratified by Pakistan in 2010) gives every citizen the right and opportunity to take part in public affairs, to vote and to be elected without any unreasonable restrictions.

FAFEN observers faced a number of restrictions in accessing women candidates in several parts of the province, mostly due to cultural taboos and traditional beliefs of local people. In one such incident, FAFEN was unable to directly interview a female candidate in Bannu, where the candidate's family members spoke on her behalf to the observer.

Similarly, posters/banners of women candidates were hardly visible in Peshawar, Malakand, Upper Dir and Lower Dir - without their pictures and names in some cases. Similar observations were also reported from Swat district, where women candidates' campaign material was missing altogether.

In Katlang village of Mardan, general, peasant/worker and youth candidates of village/neighborhood councils were denied polling agents by the district and tehsil candidates. A similar incident was reported from Takht-i-Bahi in Mardan, where the same candidates were denied polling agents by the Deputy Superintendent of Police (DSP).

The observer in Swat also reported that due to limited space in the polling stations, candidates of village/neighborhood councils will not be allowed to deploy polling agents.

In Babu Zai, a JI candidate for district council said there was an agreement among residents to only vote or campaign for candidates nominated by the local elders. He also said that anyone violating this agreement would be expelled from the area.

#### **6. Uncontested Elections**

The observers reported several incidents where the candidates were elected without any contest. One such incident was reported from Tarang village in Battagram, where all the candidates were elected unopposed.

Similarly, two women candidates of neighborhood councils and one on a minority seat in Peshawar Town-1 were also elected without any contest.

Women candidates were also elected unopposed in several union councils of Abbottabad, mostly due to lack of competition in the area. The observers also noted that the women

candidates in these areas were mostly nominated on the recommendation of influential personnel and their nomination papers were also submitted by their male relatives.

In Mardan, women seats remained uncontested for the most part, with hardly any campaign material visible in these areas.

## **7. Use of Development Funds**

FAFEN observers reported extensive development work being carried out by the MPAs in Dera Ismail Khan to solicit votes ahead of the elections. For instance, one of the observers saw transformers installed in various localities that bore PTI flags on them. Similar observations were reported from Nowshera, where the government initiated development work following the announcement of the election schedule.

## **8. Minority, Peasant and Worker Candidates**

One of the major issues observed by FAFEN was the lack of criteria specifying the contest on a specific seat. As a result, a number of candidates were observed to be nominated on peasant, labour and minority seats - even though they did not belong to these communities.

One of the candidates nominated on a labour seat in Peshawar Town-1 was in fact working as an assistant manager for a local news agency. Similarly in Abbottabad and Chitral, candidates contesting on seats for peasants had significant land holdings.

In order to ensure effective representation of marginalized communities, the ECP should define a specific criterion for eligibility on reserved seats and ensure its effective implementation during the scrutiny of the candidates.

## **Preliminary Recommendations for Reforms**

A local government election system inspiring public confidence is critical to strengthening democracy in Pakistan. The existing legal and administrative frameworks, as proposed/enacted by the provinces for the conduct of local government elections, are inadequate to meet internationally-accepted and constitutionally endorsed standards of electoral freedom, uniformity, fairness, neutrality and transparency. The framework needs comprehensive reforms to enhance the quality of future elections, thereby allowing democracy to take firm roots.

One of the essential elements to achieving a local government election system is federal legal measure to ensure that the constitutional and legal guarantees to rights and entitlements of voters and candidates are complied with by the provinces. Such standardization is possible within the overall ambit of the existing constitutional provisions delineating the responsibility for the conduct of local government elections to the ECP.

While local government is a provincial subject, electoral rights of citizens and candidates are not subject to varying interpretations of the provinces. The constitution mandates the ECP as custodian of the electoral rights of citizens and candidates under federal legislation as prescribed in Article 222 of the Constitution that explicitly states that the ECP functions under laws framed by the national parliament (Majlis-i-Shura).

The Eighteenth Amendment Act 2010 inserted Article 140-A (2) to the Constitution, mandating the ECP to hold elections for the local government. However, constitutional and legal amendments critical to the operationalization of Article 140-A (2) were never made,

creating legal lacunae for the ECP. One example is the responsibility for the preparation of electoral rolls for the local government, as existing constitutional Article 219 (a) empowers the ECP to prepare the voters' list for only national and provincial elections. Similarly, Article 219 (d) only mandates the ECP to hold general elections of the local government. It is silent on the responsibility for indirect elections of local government which have been introduced in provincial legislations.

In the absence of clear legal guidance, a constitutional and federal institution (the ECP) is now being required to function under laws that are devised by federated units (the provinces), without any umbrella legislation authorizing its functions. Under these circumstances, the validity of any ECP action may be subject to future legal challenges, calling any local government election into question.

FAFEN therefore proposes a Federal Framework Legislation for the Conduct of Local Government Election in order to define the role of the ECP to conduct consistent, free, fair and transparent local government elections under the laws provided by the provincial assemblies. The proposed legislation will also provide minimum standards guidelines to the provinces to ensure uniformity in provincial legislations on basic electoral rights and processes - including qualification of voters; eligibility of candidates; periodicity of elections; voting and counting processes; minimum quota for reserved seats for women, minorities, peasants and workers; criteria for reservation of seats; eligibility for reserved seat candidates; responsibility for preparation of voters' rolls; basic principles for delimitation; election complaints handling and election dispute mechanisms.

The routes for putting in place the proposed set of measures could possibly be pursued through either constitutional or legal instruments. Constitutional amendment is the most wholesome and overarching instrument for dealing with the existing lacunae and inconsistencies within and among the provincial and federal laws and the corresponding scope of their respective legal, structural and organizational mandates. The constitutional amendment route, however, is a lengthy and contentious process requiring at least a two-third majority support from the Parliament.

A potential alternate pathway for the purpose of the Federal Legal Framework lies in introducing legal instruments in the light of the existing constitutional amendments - in particular, Article 140-A (2) of the Constitution. The subordinate law to the amendment may serve the purpose of explaining the ECP's terms of reference in organizing and holding the elections in lieu of the recommendations listed above. Furthermore, the law may spell out in detail the ECP's responsibility to oversee and organize both direct and indirect phases of the elections as required under the various provincial local government laws. In addition, the Federal Framework for Local Government may well address the issue pertaining to women and minorities by operationalizing a formula to ensure minimum representation requirements at various levels of the local government structure in fulfillment of Articles 32, 34 and 36.

To make local government elections uniformly fair and consistent with constitutional and legal provisions as well as international best practices, FAFEN recommends the following standardizations to be made part of the Federal Framework Legislation:

### **1. Responsibility to Conduct Local Government Elections**

Framework Legislation for the Conduct of Local Government Elections should authorize the ECP to conduct local government elections under duly enacted provincial legislations,

provided these laws are compliant with minimum requirements as defined by the Federal Framework Legislation. The ECP should also be authorized to make detailed rules and regulations for the administrative conduct of local elections that must be implemented in every province.

## **2. Phased Local Government Elections**

The ECP should hold phased elections keeping in view the scale of the local government elections, which usually draw greater public interest both in terms of voting and candidate contestation. Such phased models are successfully practiced in many countries, including India, which not only eases administrative pressures but also helps improve the quality of elections. Pakistan has practiced a similar phased model under the local government system of 2001 and 2005. This principle should be included in the Federal Framework Legislation.

## **3. Voter Eligibility**

The Framework Legislation for the Conduct of Local Government Elections should require provincial legislations to adhere to the definition of a voter as contained in Articles 51 and 106 of the Constitution and Section 6 (2) of the Electoral Rolls Act 1974. The necessary requirement of possessing a Computerized National Identity Card (CNIC) issued by the National Database and Registration Authority (NADRA) should be incorporated in all provincial legislations as required by the amendment in section 6 (2) of the Electoral Rolls Act 1974 in April 2011.

## **4. Constituency Delimitation**

The Framework Legislation for the Conduct of Local Government Elections should define the basic principles for delimitation of administrative boundaries that would serve as electoral constituencies in the local government elections. The Framework Legislation should provide adequate guidelines to provinces to guard against political gerrymandering and maneuvering. Section 9 of the Delimitation Act 1976 provides basic principles that should be uniformly adopted by the provinces in carving out administrative units-cum-electoral constituencies.

The Framework Legislation should provide basic principles such as average population for a union council, homogeneity and use of uniform census blocks etc.

The argument for standardized delimitation is further bolstered considering the technical, administrative and financial costs an alternative system would incur. The ECP, being the possessor of the voters' lists for National and Provincial Assemblies' elections, can make the rolls compatible with the needs of the local government elections only if the delimitation for union councils is made on the same census blocks used by the ECP. It would require a great amount of labour and resources to either make fresh rolls in each province or adjust the existing rolls to fulfill the requirement of Punjab that has delimited the constituencies according to the 1998 census blocks. The ECP used census blocks from the 2011 House Count. Such technical discrepancies should be preempted through a federal Framework Legislation to ensure uniform, fair and smooth elections administered by the ECP.

## **5. Periodicity of Local Government Elections**

The Framework Legislation for the Conduct of Local Government Elections should require the provinces to include in explicit terms the periodicity (frequency or regularity) of local government elections. Periodicity is among the basic characteristics of democratic elections. Although the legislations in each province provide for four-year terms for the elected local governments, none of them specify the period after which fresh elections of



local governments will be held. The Framework Legislation should provide provinces the timeframe for fresh elections after expiry or dissolution of the local government. Article 224 of the Constitution mentions 60 days for fresh elections in case of expiry and 90 days in case of dissolution of the National Assembly. A similar principle may be followed for local government elections.

## **6. Establishment of Local Government Councils**

The Federal Legislation Framework should establish a timeframe for the completion of the local government elections including indirect elections for the second tier.

## **7. Electoral Rolls**

The ECP is responsible for preparing and revising the electoral rolls annually for National and Provincial Assemblies' elections under Article 219 (a) of the Constitution. The Framework Legislation for the Conduct of Local Government Elections should guide the provincial legislations in voter registration, especially in fulfilling the technical prerequisites for voter registration by the ECP. All provincial legislations put the responsibility of the electoral rolls on the ECP, and therefore Section 4(1) of the Electoral Rolls Act 1974 should formally be amended to add this responsibility.

## **8. Appointment of Returning Officers and Election Staff**

The Framework Legislation for the Conduct of Local Government Elections should also provide for the provinces the basic principles for selecting staff for election duty. Representation of People's Act (ROPA) 1976 provides guidance for the management of election staff for national and provincial elections. Similar principles should be applied for local government elections.

## **9. Qualification and Disqualification of Candidates**

Qualification and disqualification of candidates is an important aspect of any election. Articles 62 and 63 of the Constitution define the qualification and disqualification, respectively, for candidates wishing to become members of the Parliament. These constitutional principles have been operationalized in Section 12 (2) of the ROPA 1976 and ROPA Rules 1977. Candidacy for local government elections should not be assessed differently from these principles.

Framework Legislation for the Conduct of Local Government Elections should require the provinces to follow the standardized criteria for qualification and disqualification of candidates.

## **10. Reserved Seats**

Federal Framework Legislation for the Conduct of Local Government Elections should provide uniform criteria for provincial legislations for the reservation of other-than-general seats in local councils.

Article 32 of the Constitution of Pakistan articulates the basic principle of representation. It requires that "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". In addition, Articles 34 and 36 reinforce the state's responsibility to ensure participation of women and representation of minorities in national life.

The Framework Legislation for the Conduct of Local Government Elections should attempt to operationalize this constitutional requirement by providing basic principles of



representation as was done in the case of representation of women and minorities enshrined under Article 51 and 106 of the Constitution. A minimum quota for reserved seats should be prescribed on the basis of population and/or the number of general seats. The current provincial legislations differ on quotas for religious minorities, peasants and workers and, more importantly, on the mode of election for these reserved seats.

The Framework Legislation for the Conduct of Local Government Elections should define the quotas, the criteria and the mode of election for reserved seats that must be followed by all provinces uniformly. Similarly, the Framework Legislation should also define who can be a candidate on a reserved seat. Uniform definitions will help ensure more meaningful representation of marginalized groups in local government elections.

### **11. Voting, Counting and Consolidation**

Article 226 of the Constitution provides for secret balloting, which is essential to guarantee the free expression of the voters' will. Although the provincial legislations have mostly relied on the Section 33 of ROPA 1976 for voting and counting processes, an amendment in the Sindh Local Government Act allows for a show of hands for the indirect election of Chairman and Vice Chairman of all bodies other than union councils. The Framework Legislation for the Conduct of Local Government Elections should formalize voting, counting and consolidation procedures by providing guidelines to provinces on these topics.

For consolidation of the vote count, Section 39 of ROPA 1976 provides solid guidelines that should be part of the Framework Legislation.

### **12. Responsibility for Conducting Indirect Elections**

The Constitution and all provincial legislations put the responsibility of conducting elections on the ECP but none of these laws mention who will conduct indirect elections. This gap can be misinterpreted. The Framework Legislation for the Conduct of Local Government Elections should specifically address this issue by guiding the provinces to include in their local government legislations that the ECP will conduct both direct and indirect local government elections.

### **13. Election Complaints and Challenges to Election Results**

Federal Framework Legislation for the Conduct of Local Government Elections should reinforce the mechanisms for election dispute resolution as enshrined ROPA 1976. Section 103AA of the same law empowers the ECP to declare the poll in any constituency void. These legal principles should be incorporated in each of the provincial legislation. FAFEN recommends that much more specific uniform procedures are needed to address both election complaints and results disputes both for general and local government elections.

### **14. Appeals and Petitions**

Framework Legislation for the Conduct of Local Government Elections should include the same mechanisms for appeals and petitions against election results that are used for National and Provincial Assemblies' elections. All the details regarding election petitions and election tribunals, particularly time for filing and disposing of petitions and appeals against decisions on petitions and criteria for appointment of judges, must be incorporated in provincial legislations for local government elections, following the Framework Legislation's guidelines.

Article 225 of the Constitution provides that no election to the Senate, National Assembly or any Provincial Assembly shall be called into question except by an election petition

presented to an election tribunal. Similar rules should be applied to the local government elections for the purpose of uniformity and quality. Sections 52 to 77 of ROPA provide guidelines regarding election petitions on presentation, parties, contents, procedure on receipt of petition by ECP, appointment of tribunal, power to transfer, place of trial, appearance, procedure before tribunal, powers, decisions, grounds for decisions and appeal against the decision of tribunals. These rules should be used for local government elections as well.

### **15. Election Management**

The management of election processes reflects significantly on the extent of realization of democratic and fundamental rights of citizens to choose their government. Given the historically profound implication of elections on the broader political environment and stability of Pakistan, the Federal Framework Legislation for the Conduct of Local Government Elections should put in place a more uniform and professional administrative setup for the conduct of all elections.

One critical issue in this regard relates to the ECP's control over staff deputed from other state institutions for the conduct of elections. The Federal Framework Legislation should provide for the embedding of the seconded/deputed staff into the election management structure with an established hierarchy that overrides the deputed staffs' position, rights and responsibilities in their parent organization for the duration of their election related work. The ECP—for the duration of the deputed staffs' election related work—must have exclusive control and authority over the personnel Terms of Reference and conduct.

### **16. Election Transparency**

A critical issue evident from the electoral history of Pakistan reinforces the need for a transparent election process to help ensure the public trust in election processes and results. These processes in need of transparency especially include demarcation of constituencies, creation of complete and accurate voters' lists, determining and publicizing a functional polling scheme, enforcing procedures for free balloting, and conducting open result consolidation at all levels. Transparency of these processes requires unhindered observation and availability of officially authenticated documents to all concerned citizens and organizations.

The Federal Framework Legislation for the Conduct of Local Government Elections must enforce transparency in all provinces equally related to electoral processes ranging from delimitation to polling schemes to be used on Election Day.

### **17. Party-Based Elections**

Given the freedoms of associations enshrined in Article 17 of the Constitution and given the representative nature of the local government system in established democracies, the Federal Framework Legislation shall provide for party-based local government elections.

The need is further reinforced given the Lahore High Court's order and subsequent amendment in the Punjab's local government law to hold party-based local bodies' elections. The Federal Framework's inclusion of the party-based elections will therefore provide the tool for across the board implementation of the constitutional right of freedom of association. This will ensure the equality of citizens to avail a constitutionally guaranteed right notwithstanding the provincial boundaries.