

Chapter 3

Electoral Framework and Election Administration

Electoral system

For the purpose of electing the National Assembly² the country is divided into 272 single member constituencies. Constituencies are established in each area on the basis of population size. The number of seats in each area is provided in the table below. The electoral system for the National Assembly general seats is based on the single-member constituencies where members are elected by direct vote through a first-past-the-post (simple majority) system.

There are also 60 reserved seats for women. These are allocated to parties on the basis of a proportional distribution from party lists based on each party's share of the general seats won in the province.

In addition there are ten seats reserved for non-Muslims. These are allocated to parties on the basis of a proportional representation party list system based on each party's share of the general seats won in the National Assembly.

Distribution of seats in the National Assembly:

	General seats	Women	Non-Muslims	Total
Balochistan	14	3		17
Khyber Pakhtunkhwa	35	8		43
Punjab	148	35		183
Sindh	61	14		75
FATA	12	-		12
Federal Capital	2	-		2
Total	272	60	10	342

For the Provincial Assemblies, each province is divided into a series of single member constituencies. The number of seats in each province is provided in the table below. In each of the single-member constituencies for the general seats the election is also on the basis of first-past-the-post.

There are also reserved seats for women. These are allocated to parties on the basis of a proportional representation party list system based on each party's share of the general seats

² The Majlis ash-Shura (The Parliament of Pakistan) is a bicameral federal legislature. According to the Constitution the Parliament consists of the President, a 104-member Senate and a 342-member National Assembly. The President is the Head of State and the Prime Minister is a Member of the National Assembly who commands the confidence of the majority of members. Senate members are indirectly elected. Each of the four Provincial Assemblies elect 23 members. The President is also indirectly elected, being chosen by the National Assembly.

won in the province.

In addition there are seats reserved for non-Muslims. These are allocated on the same basis as the reserved seats for women in the Provincial Assemblies.

Distribution of seats in the Provincial Assemblies:

	General Seats	Women	Non-Muslims	Total
Balochistan	51	11	3	65
Khyber Pakhtunkhwa	99	22	3	124
Punjab	297	66	8	371
Sindh	130	29	9	168

International and regional commitments and national legal framework

Pakistan has signed or agreed to the major regional and international commitments and instruments relating to the conduct of elections. These include:

- South Asian Association for Regional Cooperation Charter on Democracy (2009)
- Port of Spain Affirmation of Commonwealth Values and Principles (2009)
- International Convention on the Elimination of All Forms of Racial Discrimination (1996)
- Convention on the Elimination of All Forms of Discrimination against Women (1979)
- International Covenant on Civil and Political Rights (1966)
- Universal Declaration of Human Rights (1948)

The Pakistan Constitution guarantees fundamental rights and freedoms, including freedom of expression, assembly, association and participation in elections.

The key documents providing the legal and regulatory framework for the conduct of the elections are:

- The Constitution (1973, as amended)
- Delimitation of Constituencies Act (1974)
- Representation of the People Act (ROPA) (1976)
- Representation of the People (Conduct of Election) Rules (1977)
- Electoral Rolls Act (1977)
- Political Parties Order & Rules (both 2002)
- Election Commission Order (2002)
- Allocation of Reserved Seats for Women and Non-Muslims Rules (2002)
- Election Commission of Pakistan Codes of Conduct (2012)

The Election Commission of Pakistan (ECP)

The ECP at the national level comprises a Chief Election Commissioner (CEC) and four other

commissioners³ and has overall responsibility and authority for the conduct of elections. The ECP has 2,288 full-time employees and in addition to the national commission has offices at the provincial, divisional and district levels. The current CEC is Mr Justice (Retd.) Fakharudin Ebrahim.

To be qualified as a CEC a person must be or have been a Judge of the Supreme Court or a Judge of a High Court and qualified to be appointed as a Supreme Court Judge. For the other commission members a person must be a former Judge of a High Court.

Following the 18th Amendment of the Constitution (see key issues below) the CEC and commissioner members are selected through an inclusive consultative process between the government and parliamentary opposition and approved by the president. The prime minister, in consultation with the leader of the opposition in the National Assembly, forwards three names to a parliamentary committee⁴ for hearings and confirmation. Failing agreement between the prime minister and leader of the opposition they can forward separate lists to the committee. The committee makes its selection by a simple majority vote and names are forwarded to the president for appointment.

The CEC and other commissioners are appointed for five-year terms and cannot be removed except by the same procedure used to remove judges of the superior courts.

Mr Ishtiaq Ahmad Khan is the Secretary of the ECP and heads the Secretariat, which consists of several departments, including: elections, administration, budget and finance, it and public relations.

In terms of the sub-national offices: there are four provincial election commission offices, headed by a provincial election commissioner; 24 divisional election commission offices, managed by regional election commissioners; 118 district election commission offices, managed by district election commissioners. In addition, there are seven agency election commission offices for the FATA.

Returning officers are appointed at the constituency level, with responsibility for candidate nominations and also the results process. Returning officers are appointed from among members of the local judiciary and are not under the direct operational control of the ECP (see key issues below).

The ECP's key responsibilities are:

- Preparing electoral rolls for national, provincial and local elections and revising them annually
- Delimitation of constituencies

³ Each of the four commissioners is from and represents one of the four provinces.

⁴ The committee is constituted by the speaker and comprises 12 members in total; six nominated by the government and six by the opposition. At least four of the total must be from the Senate.

- Organising and holding general elections
- Appointing election tribunals

The ECP receives its operational funding from the federal budget through the Ministry of Finance. The ECP also has a supplementary budget for electoral activities and special projects, including the conduct of the polls, preparation of the electoral rolls and IT.

Voter eligibility and voter registration

To be eligible as a voter a person must be:

- A citizen of Pakistan;
- At least 18 years of age;
- Of sound mind;
- A resident of the electoral area; and
- Have a Computerised National Identity Card (CNIC) issued by the National Database and Registration Authority (NADRA).

In 2011 a bill was passed making possession of a valid National Identity Card mandatory for voter registration. This resulted in collaboration between the ECP and NADRA in preparing the electoral rolls. NADRA undertook a check of the 2007 electoral roll against their own database of eligible persons and also added all newly eligible persons based on their own data of issued CNICs. As a result NADRA confirmed 44 million of the 81 million entries on the 2007 list (some 37 million entries were found to be duplicate or unverifiable) and also identified some 36 million citizens not included at all on the 2007 list.

Following this, the ECP verified the electoral rolls through a door-to-door exercise. Over 75 million voters on the roll were verified through this exercise. The ECP then displayed the preliminary rolls for 21 days at more than 50,000 display centres across the country. After the display period some 3 million corrections and objections were filed and the list was accordingly amended. Further, some 1 million extra persons were added to the list as they had obtained their CNICs subsequent to NADRA handing over the initial data to the ECP. This updating continued up until the time the election schedule was announced.

For the production of the final electoral rolls photographs of each person were added.⁵ Prior to the election the ECP website stated there were 86,189,802 registered voters for the polls and provided the following breakdown of final numbers of registered voters on the electoral rolls for the 11 May 2013 elections:

Province / area	Males	Females	Total voters
Balochistan	1,915,388	1,421,271	3,336,659
FATA	1,142,234	596,079	1,738,313
Federal Capital	337,900	288,064	625,964

⁵ With the exception of some women who do not submit a photograph when applying for their CNICs.

KPK	7,008,533	5,257,624	12,266,157
Punjab	27,697,701	21,561,633	49,259,334
Sindh	10,490,631	8,472,744	18,963,375
Total	48,592,387	37,597,417	86,189,802

The ECP also established an SMS service for voters, whereby they could text their CNIC number to 8300 and receive an automated response with the CNIC number confirmation, the name of the voter's electoral area, their block code, polling station location and serial number on the roll.⁶

Candidate eligibility and nomination

The eligibility criteria for candidates of the National Assembly are defined in Articles 62 and 63 of the Constitution.⁷ The criteria are quite extensive, but the key points for eligibility are that a person must:

- Be a citizen
- Be not less than 25 years of age
- Be a registered voter
- Be 'of good character and is not commonly known as one who violates Islamic injunctions'
- 'Has adequate knowledge of Islamic teachings and practices obligatory duties prescribed by Islam as well as abstains from major sins'⁸
- Be 'sagacious, righteous and non-profligate'
- Not have worked against the integrity of the country or opposed to the ideology of Pakistan

Further, to be eligible for candidacy a person must not:

- Be a dual national
- Have defamed the judiciary or armed forces
- Have been convicted of a corrupt practice or misuse of power
- Be military personnel, a civil servant or a person involved in government contracts
- Have unpaid loans, utility bills (including spouses) or have defaulted in submission of tax returns

Once the ECP announces the election schedule candidates have six days to file their nomination papers. Prospective candidates must submit their nomination papers to the respective RO. Candidates are not limited in the number of constituencies they may contest.⁹

⁶ The electoral rolls were organised by household number, which is not reflected on a voter's CNIC. Thus the provision of the serial number on the roll is useful.

⁷ The controversial requirement for candidates to have a university degree was dropped prior to these elections.

⁸ This clause and the one above are not applied to a person who is a non-Muslim, for whom the requirement is to 'have a good moral reputation'.

⁹ If a candidate is successful in more than one constituency then they have to resign from all but one constituency, with by-elections held in the others. Further, candidates for the National Assembly do not necessarily have to be

For National Assembly elections a prospective candidate must also pay a deposit of RS4,000. For the Provincial Assembly the deposit is RS2,000. Each submitted nomination must also be accompanied by the signatures of two registered voters from the constituency.

Candidates are able to contest the election as a party candidate or as an independent.¹⁰ At the time of nomination candidates may list party affiliation but the official party endorsement takes place later. Nomination papers can be submitted by a person authorised by the candidate.

ROs scrutinise submissions and thereafter accept or reject the nomination paper on the basis of whether or not they are eligible in accordance with Articles 62 and 63 of the Constitution. Appeals against the decisions of ROs can be made to an appellate tribunal. For the purpose of scrutinising declarations regarding financial assets and related financial matters the ECP co-ordinated with the State Bank of Pakistan, the National Accountability Bureau and the Federal Board of Revenue.

In the event, 4,670 candidates contested the 272 general seats for the National Assembly and 10,955 candidates contested the elections for the four Provincial Assemblies. Of the 4,670 candidates contesting the general seats in the National Assembly 161 (3.5%) were women. This compares to 64 women contesting the general seats in 2008.

Complaints, appeals and election petitions

Election tribunals are established by the ECP and are tasked with addressing electoral complaints within four months of receiving the complaint, notably on candidate nominations and later on results. Decisions relating to election results can be challenged in the Supreme Court.

The ECP created monitoring teams in each Province to report on violations of the campaign code of conduct. These teams monitor the process and report to respective Provincial Election Commission Offices on possible violations, for instance on campaign activities and campaign financing.

Key issues

1. Legal framework for the Election Commission of Pakistan

The legal framework relating to the nomination, appointment and work of the ECP was significantly improved by the 18th Amendment to the Constitution. This resulted in increased confidence in the ECP at the national level.

registered voter in that constituency but must be a registered voter somewhere in the country. For the province a candidate must be a registered voter in that province. In 2008, the ECP conducted 21 by-elections for 26 vacated seats (five seats were uncontested).

¹⁰ If successful in the election an independent candidate has three days from the date of publication of results in the official gazette during which they may join a party.

The requirement in the 18th Amendment for the CEC and other commissioners to be nominated through a cross-party process makes for a far more inclusive and transparent process, which results in an increased level of confidence in the overall electoral arrangements. Previously, the appointment of the CEC and commissioners was the sole prerogative of the president.

The same amendment provides for a five-year as opposed to three-year term for ECP members, which is a more balanced term of tenure. Furthermore, the ECP also has more control over its finances, which increases its independence.

However, there are concerns regarding the election management body's structure and management process. For instance, the ECP did not have authority over ROs in electoral matters (see below) and district and provincial-level election officials did not adequately enforce the codes of conduct.

2. Voter registration

The electoral roll was heavily criticised by stakeholders and observers in past elections. The 2002 roll was only partially computerised and as a consequence there was no way of accurately checking for duplicate entries or to search for unverified entries. The 2007 roll saw some improvements but was still criticised due to some one-third of the electorate being listed on a supplementary list rather than the main list and with many of the entries lacking unique ID numbers.

The electoral roll for the 2013 elections represents a major improvement and enjoys widespread confidence. It is now fully computerised and reliant upon the unique CNIC numbers as issued by NADRA in its national database of citizens. This means it can be easily updated as new citizens turn 18 and also that it can be easily used for cross-checking and verifying entries to maintain accuracy and reliability. On the day of the election it proved an accurate and a reliable document.

During the finalisation of the rolls it was found that many people were registered for the election according to their address at the time of registration for their CNIC, but their actual residence now was different. This seems to have been a particular issue in Karachi with over 100,000 people apparently affected. The ECP made efforts to resolve the matter and no major complaints were made after the election in this regard.

A further concern is the manner in which the Ahmadi community is treated with regard to their right to vote. Many persons from this community do not register to vote in the first place because they do not agree that they should be identified as non-Muslim. However, some do register and NADRA identified over one hundred thousand Ahmadis from the list of issued CNIC cardholders and rather than placing them on the electoral roll they were placed on a supplementary list.

The ECP's use of an SMS system to facilitate voter verification of their registration, polling

place, block number and serial number of the electoral roll was a commendable initiative and served the process extremely well. It was estimated that some 40 million people took advantage of this facility. On election day the system was so heavily accessed it ran into some technical problems.

The number of women on the electoral roll remains substantially lower than the number of men. Based on ECP figures there are some 10 million fewer women than men. The trajectory for registering women is positive, as the gap is lessening and the ECP undertook a series of positive initiatives for these polls to increase women's registration levels. But there remains work to be done in this regard. Given the new system, whereby it is registration for a CNIC that triggers one's registration as a voter the issue is broader than just an electoral one and therefore requires the involvement of more state institutions than just the ECP.

The electoral roll lists people by household number, which is not a commonly understood reference in the Pakistani context. The ECP SMS system included a voter's serial number as part of the information offered but political parties continue to play an active role in informing voters of their serial number, notably through the camps they establish near to polling stations. However, this involvement of the parties has the potential for enabling them to influence voters on the day of polling. Given that all voters now have a CNIC with a unique number it would be possible to have a list ordered by CNIC number, which would be clear and easy to follow for voters and poll officials alike, and would enable the prohibiting of party camps outside of polling stations and would also lessen the proactive role of polling agents inside polling stations.

3. Candidate nomination

While the total number of candidates registered for these elections represents a significant increase compared to the previous polls, and the elections were certainly competitive in this regard, there is a concern at some aspects of the candidate nomination process in terms of both the criteria and the implementation of the process.

The current criteria for candidate eligibility include a series of 'moral' requirements which are subjective in nature and inconsistent with the ICCPR's requirement for participation to be based on reasonable and objective criteria. Article 62 of the Constitution has three such moral and subjective stipulations, whereby candidates are required to:

- 'Be of good character and is not commonly known as one who violates Islamic injunctions'
- Have 'adequate knowledge of Islamic teachings and practices obligatory duties prescribed by Islam as well as abstains from major sins'
- Be 'sagacious, righteous and non-profligate'¹¹

¹¹ Some parties pointed out to the Mission that while many of the Constitutional Amendments made by General Musharaf had been repealed, Articles 62 and 63, which were inserted into the Constitution by former military ruler General Zia-ul-Haq, remained.

The candidate nomination process is administered by the respective constituency returning officer (RO). For the purpose of this election ROs were drawn from among the judiciary but are not under the direct control and authority of the ECP. In electoral management terms this is not ideal. In practice this led to inconsistencies in implementation, for instance with a prospective candidate who applied to be a candidate in more than one constituency being rejected in one constituency but accepted in another.¹²

Further, there were reports of some ROs going beyond the remit of administering the process and starting to interpret the application of the Constitution, for instance with regard to the elements of Article 62 mentioned above. There were reports of women being asked if they were married and others being asked to recite verses of the Koran to prove their knowledge of Islam. The High Court in Lahore was petitioned and ordered ROs to cease such practices in the Province. It should also be noted that in the more traditional area of KP Province such practices were not reported.

These reports highlight the problem of having such moral and subjective criteria and also of the ECP not having control over the ROs to ensure consistent and objective implementation of the rules and regulations.

It should also be noted that the requirement for candidates to have a university degree, which was heavily criticised in previous polls, was struck down by the Supreme Court in 2008.

4. Women's participation and representation

The ECP undertook a number of initiatives with regard to women's participation for these elections.¹³ The total number of registered women voters has increased compared to the previous election and a strong turnout of women voters was observed on election day. There were also some advances in terms of women's participation as candidates, notably a woman contested a general seat in the FATA for the first time.

However, while some improvements are noted there clearly remains work to be done in this regard as the total number of registered women voters, according to ECP figures, is some 10 million less than registered males. Also, the number of women candidates contesting the open general seats for the National Assembly was just 3.4 per cent of the total number of seats.

Women represent just 1.8 per cent of the ECP's 2,288 full time employees and there are no

¹²¹² The case of General Musharaf is an example of the inconsistencies in the nomination process. He returned to Pakistan during the nomination process and submitted nomination papers in multiple constituencies. In some he was accepted while in others he was rejected. In one case where he was rejected the RO stated it was because of the charges brought against him. However, being charged with an offence does not preclude candidacy, rather it is being found guilty of an offence that precludes candidacy. In the end none of his applications for nomination went forward and he did not contest the polls and remained under house arrest during the election period.

¹³ Polling station officials were required to provide gender aggregated data as part of their final paperwork on the turnout of voters, which helps to identify the level of women's participation. Further, the Code of Conduct includes a number of items relating to parties not denigrating others on the basis of gender and should not provide obstacles to women's participation as voters. The Code also encouraged parties to provide equal opportunity to both men and women to participate in the electoral process.

women in senior management positions. The ECP recognises this shortcoming and in its Five-year Strategic Plan (2010–2014) it states that it aims to increase the representation of eligible women within the ECP to at least 10 per cent.

5. Overseas voting

In response to requests from political parties the ECP decided in February 2012 to allow overseas-resident Pakistanis to vote in national elections, although the required arrangements had not yet been put in place. Subsequently, the Supreme Court, in the course of hearing a long-running petition by a political party on the matter, ordered the ECP to ensure that all overseas-resident Pakistanis would be able to vote in the May general elections. During hearings in April 2013, the ECP argued that it did not have sufficient time to set in place a secure online system for the estimated 4.5 million Pakistanis resident abroad. Overseas Pakistani citizens are primarily residing in the Gulf States, United Kingdom, United States and in Asia.

After several statements to the Court by the ECP and caretaker government reiterating their inability to institute the necessary arrangements, the Court accepted that overseas voting would be instituted for subsequent elections. On 9 May 2013, President Zardari signed the Election Laws (Amendment) Ordinance, providing for the right to vote for overseas Pakistanis.

Recommendations

- It is important for the ECP to have managerial control of all aspects of the electoral process they are responsible for, to ensure full compliance and consistency in application of rules and regulations. In this regard, returning officers should be more directly accountable to the ECP in exercising their electoral duties.
- The ECP has issued a series of codes of conduct to help regulate the electoral environment. However, in order to be effective these require suitable enforcement mechanisms to ensure compliance and accountability. Of particular note in this regard are the codes of conduct for the election campaign and media, which require the ECP to have the means to monitor violations and the will and capacity to enforce accountability measures.
- The moral criteria contained in Article 62 of the Constitution, as currently phrased, give scope for subjective interpretation and are contrary to Pakistan's obligation under the ICCPR.
- The relative advancements in increasing the levels of women's participation as voters, candidates and ECP staff/management need to continue. In particular, emphasis should be placed on ensuring women's access to a CNIC, which is vital for them as a citizen in general but critical for them as a voter in future elections.
- Further effort should be made to resolve the case of Ahmadi voters being excluded

from the main electoral roll, bearing in mind the constitutional right and treaty obligations with regard to equal treatment of Pakistani citizens in this regard.

- The listing of voters on the electoral rolls by household number does not appear to be helpful, as it is not known in many instances. Further, the use of the household number in this regard means that voters still want to know their serial number on the roll and this opens the door to political parties establishing their camps around polling stations to fulfil this function. Such camps have the potential for undue influence on voters and represent campaigning on election day which is proscribed by the law. As voting is now on the basis of the unique CNIC number, this would appear to offer a solution, with lists able to be organised by CNIC number, facilitating the work of poll officials.