ELECTION MANAGEMENT AND PARTY DECISION MAKING IN PAKISTAN

Sameen A. Mohsin Ali
(SOAS)
Work in Progress – Please do not cite

ABSTRACT
This paper argues that while the election was definitely a step in the right direction, a great deal needs to be done before democratic consolidation takes place in Pakistan. I argue that electoral mismanagement; the powerlessness of the ECP; and, the intervention of an activist Supreme Court in the run up to the election shaped how parties made candidate selection decisions, and in turn, impacted the voters’ choices. In order to highlight these issues with the electoral process, I will discuss (1) the structure and staffing of the ECP, linking the notion of bureaucratic agency to malpractices within the Commission; and (2) the powerlessness of the ECP in light of 4 issues that were relevant in the run up to 11 May 2013, leaving a gap for the Supreme Court to fill. This is not a normative argument; instead, this paper present a picture of how the actors involved in the electoral process are interlinked, influencing each other’s decisions and behaviour, leaving loopholes for other actors to fill. It indicates how these interactions might impact the electoral process in Pakistan, and suggests that further research on the issue may yield observations of interest.

INTRODUCTION
Following the May 2013 election, there have been numerous accusations of misconduct, mismanagement, and rigging. With some of these accusations, the Election Commission of Pakistan (ECP) has dealt promptly and well, for example, re-polling at polling stations in Khyber Pakhtunkhwa where women were barred from voting. A number of other concerns have not been as satisfactorily dealt with, such as the debate over recounts in two constituencies in Lahore and the dispute over the testing of the magnetic ink used by voters on ballot papers.

In themselves, these disputes are not surprising. No election can be perfect, and 2013 was declared ‘largely free and fair’ by neutral observers. This paper’s argument emerges from the realisation that despite numerous problems in the administration of the election, there is little public debate on reforming the ECP or improving its performance. In fact, in considering the election a success, what has been forgotten is the uncertainty that lasted till the day of the

---

1 This paper is the result of election monitoring carried out in 2013 with Dr Mariam Mufti. It is very much a work in progress since I have not been able to follow up on a lot of the intuitions and ideas presented here. However, the author thanks Dr Matthew Nelson and the Pakistan Policy Group at the FCO for their valuable comments on a presentation based on a draft version of this paper, and special credit and thanks go to Dr Mariam Mufti for inspiring this work and for her encouragement. All errors are my own.
election, and the very serious problems with the ECP’s management of the processes in the lead up to Election Day (11 May, 2013). Since 2013 was the first time that the electoral cycle was completed without (overt) interference from the military, and the bureaucracy and the parties had a chance to prepare for an upcoming election over the course of 5 years, the preparation for 2013 is of significance for all observers of Pakistan’s democracy.

This paper is concerned with decision making (or lack thereof) by the ECP bureaucracy in the months leading up to the election, and how it left a loophole for external actors to interfere in the electoral process. As a consequence, the choices made by the political parties vis a vis candidate selection were impacted, in turn effecting the choices available to the voter on election day and the legitimacy of the election. Arguably, but for the intervention the Supreme Court under the activist Chief Justice Iftikhar Chaudhry, it is possible that the election would (at least) have been delayed due to the ECP’s powerlessness.

This paper will not consider the history of the electoral process in Pakistan. Instead, it will focus on considering the 2013 election, with occasional comparisons, where relevant, to 2008 and 2002. The paper begins with a brief discussion of the theory on election management, and then discusses the structure and staffing of the Election Commission of Pakistan. An account of the ECP bureaucracy and its motivations is followed by a discussion of three of the issues that the ECP faced in the lead up to the election – voter lists, the nomination of candidates, and their scrutiny. The discussion then moves on to the process of candidate selection, as it takes place within the major Pakistani political parties, and how it was impacted in 2013 by the decisions made by the ECP. The paper concludes by discussing the importance of election administration and reform of the ECP to democracy in Pakistan, and avenues for further research.

It is convenient to look back at the election as a success and not pursue the reforms necessary, but the issues with the electoral process risk derailing the entire democratic process and making the Election Commission of Pakistan (ECP), which for the first time seemed to have a chance to be truly independent, seem not just inefficient, but ridiculous.

ELECTION MANAGEMENT

According to Mozaffar and Schedler (2002, 5) because elections are held regularly in the developed world, interest in election management does not arise unless ‘something goes seriously wrong’ (Elklit and Reynolds 2005, 148). In emerging democracies though, like Pakistan, the electoral process is frequently interrupted or called into question, and therefore lacks ‘procedural certainty’ (Mozaffar and Schedler 2002, 5). Mozaffar and Schedler (2002, 11) go on to contend that ‘substantive uncertainty’ of electoral outcomes is an indication of ‘the impartiality of [electoral] institutions’, and in order to ensure such ‘substantive uncertainty’, ‘procedural certainty’ is essential. Furthermore, in countries still in democratic transition, not all parties trust electoral institutions or the electoral process; as a result, consolidating democracy in such states must include removing doubts about the neutrality and integrity of the process (Mozaffar and Schedler 2002, 9).
Elklit and Reynolds (2002, 87) point out that election administration is important in determining how an election is perceived, at home and abroad. In other words, election administration is a key determinant of the legitimacy of the election, and of the democratic process (Elklit and Reynolds, 2002, 88). Election administration has not garnered a great deal of academic attention in Pakistan. The Election Commission of Pakistan (ECP) and the conduct of elections are referred to in work assessing the integrity of elections, but there is little interest in how the Commission functions and how its members make decisions and impact the democratic process. Organisations like the International Crisis Group, observer mission reports, and local think tanks and NGOs (PILDAT and FAFEN, for example) take an interest in reforming the ECP. While they identify many of the problems in the ECP’s structure and decision making processes, and outline their impact on the fairness of elections, they do not consistently link the operations of the Commission to other actors, and their decisions.

Most of my research for this paper comes from newspaper articles published in the six months leading up to the 2013 election. Since then, however, interest in the electoral process has more or less disappeared. It is possible that the lack of interest in election management in Pakistan is due to a lack of interest in the political legitimacy of the government due to the assumption that the government does not have legitimacy anyway. This notion stems from the idea that the same people tend to get elected whenever an election is held due to dynastic politics or rural patronage relations, that the military pulls the strings of politicians and determines electoral outcomes, or that rigging is so widespread that a vote means next to nothing. While these are legitimate concerns, especially in particular constituencies, I would argue that 2013 was different and deserves a more critical eye. The turnout was greater than in the last few elections, some traditional politicians lost what were regarded as safe seats, and the election was competitive. Furthermore, my contention is that election administration, and consequently checks on that administration, are tasks that must continue for the full duration of the electoral cycle, rather than something that becomes a concern only a year or two prior to the next scheduled election.

Elklit and Reynolds (2005, 148) argue that the literature on elections has ‘focused on electoral manipulation as an indicator… not a cause’ of political illegitimacy. This contention is interesting because it seems to encapsulate the conventional attitude toward problems in election management – rigging happens because the government is illegitimate, rather than the government is illegitimate because the election was mismanaged. Though we risk reducing the issue to a chicken and egg problem, the point I am trying to make is that election mismanagement is not just a sign of democratic illegitimacy. It is a choice made by officials, for particular reasons, and creates illegitimate governments.

In order to assess an election as a determinant of legitimacy, Elklit and Reynolds (2005, 152-154) develop a framework that includes various aspects of the electoral process, including ‘Legal framework’, ‘Electoral management’, ‘Constituency and polling district demarcation’, ‘Voter education’, ‘Voter registration’, and more. They develop a weighting system, differentiating between ‘established democracies’ and ‘fledgling democracies’, and lay out the characteristics that they believe to be ‘essential’, ‘important’, and ‘desirable’ for each
type (Elklit and Reynolds, 2005, 155). Future research on Pakistan’s ECP may look to this framework to judge the legitimacy of elections, but it is outside the scope of this paper.

Lopez-Pintor (2000) develops a typology of Election Management Bodies (EMBs) – 1) a body based within the government; 2) a body based within the government but with an external body of overseers; and 3) a relatively independent body. This third type is, according to Elklit and Reynolds (2002, 89), known as an Electoral (or Election) Commission and ‘is usually established under a board of directors with an implementing secretariat under a Chief Electoral Officer’. Elklit and Reynolds (2002, 89) lay out 5 considerations to keep in mind when assessing election management: the structure of the Commission, the independence of the Commission from political influence, the interests of the members of the Commission itself, the interests of the Commission as an organisation, and the transparency of the Commission’s actions. In this paper, I will try and address some of these points with regard to the Election Commission of Pakistan.

ECP STRUCTURE AND STAFFING

The Election Commission of Pakistan (ECP) is based in Islamabad. Besides a Chief Election Commissioner (CEC), members for the apex of the body are selected from each province. These five members of the Commission are the most senior in the ECP, and are responsible for signing off on all changes to electoral laws and processes. The ECP has separate hierarchies in each province, headed by Provincial Election Commissioners who ensure the proper implementation of electoral rules in their respective provinces. At the local level, the ECP exercises control over the electoral process through District Returning Officers (DROs) who are in charge of all the constituencies in their district.

The 2013 election was distinctly different from previous ones due to the 18th, 19th and 20th Amendments to the 1973 Constitution, the first two directly impacting the ECP. The 18th Amendment was passed in 2010 by the then Pakistan People’s Party-led coalition government. The 18th Amendment took away the power of the President to appoint the Chief Election Commissioner (CEC) and the Provincial Election Commissioners (PECs), appointing the task to the Prime Minister and mandating that it be a consultative process with the opposition. The members chosen for the Commission must be retired high court judges and their term was extended from 3 to 5 years. The final names were to then be approved by a joint parliamentary committee. Under the 19th Amendment, this committee was expanded to twelve members, one-third of whom must be drawn from the Senate. If no consensus was reached on a list of names between the government and the opposition, separate lists could be submitted to the committee for a final decision.

2 The 20th Amendment stipulated that the caretaker setup be consultative and fair. Despite the amendment, the neutrality of the 2013 caretaker government was a point of contention. Though this issue is outside the scope of this paper, it is an avenue for further research.
The Election Commissioner

Fakhruddin G. Ebrahim was appointed CEC on July 23, 2012. A retired judge, Ebrahim was the consensus candidate, and is generally regarded as an honest, upright person. However, his nomination was not without controversy. His age at the time of his appointment was a concern amongst the media, and the very public protests and sit-ins by Tahir ul Qadri of the Pakistan Awami Tehreek in January of 2013 were aimed at the supposedly unconstitutional selection process of the ECP’s commissioners.3

Despite his honesty and integrity, or perhaps because of it, the perception through much of Ebrahim’s tenure was that he was not really in control of the workings of the ECP. This is borne out by his abrupt resignation soon after the election, which was attributed to his being road-blocked every step of the way in carrying out free and fair elections. Arguably, therefore, the election was really in the hands of the ECP Secretary and the provincial election commissioners. In his TV show, 12 August 2013, Najam Sethi4 recounted a story from his time as Caretaker Chief Minister of Punjab – he wrote to the establishment division to give him a name to appoint as Chief Secretary Punjab. However, the ECP had already sent in a name for the post in an unsigned letter to the Establishment Division. Sethi contacted Ebrahim, who had no idea that any such letter had even been written, and said the ECP had no jurisdiction in the matter. Sethi further claimed that since Ebrahim spent most of his time in Karachi, and ECP operations are based in Islamabad, he did not really control the body or its actions.

An op-ed by M. Ziauddin5 noted the same in February. He argues that the CEC seems to be given the run around by the ECP bureaucracy who were complicating things so that the CEC questions decisions and reverses himself, and insulating the CEC from political parties. The HRCP’s preliminary report on the election, while noting that the ECP has managed to achieve a great deal, ‘stressed the need for checking [the] bureaucratic stranglehold over it’. 6

A broader problem has been that when a member retired, whether CEC or provincial, posts have often stayed vacant for months on end, meaning that for that time, there was no one to supervise or regulate the activities of the commission. For example, from June 2006-January 2008, the NWFP (now KP) and Sindh posts were vacant. All four provincial posts were vacant between the passing of the 18th Amendment in 2010 and 2011, during which time a number of by-elections took place.

3 Negotiating with Qadri and Imran Khan at that time in the planning of the election and the caretaker set up was, in this author’s opinion, itself a constitutional violation. Since they were not part of the Assembly, they had no right to be involved. In the interest of compromise, however, the government agreed to their terms to ensure transparency and consensus in the electoral process.

4 A prominent journalist, and CM Punjab under the caretaker government in 2013. Show titled Aapas ki Baat.


Bureaucratic Agency and the ECP Bureaucracy

Indepth studies of Pakistan’s bureaucracy date back to the 1960s, 70s, and 80s, after which the bureaucracy has largely been seen either as an institution to reform or as a broker between politician and voter. Most of this research sees bureaucrats as a whole (the bureaucracy, the elite service, DMG, etc.). I would contend that the only recent work that has placed Pakistani bureaucrats at the centre of the investigation, and studied their interactions, has been Matthew Hull’s ‘Government of Paper’ (2012), which studies the bureaucracy (in Islamabad’s Capital Development Authority and related offices) through its paper trail.

Moe (1987) argues that bureaucrats must be studied as agents themselves, with personal interests and preferences. We must ask therefore what it is that bureaucrats want? I contend that they want job security, desirable transfers and promotions, and money and perks. How are these objectives to be achieved? One of the methods is by forming patronage relationships with politicians and manipulating formal rules.

Keeping these points in mind, and the discussion above regarding the inefficacy of the CEC, we turn to the ECP’s bureaucracy, and why they might need to form ties with politicians in order to achieve their objectives.

According to the ECP’s Five Year Strategic Plan (2010-2014), the Commission employs nearly 2000 people across Pakistan. The International Crisis Group Report (2011, 14) notes that most of these officers were promoted on the basis of seniority (in terms of years of service) rather than merit, training, or achievement. The same report notes that promotions within the ECP are incredibly slow, citing the case of one person who moved up only 3 BP Scales in 32 years (ICG Report 2011, 14). This happens for two reasons. The first is that when vacancies do arise at high level posts, they are filled by members from other parts of the federal bureaucracy. This is justified by arguing that these people have more training and administrative expertise than the under-trained ECP officers. This is a cop out – it is the government’s and the ECP’s responsibility to train junior officials, especially since they rely on them for the day to day tasks of the electioneering process. A move toward this was made in 2004 in setting up the Federal Election Academy, the ICG Report (2011, 14) points out, but it was not till 2009 when it really started functioning (though still on a limited basis) with support from the International Foundation for Electoral Systems.

Regardless, the system of appointments and promotions in the ECP is hugely problematic. Bringing in federal bureaucrats for election related administration means that the neutrality of

---


8 For example, Wilder (1999) and Shafqat (1999)

9 For example, Nelson (2011) considers the dynamics at play between local level bureaucrats and politicians, and citizens over the issue of Islamic inheritance law.

10 I do not elaborate on this argument here since it forms the basis of my dissertation
the ECP is being broken down. Federal bureaucrats, having worked in ministries, come with their own biases and patron-client relationships. If the appointments were being made in a meretricious and transparent fashion, it could be argued that these appointments were essential to ensure the smooth management of the ECP. However, appointments to the Commission tend to be problematic.

This leads to the second reason that promotions in the ECP are slow – the granting of contractual extensions to retiring officers.\footnote{Alvi, M. 2013. Senior ECP officials jockey for extension. The News, January 7. Accessed on 19/2/2014. Available at http://www.thenews.com.pk/Todays-News-2-152928-Senior-ECP-officials-jockey-for-extension} In the past, objections have been raised to appointments being made to the ECP by the federal government rather than the CEC and the Provincial Election Commissioners. In 2009, for example, the government had removed the ECP Secretary but the decision was reversed when PILDAT objected on the grounds that this was not in the purview of the federal government.\footnote{Citizen Group calls for Urgent Actions to Prepare for Fair Elections, PILDAT, April 25, 2012. Accessed on 19/2/2014. Available at: http://www.pildat.org/CGEP/News/25042012.asp & http://www.dawn.com/news/849458/reinstatement-of-ec-secretary-likely} In November 2011, the federal government extended the contracts of the ECP Secretary Ishtiaq Ahmed Khan\footnote{Ghauri, I. 2011. 2013 Preparations?: Election commission secretary gets two-year extension. The Express Tribune, November 10. Accessed on 19/2/2014. Available at: http://tribune.com.pk/story/289522/2013-preparations-election-commission-secretary-gets-two-year-extension/} and Sindh Election Commissioner Sonu Khan Baloch.\footnote{Shaheen, S. 2011. PEC gets 3rd extension despite SC ruling. The Nation, June 12. Accessed on 19/2/2014. Available at: http://www.nation.com.pk/national/12-Jun-2011/PEC-gets-3rd-extension-despite-SC-ruling} Baloch is an exceptional case that deserves some further elaboration. He has, so far, had a total extension period of 5 years past his official retirement date.\footnote{Ghauri, I. 2013. Working after retirement: Punjab, K-P poll chiefs set to get extension. The Express Tribune, October 8. Accessed on 19/2/2014. Available at: http://tribune.com.pk/story/614988/working-after-retirement-punjab-k-p-poll-chiefs-set-to-get-extension/} He has not only been under investigation on charges of corruption, but he was also transferred to Islamabad as the Director General Budget because political parties in Karachi accused him of tampering with the city’s voter list. There were no repercussions for Baloch, however, and in January 2013, he was transferred to KP as the Provincial Election Commissioner.

Though these extensions are granted with the approval of the CEC and Provincial Commissioners, it seems that the federal government has played a substantive role in contract decisions. Furthermore, there have been times when the office of the CEC has been vacant for extended periods, and during such times, extensions have been granted to officials without any oversight. What this means is that it is possible for the government in power to appoint to the ECP officials that it believes to be sympathetic. This matters not just at election time, but throughout a government’s terms, as not only is the ECP structured and trained during this time, but by-elections take place continuously.\footnote{The problem continues as is evident from this article: IHC seeks reply from premier, election commissioner, DAWN, August 11, 2013. Accessed on 19/2/2014. Available at: http://www.dawn.com/news/1054887/ihc-seeks-reply-from-premier-election-commissioner}
Keeping in mind the staffing problems of the senior officials, let’s consider the lower ranks of the ECP bureaucracy, those involved in drawing up voter lists, implementing the election code of conduct, the scrutiny of candidates, etc. (see Diagram 2). Note that the District Returning Officer appoints all district level staff, and the Returning Officer appoints polling staff. As the ICG report (2011, 15) points out, the DRO who appoints the staff is responsible for handling complaints against them as well. Under the 2009 National Judicial Policy, the decision had been that judicial officers would no longer be made DROs, ROs or AROs, in order to prevent politicisation of the judiciary. However, in the lead up to the 2013 election, the ECP requested that the Policy be overridden because they simply did not have the manpower to staff all the constituencies, and, according to the EU EOM report (2013, 15), due to the ‘mistrust amongst the political parties of the alternative of ROs coming from civil administration.’ The parties’ attitude is an indication of the lack of neutrality of the bureaucracy.

Furthermore, Elklit and Reynolds (2002, 97) point out that ‘street-level bureaucracy…varies considerably in formal and informal qualifications and in professional dedication’. Since the ECP relies on temporary personnel hired from various government departments, the possibilities for bias and corruption in the electoral process are endless. The most prominent example is the use of teachers as polling staff. What makes the situation worse is that, knowing that they have to rely on officials from other departments, including the judiciary, the ECP still failed to provide them with clear guidelines or training. This was the ECP’s failing, and caused a number of problems in the lead up to the election, as I will discuss below.

All the assertions I have made here bear further investigation, but it does plant a seed of doubt as to how neutral the ECP really is, how powerful individual provincial commissioners are, and to what extent decisions are being made not by the members of the Commission, but by bureaucrats. The reason I am highlighting this issue is that the ECP’s composition, in terms of the bureaucracy, never seems to come up. During the lead up to the election, the only real focus on bureaucrats was in terms of banning appointments, transfers and promotions by the outgoing government, and the caretaker government. The reason that the role of bureaucrats in the ECP is important is that, just like other actors, civil servants too have interests and motivations of their own. My argument is, therefore, one of ascribing agency to officials who are frequently overlooked in studies of election management.

---

17 Since the appointments of bureaucrats in specific posts can impact the election, the ECP issued a ban on recruitment and transfers. This was implemented to some extent, and certainly caused a lot of controversy. The PPP disavowed any intention to appoint bureaucrats so as to influence the election, while the opposition protested their freedom to do so.
DIAGRAM 1

ADAPTED FROM ICG REPORT (2011).

*Note that the report’s account of the structure of the ECP differs from the Organogram presented in the ECP’s Five Year Strategic Plan 2010-2014. I opted to follow the ICG report’s version simply because it is dated later than the Plan.
DIAGRAM 2

ADAPTED FROM ECP FIVE YEAR STRATEGIC PLAN 2010-2014 AND ICG REPORT (2011)
DIAGRAM 3
ADAPTED FROM ICG REPORT (2011)

ISSUES IN THE LEAD UP TO THE 2013 ELECTION

The Powerless Election Commission

In 2010, the ECP had developed a five year strategic plan for electoral reform. On this basis, an Electoral Reform Bill was proposed in January 2013. Approved by the ECP, it proposed a 30 day scrutiny period of nomination forms, that a candidate must win 50% of the vote to win a seat, proposed that the security deposit would not be returned if the candidate did not get at least 10% of the vote, increased the fee for filing papers to contest seats manifold, and increased fines for violations of the code of conduct. It also proposed that the ECP be put in charge of all administrative machinery for the duration of the election period, like the Election Commission in India.

Under the 2002 Chief Executive’s Order No. 1, Article 9C,

“Bar of Jurisdiction.—No Court shall question the legality of any action taken in good faith by or under the authority of the Commission, the Commissioner, a Returning Officer, Presiding Officer or an
Recall of course that this Order was issued by Musharraf, a martial law administrator. However, one, the law still stands. Second, if the ECP is to be independent, it does need some insulation not just from politicians, but also from an activist judiciary. In India, the Election Commission’s decision can be challenged in the SC and high courts. However, once the electoral process begins, the judiciary cannot intervene in the conduct of polls. And in all matters not adjudicated by the law, the commission has the final word. The CEC in India is a civil servant, as is the rest of the commission. This pattern would not work unless the CEC as an individual is empowered and is someone who will take action if there are rule violations.

A 2008 PILDAT report (p. 16) argues that the difference between India and Pakistan’s Election Commission’s is ‘in the strength of the unfettered Indian democracy and the rule of law in India that the ECI has been able to effectively carry out its functions enjoying the trust of all stakeholders, the public and the media.’ This is rather an obvious point – India has seen more elections, uninterrupted democratic rule for most of its history. However, guarantees of non-interference and independence are crucial.

The proposed Electoral Reform Bill was extremely contentious, with the Ministry of Law objecting to nearly every single proposed article, particularly to the proposed new nomination form. Since the bill was never passed, the ECP, left rather toothless, had to rely on the elected government, and the caretaker government, to fulfil its instructions, and the Supreme Court to enforce its decisions (EU EOM report 2013, 15). I will now elaborate on a number of electoral issues to highlight the powerlessness of the ECP.

The Voter List

The voter list used for the 2008 election was found to have 37 million bogus votes\(^{18}\). Therefore, NADRA (which is under the Ministry of Interior) was asked to make a new, computerised list, which was issued on Jul 30 2012, with over 84 million voters. The new list was formed on the basis of Computerised National Identity Cards (CNICs). Unfortunately, many in Pakistan still do not have CNICs, especially women in rural areas.\(^{19}\) Second, despite the computerised list, over 4 million voters were not verified, and FAFEN reported that 3.9 million eligible voters, mostly women, were not registered.\(^{20}\)

Elklit and Reynolds (2002, 97) argue that where the body that issues ID cards is separate from the Election Commission, the relationship between the bodies will impact the electoral process. It is worth exploring further than is possible here whether this explanation is valid for the list being so contentious in Karachi. The accusation made was that the ECP had


\(^{19}\) Part of the problem here is that many Pakistanis are not registered at birth, which means they have no birth certificate with which to get a CNIC.

moved the votes of numerous individuals to their address of origin. A city of migrants, that meant that people would have to travel outside of Karachi (often long distances) to vote. For the Karachi parties – the MQM and the ANP, especially – this meant a loss of large amounts of votes in Karachi constituencies. For parties in the home constituencies of these migrants, where competitive, it would mean convincing these people to (a) travel to vote; and (b) vote for someone they didn’t know, in a constituency they no longer lived in.

Despite the objections of the Karachi parties, it was not until the Supreme Court issued an order that the ECP began a revision of the list in Karachi. The army was to accompany ECP officials door to door, and that in itself was hugely contentious, for obvious reasons. However, the bigger problems were, firstly that the process was poorly planned and subject to delays, and secondly, that the ECP was reliant on local officials and on bureaucrats from its lower ranks. Considering patron-client ties that are maintained between local administrative officials and constituency politicians and parties, and keeping in mind the issues with the staffing of the ECP bureaucracy enumerated above, it is unlikely that the voter list verification was an unbiased process.

**Delimitation**

There has been no census in Pakistan in 1998, though there was an attempt at one in 2011/2012 which soon stalled. That means we have no accurate assessment of the total population and no means of knowing if the constituencies are approximately the same size in terms of population size. Karachi became the forefront for a pitched battle over delimitation, as a city that has grown and continues to grow rapidly, and faces increasing ethnic and sectarian divisions.

For a few months, utter confusion reigned as to whether the process would take place or not. On Jul 31, 2012, CEC Ebrahim said no delimitation would take place. On Nov 26, 2012, the Supreme Court ruled that delimitation should take place in Karachi as a means of reducing divisions and violence, overruling the objection of the Regional Election Commissioner that delimitation was barred under Article 51(5) of the Delimitation of Constituencies Act 1974 if there was no consensus amongst political parties. The MQM was the only party which objected strongly to delimitation in a meeting with the CEC, and the ECP found itself caught between the party and the court in Karachi. In January, 2013, the CEC stated that delimitation would not take place, and the ECP asked the Supreme Court to accept that decision. On February 27, 2013, the court ruled against the ECP and ordered the delimitation to go ahead stating that ‘delimitation and demarcation are two different things and added that census is not necessary for redrawing of electoral constituencies in Karachi’.

On March 2nd 2013, the court again criticised the ECP for not following its orders. On March 22nd, the ECP issued a notification to delimit specific national and provincial constituencies.

Since Karachi’s number of seats in the Sindh Assembly (42 MPAs) cannot be increased without going to parliament and a fresh census, the ECP will use its powers given in Article 10 of The Delimitation Act of 1974 which allows it to change the boundaries of existing constituencies. The ECP orders its District Election Officer (now a grade 18 official with 22 being the most senior) to re-draw the boundaries of the constituencies.  

Though delimitation takes place under the supervision of a commission made up of the election commissioners, and the provincial election commissioners, the actual task falls to district officials. These officials are appointed, promoted and transferred by provincial departments. In a city as politically and ethnically charged as Karachi, the district officials’ ties to the provincial government can become quite problematic, especially when determining constituency boundaries. 

The Nomination Process

The new nomination form, proposed in the Electoral Reform Bill, improved considerably on the old one and caused a furore amongst the political elite. On February 19th 2013, the ECP sent a draft of a new nomination form to the president for approval. The new form required information on all assets and taxes of the applicant, and also a statement regarding the legality of assets of the applicants immediate family, how many children he had studying abroad, travel abroad, etc. the idea was to weed out defaulters, tax evaders and the corrupt. The plan was that the data on the form would be double checked with the Higher Education Commission, National Accountability Bureau, Federal Board of Revenue, and the State Bank.

The law minister, Farooq Naik, objected strenuously to the form, essentially on the grounds that it would disqualify or at least cause difficulties for at least half of the politicians in the country. By March, no decision had been made, and reports surfaced that the CEC was isolated in insisting that the bill be passed. A Pakistan Today report states that the four provincial election commissioners had advised the CEC to back down on the bill. The Assemblies were dissolved on March 16th and the bill had not been passed. Despite talk of it being passed as an ordinance by the caretaker government, this never happened. This delay is interesting because it seems that the ordinance was either never drafted or never sent to the Caretaker PM.

Eventually, some of the reforms were forced through by judgements delivered by the Supreme Court. On March 13, the court ruled that the ECP could do what it wanted with the form. On March 14, the form was sent for printing, without consensus being reached and

---


23 The delimitation process for local government elections in all four provinces has been indicative of the contentiousness of the issue.

without the approval of the President, a constitutional requirement. The Supreme Court’s intervention at this point was perhaps what ensured that the election took place as scheduled. Had the ruling not been passed, the ECP and the Ministry of Law would have continued their largely fruitless discussions on the nomination form, with neither party seemingly willing to back down. Therefore, for the political parties, candidates, and the public, the electoral process was one with little ‘procedural certainty’ (Mozaffar and Schedler 2002, 5), despite reforms put in place by the ECP.

Though the interventionism of the SC under CJ Iftikhar Chaudhry is a matter of some controversy in Pakistan, it is not the focus of this paper. The point I wish to highlight here is the weakness of the ECP. Without the SC’s support, it was unable to push through its reform agenda. Though Elklit and Reynolds (2002, 97) discuss a range of bodies and groups that will have a relationship of interest with an Election Commission, including NGOs, the media, the printer of ballot papers and other documents, and delimitation bodies, they do not consider the judiciary. Mozaffar and Schedler (2002, 10) emphasise the need for proper adjudication of electoral disputes, and highlight the role of the US Supreme Court in doing so in the 2000 presidential election, and the role of the Ghanaian Supreme Court, also in 2000, in ruling on the validity of photo id cards for voting. I argue that though it is necessary for the Supreme Court to play an adjudicatory role in the electoral process, the Pakistan Supreme Court’s intervention in election administration in 2013 was exceptional. The weakness of the ECP and its inability to make decisions left room open for an activist judiciary to do more than adjudicate electoral disputes.

The Scrutiny and Appeals Process

The nomination form and the scrutiny process created a fissure between the reform oriented Ebrahim and the other commissioners and officials within the ECP. The objections of the ECP bureaucracy were understandable to a certain extent - logistically, the forms would generate data that the ECP simply did not have the resources to handle. However, reports suggest that the problem was more the ECP bureaucracy’s ‘incompetence and inefficiency’.

The Returning Officers, district level judges for the most part, but taking on the roles of the lower ranked ECP bureaucracy, were empowered to distribute the new nomination forms, collect them, ask any questions of the candidates, and then send their papers for scrutiny to the Central Scrutiny Committee comprised of the ECP, National Accountability Bureau (NAB), State Bank of Pakistan (SBP), Federal Board of Revenue (FBR), and National Database and Registration Authority (NADRA). The forms would then be sent back to the ROs.

---

25 In March 2012, Ishtiaq Ahmed Khan, the secretary of the ECP, wrote an extensive letter of resignation implying interference by the SC in the conduct of by-elections, and over the Waheeda Shah case (who slapped an Assistant Presiding Officer, and was backed by the then Sindh Election Commissioner Sonu Khan Baloch and the then CEC Justice (R) Hamid Ali Mirza, a close associate of Zardari and friend of Sonu Khan Baloch).

The first problem was that the ROs were provided with few guidelines as to how to perform these tasks, and there seems to have been even less oversight. The EU EOM report (2013, 15) adds that the Commission ‘admitted to a lack of control over ROs’. Neither had the ECP allowed for any interaction between ROs of different constituencies, for cases where a candidate was contesting or had applied for multiple seats. The only guidelines that were available were Articles 62 and 63, put in by General Zia ul Haq, stating that candidates must be ‘sadiq’ and ‘ameen’, and the Chief Justice had instructed the ROs, as judicial officers, to uphold the constitution in performing their election related tasks (EU EOM report 2013, 22).

The result was that the ROs started a farcical process of asking intrusive, irrelevant questions, including asking how many wives an applicant had, asking applicants to recite Quranic verses, procedures of prayer, etc. Ayaz Amir, a columnist, was disqualified for writing ‘against the ideology of Pakistan’. Aside from the farce, confusing and ridiculous though it was, there were very serious issues with the scrutiny process which had to do with the unevenness of the decision making. Applicants for multiple constituencies were accepted in one, but rejected in others. Examples are Pervez Musharraf and Chaudhry Nisar.

Another issue, and one that was far more serious, was that in many cases actual issues that should have led to disqualification – corruption, financial wrong doing – were ignored. It is at this point that the bureaucracy becomes involved. The scrutiny committee was comprised of bureaucrats from a number of bodies, none of whom are considered entirely neutral in their ties with politicians. The most publicised example was of a disagreement between the ECP and the FBR. The Board alleged that the ECP bureaucracy was not sending them complete data of the individuals they wanted information on. The ECP, on the other hand, alleged that officials within the FBR were ‘using delaying tactics’, apparently in order to protect certain individuals.

CANDIDATE SELECTION IN 2013

The preceding discussion has laid out some of the issues that cropped up in the lead up to the May 2013 election in Pakistan. We now come to how these various problems, within the ECP and outside it, impacted the decisions of political parties vis a vis candidate selection.

In Pakistan’s single member constituencies, each party selects a candidate who they believe will win. It is on that basis that the individual in question receives not just the party’s ticket for the election, but also the party’s financial and logistic backing for electioneering. Generally speaking, a candidate has value if he has contacts in the community, and has disposable income available to campaign and to dispense patronage. Though the campaigning period legally was twenty days in 2013, campaigning does in fact continue throughout the
electoral cycle, as candidates who may or may not be in office or on the party leadership’s horizon lay down roots, or consolidate them, in a constituency.

Mariam Mufti (2011) argues that candidate selection is a form of elite recruitment amongst the prominent parties in the country (PPP, PMLN, PMLQ, ANP, MQM). Mufti argues that this process of candidate selection automatically limits the choices available to the voter before voting day, therefore directly impacting democratic choice. The allocation of the party ticket is, in some cases, a matter of substantial debate and even controversy. Depending on the party one is looking at, procedures and criteria differ. It is not a transparent process, and to a great extent the decision comes down to who the party leadership, or powerful individuals within the party, favour (Hellmann, 2011).

The 2002 election had been held under the BA degree rule. As we know now, many politicians faked their degrees. The implication is that candidate selection did not change significantly due to the rule. In 2008, the rule was voided by the SC. The election that year was held a few months after Benazir Bhutto’s death, and the Sharifs’ return from exile. In 2008, the PMLN had one very simple criteria – loyalty to the exiled leadership, and though it would be false to argue that the PPP won on the basis of Benazir’s death, it would be reasonable to say that it was not as competitive an election as 2013 has been, and parties went for conventional choices as candidates with little internal debate.

In 2013, selection was particularly difficult for the parties, and especially so for parties that were in direct competition - the PMLN and the PTI. The PMLN especially took a great deal of time over its selection, at times reversing its ticket allocations either due to internal disagreements or due to decisions made by ECP officials, as will be explained below. As late as mid-April, with elections scheduled for May 2013, tickets were still being decided upon in the PPP, the PMLN, and the PTI.

There is no one reason for this situation in 2013. It could be argued that the parties were just disorganised, which is true to some extent. More organised parties like the ANP and MQM were ready with their candidates earlier. However, it must be remembered that the ANP and MQM are more localised parties, the former operating predominantly in Khyber Pakhtunkhwa and the latter in Karachi and parts of Sindh, and don’t attempt to put up candidates for nearly all, if not all, the constituencies. Second, the parties have always been disorganised, so it does not account for the delays in 2013, which were unprecedented.

It could be argued that the cause of the delay was the competitiveness of the election itself, or the fact that so many people applied for tickets. These are both possible answers. However, if the decision on the part of the parties had been clear cut, on the conventional criteria and processes, it would not have taken that much time, regardless of the competition. Therefore,

---


30 Though in 2013, the MQM did put up candidates in parts of the Punjab for the first time.
we must consider other exogenous factors that caused the 2013 candidate selection process to be especially fraught.

I argue that electoral mismanagement; the powerlessness of the ECP; and, the intervention of an activist Supreme Court in the run up to the election caused the parties to think not only more carefully about their criteria for selecting candidates, but also to reverse their decisions. This is not to say that they necessarily chose someone other than their first choice at the end of the day, but that making the decision was much more complex than it may otherwise have been, and thus impacted a range of other electoral decisions such as seat adjustments, alliances, and party switching.

Parties had one of two options in handing out tickets in 2013. The first was to give the ticket to a candidate who raised serious red flags on the new nomination form, and hope that the bureaucrats involved in the scrutiny could be influenced. The second option was for the party to be more careful and select people to whom there could be no objections (an unlikely choice, since such people would not be likely to have the money or the connections to be successful in an election), or opt for candidates who had successfully hidden malfeasance or escaped prosecution through deals (such as the National Reconciliation Ordinance). Initially, the major parties compromised – in a complete departure from the procedure they had followed in previous elections, they asked interested candidates to submit the paperwork to the Returning Officer in their constituencies of choice, and the party would determine the recipient of the ticket later. Newspaper reports from the time suggested that the scrutiny did scare potential candidates off, with fewer people submitting papers than previous elections.\(^{31}\)

However, it was the actual scrutiny process created a range of problems that none of the parties could have foreseen, leading to utter confusion until the end of April (with the election scheduled for 11 May). Aside from the ROs’ intrusive questions and dubious disqualifications, the subsequent, last-second reversal of most RO disqualifications by election tribunals made the parties’ candidate selection decisions even more complicated.

Some examples will perhaps help understand the situation at this stage of the electoral process. Raja Pervez Ashraf, the PM for the last stretch of the PPP’s term, was disqualified by the RO in his constituency, but the disqualification was overturned despite ample evidence of corruption against him in the Rental Power Projects case. At the last minute, the PPP gave him the ticket, but he lost the election. Yousaf Raza Gilani was not as lucky, his disqualification was not overturned.

Though the condition of having a BA degree had been removed in 2008 by SC ruling, formalised in an amendment in 2009, politicians were being jailed for having fraudulent degrees, and being disqualified from the 2013 election. Here too, some people were lucky enough to get away with it, though at the last minute. One was Jamshed Dasti, who contested two seats as an independent after being released on a technicality, since the parties had

already distributed their tickets in his constituencies. Sheikh Waqas Akram was another whose conviction for fraud was overturned, but the decision was too late for him to contest, and his father contested instead. This last case points to another problem with the way the scrutiny process played out. In some cases, the disqualified candidate was replaced by a relative who would be the ‘face’, while the actual campaign, and if they won, the seat would be run by the person who had been disqualified. This further entrenches family politics in an already weak democratic system.

Another problem arose due to the introduction of the facility that ordinary citizens were allowed to access the filled in nomination forms for all applicants in their constituency, after payment of a fee, and raise objections to the candidate. Many citizens did do so, but in a lot of cases, it was simply one party challenging the nomination of their competitor. The worst case, though, was of PTI candidate being challenged by a fellow party member who wanted the ticket. However, in some cases, valid points were raised, and in some cases, valid decisions were made by ROs – such as the original disqualification of Raja Pervez Ashraf.

Apart from the issue of fake degrees, another controversy at the time was the issue of dual nationality. The constitution states that those with other nationalities cannot contest and occupy a seat, so they were being prosecuted for continuing to occupy a seat while retaining a second nationality. This became a farce and a media circus soon enough, as one after the other various politicians were accused of having dual nationalities, including Rehman Malik, the Interior Minister, and who then claimed to have renounced the second nationality. A number of tickets granted by the parties were called into question due to the nationality issue.

Though technically, scrutiny and appeals were to be over by April 16th, a number of cases dragged on. From about 5th April, there was a flurry of activity as parties finally had a more or less complete list of viable candidates. The next step was numerous withdrawals as tickets were finally allocated. It was not until this point that seat adjustments and alliances could be finalised. This was also a period of peak party switching and switching to or from being an independent candidate. Because parties had hedged their bets and asked multiple candidates to file their papers, when one approved candidate was chosen, the rest sought to switch parties to see if they could still have a chance at the election.

CONCLUSION

What does all this mean for democracy in Pakistan? I have argued that the ECP’s (mis)management, its powerlessness, and the involvement of the Supreme Court in the electoral process shaped candidate selection by the parties, and therefore, the choice the voters were presented with on election day. Regardless of who they finally chose to award tickets to, or what strategy they adopted, the ECP’s electoral (mis)management made parties spend more time thinking about their candidates and strategy than they may otherwise have.

32 Seat adjustments are where two parties make a deal to support each other on specific seats and withdraw their own candidate.
and at times, forced them to reverse their decisions. Beyond candidate selection, party switching, alliances, and seat adjustments were also impacted. It bears investigating, but generally speaking, there were definitely fewer alliances in 2013. In itself, more time spent on these decisions does not sound like a problem. However, what I have tried to argue here is that the ad hoc nature of the proceedings bred further ad hocism as parties also looked for short cuts out of the situation they were in. Therefore, any extra thought they may have put into the electoral process did not make the process necessarily fairer.

The elephant in the room is the SC’s involvement every step of the way. Chaudhry’s bench was particularly activist which some have praised and others criticised. The problem is that if the ECP is meant to be the neutral body that is in full charge of the election, then the SC should not be ordering it to carry out delimitation, for example. The first step to solving many of the problems I have outlined here is empowering the ECP. This needs to be done by moving beyond a strategic plan for 5 years, and setting shorter term targets, overhauling the ECP bureaucratic set up, changing the requirements for the CEC and other members, and ensuring that other state organs understand that they are bound by ECP rulings during the election period. This requires what could be called ‘political courage’ and therefore, pressure must be constantly exerted on the government to institute these changes.

The ECP, if it is to be effective, must be empowered to the extent that it does not need validations from the SC or anyone else. In 2013, the problem, I argue, was that since the electoral process was not institutionalised (lacking procedural certainty), there were many gaps that the SC could step into. These gaps must be plugged. Rather than expecting the SC not to interfere, it is the ECP that must be given the power to control the electoral process.
BIBLIOGRAPHY


