

NEUTRAL CARETAKER GOVERNMENTS: PAKISTANI EXPERIENCES AND THE WAY FORWARD ¹

EXECUTIVE SUMMARY

Elections in fragile countries are often marred by rigging charges that lead to violence. Pakistan too has a history of electoral controversies and biased caretaker cabinets appointed by partisan Presidents. Since 2010, Pakistan has developed detailed guidelines related to the appointment and mandate of neutral caretaker cabinets for holding elections to reduce electoral controversies. Building on a paper written in 2014 by Democracy Reporting International (DRI) on the Pakistani caretaker government system ², this paper reviews Pakistani experiences with caretaker regimes since then and identifies lessons for improving their effectiveness in the future. It is based on a review of legal documents and articles, and the insights from a consultative workshop held by DRI in August 2018 with ex-members of Pakistan's 2013 and 2018 caretaker cabinets and civil society members on the effectiveness of caretaker governments.

The 18th and 20th constitutional amendments passed between 2010 and 2013 have eliminated the presidential discretion and given the right to appoint the caretaker Prime Minister (PM) and Chief Ministers (CM) to the respective Leaders of the House and the Opposition by mutual consultation. In case of disagreement among them, the matter is sent to parliamentary committees with equal treasury and opposition representation and finally to the Election Commission ³. The 20th amendment bars members of the caretaker cabinets and their spouses and children from contesting the next elections. The 2013 election Code of Conduct for Political Parties and Candidates bars the

participation of caretakers along with the President and Governors in the election campaign ⁴. The Election Law passed by Parliament in 2017 limits the caretaker government to routine functions and restricts their authority related to major policy decisions, contracts, bureaucratic changes and international negotiations ⁵.

However, major rigging controversies still arose after the 2013 and 2018 elections, though unlike 2013, no major controversies arose related to the decisions taken by the 2018 caretaker cabinets before the elections or their involvement in rigging. These experiences show that despite some issues with the neutral caretaker government system, the focus must be on improving its effectiveness rather than abandoning it. Based on the discussion points in the DRI August 2018 consultative workshop and the review of documents, three broad areas of improvements are identified:

- Strengthening the appointment mechanism for caretakers by i) developing formal qualification criteria related to government experience and competence, political neutrality, professional conflict of interest, and clean criminal record; ii) increasing the effectiveness of the parliamentary committee by ensuring the participation of other parties in them; iii) eliminating the role of the ECP as the final appointing authority to reduce conflict of interest and identifying a more suitable final authority such as a committee consisting of Senate members or the Chief Justices of the High Courts, and

¹This paper draws on discussion points and recommendations made during a consultative workshop DRI held on the effectiveness of caretaker governments in Pakistan in August 2018. It was written by Dr. Niaz Murtaza, Executive Director of the Institute for Progressive Ideas to Reform Governance (INSPIRING) Pakistan with the support of DRI.

²"Caretaker Government and Elections in Pakistan"; http://democracy-reporting.org/wp-content/uploads/2016/03/dri_pk_bp_45_caretaker_governments_in_pakistan_march_2014.pdf

³Constitution of Pakistan, Articles 224 and 224(A); <http://www.pakistani.org/pakistan/constitution/>

⁴ Election Commission of Pakistan (ECP) 2013: Code of Conduct for Political Parties and Candidates. <http://ecp.gov.pk/ViewPressReleaseNotificDetail.aspx?ID=1841&TypeID=1>

⁵ Pakistan Election Law, 2017. <https://www.ecp.gov.pk/Documents/laws2017/Election%20Act%202017.pdf>.

iv) clarifying whether the existing caretaker government will continue or a new one will be appointed in case of a hung parliament after elections.

- Ensuring better preparation for caretakers by i) appointing them a few weeks before the end of the current government and arranging hand-over and induction; and ii) requiring the PM office and the ministries to develop hand-over notes for caretakers highlighting the most important routine issues pending at different levels that may require their immediate attention.
- Ensuring proper functioning of caretaker cabinets by i) clearly defining the division of labor between the ECP and caretakers for holding elections, making bureaucratic changes, ensuring timely risk management of any new controversies, undertaking effective communication with all political parties and ensuring security for elections; ii) providing for a clear role for the Senate in the supervision of the caretakers; iii) requiring the caretaker government to publish performance and financial reports; iv) asking all caretaker officials to endorse the International Code of Conduct for Public Officials.

INTRODUCTION

Elections in developing countries are often marred by allegations of fraud against the ruling party by both opposition parties and neutral observers. Such election controversies result frequently in election and assembly boycotts, violent street protests and even civil wars. Pakistan's own history has been marked by frequent electoral controversies, particularly after the 1977 elections which led to prolonged street protests and martial law⁶

To reduce such controversies, Pakistan introduced a system after 2010 for holding elections under a neutral caretaker government that is appointed by mutual consultations between the government and the opposition. The 2013 and 2018 elections held under this system to-date have highlighted both its strengths and weaknesses. This paper builds on an earlier paper written in 2014 by Democracy Reporting International (DRI) on the Pakistani caretaker government system. It reviews Pakistani experiences with caretaker regimes since then to identify lessons for improving their effectiveness in the future. It is based on a review of legal documents, news reports and articles and a consultative workshop held by DRI, Pakistan in August 2018 with ex-members of Pakistan's 2013 and 2018 caretaker cabinets and civil society members on the effectiveness of caretaker governments.

THE CONCEPT OF CARETAKER GOVERNMENTS FOR ELECTIONS

The focus in this paper is on short-duration caretaker governments that govern a country during the election phase until a new elected government ascends to power. The two key issues related to such caretaker regimes are their mode of appointment and mandate and authority. Under Westminster-style democracy, caretaker governments usually come into existence constitutionally three months before the next elections. The parliament is dissolved and the existing government adopts a caretaker role until the new parliament is convened. In such cases, the issue of the mode of the appointment of the caretaker regime is irrelevant and the main issue is defining its mandate and authority. Since parliament stands dissolved, it is generally felt that the caretaker regime lacks the political and moral authority to take major decisions that will have substantial impact into the future. Thus, several advanced democracies have developed detailed legal guidelines limiting the authority of caretaker governments.

The Australian Caretaker Convention 2010 explicitly limits the business of government to ordinary matters of administration in the areas of i) major policy decision, ii) significant appointments, iii) major contracts or undertakings, iv) international negotiations, and v) avoiding the involvement of the public service in election activities⁷. Still, the Convention leaves room for interpretation as it does not provide concrete qualitative or quantitative thresholds in these areas. In Canada in 2008, the Privy Council Office issued guidelines which stipulate that during an election, the government should restrict itself to activity that is routine, non-controversial, urgently needed and in the public interest, reversible by a new government and agreed to by the opposition⁸. In the UK, there is also a practice called period of sensitivity or "Purdah" starting around three weeks before elections which disallows government departments to start new programmes or make major communications⁹.

Since other state and civil society institutions are strong in advanced democracies, elections held under partisan caretaker governments do not result in frequent election controversies. In developing countries, since elections often lead to election controversies, mechanisms to limit the ability of caretaker governments to influence the elections are critical. However, very few developing countries appoint neutral caretaker governments or have guidelines defining the powers of neutral or partisan caretaker regimes. In India, a Code of Conduct to guide the caretaker government focuses on the misuse of state resources for campaigning purposes, stipulating that Ministers shall not i) announce official grants, ii) initiate projects, iii) make any promise for infrastructure projects, iv) make ad-hoc appointments in Government or public institutions¹⁰

Bangladesh is perhaps the only country globally that had

⁶Talbot, Ian (1998). Pakistan, a Modern History. NY: St. Martin's Press. pp. 240-1

⁷ Australian Government and the Office of the Prime Minister and the Cabinet 2010: Guidance on Caretaker Conventions, p. 1 http://www.dpmc.gov.au/guidelines/docs/caretaker_conventions.pdf.

⁸ Privy Office Council 2008: Guidelines on the Conduct of Ministers, Secretaries of State, Exempt Staff and Public Servants during an Election. <http://jameswjbowden.files.wordpress.com/2011/07/guidelines-cartaker-convention1.pdf>.

⁹ White, Isobel (30 March 2015). "Election 'purdah' or the pre-election period" (PDF). Parliament and Constitution Centre

¹⁰ Election Commission of India 2007: Model Code of Conduct for Political Parties and Candidates. http://eci.nic.in/eci_main/Model_Code_Conduct.pdf.

institutionalized (and then subsequently abandoned) the practice of appointing neutral caretaker cabinets during the election period given its long earlier history of controversial elections. In 1996, the concept of a neutral caretaker cabinet was introduced through a constitutional amendment. It gave the powers to the President to appoint such a cabinet consisting of a Chief Adviser appointed from among the recently retired Chief Justices of the Supreme Court and a 10-member cabinet recommended by the Chief Adviser. Qualifications were also laid out for cabinet members as follows: (a) qualified for election as members of Parliament; (b) not members of any political party or of any organization associated with or affiliated to any political party; (c) not, and have agreed in writing not to be, candidates for the ensuing election of members of parliament; (d) not over seventy-two years of age. Three elections (1996, 2001 & 2008) were held successfully under this system with high turnover and relatively peaceful campaigning and transfer of power. This was despite the fact that the President who appointed the cabinet was usually a partisan figure elected by political governments. But the detailed qualifications laid out for the appointment of the caretaker cabinet still ensured their neutrality. However, the practice of neutral caretaker government was declared illegal by the Supreme Court in 2011¹¹. Since then, the elections held in 2014 and 2018 under partisan caretaker regimes have again led to rigging controversies^{12,13}. These global experiences highlight the utility of having detailed guidelines for the appointment and mandate of caretaker governments in enhancing their effectiveness and neutrality.

PAKISTANI CARETAKER HISTORY: 1969-2008

Pakistan has a long history of being governed by caretaker governments though most such governments were appointed on an ad-hoc basis and were often not seen as neutral. It held its first national elections based on universal franchise only in 1970, 23 years after independence in 1947, under a military regime. Following a prolonged power transfer controversy and a civil war which led to the creation of Bangladesh, the military regime handed over power in December 1971 to a civilian government led by the Pakistan People's Party (PPP). Subsequently, it adopted a new constitution in August 1973 which introduced the parliamentary form of government. This constitution did not provide for a neutral caretaker government and the next elections in 1977 were held under a PPP caretaker regime. They were the only national elections held under an elected civilian regime in Pakistan's history. Major accusations of rigging were raised by the opposition and neutral observers against the government, leading to prolonged street protests and martial law¹⁴. General Zia introduced a law in March 1985 which stated that where the President dissolves the National Assembly, the President shall in his or her discretion appoint a caretaker cabinet¹⁵. Yet, the law provided no guidelines to ensure their neutrality. To ensure consistency, General

Musharraf in 2002 included a clause in the Legal Framework Order, 2002 to mandate the appointment of a caretaker government in case of even regular dissolution of the National Assembly and not only when the President dissolved it¹⁶. National elections between 1985 and 2008 were all held under either military regimes (1985 and 2002) or caretaker regimes appointed by the President after the previous regime was dismissed prematurely (1988, 1990, 1993 and 1997) or had completed its term (2008). However, these caretaker regimes were usually not seen as neutral as the President often appointed active politicians who could even participate in the elections being held under them (1988, 1990, 1993 and 2008). Thus, these elections were very controversial due to rigging allegations¹⁷. Caretaker cabinets from 1988 to 2008 also frequently undertook major policy decisions which significantly influence the national politics and economy, e.g., devaluing the currency and increasing food and other prices¹⁸.

POST-2008 DEVELOPMENTS

The events in the pre-2008 phase, with the frequent dismissals of governments and the biased nature of many of the caretaker cabinets appointed by the President, encouraged major political parties to develop a smoother transfer of power mechanism after 2010. Since 2010, the state has made considerable progress in developing guidelines related to the appointment and mandates of neutral caretaker governments to ensure a smooth transfer of power mechanism.

Constitutional Amendments for Providing Appointment Modalities

During 2008-2013, the parliament adopted two related constitutional amendments. In 2010, the 18th Amendment added sub-articles 1A and 1B to Article 224. Article 224 (1A) eliminated the presidential discretion and extended the right to appoint the caretaker Prime Minister (or Chief Minister in the provinces) to the Prime Minister (Chief Minister) and Leader of the Opposition in the outgoing National (Provincial) Assembly through mutual consultation. Article 224 (1B) barred members of the caretaker cabinets and their spouses and children from contesting the next elections. The 20th Constitutional Amendment in 2012 introduced a new article, 224A, which gives parliament and the Election Commission of Pakistan (ECP) a role in the appointment of the caretaker government in case the Leaders of the House and Opposition cannot agree on the caretaker Prime Minister/Chief Minister¹⁹. With the addition of these amendments, the system for the appointment of the caretaker cabinets is now as follows:

- The care-taker Prime Minister shall be appointed by the President in consultation with the Prime Minister and the Leader of the Opposition in the outgoing National Assembly, and a care-taker Chief Minister shall be appointed by the Governor in consultation with the Chief Minister and the Leader of the

¹¹ Abolition of non-party caretaker government system in Bangladesh: Controversy and reality, Md. Mahbub Alam Prodip and Golam Rabbani, *Global Journal of Arts Humanities and Social Sciences* Vol.2, No. pp.24-42, July 2014.

¹² Barry, Ellen (2014-01-06). "Bangladesh ruling party wins after boycotted vote". *The New York Times*.
https://www.nytimes.com/2014/01/06/world/asia/boycott-and-violence-mar-elections-in-bangladesh.html?_r=0

¹³ Bangladesh election: Opposition demand new vote BBC News, 30 December 2018; <https://www.bbc.com/news/world-asia-46716605>

¹⁴ Talbot, Ian (1998). *Pakistan, a Modern History*. NY: St. Martin's Press. pp. 240-1

¹⁵ Article 48(5)(b) in the Revival of Constitution of 1973 Order (RCO), 1985.

¹⁶ Evolution of caretakers, Ahmed Bilal Mehboob, *Dawn*, June 09, 2018, <https://www.dawn.com/news/1412999>.

¹⁷ A Dispassionate Analysis of How Elections are Stolen & Will of the People is Defeated: Reflection on the Electoral History of Pakistan (1970-2008), published by Pakistan Institute of Legislative Development and Transparency (PILDAT).

¹⁸ Wynbrandt, James. *A Brief History of Pakistan*. Infobase Publishing. ISBN 9780816061846.

¹⁹ Constitution of Pakistan, Articles 224 and 224(A); <http://www.pakistani.org/pakistan/constitution/>

- Opposition in the outgoing Provincial Assembly.
- In case the Prime Minister and the Leader of the Opposition in the outgoing National Assembly do not agree on any person to be appointed as the care-taker Prime Minister within three days of the dissolution of the National Assembly, they shall forward two nominees each to a Committee to be immediately constituted by the Speaker of the National Assembly, comprising eight members of the outgoing National Assembly, or the Senate, or both, having equal representation from the Treasury and the Opposition, to be nominated by the Prime Minister and the Leader of the Opposition respectively.
- In case a Chief Minister and the Leader of the Opposition in the outgoing Provincial Assembly do not agree on any person to be appointed as the care-taker Chief Minister within three days of the dissolution of that Assembly, they shall forward two nominees each to a Committee to be immediately constituted by the Speaker of the Provincial Assembly, comprising six members of the outgoing Provincial Assembly having equal representation from the Treasury and the Opposition, to be nominated by the Chief Minister and the Leader of the Opposition respectively.
- The Committee constituted under clause (1) or (2) shall finalize the name of the care-taker Prime Minister or Chief Minister, as the case may be, within three days of the referral of the matter to it.
- In case of inability of the Committee to decide the matter in the aforesaid period, the names of the nominees shall be referred to the ECP for a final decision within two days.
- The Members of the Federal and Provincial care-taker Cabinets shall be appointed on the advice of the care-taker Prime Minister or the care-taker Chief Minister, as the case may be.

Laws Defining the Mandate of Caretaker Governments

Before the 2013 elections, the ECP included a provision into the Code of Conduct for Political Parties and Candidates to ensure the neutrality of caretaker officials during campaigning. Section 30 of the Code bars their participation along with the President and Governors in the election campaign:

“The President, Prime Minister, Chairman/Deputy Chairman Senate, Speaker/Deputy Speaker of an Assembly, Federal Ministers, Ministers of State, Governors, Chief Ministers, Provincial Ministers and Advisors to the Prime Minister and the Chief Ministers, and other public office holders shall not participate in election campaign in any manner whatsoever”²⁰.

²⁰Election Commission of Pakistan (ECP) 2013: Code of Conduct for Political Parties and Candidates. <http://ecp.gov.pk/ViewPressReleaseNotificDetail.aspx?ID=1841&TypeID=1>

The caretakers in 2013 reshuffled several high-ranking public officers and made new appointments to the higher civil service. A political party challenged the matter in the Supreme Court, which in its judgment of 6 June 2013 declared all the appointments, postings and transfers null and void. Referring to Article 2A and 48(5) of the constitution, amongst others, the Supreme Court stated that major policy decisions, including making major appointments, “should be left to the chosen representatives of the people”. The Supreme Court noted the absence of related guidelines to be observed by the caretaker government²¹. The reports by the 2008²² and the 2013²³ European Union Election Observation Missions had also suggested that the mandate, functioning and neutrality should be defined more clearly in law.

The Election Law passed by Parliament in 2017 addressed these concerns by including a section entitled “Functions of the caretaker government” which states that a caretaker government shall:

- perform its functions to attend to day-to-day matters which are necessary to run the affairs of the Government;
- assist the Election Commission to hold elections in accordance with law;
- restrict itself to activities that are of routine, non-controversial and urgent, in the public interest and reversible by the future Government elected after the elections; and
- ensure impartiality to every person and political party.

It also states that the caretaker government shall not:

- take major policy decisions except on urgent matters;
- take any decision or make a policy that may have effect or pre-empt the exercise of authority by the future elected Government;
- enter into major contract or undertaking if it is detrimental to public interest;
- enter into major international negotiation with any foreign country or international agency or sign or ratify any international binding instrument except in an exceptional case;
- make promotions or major appointments of public officials but may make acting or short-term appointments in public interest;
- transfer public officials unless it is considered expedient and after approval of the Commission; and
- attempt to influence the elections or do or cause to be done anything which may, in any manner, influence or adversely affect the free and fair elections²⁴.

These provisions are more comprehensive in scope than those found in Australia and Canada for caretaker cabinets.

²¹ Constitution Petition 30 of 2013, Khawaja Muhammad Asif vs. Federation of Pakistan. The verdict also references similar case law (PLD 1988 Lahore 725, Khawaja Muhammad Sharif vs. Federation of Pakistan and PLD 1997 Lahore 763, Tanveer A. Qureyshi vs. Federation of Pakistan, amongst others). http://supremecourt.gov.pk/web/user_files/File/Const.Petition.No.30of2013-dt-4-6-2013.pdf

²² https://eeas.europa.eu/topics/election-observation-missions-eueoms_en/26030/EU%20election%20observation%20mission%20to%20Pakistan%20in%202008

²³ https://eeas.europa.eu/headquarters/headquarters-homepage/24059/european-union-election-observation-mission-pakistan-2013_en

²⁴ Pakistan Election Law, 2017. <https://www.ecp.gov.pk/Documents/laws2017/Election%20Act%202017.pdf>.

²⁵ DRI August 2018 Workshop proceedings.

They provide a legal basis for aggrieved parties to approach the ECP or the higher courts in case they feel that a caretaker cabinet is exceeding its mandate. Despite these additions, there are some concerns about the following issues related to the functioning of caretaker regimes²⁶:

- Inadequacy of the handover and induction process for caretaker cabinet members;
- Lack of clarity about the expectations, mandate and authority of caretakers;
- Lack of accountability of caretakers as they have high authority without being elected;
- Ensuring the bureaucracy's cooperation given the caretakers' short term;
- Confusion about the overlapping roles of caretakers and the ECP in holding elections and ensuring security;
- Absence of a role for Senate in the caretaker period given its status as the only elected institution that continues in the caretaker period;
- Lack of clarity about the mandate of the caretakers if there is a delay in formation of regular government due to a hung assembly after elections.

Election Controversies during the 2013 and 2018 Elections Unlike the Bangladesh system, no law provides legal guidelines about the qualifications of the neutral

2018	Appointed by	Background
PM	Party Leaders	Ex-Judge
Punjab CM	ECP	Academic/Media Analyst
Sindh CM	Party Leaders	Ex-bureaucrat
KP CM	ECP	Ex-Judge
Baluchistan CM	ECP	Businessman
2013		
PM	ECP	Ex-Judge
Punjab CM	Party Leaders	Media Analyst
Sindh CM	Party Leaders	Ex-Judge
KP CM	Party Leaders	Ex-Judge
Baluchistan CM	Party Leaders	Ex-Bureaucrat

caretaker cabinet in Pakistan. As such, some issues arose in the appointment of the Prime/Chief ministers and other ministers during the 2013 and 2018 elections. The following chart provides the mode of appointment of the two Prime Ministers and eight Chief Ministers appointed as caretakers before the 2013 and 2018 elections as well as their professional backgrounds.

The chart above shows that the out-going party leaders, i.e. House and Opposition Leaders, were able to decide four out

of the five appointments made before the 2013 elections by mutual consent. However, they could only agree upon two out of the five appointments made in 2018. All the appointments on which there was a deadlock between party leaders across the two elections could not be resolved even by the parliamentary committees and the cases went to the ECP for the final decision. Thus, the parliamentary committee mechanism appears to be ineffective. Only one of these four ECP appointments generated controversy, which suggests that the ECP was able to appoint neutral figures. The Pakistan Muslim League-Nawaz (PML-N) objected to the appointment of the Punjab CM, a media analyst, in 2018 on the grounds that he was biased against it in his media analysis²⁶. However, there were no further accusations by the PML-N about his neutrality during his tenure or later. In 2013 too, after the election results were announced, the Pakistan Tehreek-e-Insaf (PTI) accused the caretaker Punjab CM appointed by the out-going CM and Opposition Leader by mutual consultation, of helping PML-N to win the elections. However, the Supreme Court later found no merit in these accusations based on a thorough inquiry²⁷.

Seven out of the ten appointees in 2013 and 2018 had extensive governmental job experience, with five being ex-judges of higher courts and two being senior ex-bureaucrats. Ex-judges have more legal experience and are likely to be seen as more neutral while ex-bureaucrats have more administrative and public policy experience. The remaining three included two political media analysts and one businessman, none of whom had any prior government job experience. The appointment of the two media analysts attracted the most criticism given that such persons have a long track-record of expressing public opinions on political issues which may be seen to favor some parties more than others. These issues, however limited, highlight the need for developing qualification criteria for the appointment of the caretaker cabinet members along the lines of the Bangladeshi system. The four key qualification issues that merit attention are: i) government experience and competence, ii) political neutrality, iii) professional conflict of interest, and iv) clean criminal record²⁸.

The deadlines laid down in the law for the completion of the deliberations at each stage were met in all cases. Yet there is the potential for delays in the future. This suggests the need for completing the process of appointment of caretakers a few weeks before the dissolution of the previous government. The law does not mandate the involvement of other parties in the consultation process between the out-going Leaders of the House and Opposition. This issue was salient in the 2018 appointment process as the number of seats in the National Assembly of the third largest party (PTI) was very close to that of the biggest opposition party (PPP).

Despite the major developments in the appointment and functioning of caretaker regimes, major electoral controversies still arose after the 2013 and 2018 elections. In 2013, the PTI accused the PML-N of rigging the elections with the help of the caretaker cabinet, especially in Punjab, and other state institutions. This led to months of street agitation and finally the establishment of a judicial commission to investigate the rigging charges. After a thorough

²⁶ PML-N rejects Hasan Askari as caretaker CM Punjab, The Nation, June 7, 2018; <https://nation.com.pk/07-Jun-2018/pml-n-rejects-hasan-askari-as-caretaker-cm-punjab>.

²⁷ Election rigging probe: Inquiry commission rejects PTI's allegations, Express Tribune, July 23, 2015; <https://tribune.com.pk/story/925188/election-rigging-probe-inquiry-commission-rejects-ptis-allegations/>.

²⁸ DRI August 2018 Workshop proceedings.

investigation, the Supreme Court concluded that the rigging charges were baseless and that the results of the 2013 elections broadly reflected the public mandate.²⁹ The PML-N, PPP and other opposition parties raised allegations that rigging helped the PTI win the 2018 elections. A parliamentary commission was subsequently formed to investigate these allegations, which is still looking into the charges³⁰. The final 2018 European Union Election Observation Mission report³¹ and a report by the Pakistan Institute of Legislative Development and Transparency (PILDAT) also raised concern about the neutrality of the pre-election phase in 2018. However, these reports did not accuse the caretaker cabinet of undermining the fairness of the elections but focused on other issues. Unlike 2013, there were no major issues related to the caretaker regime exceeding its limits and taking substantive policy or administrative decisions before the 2018 elections. This validates the utility of the guidelines laid down in the 2017 election law limiting the authority of caretaker cabinets.

CONCLUSIONS AND RECOMMENDATIONS

Pakistan's neutral caretaker government system is perhaps the most elaborate one developed globally and has evolved further since its introduction in 2010. However, the previous discussion has identified several issues related to it. Firstly, there is the basic issue of whether Pakistan should continue using this system based on a number of arguments against it as follows:

- No other country in the world uses it and there is significant effort and friction involved in appointing caretakers;
- The increasing powers of the ECP make it difficult for even partisan caretaker governments to influence election results, making the need for neutral ones questionable³²;
- The use of neutral caretaker governments increases the extent of transition as the country is governed by three different regimes within four months which leads to decision-making drift and conflicting policies;
- Despite the use of neutral caretaker regimes in 2013 and 2018, major election controversies still arose. Also, in the absence of qualification criteria, caretakers lacking sufficient experience in state governance could be appointed;
- Since they may not necessarily seek elected office in the future, caretakers have low accountability to people and may not be taken seriously by the bureaucracy, unlike persons in partisan caretaker governments.

However, there are many reasons why neutral caretaker governments may still be required in Pakistan:

- There is no evidence that the 2013 and 2018 caretakers attempted to influence election results while there is strong evidence that partisan

caretakers in the past have influenced election results in Pakistan, especially in 1977 and 1990;

- The development of qualification criteria for caretakers can further ensure their neutrality, experience and competence for the routine matters that caretaker cabinets are restricted to and make the appointment process smoother. Leaving the appointment to the Presidents, as in Bangladesh, also seems inadvisable given the partisan nature of their own appointments;
- The powers of the ECP have increased but its effectiveness has still not reached a level where it can hold elections without major controversies as the experiences of the 2013 and 2018 elections revealed. Once the effectiveness of the ECP reaches such a level, as reflected by the non-controversial results of several election cycles, the argument for dispensing with neutral caretaker cabinets may become stronger. Bangladesh's case highlights the problems that could emerge from a premature end to the neutral caretaker government system;
- With partisan caretaker cabinets, it will not be possible to have the current rule that bans caretakers from taking part in elections. This will give some advantage to incumbents and also mean that caretakers will be dividing their time between campaigning and governance.

Thus, at this stage, it seems more conducive for ensuring Pakistan's democratic transition to focus on improving the effectiveness of the neutral caretaker mechanism rather than abandoning it. There are three broad areas in which further work is needed to enhance the effectiveness of the Pakistani caretaker government system in light of the discussion in the DRI August 2018 consultative workshop and the further analysis given in this paper.

Strengthening the appointment mechanism for caretakers

- The biggest gap in the appointment mechanism relates to the absence of any qualification criteria for the caretakers, unlike in Bangladesh earlier. The four key qualification issues that merit attention are: i) government experience and competence, ii) political neutrality, iii) professional conflict of interest, and iv) clean criminal record. Such criteria will reduce controversies and ensure the appointment of qualified persons.
- The effectiveness of the parliamentary committees for appointing caretakers is currently low and there is no formal mechanism for ensuring the participation of other parties in the appointment process. Thus, providing a mechanism for the inclusion of other parties in the parliamentary committee may solve both issues.
- In case the parties cannot agree, the ECP is the final decision-maker on the appointment of the PM/CMs. This blurs the independence of the caretaker government vis-a-vis the election management body.

²⁹Election rigging probe: Inquiry commission rejects PTI's allegations, Express Tribune, July 23, 2015; <https://tribune.com.pk/story/925188/election-rigging-probe-inquiry-commission-rejects-ptis-allegations/>.

³⁰ <https://www.thenews.com.pk/latest/370293-parliamentary-panel-formed-to-probe-election-rigging>.

³¹ https://eeas.europa.eu/election-observation-missions/eom-pakistan-2018/52868/eu-eom-pakistan-final-report-25-july-general-elections-urdu-version_en

³² General elections 2018: Score card on Perception of Pre-poll Fairness, May 2018; Pakistan Institute of Legislative Development and Transparency (PILDAT).

³³ Do we really need caretakers? Ahmed Bilal Mehboob, Dawn, May 28, 2018; <https://www.dawn.com/news/1410465>.

A more suitable authority could be created, such as a committee consisting of the Chief Justices of the High Courts, with the Chief Justice for each province sitting out on the CM decision for that province to avoid conflict of interest later.

- There are currently no rules to specify what would happen in case no party is in a position to form a government at the national or provincial levels after elections and there is a need to hold fresh ones. It must be clear whether the existing caretaker government will continue or a new one will be appointed and if so by whom. Otherwise, there is a potential for a constitutional vacuum and major controversy.

Ensuring proper induction and hand-over for caretakers

- Formal induction and hand-over processes will enhance the functioning of caretaker regimes and clarify to the caretaker cabinets their limited mandate. This could include appointing caretakers a few weeks before the end of the current government to allow adequate time for overlap, induction and hand-over. The PM office and the ministries could also be required to develop hand-over notes highlighting the most important routine issues pending that require immediate attention.

Ensuring proper functioning of caretaker cabinets

- The development of guidelines on the role of caretakers in the Election Law 2017 has helped limit the parameters of their mandate. There is still a need to more clearly define the division of labor between the ECP and caretakers with respect to holding of elections, making bureaucratic changes, enduring timely risk management of any new controversies, undertaking effective communication with all political parties and ensuring security for elections.
- A role for the Senate in the supervision of caretakers can also help in ensuring their accountability. The caretaker prime minister and chief ministers of each province could be required to hold regular meetings and report to dedicated Senate Committees (and possibly dedicated Committees for each provincial caretaker government) and provide them with regular reports and updates.
- The development of mechanisms to ensure transparency, such as requiring the caretaker government to publish performance and financial reports, would strengthen accountability of caretaker officials towards the citizens, and minimize the risk of misuse of state resources. Such reports could also include sections on the performance of the bureaucracy during the caretaker phase to instill more accountability within the bureaucracy during this phase.
- Benefits and immunities should be restricted to those strictly necessary. For example, caretaker officials should not be eligible for diplomatic passports if they are not travelling. If they are required to travel, the diplomatic passports should expire with the conclusion of the caretaker term.
- While the caretaker government is in place to ensure the neutrality of the state, it is the ECP which has the mandate for holding the elections. The election management body could, however, be requested to provide regular updates on the preparations and the electoral process.
- All caretaker officials should endorse the International Code of Conduct for Public Officials. This would amount to a public commitment that they

will be responsive to complaints, work impartially and disclose full information on the measures taken.

Key Reading Resources

1. Caretaker Government and Elections in Pakistan, Briefing Paper 45, March 2014, Democracy Reporting International. http://democracy-reporting.org/wp-content/uploads/2016/03/dri_pk_bp_45_caretaker_governments_in_pakistan_march_2014.pdf
2. Constitution of Pakistan, Article 224 and 224A. <http://www.pakistani.org/pakistan/constitution/>
3. Constitution Petition 30 of 2013, Khawaja Muhammad Asif vs. Federation of Pakistan The verdict also references similar case law (PLD 1988 Lahore 725, Khawaja Muhammad Sharif vs. Federation of Pakistan and PLD 1997 Lahore 763, Tanveer A. Qureshi vs. Federation of Pakistan, amongst others).
4. Do we really need caretakers? Ahmed Bilal Mehboob, Dawn, May 28, 2018; <https://www.dawn.com/news/1410465>.
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6. EU Elections Observer Mission Report, 2013; https://eeas.europa.eu/headquarters/headquarters-homepage/24059/european-union-election-observation-mission-pakistan-2013_en
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9. General elections 2018: Score card on Perception of Pre-poll Fairness, May 2018; Pakistan Institute of Legislative Development and Transparency (PILDAT).
10. Pakistan Election Law, 2017. <https://www.ecp.gov.pk/Documents/laws2017/Election%20Act%202017.pdf>.

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Democracy Reporting International (DRI) is a non-partisan, independent, not-for-profit organisation registered in Berlin, Germany. DRI promotes political participation of citizens, accountability of state bodies and the development of democratic institutions world-wide. DRI helps find local ways of promoting the universal right of citizens to participate in the political life of their country, as enshrined in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

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