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Mandate of the Working Group on the issue of discrimination against women in law and in practice

REFERENCE: OL PAK 1/2014

10 February 2014

Excellency,

I have the honour to address you in my capacity as Chairperson-Rapporteur of the Working Group on the issue of discrimination against women in law and in practice pursuant to Human Rights Council resolution 23/7.

In this connection, I would like to bring to the attention of your Excellency's Government information I have received concerning **the introduction of legislation in four provinces in Pakistan overseeing the formation of local governments, which has abolished quotas and allegedly resulted in a decrease in women's political representation in these provinces.**

According to information received:

Following the 18th constitutional amendment in 2010 that devolved local Government to the provinces in Pakistan, four provinces have reportedly promulgated legislation to govern the formation of local governments. The Local Government Acts of Punjab, Sindh, Balochistan and Khyber Pakhtunkhwa provinces allegedly replaced the 2001 Local Governance Ordinance that expired in 2009. The Local Government System brought about by this 2001 Ordinance had stipulated 33% seats reservation for women at the grass-roots level and reportedly provided the opportunity for many women to enter provincial and national level politics, despite opposition from many male politicians.

It is further alleged that, despite the commitment of the current Government to ensure the adequate and effective representation of women at all levels of government, the new local government legislation, with its abolishment of quotas, has significantly reduced women's participation in the provinces of Sindh and Punjab, from 33% during 2001-2009, to 10% and 20% respectively in 2013. In addition, it is reported that women councilors in the above-mentioned four provinces are elected to reserved seats on local councils through the mixed method of elections by general councilors (the vast majority of whom are men)

instead of being directly elected by community members, as is the case with male councilors. It has further been reported that this practice particularly affects levels of representation of women from minority groups.

Concern is expressed that the introduction of this new local government legislation in the provinces is directly at odds with the Government of Pakistan's commitment under both national and international law to strengthening women's participation in political and public life. The devolvement of local Government to the provinces and the loss of the 33% quota of reserved seats for women introduced under the 2001 local government system has resulted in a significant decrease in the numbers of women candidates elected to local councils, committees and corporations, especially those from minority backgrounds. Concern is particularly expressed at the use of the mixed method of elections, which denies women candidates on reserved seats their direct votes from communities, with the result that the electorate do not know the women candidates or are not engaged with them. The mode of women's participation should be direct elections for the reserved seats on the basis of joint electorates, to help create women's own constituencies. Furthermore, women, particularly those from minority backgrounds, should be eligible to contest general seats and all councilors should be treated as equal, regardless of their election to reserved or general seats.

In relation to the above concerns, I wish to refer your Excellency's Government to the domestic legal framework in Pakistan and particularly article 34 of the Constitution of Pakistan, which underscores the State's commitment to full participation of women in national life. In addition, article 32 of the Constitution clearly states that "the State shall encourage local Government institutions composed of elected representatives of the areas concerned and in such institutions special representation will be given to ... women."

I would also like to take this opportunity to recall your Excellency's Government to its obligations under the Convention on the Elimination of all Forms of Discrimination Against Women (hereinafter "CEDAW"), ratified by Pakistan on 12 March 1996: article 2, which condemns all forms of discrimination against women; article 3, which guarantees basic rights and fundamental freedoms on an equal basis with men, particularly in the political, social, economic and cultural fields; article 4(1) on temporary special measures aimed at accelerating de facto equality between men and women and; article 7 requiring States to take all appropriate measures to eliminate discrimination against women in political and public life.

The Committee on the Elimination of Discrimination Against Women (hereinafter "CEDAW Committee") has further developed some of the above norms through its general recommendations. Those specifically relevant to this case, which I would like to recall, include General Recommendation No. 25 on Temporary Special Measures (2004) and General Recommendation No. 23 on Political and Public Life (1997).

In paragraph 23 of its General Comment No. 25 on Temporary Special Measures (2004), the CEDAW Committee has noted that "For appointment, selection or election to public and political office ... the principles of democratic fairness and electoral choice,

may also have to play a role.” As such, in paragraph 37 of the same General Recommendation, the CEDAW Committee has recommended that states apply temporary special measures in the fields of education, the economy, politics and employment, in areas where women represent their Governments at the international level and participate in the work of international organizations, and in the area of political and public life. States parties should intensify, within their national contexts, such efforts especially with regard to all facets of education at all levels as well as all facets and levels of training, employment and representation in public and political life.”

In paragraph 17 of its General Recommendation No. 23 on Political and Public Life (1997), the CEDAW Committee has affirmed that “it is essential to involve women in public life to take advantage of their contribution, to assure their interests are protected and to fulfil the guarantee that the enjoyment of human rights is for all people regardless of gender. Women's full participation is essential not only for their empowerment but also for the advancement of society as a whole.”

In paragraph 41 of the same General Recommendation, the Committee has recommended to States parties “that their constitutions and legislation comply with the principles of the Convention, and in particular with articles 7 and 8.” Furthermore, the Committee has called upon States parties to “identify, implement and monitor measures ... designed to achieve a balance between women and men holding publicly elected positions” (para. 45 (a)).

In this connection, I wish to recall paragraph 19 of 2013 Concluding Observations of the CEDAW Committee on Pakistan (CEDAW/C/PAK/CO/4), where the Committee has specifically expressed its regret at “the expiration of the local government system, which used to reserve 33 percent of seats for women at local government level.” The Committee has recommended that Pakistan, “ensure that the local government system is restored, that the 33 percent reserved seats for women are retained and that women from religious minorities are represented in such a system” (paragraph 20 (b)).

Moreover, I would like to draw the attention of your Excellency's Government's attention to the recommendations of the 2013 Report of the Working Group on women's participation in political and public life (A/HRC/23/50), where the Working Group has affirmed in paragraph 94 that “for women's participation in political and public life to be meaningful, it must be on equal footing with that of men, covering all aspects of political and public life, and effective in achieving substantive outcomes on equality between men and women in all fields of life.” The Working Group has further elaborated that “the right mix of special measures, both temporary and permanent, is required to address reported stagnation in the rise in women's participation in public office. Partial and selective application of gender quotas and other temporary special measures must be replaced by a comprehensive system-wide approach, in permanent as well as ad hoc institutions of governance, peace, development and human rights, at the local, national and global levels” (para. 96). As such, the Working Group has recommended in paragraph 97 that states “strengthen the legislative foundation towards parity, including through constitutional provisions and other legislative measures for positive action, such as

quotas, to overcome structural barriers to women's political participation." It has further recommended that States should provide "a positive image of diverse women, including minority women, indigenous women, women with disabilities, and other historically marginalized women, in leadership and decision-making positions" (para. 97(b)(ii)).

Finally, in paragraph (o) of its most recent set of agreed conclusions (2013), I wish to recall a recommendation from the Commission on the Status of Women, in the context of political participation of women, which calls upon states "take effective steps to ensure the equal participation of women and men in all spheres of political life, political reform and at all levels of decision-making, in all situations."

Since it is my responsibility under the mandate provided to me by the Human Rights Council to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Are the facts alleged in the summary of the case accurate?
2. Please provide details of any measures taken to ensure the enjoyment of all rights by women wishing to participate in the decision-making process in local government at all levels, on an equal basis with men.

I would appreciate a response within sixty days. I undertake to ensure that your Excellency's Government's response to each of these questions is accurately reflected in the reports we will submit to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of my highest consideration.

Frances Raday
Chairperson-Rapporteur of the Working Group on the issue of
discrimination against women in law and in practice