



Pakistan: Inching toward Contested Elections

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What's new? General elections in Pakistan, which were due in November 2023, are now scheduled for 8 February. With the electoral commission facing major challenges in overseeing a transparent and inclusive ballot, the risk of one-sided contest has increased.

Why did it happen? Facing a military-led crackdown after May 2023 violence by party supporters, Imran Khan's Pakistan Tehreek-e-Insaf (PTI) accuses the authorities of denying it a fair run in the polls. Khan's rival, Nawaz Sharif, has returned after years in self-exile to spearhead the campaign of his Pakistan Muslim League-Nawaz party.

Why does it matter? The election commission has not redressed flawed decisions it has made to the PTI's detriment, nor those of the federal and provincial caretaker governments that rule during election periods. Its failures could damage the polls' credibility and cause turmoil amid an uptick in militant violence.

What should be done? The election commission should strive to ensure that all parties, including the PTI, can contest the polls and all voters, particularly women, can cast their ballots. The superior courts should continue to uphold freedoms. Political parties should reject efforts to manipulate the outcome, since they have the most to lose.

I. Overview

Pakistan will hold general elections on 8 February, three months after the original date set for November 2023. The vote will take place in the shadow of a crackdown on Pakistan Tehreek-e-Insaf (PTI), the party of former Prime Minister Imran Khan, following attacks by its loyalists on military targets. Conditions were already badly skewed against the PTI, with Khan himself sitting in jail. The election commission has failed to curb interference by the caretaker governments that, in accordance with the law, hold power around Pakistani elections. Nor has it exercised sufficient oversight over its own personnel. A flawed poll will harm the incoming government's legitimacy, fuel discontent and heighten risks of tumult in a country already reeling from attacks by jihadist insurgents. The election commission must try to ensure that all parties can contest the polls freely. The superior judiciary should uphold fundamental freedoms of association and expression, while Pakistan's politicians should reject attempts at electoral manipulation by the civil or military bureaucracies.

Political upheaval kept the polls from happening on time. In April 2022, after Khan's ouster as premier through a no-trust vote in parliament, he demanded snap elections. He led demonstrations, at times violent, against the coalition government fronted by Shehbaz Sharif's Pakistan Muslim League-Nawaz (PML-N) that had taken over. For its part, Sharif's coalition insisted that elections wait until after parliament had completed its five-year term in August 2023. Khan quit parliament and, in January 2023, disbanded PTI-led governments in two of the country's four provinces, Punjab and Khyber Pakhtunkhwa, leaving caretakers in charge. But the ruling coalition did not budge. Sharif finally dissolved the National Assembly, the federal parliament's lower house, on 10 August, three days before its term was to conclude. Per Pakistani law, elections should then have been held within 90 days. But days prior to the dissolution, the ruling coalition, backed by all four provincial governments, including the two caretakers, pushed them back by approving a census, meaning constituency boundaries had to be redrawn before a fresh vote.

Though the PTI's support appeared solid after Khan's removal, his subsequent bid to take on the military has upended the party's prospects. Khan first tried to win the military's backing for an early vote, approaching army chief Qamar Javed Bajwa and his successor Asim Munir for their help. When the overtures proved futile, he accused both of conspiring with his political opponents. His relationship with the military tanked following his 9 May 2023 arrest on corruption charges, which triggered a nationwide rampage by PTI supporters. Egged on by conspiracy theories, including one positing that a high-ranking officer was involved in attempts to assassinate Khan, furious crowds attacked military installations and properties in several cities, including the army headquarters. PTI leaders made little attempt to calm things down. The crackdown that followed decimated the party's top echelons; many either quit or were detained, alongside scores of rank-and-file activists. Khan was convicted of corruption and, on 30 January, of subverting state security as well. He is out of the running on 8 February.

Caretaker governments, both national and provincial, are also mired in controversy, suspected of seeking to swing the vote. The Pakistan Peoples Party (PPP), formerly a coalition partner of the PML-N and now its rival, has accused the federal and Punjab caretaker governments of favouring the PML-N. Caretaker governments have also blocked PTI rallies. Arrests of PTI leaders and potential candidates, many charged with complicity in the 9 May riots, have gathered steam since the election schedule's unveiling on 15 December. In contrast, PML-N leader and former Prime Minister Nawaz Sharif has overcome legal challenges that would have stopped him from contesting the vote.

A climate of extreme polarisation amid the military crackdown on the PTI poses stiff challenges to the election commission. The PTI and PPP have called on the commission to prove it can maintain a level playing field. The PTI, which has long accused commission leaders of partisanship, had hoped that the courts would intervene to allow Khan to contest the vote. But PTI leaders are now sceptical the superior judiciary will come to its aid after the Supreme Court endorsed the commission's decision to deprive the party of a common election symbol, its well-known cricket bat.

With the military still seemingly bent on punishing the PTI for the 9 May attacks, the commission will struggle to ensure the election is not tilted against the party. The commission's own ill-advised actions are also eroding its legitimacy. Election officials

appointed from the civil bureaucracy have refused to allow scores of PTI leaders to stand. Election appellate tribunals, manned by high court judges, have since overturned most rejections, as have the high courts and the Supreme Court. The controversy over the PTI also underscores the importance of the commission monitoring the performance of its own officials during the vote and in the tabulation of results. Unless the commission can demonstrate its neutrality, the judiciary is likely to become the arbiter of any disputes, which might be a short-term fix but will undermine faith in democracy in the long run.

A disputed poll could well result in turmoil on election day and in the aftermath. The military might be able to keep a lid on dissent in the short term, as it has done since 9 May. But political discontent would continue to roil the country, with grave implications for a moribund economy. Whichever party wins, flawed elections would tarnish the incoming government, leaving it ill-equipped to deal with the instability that would seem sure to follow.

It is not too late to avoid the worst-case scenarios. The election commission should keep doing all it can to promote the right of all parties, including the PTI, to participate. It must ensure that election staff and caretaker governments do not prevent eligible voters from casting ballots, no matter which party they support. The commission should exercise close oversight over the vote count. It should also act to protect women's right to vote and stand for public office. The country's leading politicians, meanwhile, should unite behind the principle that all parties should be able to freely contest the polls, rejecting any manipulation of the process, even in ways that seemingly redound to their benefit.

II. Rising Polarisation ahead of the Polls

Political polarisation is hardly new to Pakistan, and nor are contested elections that involve the military high command.¹ The powerful army has regularly intervened, often with the judiciary's support, to tilt the playing field against perceived adversaries and to back potential allies.² The army put its thumb on the scales in 2017, a year before the vote that brought the PTI to power. Its relations with Prime Minister Nawaz Sharif had grown strained. The Supreme Court convicted Nawaz of dubious corruption charges, forcing him to step down, and on that basis the court barred him from standing for office ever again.³ Both the PML-N and PPP claimed that Khan's

¹ For earlier analysis of political contestation in Pakistan, see Crisis Group Commentaries, "Keeping Turmoil at Bay in Pakistan's Polarised Polity", 25 May 2022; "A Change of Command and Political Contestation in Pakistan", 25 December 2022; and "Pakistan: At the Tipping Point?", 12 May 2023. See also Samina Ahmed, "Imran Khan's Fall: Political and Security Implications for Pakistan", Crisis Group Commentary, 13 April 2022; and "Pakistan: Plunging into Chaos?", Crisis Group Commentary, 10 November 2022.

² Crisis Group interviews, political analysts, Karachi, October 2023.

³ The court disqualified Nawaz from holding public office under Article 62 (i) (f) of the constitution, a morality clause inserted by military dictator Zia ul Haq in the 1980s. Its ruling cited his failure to declare a salary to which he was entitled – but had not collected – from a company owned by his son. In April 2018, just months before the elections, a bench led by Chief Justice Saqib Nisar ruled that disqualifications from holding public office under this article would apply for life.

subsequent victory owed to the military's interference. Once in power, the PTI went after its rivals through a flawed anti-graft drive, overseen by the National Accountability Bureau, an autonomous federal agency, with the assistance of an apparently sympathetic Supreme Court.⁴ Khan's opponents then joined hands to oust him through a parliamentary no-confidence vote in April 2022.

The PTI government first appeared to enjoy the military's backing, to the extent that some analysts called it a "hybrid regime" in which the civilian government played second fiddle to the high command.⁵ But by the time of the no-trust vote, it had fallen out with the top brass. Khan had encroached upon the military's jealously guarded autonomy, reportedly through attempts to impose his own preferred candidate to succeed army chief Bajwa.⁶ On the eve of parliament's no-confidence vote, Khan appealed to Bajwa for support, but the general opted instead to stay aloof. Khan retaliated by accusing Bajwa of colluding with the political opposition and the U.S. to get rid of him. Addressing a party rally on 27 March, he waved a paper, based on a diplomatic cable dated 7 March (which he called a "letter") that Pakistan's then-ambassador to Washington had sent after a meeting with a senior State Department official, calling it proof of a "foreign conspiracy" to remove him.⁷

Ousted from power, Khan could have headed the parliamentary opposition and then run in general elections then scheduled for late 2023. He chose instead to quit parliament, along with other PTI lawmakers, and call on his supporters to take to the streets.⁸ Demanding snap elections, he asked the army high command to support his cause even as he continued to use the anti-military conspiracy narrative to rally the party faithful. Shehbaz Sharif's PML-N-led coalition government, which assumed power after Khan's departure, insisted that elections be held on schedule, after parliament completed its five-year term in August 2023. Appointed in November 2022, the new army chief, Syed Asim Munir, whose nomination Khan had reportedly opposed, was also disinclined to back the demand for early polls.

The relationship between Khan and the army soured further after a gunman shot and injured him at a PTI rally on 3 November 2022. Khan publicly blamed Major General Faisal Naseer, a senior Inter-Services Intelligence (ISI) officer, along with Prime Minister Sharif and the interior minister, for the assassination attempt.⁹ In another abortive bid to prompt early elections, Khan dissolved the PTI-led governments in two of Pakistan's four provinces, Punjab and Khyber Pakhtunkhwa, in January. That move should have triggered fresh elections for those provincial assembly seats within three months. But negotiations between the PTI and Sharif's federal government to set a date for Punjab elections collapsed. Khan then warned the ruling coalition and the high command that failure to hold the vote on 14 May 2023, in line with an order by a congenial Supreme Court chief justice, would unleash "lawlessness in the coun-

⁴ Ahmed, "Imran Khan's Fall", op. cit.

⁵ Crisis Group telephone interviews, May 2022.

⁶ Crisis Group Commentary, "A Change of Command", op. cit.

⁷ Ahmed, "Imran Khan's Fall", op. cit.

⁸ Crisis Group Commentary, "Keeping Political Turmoil at Bay", op. cit.

⁹ Ahmed, "Pakistan: Plunging into Chaos?", op. cit.

try”.¹⁰ He doubled down on accusations that the prime minister, the interior minister and Major General Naseer were part of repeated attempts to kill him.¹¹

With Khan facing multiple corruption charges, including that he benefited financially from an under-the-table deal with a real estate tycoon that cost the national exchequer millions of dollars, his party repeatedly cautioned that it would not be able to restrain its activists should he be arrested.¹²

III. Confronting the Military

The stage was set for violent confrontations between PTI supporters and the military. On 8 May 2023, the military publicly rebuked Khan for his allegations that the ISI’s Naseer had conspired to assassinate him.¹³ The next day, as Khan readied to leave his Lahore home for the Islamabad High Court to apply for pre-arrest bail in cases lodged against him, he repeated the charges in a recorded message, fuelling anti-military sentiment among the party base.¹⁴ As he arrived in Islamabad, along with hundreds of the PTI rank and file, paramilitary Rangers arrested him. Rumours soon circulated on social media that military personnel had kidnapped and tortured him.¹⁵

Enraged Khan supporters attacked police stations, government buildings and private properties, but they directed their wrath primarily at the military. Activists, in many cases led by top party lieutenants, ransacked the Lahore corps commander’s house, attempted to storm army headquarters in Rawalpindi and the ISI office in Faisalabad, and assailed army and air bases in several cities including Sialkot, Guj-

¹⁰ The PTI and ruling coalition had agreed to hold all elections on the same day, but not on which day that should be. The PTI wanted a mid-July date and the government a later occasion by the first week of October. Khan then reverted to insisting on the 14 May date for Punjab polls, at which point the negotiations broke down. Crisis Group interview, PPP leader, Islamabad, May 2023. See also “PTI to hit the streets if polls delayed: Imran”, *The Express Tribune*, 1 May 2023; “Go ahead with planned elections, PTI urges SC”, *Dawn*, 4 May 2023

¹¹ “Hold ‘top intelligence official responsible’ for future assassination attempts, says Imran”, *The Express Tribune*, 4 May 2023.

¹² In August 2022, Khan was booked on anti-terrorism charges for comments he had made at an anti-government rally. PTI leaders warned that arresting him was a “red line”. “PTI warns Imran Khan a ‘red line’ as reports of warrants for his arrest make rounds”, *Dawn*, 21 August 2022. In what is known as the Al-Qadir Trust case, the National Accountability Board is investigating both Khan and his wife for alleged corruption. In March 2023, police tried to arrest Khan in this connection at his Lahore home, leading to violent clashes with party workers.

¹³ On 6 May, addressing a rally in Lahore in which he announced countrywide protests to demand elections, Khan once again accused Naseer of orchestrating plans to murder him. “This man tried to kill me twice”, he said. “Imran plans more rallies, warns against breach of SC order”, *Dawn*, 7 May 2023. On 8 May, a military spokesperson called Khan’s “irresponsible and baseless allegations” against a serving senior officer without any evidence “deplorable and unacceptable”. “Baseless’ allegations by PTI chief against serving military officer ‘unacceptable’: ISPR”, *Dawn*, 8 May 2023.

¹⁴ In a video message recorded on 9 May, Khan said, “This man [whom he called “Dirty Harry”] tried to kill me twice. ... I will prove that it was this man and there is a whole gang with him”. “Listen to me carefully’: Imran Khan doubles down on allegations against senior military officer”, *Dawn*, 9 May 2023.

¹⁵ “Imran Khan arrested in IHC: court deems ex-PM’s arrest legal”, *Dawn*, 9 May 2023.

ranwala, Bannu, Mardan and Mianwali. Protesters did not spare monuments put up to honour fallen soldiers.¹⁶

The Punjab and Khyber Pakhtunkhwa caretaker governments called in the army to restore order. Caretaker prime ministers and chief ministers are appointed by consensus between the prime minister and the opposition leader in the federal parliament and chief ministers and opposition legislative leaders in the provinces – or, in the absence of agreement, by the election commission. The heads of caretaker governments and ministers in their cabinets cannot run in the polls they are meant to oversee, to avoid government interference, and in general they are meant to reassure the public of the authorities’ neutrality in the voters’ choice. Yet in the leadup to the 8 February polls, the caretaker governments’ moves – on both the federal and provincial levels – have increasingly indicated bias against the PTI.

After the army answered the caretaker governments’ call in Punjab and Khyber Pakhtunkhwa, concerns grew that the military and PTI supporters would start shooting at each other. The military sensibly refrained from using lethal force against demonstrators. Still, clashes between the police and protesters, which continued through 10 May, killed at least eight people and wounded close to 300.¹⁷ At first, PTI leaders, including Khan himself, justified the attacks on military installations as a natural, spontaneous reaction to his arrest. But Khan then claimed that state security agents had triggered the violence as part of an “organised conspiracy” by the ruling coalition, with military support, against him and his party.¹⁸

The military, for its part, vowed to hold all those responsible for planning and conducting the attacks to account, expressing anger at what it termed a “black chapter” in the nation’s history.¹⁹ “The armed forces will not tolerate any further attempt at violating the sanctuary and security of its installations or vandalism”, warned army chief Munir, adding that “all the planners, abettors, instigators and executors” of the 9 May violence would be brought to justice.²⁰ The top brass decided to try the culprits in military courts, a decision validated on 16 May by the National Security Council – Pakistan’s highest security body, presided over by Prime Minister Sharif. Civilian courts then approved the transfer of over 100 suspects to military authorities for trial under the Pakistan Army Act of 1952 and Official Secrets Act of 1923.²¹

¹⁶ “Eight killed in clashes as Imran Khan in NAB custody”, *Dawn*, 11 May 2023; “May 9 riots: Military courts to take up cases against 16 miscreants”, *The Express Tribune*, 24 May 2023; “SC emphasises May 9 rioters right of appeal”, *The Express Tribune*, 19 July 2023,

¹⁷ The Supreme Court reacted swiftly, ruling Khan’s arrest on the premises of the court illegal, leading the Islamabad High Court to release him on bail on 11 May.

¹⁸ Asked about the violent protests, on 12 May Khan said he had warned there would be a “reaction” if he were arrested. “The people and the army are being brought face to face”, he said, “Who will control the people if I am arrested [again]?”. Subsequently, Khan claimed that “unidentified” plainclothes officers had acted as provocateurs. “Imran bailed out: IHC gives 2-week reprieve in Al-Qadir Trust case”, *Dawn*, 12 May 2023.; “Imran foresees chaos if detained again”, *The Express Tribune*, 13 May 2023; “Agencies men involved in May 9 vandalism”, *The News*, 16 May 2023.

¹⁹ “May 9 is history’s black chapter: Army”, *The Express Tribune*, 10 May 2023.

²⁰ “Planners, abettors and executors of May 9 vandalism to be brought to justice: COAS”, *The Express Tribune*, 13 May 2023.

²¹ On 23 October 2023, the Supreme Court barred the trial of civilians in military courts but, responding to petitions by the caretaker government, lifted the prohibition on 13 December until it issues a final verdict on the pleas. “Military trials for civilians gets SC nod”, *The Express Tribune*, 13 December

The crackdown on the PTI, which continues across the country, could have dire implications for the party's electoral prospects. Khan is in prison, hundreds of party workers have been arrested and scores of PTI leaders detained, many multiple times. They have been released only after publicly condemning the 9 May violence as well as breaking with Khan and the party.²² By the end of May, more than 70 leaders, including former cabinet members and lawmakers, had quit the PTI. Several defectors have joined two new factions: one led by a former Khan confidant based in Punjab and the other headed by PTI's former chief minister in Khyber Pakhtunkhwa.²³ Many PTI leaders who have chosen to side with Khan and are still free live in constant fear of arrest.²⁴

In June, with his own and his party's political survival in danger, Khan said he was ready for talks with the military establishment, whom he called the "real decision-makers", as opposed to "powerless" politicians.²⁵ The high command rebuffed the offer. Instead, Khan's legal challenges will prevent him from standing for election. On 30 January, he and a colleague were convicted of subverting state security for brandishing the diplomatic cable – a classified document – in a public setting.²⁶ Khan got a ten-year sentence. He will appeal the verdict, but for the time being he will remain behind bars, prohibited from throwing his hat in the electoral ring.

IV. The Run-Up to Elections

In parallel to the building confrontation between the army and PTI, another political drama was unfolding related to Khan's pursuit of snap elections and the ruling coalition's resistance thereto.

Following his 2022 ouster, Khan had repeatedly petitioned the Supreme Court, then led by Chief Justice Umar Ata Bandial, who was widely perceived as close to the PTI, on a series of election-related disputes. In one key judgment in May 2023, the court quashed the votes of PTI dissidents for the Punjab legislature's no-confidence motion in their party; their votes had paved the way for the appointment of Hamza, Prime Minister Shehbaz's son, as Punjab's chief minister. As a result of the court ruling, Hamza's government was dismissed and replaced by a PTI-led coalition.²⁷

Khan dismissed the PTI-led Punjab and Khyber Pakhtunkhwa governments in January and demanded polls be held in both provinces within the constitutionally

2023. See also "May 9 protests aimed at overthrowing military leadership: PM", *The News*, 30 July 2023.

²² "Samsam Bokhari parts ways with PTI", *Dawn*, 16 August 2023; "May 9 violence was aimed at ousting COAS: Usman Dar", *The News*, 5 October 2023.

²³ Jahangir Khan Tareen, a former top PTI leader, formed the Istekham-e-Pakistan Party in June, with more than 100 defecting PTI leaders and lawmakers joining it; the next month, the PTI's former chief minister in Khyber Pakhtunkhwa, Pervez Khattak, formed the Pakistan Tehreek-e-Insaf Parliamentarians party.

²⁴ Crisis Group interviews, political activists, Karachi and by telephone, October-November 2023.

²⁵ "Imran still chasing talks with military establishment", *Dawn*, 13 June 2023.

²⁶ "Imran Khan, Shah Mehmood Qureshi sentenced to 10 years in jail in cipher case", *Dawn*, 30 January 2024.

²⁷ Dissenting judges on the Supreme Court called the ruling an attempt to rewrite the constitution. Crisis Group Commentary, "Pakistan at the Tipping Point?", *op. cit.*

defined 90-day period. Shehbaz's government refused to comply, insisting that all elections, national and provincial, be held when the federal parliament's term ended in August. The Bandial-led Supreme Court sided with Khan, ruling on 4 April that the election commission should hold elections in Punjab on 14 May. In response, the federal government refused to provide money or security personnel for the polls.²⁸ Instead, on 26 June the federal parliament approved amendments to the Elections Act of 2017 that gave the election commission unilateral authority to announce election dates.²⁹ These amendments also limited the period during which legislators could be disqualified from standing for public office to a maximum of five years, thus removing the 2018 lifetime ban on Shehbaz's brother Nawaz.³⁰

The Shehbaz-led government was reluctant to test itself at the ballot box. During its sixteen months in power, the government had cemented ties with the military. Some analysts even called it a "hybrid plus" or "hybrid 2.0" regime, suggesting that the military exercised even greater influence over Shehbaz's cabinet than it had over Khan's.³¹ Yet despite this powerful backing and the damage done to the rival PTI after the 9 May crackdown, the PML-N-led government remained well aware of its sinking popularity.

Several issues loomed in its calculations about whether to call elections. The economy was in dire straits; sovereign default was averted only after the government reached a \$3 billion Standby Agreement with the International Monetary Fund (IMF) in July, weeks before its term in office ended.³² Accepting the IMF's terms led to a sharp increase in fuel and electricity prices, with the resulting spike in inflation further eroding the government's support.³³ In delaying the polls, the ruling coalition might have hoped that the caretaker governments would shoulder the blame as the harsh austerity measures it had imposed hit harder.³⁴

The PML-N also hoped that its leader, Nawaz Sharif, who was in self-imposed exile in London, would be able to return to Pakistan before the polls, and that his popularity would revive its electoral prospects.³⁵ The main hurdle, in the eyes of the PML-N, was the Bandial-led Supreme Court, since Nawaz's ability to contest the elections depended on the judiciary upholding his appeals of convictions in two corruption cas-

²⁸ Ibid.

²⁹ Until an amendment to Section 57 of the Elections Act (2017), which empowered the commission to "announce the date or dates for the general elections", it was expected to consult the president (who is a Khan loyalist) about the election date. On 13 September 2023, the president wrote to the commission, proposing that elections be held on 6 November. The commission responded that it was now solely responsible for announcing the voting day.

³⁰ The limit on the disqualification period was justified on the grounds that the constitution was silent on the "procedure, manner or duration" of such bans.

³¹ Crisis Group interviews, political analysts, Karachi, October 2023. See also Abdul Moiz Jafari, "Hybrid 2.0: How did project PM Shehbaz fare", *Dawn*, 9 August 2023; and Zahid Hussain, "The caretaker project", *Dawn*, 16 August 2023.

³² "Pakistan receives critical \$3bn nod from IMF in the nick of time", *Dawn*, 30 June 2023.

³³ For analysis of Pakistan's economic challenges, see Crisis Group Commentary, "Pakistan: At the Tipping Point?", op. cit.; and the Pakistan section in Crisis Group Special Briefing N°10, *Seven Priorities for the G7 in 2023*, 15 May 2023.

³⁴ Crisis Group telephone interviews, Islamabad and Karachi-based analysts, October 2023.

³⁵ Crisis Group telephone interviews, Lahore-based politicians, October 2023.

es.³⁶ The Supreme Court could also overrule the parliamentary amendment that had replaced the lifetime ban on standing for public office to a five-year suspension for lawmakers such as Nawaz. With Judge Bandial's retirement due on 16 September, the ruling coalition waited until 9 August to dissolve the national assembly, three days before it was to complete its five-year term; legislatures in Sindh and Balochistan were also prematurely sent home.

General elections would have been due by 9 November, but plans for a November election date did not last long.³⁷ Days before it stepped down, the federal government decided to approve the 2023 population and housing census. The Council of Common Interest, which included all four provincial governments, unanimously agreed to ratify the census. The election commission then insisted that it needed at least four months to update voter rolls and demarcate constituencies on the basis of the new data. In September, it announced that the polls would take place by late January, exceeding the constitutional 90-day period after parliament's dissolution, but it refused to name an exact date until new constituency boundaries were drawn. As the long overdue elections were delayed even further, many observers began to doubt they would be held at all.³⁸

V. Risks and Opportunities

As the election fast approaches, the military-led crackdown on the PTI and the caretaker governments' partisanship bode ill for political stability. High levels of polarisation and a potential one-sided poll mean the actions of the courts, the election commission and political parties will shape risks of conflict.

A. Judicial Activism and Elections

Uncertainty about the election date finally ended early in November. On 17 September, Qazi Faez Isa was appointed chief justice of the Supreme Court.³⁹ In one of its first major interventions, the Isa-led Supreme Court directed the election commission to set a date as it heard Khan's petition and several others. Following court directives, the commission consulted the president. It then notified the court on 3 November that elections would be held on 8 February 2024, adding that the date was "set in stone". The court ordered the government to ensure "uninterrupted elections" on that day.⁴⁰ All political parties, including the PTI, PML-N and PPP, lauded the Su-

³⁶ A top election expert noted, "The delay in the polls apparently works in favour of PML-N as they get more time to sort out Nawaz Sharif's legal issues after the retirement of the present [chief justice of Pakistan]". "Who reaps rewards of poll delay?", *The Express Tribune*, 19 August 2023.

³⁷ Article 224 of the Pakistani constitution sets timelines for holding elections after parliament is dissolved: within 60 days of dissolution of a full-term parliament and within 90 days in cases of premature dissolution.

³⁸ Crisis Group telephone interviews, November 2023.

³⁹ The Supreme Court of Pakistan is made up of seventeen judges, including the chief justice. Only two women are now serving on the bench. The first was appointed in May 2022.

⁴⁰ Holding general elections before March 2024 was particularly important as Senate elections were due that month. "ECP submits notification on election date to SC", *Dawn*, 3 November 2023;

preme Court's intervention. It ended rumours that the polls would be indefinitely delayed, which could have sparked more instability and undermined investor confidence in an already flagging economy.⁴¹ Further delays could also have harmed relations with international financial institutions, such as the IMF, and with important donors and international partners, particularly the U.S. and the EU, which have repeatedly called for fair and timely polls.⁴²

As the Isa-led Supreme Court and the High Courts continue to hear sensitive political, including election-related cases, their judgments could shape the polls' conduct, the field of candidates and the outcome. Khan's appeals of his 8 August conviction by an anti-corruption court are significant: following his conviction, the election commission disqualified him from public office for five years.⁴³ Although the Islamabad High Court suspended his three-year prison sentence on 29 August, the conviction remains in force.⁴⁴

Further complicating Khan's situation, on 20 August the Federal Investigation Agency arrested him and former foreign minister Shah Mehmood Qureshi for the misuse and unauthorised retention of the diplomatic cable that Khan had waved before his followers in the 27 March rally as proof of an alleged conspiracy.⁴⁵ Khan asked the Supreme Court for post-arrest bail and to overturn the case. The court granted him bail on 22 December, but Khan remained in prison facing other corruption cases and several charges linked to the 9 May violence. Khan has lodged appeals of his 30 January conviction in the diplomatic cable case and in two corruption cases.⁴⁶ But even if the superior courts uphold his motions, it will be too late for him to stand for election.⁴⁷

"Supreme Court orders 'uninterrupted elections' on date agreed by president, ECP", *The News*, 3 November 2023.

⁴¹ Crisis Group interview, political economist, Karachi, October 2023.

⁴² The State Department's top South Asia official, for instance, said, "We feel strongly that Pakistan's future leadership is for the Pakistani people to decide, that the Pakistani people deserve their day at the polls", adding, "We want to see the [electoral] process advance in a way that facilitates broad participation, with respect for freedom of expression, assembly and association". "U.S. wants institutions to advance electoral process", *Dawn*, 4 September 2023.

⁴³ On 5 August 2023, an anti-corruption court convicted Khan of concealing the proceeds of Toshakhana gifts (the Toshakhana is the state depository where gifts given to officials by foreign governments are kept), sentencing him to three years in prison, the maximum penalty for the offence. "His dishonesty", the court ruled, "has been established without doubt". "Imran arrested for the second time in three months after being found guilty in Toshakana case", *Dawn*, 5 August 2023; "Toshakana case: Trial court summons Imran Khan tomorrow after IHC ruling", *The News*, 4 August 2023.

⁴⁴ "SC spots 'procedural defects' in Imran's conviction", *Dawn*, 24 August 2023.

⁴⁵ The first information report, as police reports are known in Pakistan, charged Khan and Qureshi with communicating information in the "secret classified document" (a cipher telegram dated 7 March) "to the unauthorised person (ie, the public at large) by twisting the facts to achieve their ulterior motives and personal gains in a manner prejudicial to the interests of state security", as well as with misplacing the secret document. Arfa Feroz Zake, "Cipher case: Special Court extends Imran, Qureshi judicial remand till Oct 10", *The News*, 26 September 2023.

⁴⁶ An anti-graft court convicted Khan in a second corruption case on 31 January. "Imran Khan, Bushra Bibi sentenced to 14 years in Toshakhana reference", *Dawn*, 31 January 2024.

⁴⁷ Khan approached the Supreme Court on 26 December, after the Islamabad High Court turned down his plea that his conviction be suspended so as to allow him to contest the elections. "Toshakhana conviction: Imran Khan approaches Supreme Court again", *The News*, 26 December 2023; "Imran's prospects dim as conviction remains in field", *Dawn*, 22 December 2023.

PML-N leader Nawaz Sharif, on the other hand, has overcome legal challenges to standing in the polls. On 29 November, the Islamabad High Court upheld his appeal of a conviction in one of two corruption cases and acquitted him in the second on 12 December.⁴⁸ The Supreme Court's 8 January 2024 decision to rule out lifetime bans on lawmakers convicted on corruption charges has removed the last remaining hurdle to Nawaz's candidacy, his 2018 disqualification. A lifetime ban, the court emphasised, undermined the right of all citizens to stand for elections.⁴⁹ Though the Supreme Court's ruling certainly benefited Nawaz, it also protected the rights of all politicians, including Khan, who could also have been disqualified for life under the earlier interpretation.

The superior courts have also highlighted the importance of holding credible polls. Responding to a petition from the PTI on 22 December, the Supreme Court ordered the election commission and caretaker governments to urgently resolve the party's grievances and provide all parties and candidates equal opportunities to contest the polls. "Organising free and fair elections is more important than the results", the order read.⁵⁰ In several other rulings, superior courts have rebuked caretaker governments and their law enforcement agencies for harassing PTI leaders and activists, as well as the election commission for failing to stop such violations. The Peshawar High Court, for instance, warned if the PTI was barred from political activity in the province, "the chief minister and the [Chief Election Commissioner] will be asked about their failure to fulfil the responsibility of holding the polls in a free and fair manner".⁵¹

The superior courts should be ready to go beyond verbal reprimands of government officials and police forces, holding them in contempt of court if they continue to violate such order and directives. By consistently upholding freedoms of association, expression and assembly, the superior courts could play a critical role in ensuring that the forthcoming election is inclusive and credible.

B. *The Election Commission and Caretaker Governments*

In normal circumstances, the Supreme Court should not have had to force the announcement of a formal election date. In his ruling, Justice Isa himself said the matter had been "unnecessarily" brought before the court, adding that the court was "fully aware of our constitutional jurisdiction" and careful not to "encroach on the jurisdiction of ... the Election Commission of Pakistan".⁵² As the country's top electoral body, the commission is primarily responsible for organising and overseeing ballots, ensuring they are "conducted honestly, fairly and in accordance with the law".⁵³ But the courts have repeatedly intervened because of the commission's failure to uphold its

⁴⁸ Nawaz had been sentenced to seven years' imprisonment in the Al-Azzia steel mill case in December 2018 and ten years imprisonment in the Avenfield case in July that year, but the Islamabad High Court suspended the latter verdict in September 2018. Released on bail on medical grounds in March 2019, he had left for London in November. His appeals in both cases were therefore not heard until he returned to Pakistan.

⁴⁹ "SC strikes down lifetime bar on MPs", *The Express Tribune*, 8 January 2024.

⁵⁰ "PTI to play its election innings without 'bat'", *Dawn*, 23 December 2023.

⁵¹ "PTI chalks out strategy to tackle 'non-political state actors' active against Imran", *The News*, 21 November 2023.

⁵² "Elections date case 'unnecessarily' brought before SC: CJP", *Dawn*, 5 November 2023.

⁵³ Article 218 (b) of the constitution.

constitutional mandate. Both the commission and caretaker governments have faced fierce criticism from the PTI and other opposition parties.⁵⁴

The PTI, in particular, decries the commission's silence as the party's rights to mobilise, and hence contest the polls, are violated. Arrests of party leaders by law enforcement agencies under the caretaker governments' purview, the party says, are "a question mark on the role of the commission in staging fair polls".⁵⁵ The interim governments at the federal and provincial levels, particularly in Punjab and Khyber Pakhtunkhwa, the PTI's erstwhile strongholds, are far exceeding their remits. While other parties are holding rallies ahead of the elections, the two provincial administrations have often refused to let the PTI convene public meetings even when the party has obtained approval from the courts.⁵⁶

Other parties also voice grievances. The PPP accuses the interim federal and Punjab governments of partisanship, claiming that both back the PML-N. After the party raised objections to the inclusion of former top bureaucrats with close PML-N ties in the federal caretaker cabinet, a few ministers stepped down at the election commission's request. But the PPP's concerns are not assuaged. Implying that the departed caretaker ministers were following the high command's orders, and referring to the alleged military manipulations that led to the PTI 2018 victory, PPP chairperson Bilawal Bhutto-Zardari said: "Having endured the rule of a selected [PTI] government, we cannot afford another selected government".⁵⁷

The election commission has taken steps to protect the sanctity of the polls. It compelled the authorities to reassign senior federal bureaucrats and police officers who could have influenced the elections. Similarly, it insisted that interim provincial ministers involved in politics be removed, resulting, for example, in the reshuffling of the entire Khyber Pakhtunkhwa cabinet in August.

A big test for the commission will be whether it acts to stop caretaker governments, particularly in Punjab, from cracking down on PTI candidates and activists on election day and in the aftermath.⁵⁸ The PTI is sceptical that it will do so. Party leaders point to its decision to appoint election officials from a civil bureaucracy that has played a central role in the caretaker administrations' suppression of the party. The

⁵⁴ According to the Elections Act of 2017, the caretaker governments' primary role should be to help the commission "hold elections in accordance with the law". They must also "be impartial to every person and political party" and restrict themselves "to activities that are routine, non-controversial and urgent, in the public interest".

⁵⁵ "Senior PTI leader Asad Qaiser sent to Adiala jail in corruption case", *The News*, 4 November 2023. In separate letters sent to the interim prime minister and the chief election commissioner in October, the PTI's secretary general called enforced disappearances of party leaders "the most blatant and open form of pre-election rigging". "Blatant pre-poll rigging: PTI demands recovery of missing leaders", *The Express Tribune*, 3 October 2023.

⁵⁶ In October, responding to a PTI petition on the denial of approvals for public meetings by Khyber Pakhtunkhwa's district administrations, the Peshawar High Court allowed PTI to carry out political activities. In November, the Lahore High Court, responding to a similar PTI petition, said it was the right of political parties to conduct political activities following the announcement of the election date. "Peshawar High Court allows PTI to carry out election campaign", *Dawn*, 24 October 2023; "LHC directs DCs to decide on PTI applications for political activities", *The News*, 15 November 2023.

⁵⁷ "No more 'selected ones', Bilawal tells rivals", *The Express Tribune*, 12 November 2023.

⁵⁸ Crisis Group interviews, rights activists, Karachi, October 2023.

commission insists it had no choice but to make these appointments since the superior courts had refused to allow judges from lower courts to take up election duties.⁵⁹

Candidate vetting has also proven contentious. PTI leaders claim their concerns about returning officers appointed from the bureaucracy are justified after those officials rejected the nomination papers of more than 600 of the party's candidates, including 90 per cent of its top leaders.⁶⁰ In response, the commission argued to the Supreme Court on 7 January that officials had accepted more than three quarters of PTI nominations.⁶¹ What it omitted was that returning officers had rejected the applications of scores of party leaders. Election appellate courts, comprising high court judges, have overturned many of these decisions. The superior judiciary also appears to be a critical check. High courts have accepted the appeals of many prominent PTI candidates lower ones had rejected. The Supreme Court, which has the final word, has also allowed many PTI leaders to contest the polls.⁶² The commission must now strive to ensure that the controversy over candidate vetting is not replicated on election day and in the tabulation of results. It should closely monitor the performance of election officials, who will oversee the polling and the tally.

Another dust-up came with the commission's prohibition on PTI candidates using their party's symbol, the cricket bat (in homage to Khan's career as a professional cricketer). The commission took that decision on 22 December, after nullifying the PTI's 2 December intra-party elections for violating the party's constitution.⁶³ Though the commission justified its ruling on technical grounds, many believe it was politically motivated.⁶⁴ Though the Peshawar High Court restored the symbol, the commission appealed to the Supreme Court, which upheld its decision. The verdict reflected the chief justice's views, as stated during the hearing of an earlier PTI petition. "To the extent that the [commission] is not doing anything in accordance with the constitution or the law, we can look into it. But we are not the [commission]", he said at the time.⁶⁵

While criticising the verdict as "controversial", a top PTI leader said party candidates would "contest independently", with the party using social media to educate

⁵⁹ "February polls hit a snag after LHC ruling", *Dawn*, 15 December 2023; "CEC promises level playing field for all, including PTI", *Dawn*, 16 December 2023.

⁶⁰ As the PTI alleged on its official X account, "[Returning officers], caretakers and [the election commission] have played the role of facilitators for Nawaz Sharif in the first phase of the election itself". "PTI to challenge rejection of nomination papers in Supreme Court", *The News*, 1 January 2024; "ROs stump PTI as scrutiny concludes", *The Express Tribune*, 31 December 2023.

⁶¹ According to the election commission, 598 of 843 nomination papers of PTI candidates for the National Assembly have been accepted, as have 1,398 of 1,777 nominations for provincial assembly seats. "76pc of PTI's papers accepted, ECP tells SC", *The News*, 8 January 2024.

⁶² "Big relief for PTI as scores cleared to contest polls", *Dawn*, 6 January 2024; "SHC dismisses pleas against candidature of three PTI men", *Dawn*, 11 January 2024; "LHC reserves judgement on Elahi, Qureshi pleas", *Dawn*, 14 January 2024; "SC allows PTI's Parvez Elahi to contest polls from PP-32", *Dawn*, 26 January 2024.

⁶³ "PTI, ECP both found at fault", *Dawn*, 23 December 2023. "Pendulum swings away from PTI", *Dawn*, 4 January 2024.

⁶⁴ Crisis Group telephone interviews, December 2023.

⁶⁵ "Don't make allegations against constitutional body without proof, CJP tells PTI counsel", *Dawn*, 8 January 2024.

voters about the multiple symbols allocated by the commission.⁶⁶ But the absence of a common symbol could damage the party's prospects, as fielding independent candidates with separate symbols is likely to puzzle voters. Since many voters are illiterate, party symbols are vital in Pakistani politics: on election day, many citizens choose candidates by identifying the symbol associated with the party. The ban also means the PTI will lose seats reserved for women and minorities that are allocated proportionally based on parties' representation in parliament.⁶⁷ By opting for such a harsh punishment – the denial of a party symbol – and then appealing the Peshawar High Court's verdict, the commission has dented its credibility as impartial. It has also done the Supreme Court's reputation harm by dragging it into the controversy.

Another issue the commission must confront is women's participation in both voting and running for office.⁶⁸ The commission has increased women's registration with donor assistance, with the gender gap falling below ten million for the first time in a decade.⁶⁹ But millions of women are still disenfranchised. The commission should continue to narrow the gap. Yet registering women voters does not necessarily translate into turnout.⁷⁰ Parties stand to gain from maximising women's participation: since many elections in Pakistan's first-past-the-post system are won by narrow margins, the more voters, the better. On previous occasions, however, several mainstream parties have prevented women from voting in conservative areas in order to retain male constituents' support.⁷¹

The commission should warn that it will enforce the 10 per cent minimum female turnout in each constituency – or else order fresh polls. It should enforce the law that disqualifies candidates attempting to forcibly prevent women from voting or standing for office.⁷² Working with law enforcement, the commission has identified constituencies requiring enhanced security.⁷³ It should include in this category those places where women voters or candidates have faced intimidation in the past.

⁶⁶ "PTI candidates to contest independently", *Dawn*, 13 January 2024; "PTI banks on social media to make up for 'bat' loss", *Dawn*, 15 January 2024; "PTI committed to active participation in polls despite symbol setback: Gohar", *The Express Tribune*, 15 January 2024.

⁶⁷ The National Assembly has 266 general seats. An additional 60 are reserved for women and ten for non-Muslims. The total number of general seats in the four provincial legislatures is 593, while an additional 156 seats are reserved for women and non-Muslims.

⁶⁸ The number of women running for office in 2024 is estimated at 3,139 women, significantly higher than the 1,687 who ran in 2018. But only about 11 per cent of all candidates are women. This number is not disaggregated to distinguish between those women running for general seats and those running for seats reserved for women and non-Muslims. See Khalid Hasnain, "Despite 'record nominations', women only 11pc of hopefuls", *Dawn*, 26 December 2023.

⁶⁹ According to the commission's latest data, of 128.5 million registered voters, 59.23 million are women (46.13 per cent) as compared to 69.26 million men (53.87 per cent). The gap at the time of the 2018 elections was 12.49 million. Iftikhar A. Khan, "Electoral gender gap falls below 10m after a decade", *Dawn*, 18 December 2023.

⁷⁰ Women's turnout in the 2018 elections, for example, stood at 40 per cent, while overall participation was around 50 per cent. See Rizwan Shehzad, "Low women turnout a pressing challenge ahead of polls", *The Express Tribune*, 17 October 2023.

⁷¹ Crisis Group telephone interviews, Khyber Pakhtunkhwa-based political activists, October 2023.

⁷² Section 9, Election Act of 2017.

⁷³ "ECP team meets Punjab IGP to delineate security plan", *Dawn*, 18 December 2023; "ECP 'reviews' security measures ahead of general elections 2024", *Daily Times*, 11 January 2024.

Concerns about militant threats are also high, particularly in Khyber Pakhtunkhwa, near the insurgent hideouts of the Pakistani Taliban and the local Islamic State franchise in neighbouring Afghanistan. In a late December briefing to the province's interim government, security agencies warned that more than 70 per cent of the polling stations there lie in "security-sensitive" areas, emphasising the importance of enhanced security for the polls.⁷⁴ The federal interior ministry has warned of serious danger to top politicians. Two such leaders, Jamiat Ulema-e-Islam's Fazlur Rehman and National Democratic Movement leader Mohsin Dawar, have survived attacks on their convoys, with Rehman escaping only narrowly when his car was targeted in Bajaur.⁷⁵ Others have not been so lucky: an independent candidate was shot dead in North Waziristan on 10 January and a PTI leader killed in Swabi the next day. Such attacks will likely escalate in the run-up to voting and on election day.

C. *Political Parties and Polls*

While the commission should strive to improve its management of the election, major political parties should also do their part. Toxic polarisation or refusal to accept the right of all parties to participate freely in the polls could well backfire, even on the winners, should it lead to a disputed outcome.

The PTI has decided to contest the polls despite all the hurdles it faces, with Khan still imprisoned and disqualified. Though the difficulties facing the PTI have mounted with the absence of a common election symbol, it hopes that independent candidates it backs will remain loyal to the party and follow its directives if elected. While the PPP and the PML-N have backed their PTI adversary's right to stand in the election, they have largely failed to condemn the systematic attempts to undermine its prospects. The PTI's disadvantages might allow its rivals to make gains, but only at the cost of marring the entire exercise and the other parties' own legitimacy if they are elected.

The PPP and PML-N should heed the warnings of their own senior leaders. A PML-N senator, for instance, declared that denying the PTI a fair chance to compete would be detrimental to democracy. "If you weaken the political parties, you weaken the federation", he said, cautioning against repeating past mistakes, such as the manipulation of the 2018 elections by intelligence and security agencies.⁷⁶ A senior PPP leader said: "All our problems stem from political engineering and manipulated elections. Such practices must end, or the incoming government will lack legitimacy; the civil-military imbalance will worsen; and it might be near impossible to stem the erosion of democracy".⁷⁷ Instead of turning a blind eye to interference by the caretaker governments and law enforcement agencies, political parties should uphold their opponents' right to contest the polls and to form a government if elected.

⁷⁴ "Two thirds of polling stations in KP sensitive, cabinet told", *Dawn*, 23 December 2023; "CDP underscores improved security across KP for polls", *Dawn*, 28 December 2023.

⁷⁵ "Maulana Fazlur Rehman's convoy comes under attack", *The News*, 31 December 2023; "Former lawmaker Mohsin Dawar's convoy comes under attack", *The News*, 3 January 2024.

⁷⁶ "Mass rejection of PTI leaders' papers to harm democracy, says PML-N senator", *Dawn*, 2 January 2024.

⁷⁷ Crisis Group interview, Islamabad, May 2023.

All parties should bear in mind that the country's economic survival is at stake. The Standby Agreement with the IMF, which ends in March, was a short-term fix, aimed at ensuring that the economy did not collapse before a new government is chosen. A new, longer-term deal with the IMF will be crucial to ensure the continued flow of external assistance to cash-starved Pakistan.⁷⁸ But such an agreement will not be enough to keep the economy afloat in the absence of political stability, something that will be elusive without a peaceful, credible transfer of power.

VI. Conclusion

With elections just days away, opportunities to address the flaws in the process are fast shrinking. Amid the deep polarisation in the country, the superior judiciary has removed some of the hurdles that lie in the way of a reasonably competitive election. Some of its rulings, such as that removing the lifetime ban on Nawaz Sharif standing for office, favour the PML-N. Judges have also played a leading role in giving Imran Khan's PTI a chance, despite the crackdown on the party, notably by allowing its candidates, including prominent leaders and activists, to contest the polls. On the other hand, the Supreme Court's support for the election commission's decision to deny the PTI a common election symbol has sparked fierce controversy.

The election commission, the body primarily responsible for overseeing the polls, is going into the 2024 contest with damaged credibility. To regain public trust, it should seek to ensure that the central and provincial interim administrations respect the right of all political parties to prepare for and participate in the vote. It might be an uphill battle to eliminate disadvantages for the PTI and other parties, given the heightened polarisation, but a blatantly uneven contest will hurt the next government's legitimacy, whichever party takes power. Parties should also do their best to ensure that the polls are not tilted against any one contender. Politicians across the divide should recognise the importance of a fair contest as a means of reviving Pakistan's weakened democracy.

Islamabad/Brussels, 6 February 2024

⁷⁸ Crisis Group telephone interviews, political economists, November 2023.

Appendix A: About the International Crisis Group

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Crisis Group's approach is grounded in field research. Teams of political analysts are located within or close by countries or regions at risk of outbreak, escalation or recurrence of violent conflict. Based on information and assessments from the field, it produces analytical reports containing practical recommendations targeted at key international, regional and national decision-takers. Crisis Group also publishes *CrisisWatch*, a monthly early-warning bulletin, providing a succinct regular update on the state of play in up to 80 situations of conflict or potential conflict around the world.

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Comfort Ero was appointed Crisis Group's President & CEO in December 2021. She first joined Crisis Group as West Africa Project Director in 2001 and later rose to become Africa Program Director in 2011 and then Interim Vice President. In between her two tenures at Crisis Group, she worked for the International Centre for Transitional Justice and the Special Representative of the UN Secretary-General in Liberia.

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