

*Policy Brief*

**Agenda for  
Electoral Reforms in Pakistan  
After 2013 General Election**

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PILDAT is an independent, non-partisan and not-for-profit indigenous research and training institution with the mission to strengthen democracy and democratic institutions in Pakistan.

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**Supported by**



**Pakistan Institute of Legislative Development and Transparency - PILDAT**

**Islamabad Office:** No. 7, 9th Avenue, F-8/1, Islamabad, Pakistan

Tel: (+92-51) 111 123 345 | Fax: (+92-51) 226 3078

**Lahore Office:** 45-A, Sector XX, 2nd Floor, Phase III Commercial Area, DHA, Lahore, Pakistan

Tel: (+92-42) 111 123 345 | Fax: (+92-42) 3569 3896

E-mail: [info@pildat.org](mailto:info@pildat.org); Web: [www.pildat.org](http://www.pildat.org)

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## Preface

While Pakistan made huge strides towards putting in place required electoral reforms ahead of May 2013 General Election, the less-than-satisfactory conduct of election on the polling day in particular and overall election management in general has once again pushed to the fore some lingering and some new requirements for instituting electoral reforms in Pakistan.

PILDAT, which has been advocating key reforms in the electoral process for a decade in Pakistan, feels that Pakistan's new Government, Parliament and the Election Commission should re-visit, and put in place, the set of reforms that are critical to ensuring a fool-proof system and a level-playing field to all contestants in every Election. The process for instituting required reforms should begin right away while the lessons learnt from the most recent electoral exercise are still fresh in our mind.

This Policy Brief is an effort by PILDAT to document the required reform proposals in the light of our experiences of 10 General Elections in Pakistan, the latest of which has been held on May 11, 2013.

## Acknowledgements

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## Disclaimer

Every Effort has been made to ensure the accuracy of the contents of this paper. Any omission or error, therefore, is not deliberate.

Islamabad  
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## Introduction

The elected political Government, Parliament and the Election Commission of Pakistan have covered a lot of ground in instituting significant electoral reforms during the past five years.

Some of the key reforms instituted include providing for full-time members of the Election Commission; Bi-partisan process to appoint members of the election commission and Chief Election Commissioner; Making Computerized National Identification Card (CNIC) mandatory for registration as a voter and for casting the vote; Preparation of Computerized Electoral Rolls with voters pictures by using the NADRA database; initiating the mechanism of constituency monitors; instituting a more elaborate system of monitoring election expenses and providing for a neutral care-taker government during the General Elections appointed through a bi-partisan process, etc.

These reforms have come about through Constitutional amendments, Acts of Parliament and administrative actions by the Election Commission. This is an impressive record by any standard.

However, there remain key areas which require further reforms. While some of these are proposals that could not be implemented in the pre-election phase, some others have cropped up due to the lack of effective management of the Election Day of Pakistan's 10<sup>th</sup> General Election.

This paper outlines a revised agenda for Electoral Reforms in Pakistan. A firm political will and commitment to reform, with support from citizens and the media can enable the country to put in place the balance Electoral Reforms that can truly provide a level-playing field to all and fulfill the criteria of free, fair and credible elections in Pakistan.

## Revised Electoral Reforms

Following is an account of the updated PILDAT proposals for Electoral Reforms in Pakistan in the light of the experience of 2013 General Election. These proposals are in no particular order and therefore are not ordered by priority or urgency.

### Restrictions on the Role of the President and the provincial Governors during an election:

As per parliamentary traditions, the President and the Governors should not, implicitly or explicitly, support any political party or group in a public statement, speech or a meeting. The President and the Governors should not show any inclination towards or promote a lobby or group on the basis of its ideology, ethnicity or language or faith. Since the offices of the President and the Governors are symbols of the unity of the State, the holders of these offices cannot act partisan at anytime. Lahore High Court held in its judgment of petition number 19561-2009 that the President of Pakistan can not be a partisan person and based on this principal asked President Asif Ali Zardari to relinquish one of the two positions i.e. the President of Pakistan and Co-Chairman of Pakistan People's Party (PPP). Following the judgment and after the court indicated that it might proceed against the President on the charges of contempt of court if he does not comply with the court ruling, President Zardari relinquished the co-chairmanship of PPP. During the period from 2008 to 2013, almost all provincial governors have had strong political party affiliation. Some of these governors have promoted party interests by using their official position and the state resources such as convening party meetings in the Governor Houses. ECP usually takes a more strict view of such partisan activities by the President and Governors after the announcement of the date of the general election when the Election Code of Conduct becomes operational but for the period before the announcement of the election date, there is no legal provision to check partisan political activities and the use of state resources for such activities by the President and the provincial Governors.

It is therefore important that the laws including electoral laws be amended to provide for certain restrictions on the possible partisan conduct of the President and Provincial Governors in the light of the spirit of the Lahore High Court judgment of 12<sup>th</sup> May 2011. Following are some of the proposals in this regard:

- i. The President or the Governor should not attend any public meeting, rally or congregation organized by or organized for the benefit of a political party
- ii. The restrictions applicable to the Prime Minister and Chief Ministers during a bye-election or to a caretaker prime minister or chief minister during a general election should be equally applicable to the President

and Provincial Governors.

- iii. The President or the Governors should not promise or announce any special or preferential package or programme from public funds for any constituency or area at least 6 months preceding the scheduled expiry of the term of the National Assembly / Provincial Assembly or with effect from the dissolution of the National Assembly / Provincial Assembly whichever occurs earlier.

### Election Commission Should Ensure Strict Compliance of Laws Relating to Control of Government Influence in Elections

As the governments' activities during the year preceding the general election 2013 indicate, both the federal and provincial governments had allocated and spent huge sums on advertisements publicizing the 'achievements' of their governments during the past four years. It is suspected that huge sums were paid to some advertisement agencies and media outlets owning TV channels and Newspapers as an indirect advance payment for publicity and a favourable coverage during the electioneering when governments have to relinquish their positions. It is therefore important that some arrangement be made to stop the misuse of public funds on early electioneering during the final year of the governments before the general election and to check the possible diversion of public funds for the partisan election publicity.

### The Election Commission Should Exercise Control, Superintendence and Discipline on the Staff Assigned to Election Commission for Election Duty and Training of the Polling staff

The Election Commission should exercise direct and complete control, superintendence and discipline on the staff assigned for the election duty including writing their Performance Reports and taking disciplinary action for violation of rules. ECP proposed some modifications to the Representation of the Peoples Act immediately before the completion of the term of the 13<sup>th</sup> (2008-13) National Assembly but these amendments were neither actively taken up nor passed by the Assembly. There is a need to revive these proposals for the new (14<sup>th</sup>) National Assembly to debate and pass the proposed amendments in order to strengthen the control of the ECP over the staff assigned for election duty.

### Independence of the Polling Staff be ensured

The Polling Staff is probably the weakest link in the election chain. Most of the polling staff comes from provincial government departments recommended by the outgoing provincial governments. A majority of polling staff comes from provincial education departments such as teachers. Over the years, most of the recruitment in such

departments are strongly influenced by local politicians who expect pay back at the time of election. This phenomenon becomes widely prevalent in the case of outgoing provincial governments who have a strong possibility to come back to power as recently in the case of Sindh (both rural and urban areas) and Punjab provinces. A stronger supervision by the ECP and exemplary disciplinary action against those members of the polling staff who violate rules will act as an effective deterrent. It is also proposed that as a minimum requirement, polling staff from one division (in the case of a large city like Karachi which consists of several districts) or district (In case of smaller towns) should be appointed in another division or district so that it may perform functions free from local powerful elements. This will certainly entail higher cost. It may also cause greater inconvenience to female staff but exceptional cases may be treated exceptionally.

#### **Training of Returning Officers and Polling Staff needs to be improved.**

Generally very little or no training is imparted in the real sense to the Returning Officers and the Polling Staff in the conduct of election duty. Distribution of a handout is usually considered sufficient. This lack of training results in gross mismanagement in the operational aspects of the electoral process especially on the day of the election. ECP should ensure that a more structured and focussed training of both Returning Officers and Polling Staff is provided and that the training commences well in time to cover the entire range of the polling staff.

#### **Training of Polling Agents to be deployed by Political Parties**

Candidates' Polling Agents can play a very important role in ensuring that the election laws are adhered to, fairness of the poll is maintained and no bogus vote is allowed to be cast. Unfortunately very few candidates are able to deploy their polling agents at each polling booth. Even those who are deployed are not always familiar with the electoral process and laws. They are not usually aware of their rights and responsibilities. ECP, in conjunction with political parties, should organise training of polling agents and political parties should be able to mobilise sufficient number of polling agents for the constituencies contested by their candidates.

#### **Election Commission should develop and implement a mechanism to monitor and regulate spending by the political parties during election campaigns**

Elections 2013 witnessed new trends in the Political Culture of Pakistan. Much greater attention and resources

were devoted to election campaign through commercial electronic and print media. Most of these campaigns were funded by the political parties. Presently electoral law places ceiling over the spending of individual candidates but no such ceiling is placed on the spending of Political Parties at a provincial or national level and not specific to a constituency. There is a need to enact a law to regulate the election campaign through the commercial media and to place a ceiling on such spending by political parties.

The Supreme Court of Pakistan had constituted a Media Commission to inquire into allegations of media-related corruption and suggest steps to ensure impartial and independent media for the General Election 2013. The commission suggested in its report to make a mechanism to monitor the Spending by the Political Parties. The Supreme Court in its order asked the Election Commission of Pakistan to note the recommendations and implement them but no implementation was undertaken by the ECP prior to the general election 2013. Thus, there is no information on whether a level playing-field has been provided to all parties and candidates because the costs of advertising remain shrouded and unknown.

#### **Increase the number of Polling Stations and make them Permanent**

It is proposed that the number of polling stations be increased for the convenience of voters and to discourage the practice of candidates providing transport to voters and thus influence voters by the use of material resources. As far as possible, Polling Stations should be at a walking distance (maximum 2 Kilometres) for the population they serve. There were many complaints that the polling stations in 2013 general election were not housed in suitable buildings. Some of them were either too small and congested or lacked in basic facilities. The ECP should declare permanent polling stations wherever possible in the country. The list of polling stations should be announced 45 days before the poll. It was also noticed that the ECP arbitrarily changed the polling scheme in some constituencies about 24 hours before the polls without any intimation to voters. This resulted in a huge chaos on the day of the poll. There should be no last minute changes in the polling scheme. The current laws provide for this plan; its strict compliance needs to be ensured by the ECP.

The ECP's **Five-Year Strategic Plan 2010-2014** had set the objective to *Identify new buildings and facilities for establishing accessible polling stations with a deadline of December 2010 and its progress was 95% in March 2013.*<sup>1</sup> The ECP had also aimed to *establish permanent polling stations across the country in consultation with the public up to June 2011, and its progress remained 30% in*

1. The ECP's Five Year Strategic Plan 2010-2014: Strategic Goal No # 3: Election Operations, page 33

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March 2013.<sup>2</sup> The ECP had also committed to a *Gradual increase in the number of polling stations for facilitating voters, including the number of polling stations dedicated to female voters by December 2012.*<sup>3</sup> It seems that the ECP has not been able to fulfil many of these commitments.

### **Use of Thumb Impression to Check Bogus Voting**

As per the current practice, a Polling officer ensures that each voter affixes his/her thumb impression on the counterfoil of the ballot paper before casting his/her vote. In 2013 general election, ECP had also arranged to get thumb impression of the voter affixed on a copy of the electoral roll. Despite this, there have been a number of complaints from across the country that bogus votes were cast instead of the real voters. ECP should not only verify the thumb impressions by selecting some polling stations as a test case, it should amend the laws to make it mandatory to randomly select a certain number of counterfoils of ballot papers from each constituency after the election and match the thumb impression with the thumb impression available in the NADRA databank or on the National Identity Card to ascertain any mismatch indicating bogus voting. The thumb impression database of NADRA can also help in identifying the thumb impression of the person who fraudulently affixed the thumb impression. These arrangements are to be made with the help of the available technology. If it is known that such a random exercise will be carried out after the election, it will act as an effective deterrent to impersonation and bogus voting.

### **Positive Voter Identification using Thumb Impression before casting of vote**

Pakistan is one of those few countries where thumb impressions of over 90 % of the adult population and 100 % of the registered voters are secured in the databank of the National Database and Registration Authority (NADRA). With the current level of technology it should be feasible to check the identity of the voter before he or she is allowed to cast his or her vote. In the light of the experience of general election 2013 and widespread allegations that some armed groups were able to cast votes on behalf of a large number of voters after affixing false thumb impressions after they either subdued the frightened polling staff or the staff colluded with the gangsters, it is important to confirm the identity of a voter before allowing him or her to vote.

### **Post polling-station wise statement of count on the ECP website as soon as it is received in the ECP**

One of the vulnerabilities of the current polling practices is that the result compiled by the Presiding Officers at polling stations may be manipulated or tempered before it is

included in the consolidation of the result at the constituency level by the Returning Officers. It is an oft-repeated complaint that the results get changed 'overnight'. In order to promote transparency and thus enhance the credibility of the counting process, it is proposed that the statement of the count prepared at each polling station be posted at the ECP website as soon as it is received at the ECP. These progressive results will contribute to the credibility of the election result in particular and in electoral process in general.

### **Strict Compliance of Electoral Code of Conduct and giving it a legal cover**

Although a Code of Conduct was announced ahead of General Election 2013, many candidates, political parties and election observers complained that the code of conduct was not strictly enforced. Lack of strict compliance of the Code of Conduct results in flouting of the code and in turn weakens of the authority of the ECP.

It is proposed that all features of the code of conduct be incorporated in electoral laws with penal provisions and the code of conduct should be left for political parties to agree among themselves. This code of conduct may consist of provisions over and above the electoral laws. The ECP had proposed an amendment to the Representation of the People Act to give legal cover to the Code of Conduct but the previous (13<sup>th</sup>) National Assembly did not consider and pass this amendment. It may now be considered by the Parliament to pass the proposed amendment.

The ECP in its **Five-Year Strategic Plan 2010-2014** aimed to *Strengthen the Code of Conduct for the political parties and contesting candidates* with a deadline of June 2011.<sup>4</sup>

### **Qualifications of the Members of the Election Commission and the Chief Election Commissioner (CEC)**

Currently the constitution stipulates that the CEC and Members of the Election Commission should have a judicial background. CEC is required to be a sitting or retired Judge of the Supreme Court or a former judge of the High court who is qualified to be appointed as a judge of the Supreme Court while members of the EC are required to be former Judges of the High Courts. Since the duties of the CEC and members of the EC are chiefly administrative in nature, the qualification of the CEC and EC members be modified to include persons with administrative experience and those who may not have a judicial background. The following changes are proposed:

2. Ibid, page 33  
3. Ibid, page 33  
4. Ibid, page 45

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- i. **Chief Election Commissioner (CEC) and Other Members of the Election Commission Do Not Have To Be Necessarily from the Judiciary:** The CEC and other members of the Election Commission do not have to be necessarily from the Judiciary. This shall require an amendment in the Constitution. After the acceptance of this proposal, the relevant provisions will become in line with the practice in most of the countries including India, Bangladesh and Sri Lanka. PILDAT feels that there is no reason why this position be confined to the persons of judicial background only.
- ii. **Retired Judges Should Not Be Appointed as Election Commissioners directly after Retirement:** A judge should not be appointed as CEC or a member of the Election Commission before the expiration of 3 years after he/she has ceased to hold the position of a judge of the Supreme or High Court. Article 207 (2) of the Constitution will need to be amended to implement this proposal.

Since the members of the EC and the CEC have already been appointed through a bi-partisan process, it is proposed that the above proposed reforms may be incorporated for future vacancies in the Election Commission.

### A Culture of Consultation & Dialogue

A dialogue between the Election Commission and political parties is a rarity in Pakistan. For any meaningful reform in the electoral process, it is important that a comprehensive dialogue is held by the ECP with the political parties, media and civil society. The guarantee of freedom of the Election Commission depends a great deal on the trust and credibility it enjoys with political parties, media and the civil society.

The ECP in its **Five-Year Strategic Plan 2010-2014** has set its objectives to *Increase the level of interaction with political parties and general public for enhancing confidence in electoral process* and to *Hold regular consultation at the national, provincial and district levels*. The ECP has given the deadline of *December 2014<sup>5</sup>* to achieve this objective.

### Electronic Voting Machines (EVMs) be employed

Electronic Voting Machines like the ones tried, tested and now applied on all polling stations in India and possibly an improved version using the state of the art technology should be developed and be **gradually** applied in Pakistan to introduce accuracy and efficiency in the counting procedure. In the recent elections it was observed that many issues in the vote count were reported. By using

Electronic Voting Machines (EVMs) the possibility of tempering and human error at the time of consolidation of results will be minimized.

The ECP has already held consultations with political parties on the subject and there is a broad consensus among political parties to adopt EVMs. ECP has also examined prototypes offered by a number of manufacturers some of whom contain such advance features as capturing the picture of the user. It is recommended that the ECP should start using EVMs in by-elections with the aim to use them universally in the next general election scheduled no later than August 2018.

### Election Tribunals Should Decide Petitions within the 4-Months Period Prescribed in the Law

According to the Representation of the people Act, 1976; article 67 (1A), the Election Tribunals shall decide the election petitions within 4 months by conducting day-to-day hearings. This, in reality, however, seldom happens. The Election Commission should develop a mechanism and appoint sufficient number of tribunals by assigning sufficient number of judges so that the requirement of the law is fulfilled. This can be ensured only if **sufficient numbers of judges are assigned the work of Election Tribunals** so that they can exclusively hear election petitions and not take up any other burden during the period of hearing and disposing election petitions. The Tribunals should exclusively hear and dispose election petitions during the four-month period. A period should also be fixed within which the appeals to the decisions of the tribunals should also be decided.

### Appointment of Returning Officers other than from Judiciary

Returning Officers were appointed from the district judiciary in the recent elections as has been the practice in the past as well. The Judicial Policy announced by the Chief justice of Pakistan disallowed the appointment of District and Session Judges and Additional session Judges as Returning Officers but an exception was made for General Election 2013 at the request of the ECP. A satisfactory alternative arrangement needs to be made by the Election Commission well in time before the next General Election. The ECP may consider appointing its own staff as Returning and District Returning Officers. The designated Returning Officers (ROs) and District Returning Officers (DROs) should undergo structured training organised by the ECP.

**The system of appointing caretaker governments should be reviewed**

5. The ECP's Five Year Strategic Plan 2010-2014: Strategic Goal No # 11: Public Outreach and Interaction with Political Parties, Civil Society Organisations and the Media, page 44

The appointment of a caretaker government under the 20th Constitutional Amendment should be reviewed in the light of the experiences gained during the recent appointment of caretaker governments. Three key weaknesses were witnessed / experienced during the recent appointment of the Caretaker Governments:

- a. A political party which is a coalition partner may part ways with the government immediately before the election and may win the position of the leader of the opposition leading to appointment of a caretaker government which excludes the real opposition from consultative process.
- b. Furthermore, in most cases, the caretaker governments did not prove to be neutral and effective. Under the current system, a caretaker prime minister or chief minister is the nominee of one of the two major political parties. It has been observed that it is difficult for the PM or CM thus nominated to act in a non-partisan manner and not be sympathetic to the nominating political party.
- c. The Caretaker Governments are generally not conversant with the system of the government and they take time to get acquainted. Since their life is from 3 to 4 months, a considerable part of this period is consumed in learning.

#### **Mechanism for Voting by Overseas Pakistanis**

Despite the clear directions of the Supreme Court of Pakistan to make arrangements to enable Overseas Pakistanis to vote from their place of residence abroad in the recent general election 2013, the Election Commission of Pakistan could not provide the facility to Overseas Pakistanis to vote at least partially due to the time constraints and non-availability of proper mechanism. The ECP should develop a mechanism in the light of the recently promulgated ordinance to this effect and use it in the bye-elections to test the mechanism so that Overseas Pakistanis are in a position to vote in the next General Election. Postal Ballots seem to be a practical option but care will have to be taken that this facility is not misused.

#### **Extend the period of scrutiny of candidates nomination papers**

ECP had revised the Nomination Form for the candidates shortly before the General Election 2013. The revised form required candidates to furnish much more detailed information about their finances, travel, taxes etc than previously was the case. The detailed information was sought against the background of ECP's announced intention to undertake a detailed scrutiny of candidates' particulars in order to establish the eligibility of a candidate in accordance with Articles 62 and 63 of the constitution. ECP had sought to amend the Representation of the People

Act (ROPA) in order to extend the period of scrutiny of nomination forms from the present one week to thirty days. Unfortunately the proposed amendment could not be passed by the previous national assembly. It is proposed that the period of scrutiny should be extended to at least two weeks (if it cant be extended to 3 or 4 weeks) by amending section 11 of the ROPA. ECP should undertake a vigorous follow-up with the new National Assembly and the Senate so that the required amendment is passed soon.

#### **Improve the enforceability of Articles 62 and 63 of the Constitution**

Article 62 of the constitution delineates the Qualifications for the Membership of Parliament and the Article 63 covers the Disqualifications for the Membership of Parliament. Some of the provisions in these articles are rather vague and their enforceability becomes a challenge and a subjective exercise as it did during the period leading to General Election 2013. For example Article 62 (1) d stipulates that 'A person shall not be qualified to be elected or chosen as a member of Majlis-e-Shoora (Parliament) unless he is of good character and is not commonly known as one who violates Islamic Injunctions. Article 62 (1) e requires that a member should be the one who 'has adequate knowledge of Islamic teachings and practises obligatory duties prescribed by Islam as well as abstains from major sins'. During the scrutiny of candidates' nomination papers by the Returning Officers during the General Election 2013, Returning Officers did not have a clear idea of how to enforce such requirements and ascertain a candidate's qualification or otherwise in the light of such constitutional provisions. Even ECP did not seek an interpretation of these articles from the Supreme Court and the ECP did not issue any guidelines to the Returning Officers on implementation of these and other similar provisions. As a result many candidates' papers were rejected by Returning Officers and ultimately the superior courts allowed such candidates to contest the election. It is proposed that the ECP should lead the effort to resolve this situation well before the next election. The Supreme Court and the Parliament of Pakistan should also play their roles in interpretation and amendment (if required) of such provisions to remove ambiguities and make these provisions uniformly enforceable.



**Islamabad Office:** No. 7, 9th Avenue, F-8/1, Islamabad, Pakistan  
Tel: (+92-51) 111 123 345 | Fax: (+92-51) 226-3078  
**Lahore Office:** 45-A, Sector XX, 2nd Floor, Phase III Commercial Area, DHA, Lahore  
Tel: (+92-42) 111 123 345 | Fax: (+92-42) 3569 3896  
E-mail: [info@pildat.org](mailto:info@pildat.org) | Web: [www.pildat.org](http://www.pildat.org)