

Citizens Group on Electoral Process

POSITION PAPER

March 2010

Proposals for Electoral Reforms

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Head Office: No. 7, 9th Avenue, F-8/1 Islamabad Pakistan
Registered Office: 172-M, DHA, Lahore, Pakistan
Ph: (+92-51) 111 123 345 Fax: (+92-51) 226 3078
E-mail: info@pildat.org Web: www.pildat.org

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PREFACE

PILDAT facilitated the formation of the **Citizens Group on Electoral Process-CGEP** in 2006, with the avowed goal of contributing towards the holding of free, fair and credible elections in Pakistan. A number of well-known personalities from the media, legal profession, civil society and former members of the superior judiciary and armed forces, but with no present affiliation with any political party, have been serving as members. The CGEP has played a key role in monitoring the electoral process ahead of February 2008 General Elections and is now working to institute and promote Electoral Reforms in Pakistan.

In one of its key publications, the Group outlined a set of required **Electoral Reforms in Pakistan** in September 2007 and revised in 2008 after consultation with different stakeholders. This paper was shared with the policymakers of the time, political parties, media and other segments of the civil society. The Electoral Reform proposals have been updated in March 2010.

The CGEP believes that the time to consider and institute required Electoral Reforms in the country is now. The elected political government, Parliament and the new administration of the Election Commission of Pakistan are well-aware of the challenges of the existing electoral system. A firm political will and commitment to reform at this stage, with support from citizens and the media, therefore, can enable the country to put in place the Electoral Reforms that can truly provide a level-playing field to all and fulfil the criteria of free, fair and credible elections in Pakistan. The updated proposals on Electoral Reforms by CGEP, therefore, are our sincere contribution to this process at this crucial stage.

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Importance of Free and Fair Elections

Pakistan has a turbulent democratic history, alternating between elected governments and military regimes since 1947. The future prosperity and stability of Pakistan will depend on the existence of a functional political system. Regular free and fair elections are an essential component of an effective political system. While improvements were seen in the 2008 Parliamentary Elections, as compared to the 2002 Parliamentary Elections, significant Electoral Reforms are still needed to achieve Elections that meet the international norms expected from a democracy and which truly contribute to political stability.

Electoral Reforms Proposals

The Citizens Group on Electoral Process (CGEP) facilitated by PILDAT formulated its first set of proposals for Electoral Reforms back in September 2007, a few months before the scheduled date of the Parliamentary Election. The CGEP

updated these proposals in 2008 in the light of experiences of the Parliamentary Election held in February 2008. The proposals for Electoral Reforms were shared with the Election Commission of Pakistan and the Government at the time as well as disseminated to and through the media.

Electoral Reforms proposed by the Election Commission of Pakistan

The Election Commission of Pakistan (ECP) constituted a committee known as the Electoral Reforms Committee-ERC in April 2008. The Committee invited proposals for Electoral Reforms from various entities including PILDAT. PILDAT submitted the proposals formulated by the CGEP to the ERC. The ECP presented its proposed Electoral Reforms to the Prime Minister of Pakistan on March 11, 2009 just a few days before the expiry of the tenure of the then Chief Election Commissioner. **Table 1** highlights the proposed amendments by the ECP.

Table 1: Summary of the ECP-proposed Electoral Reforms ¹

No.	Details	Amendments in	Proposed Insertions	Proposed Omissions
1.	Constitution of the Islamic Republic of Pakistan	08	01	
2.	The Electoral Rolls Act 1974 (Act No. XXI OF 1974)	04		
3.	The Delimitation of Constituencies Act, 1974 (Act No. XXIV of 1974)	01		
4.	The Senate (Election) Act, 1975 (No L 1 of 1975)	10		01
5.	The Representation of the Peoples Act, 1976 (LXXXV of 1976)	16	02	01
6.	The Political Parties Order 2002 (Chief Executive's Order No. 18 of 2002)	02		
7.	The Presidential Elections Rules 1988	03		

1. Proposed Electoral Reforms by the Election Commission of Pakistan presented by the then-Secretary ECP to the Honourable Prime Minister of Pakistan on March 11, 2009

Electoral Reforms Proposed by the CGEP

Following is the updated version of the proposals for Electoral Reforms formulated by the CGEP. The CGEP feels that these proposals are important and relevant to make the Electoral System of Pakistan more robust, transparent and credible.

Computerised Voting Lists

The Election Commission of Pakistan (ECP) commissioned computerised Electoral Rolls in April 2006 and completed the exercise in about 20 months just a few weeks before the 2008 General Election. Unfortunately the so-called computerised Electoral Rolls of Pakistan neither contained voters' picture (despite repeated reminders by certain citizens groups including the CGEP) nor were these complete or error free. Despite a door-to-door survey and incurring an expense of more than 1 Billion Rupees (officially declared by the ECP on its website and mainly contributed by the USAID), the resulting Voters' List enjoys a low level of confidence by the political parties and citizens' groups. The current Electoral Rolls in Pakistan are a combination of computerised voters list prepared as a result of door-to-door survey (around 52 Million voters) and a carry-over of old non-computerised voters list of 2002 (Around 28 Million voters) as per the direction of the Supreme Court. The list contains multiple entries of voters and was a major source of complaints by various candidates in the 2008 Election. A cautious estimate puts the extent of bogus votes in Pakistani Electoral Rolls at around 25 % which is huge by any standard. Pakistan instituted the system of National Identification Cards back in 1974 and adopted computerised Identification Cards through National Database and Registration Authority (NADRA) since 1998, and according to the NADRA figures, the number of CNIC holders is approaching 75.5 million as of December 2009. Out of this, 45.22 million (60 %) are men and 30.76 million (40 %) are women. The Bangladesh Government provided Identification Cards to its over 95 % adult population in less than a year through an integral process of voter registration and issuance of National Identification Card eliminating time-consuming duplication of effort on the part of the citizens and the state institutions. The Electoral Rolls in Bangladesh contain pictures of each voter which greatly facilitates the identification of voter on the day of the election and leads to smooth conduct of fair election.

Following are the CGEP recommendations for Reform:

- i. The Chief Election Commissioner (CEC), who is Constitutionally responsible for updating the Electoral Rolls in Pakistan, and the Election Commission of Pakistan (ECP) together with the National Database and Registration Authority (NADRA) should institute a system whereby **voter registration is carried out at the time of issuance of Computerised National Identification Cards (CNICs) by NADRA**. A truly one-window operation be instituted for the issuance of CNIC and the registration as a voter.
- ii. The existing **Electoral Rolls should be updated and made error-free using the NADRA database**.
- iii. The Computerised Voting Lists should be updated to **include the photographs of voters**. Voter Identification is a major bottleneck, a perpetual controversy and a potential source of bogus vote casting especially at the women's polling stations in Pakistan, Bangladesh and, to some extent, India. Voters' pictures in the Electoral Rolls will preclude the need of carrying any identification document by the voters.
- iv. The **Computerised Voters List should be available at the ECP website**, and through the use of technology through **mobile phone queries by registered voters**. For a nominal fee, these should be available in the form of CDs, to any citizen or political party which wants to obtain them.
- v. The NADRA should also be directed to ensure issuing CNIC (Computerised National Identification Card) to all eligible voters in Pakistan through a rigorous time-frame

Appointment of the Chief Election Commissioner (CEC)

According to Article 213 (1) of the Constitution, the President can appoint the Chief Election Commissioner (CEC) in his discretion. The CGEP feels that the Chief Election Commissioner should be appointed **after a meaningful process of consultation with the leaders of all major political parties and groups represented in the National Assembly of Pakistan**. Article 213 (1) of the Constitution will need to be amended to implement this proposal. In this context, we may like to learn from the example of Sri Lanka where, under their 17th constitutional amendment, appointments such as the CEC are made by a Constitutional Commission having representation of

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opposition parties.

- 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. Article 213 (2) will need to be amended to implement this proposal. 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. The CGEP feels that there is no reason why this position be confined to the persons of judicial background only.

- Retired Judges Should Not Be Appointed as Chief 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.

Composition of the Election Commission

Article 218 deals with the composition of the Election Commission. The Provincial Election Commissioners only work as part-time commissioners as they exercise their chief responsibilities as judges in the High Court on full-time basis at the seat of the respective High Court and travel to Islamabad for meetings, etc., as required by the CEC. An amendment needs to be introduced through which there should be **3-5 Full-Time Election Commissioners** alongside the Chief Election Commissioner.

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 number 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 120 days period. A **period should also be fixed within which the appeals should also be decided.**

Posting of Polling-Station Wise (Progressive) Results on the Election Commission Website

Each **polling station should electronically (e.g. email, telephone, SMS, fax, etc.) transmit a copy of its vote count (results) directly to the Election Commission who should immediately post the results on its website.** The progressive results should be posted on the website in real time as these are received without any delay. The ECP should employ latest technology such as the use of mobile telephones and text messaging, etc., in areas where traditional facilities like e-mail, telephone and faxes are not available. This measure will preclude any manipulation after the result is compiled and will enhance public confidence in the electoral process.

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

The ECP needs to **ensure strict compliance of laws relating to the control of government influence** such as advertisements in the print and electronic media, announcing development schemes by the government near elections, use of government resources in election campaigns by incumbents such as official vehicles, aircrafts, rest houses and official trips. The Election Commission should adopt an effective mechanism to **check misuse of government resources by all public officials** including the President, Prime Minister, Governors and Chief Ministers, federal and provincial cabinet ministers, parliamentary secretaries and other officials for election campaigns for their party candidates. A framework for immediate action needs to be developed and publicised by the ECP against the violators. The ECP needs to set an example by taking action and **publicising the penalty to enhance the public confidence** in the electoral process.

Neutral Caretaker Government Appointed by Consensus should hold Elections

As per the current constitutional provisions, the President

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appoints the Caretaker Prime Minister and the Cabinet. Similarly, the Caretaker Chief Ministers and the provincial cabinet is also appointed by the respective Governors with the approval of the President. The Constitutional provision does not even explicitly requires a caretaker government to be neutral. The CGEP proposes that a **Neutral Caretaker Government** should be appointed after reaching a consensus with the **outgoing National Assembly's Leader of the House and Leader of the Opposition**. In addition to the Caretaker Prime Minister and Chief Ministers, the **ministers in the caretaker cabinets should also not be eligible to contest the immediately following election of any assembly in the General Election after their appointment**. The powers and responsibilities of the Caretaker Government should be well-defined and limited to holding of elections and related routine administration.

The Election Commission Should Exercise Control, Superintendence and Discipline on the Staff Assigned to Election Commission for Election Duty

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.

Election Commission Should Ensure Strict Compliance of Laws Relating to the Maximum Election Expenses

It is a common knowledge that many candidates spend excessive amounts of money on elections which far exceeds the limits prescribed in the law. There has hardly been a disqualification of a candidate on this basis. The Election Commission should **fix a rational maximum limit** in consultation with stakeholders and devise an effective mechanism to **check the excessive spending and disqualify the violators** of the law.

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 back of the ballot paper before casting it. The Election Commission

should select a certain number of randomly selected casted ballot papers from each constituency after the election and match the thumb impression finger prints with the finger prints in the NADRA record or on the Computerised National Identity Card to ascertain any mismatch indicating bogus voting. The finger prints 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.

Permanent Polling Stations Where Possible; Scheme of Polling Stations Should Be Announced for Public Objections, if any, and Final List be Frozen 30 Days Before the Polling Day

The ECP should declare **permanent polling stations wherever possible in the country**. The list of polling stations be announced 45 days before the poll. Objections to the draft scheme be invited from all candidates. The objections should be adjudicated by a committee and a final list of polling stations should be announced 30 days before the poll after which no change should be made in the polling station scheme. The current laws provide for this plan; its strict compliance be ensured by the Election Commission.

Number of Polling Stations Be Increased

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 for the population they serve. It should also ensured that **gender-disaggregated data of the voters** should be available of every future election.

Disclosure and Declaration by Electoral Candidates

In the recent 2008 Bangladeshi parliamentary election, a 30-page exhaustive disclosures and declarations which each candidate was required to make on 8 counts while filing his / her nomination papers. All these disclosures and

declarations were made public by the Bangladesh Election Commission and placed on its website for all to see and form their opinion about each candidate. Each candidate was required to declare his/her Educational Qualification; the details of any criminal cases pending against him / her; details of any outstanding amount payable to any state institution, details of any outstanding or written-off loans payable by him/her to any Bank or Financial Institution. Another interesting declaration which each candidate was required to make was regarding the promises made by him/her in the last election and the extent to which these promises were fulfilled. These disclosures made voluminous dossier and were quite helpful to the voters. The ECP also obtains all this key information through nomination papers but it does not publicise it. A bureaucratic and time-consuming procedure is in place to access these disclosures. The spirit of these disclosures is that these be accessible to public before Elections. The CGEP proposes that the ***ECP should make arrangements to upload all disclosures for each constituency on the ECP website before every Election*** and within 3 days after the publishing of final list of candidates. This availability be publicised for public knowledge.

Strict Compliance of Electoral Code of Conduct

Although a Code of Conduct is announced ahead of each election, the code of conduct is not strictly enforced. Even the legal position of the Code of Conduct is not very clear. The CGEP proposed a model code of conduct ahead of February 2008 election for the consideration of the ECP asking the ECP to get a unanimous approval of the parties on the Code. Lack of strict compliance of the Code of Conduct results in flouting of the code and in turn weakening of the authority of the ECP.

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 initiated and maintained by the Election Commission with the political parties, media and civil society. The only guarantee of freedom of the Election Commission is the trust and credibility it enjoys in political parties, media and the civil society.

Appointment of Election Observers by the Election Commission

The ***Election Commission should appoint Election Observers from amongst senior government officials to ensure that political parties and candidates carry on their election campaign according to enacted laws and agreed norms*** and do not indulge in extravagant election expenditure, the electoral and administrative machinery functions in non-partisan manner. The Election Commission of India appoints these Special Observers from amongst the rank of deputy secretaries and additional commissioners of income tax and above, both from the central and state cadres.²In the case of Pakistan, Observers should be officers working in one province to be posted in another province to safeguard against pressure on them by their provincial government. Two types of observers are appointed in India - General Observers and Election Expenditure Observers. The same practice may also be considered in Pakistan.

Electronic Voting Machines be Employed

Electronic Voting Machines like the ones tried, tested and now applied on all polling stations in India should be developed and applied in Pakistan to introduce accuracy and efficiency in the counting procedure.

2. Quoted from VS Rama and S K Mendiratta, *How India Votes Elections Laws, Practices and Procedure*, second edition 2007, New Dehli, India, pp 229-231



Head Office: No. 7, 9th Avenue, F-8/1 Islamabad Pakistan
Registered Office: 172-M, DHA, Lahore, Pakistan
Ph: (+92-51) 111 123 345 Fax: (+92-51) 226 3078
E-mail: info@pildat.org Web: www.pildat.org