

*Position Paper*

# Delimitation of Constituencies and Voters List for Karachi

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Pakistan Institute of Legislative Development and Transparency - PILDAT

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

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

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

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

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## Preface

PILDAT Position Paper **Delimitation of Constituencies and Voters List for Karachi** cautions the ECP against conducting a fresh delimitation of constituencies in Karachi ahead of General Election in Pakistan that is due to be held latest by June 2013.

Authored by **Mr. Ahmed Bilal Mehboob**, President PILDAT, the Position Paper carries a detailed analysis of the law governing delimitation in Pakistan, the judgment of the Honourable Supreme Court and the precedence earlier set by the ECP ahead of 2008 General Election and concludes that the question of fresh delimitation of constituencies in Karachi ahead of General Election requires careful re-consideration of the Election Commission of Pakistan.

This paper is published as part of PILDAT series of Position Papers on electoral issues in the electoral process leading up to General Election in Pakistan.

## Disclaimer

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

Islamabad  
December 2012



## Introduction

The National Assembly of Pakistan has a total 342 seats. Out of this, 60 seats are reserved for women and 10 for Non-Muslims. These 70 reserved seats and remaining 272 general seats are allocated among the four provinces and two federal territories i.e. the Federally Administrated Tribal Area (FATA) and Islamabad Capital Territory (ICT) as per Article 51 of the Constitution. Similarly the number of seats in each Provincial Assembly is fixed in accordance with Article 106 of the Constitution. Entire province serves as the constituency for the seats reserved for women in National and Provincial Assemblies. The entire country serves as the constituency for the National Assembly seats reserved for Non-Muslims. The respective provinces serve as the constituencies for the Provincial Assembly seats reserved for Non-Muslims.

## Responsibility of the ECP

The Election Commission of Pakistan (ECP) is responsible for fixing the territorial limits of each of the 272 National and 577 Provincial Assemblies constituencies of the four provinces. In India, a separate body called the Delimitation Commission of India performs this function but in Pakistan the Election Commission has been entrusted with the responsibility of delimitation as well.

The exercise of fixing the territorial limits of these constituencies is called Delimitation and is governed by the Delimitation of Constituencies Act, 1974. A new exercise of Delimitation is carried out either when the report of the new population census becomes available or if and when the number of seats allocated to each province is changed. Pakistan conducted its latest census in 1998. A fresh exercise of delimitation was carried out by the ECP before the 2002 General Election because the 1998 population census results had become available by then and, in addition, General Musharraf's military government had also increased the total number of seats of the National and Provincial Assemblies.

## Legal Pre-Requisites of Delimitation

Section 10 of the Delimitation of Constituencies Act, 1974, gives the following procedure for delimitation:

“(1) For the purpose of delimiting constituencies, the Commission may receive and consider representations, hold inquiries, summon

witnesses and record evidence and shall prepare and publish in the Official Gazette a preliminary report and list of constituencies specifying the areas proposed to be included in each constituency.

(2) Any person entitled to vote at an election to the National assembly or a Provincial Assembly may, within fifteen days of the publication of the report under subsection (1), make a representation to the Commission in respect of the delimitation of constituencies.

(3) The Commission shall, after hearing and considering the representation, if any, received by it, make such amendments, alterations or modifications, in the preliminary list published under sub-section (1) as it thinks fit or necessary, and shall publish in the official Gazette the final report and list of constituencies showing the areas included in each constituency.”

Section 9 of the Act sets out the principles of delimitation and population figures prominently among the principles. Sub-section 1 of Section 9 of the Act is reproduced below:

“9. Principles of delimitation (1) All constituencies for general seats shall, as far as practicable, be delimited having regard to the distribution of population in geographically compact areas, existing boundaries of administrative units, facilities of communication and public convenience and other cognate factors to ensure homogeneity in the creation of constituencies:

Provided that for the purpose of delimiting constituencies for the general seats for the Federally Administered Tribal Areas two or more separate areas may be grouped into one constituency.”

Section 2 of the Act defines 'Population' as “*the population in accordance with the last preceding census officially published.*”

It is true that Section 10-A of the Delimitation of Constituencies Act, 1974 empowers the ECP to make amendments, alterations or modifications in the final list of constituencies “*as it thinks necessary*” but will it be in line with the principle of natural justice to make arbitrary



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modifications to delimitation of constituencies without the new census? We should also not lose sight of the fact that Section 10-A was inserted to the Act in 1984 through an ordinance when a martial law government was ruling the country.

The official website of the Election Commission of Pakistan as accessed on December 3, 2012 had the following to state in the context of Delimitation:

“DELIMITATIONS OF CONSTITUENCIES: According to the Delimitation of Constituencies Act, 1974, the constituencies for elections to the National and Provincial Assemblies are to be delimited after every census. As the census report 1998 has been published, the constituencies are being delimited, afresh; keeping in view the number of seats allocated.”<sup>1</sup>

The ECP had published its last preliminary delimitation of constituencies on March 26, 2002 and sought representations from eligible voters. In all, the Commission received 945 representations and objections from across the country. Out of these, 307 objections were related to the National Assembly while 638 were related to the

provincial assemblies.<sup>2</sup>

The final list of the constituencies was notified by the Commission on June 28, 2002 after processing the representations and objections. Although the ECP notified amendments to the list of constituencies on June 2, 2007 using its powers under section 10-A of the Delimitation of Constituencies Act, 1974, these amendments did not change the geographical limits of the constituencies. These amendments were mainly in the form of re-description of the constituencies as a number of new districts and other administrative units were created since after the final notification of constituencies in 2002.

### **Population Census**

After 1998, the next population census was due after 10 years in 2008. Unfortunately this census has not taken place as yet and it is not possible to undertake a new census and publish its final report before the next General Election which is due latest by the middle of June 2013. The total number of seats for the assemblies has also not changed since the latest delimitation exercise. Apparently, therefore, there is no sound basis to alter the physical limits of the National and Provincial Assemblies constituencies.

### **Supreme Court Judgment**

A 5-member bench of the Supreme Court headed by the Honourable Chief Justice of Pakistan, Mr. Justice Iftikhar Muhammad Chaudhry announced its judgment in the *Suo Motu Case* regarding the Law and Order situation in Karachi on October 6, 2011. The judgment is spread over 156 pages and consisted of 132 paragraphs. In paragraph number 131 of the judgment, the delimitation of constituencies was also mentioned. The relevant part of the paragraph is reproduced below:

“Further observe that to avoid political polarization and to break the cycle of ethnic strife and turf war, boundaries of administrative units like police stations, revenue estates, etc., ought to be altered so that the members of different communities may live together in peace and harmony, instead of allowing various groups to

1. For details, please see: <http://ecp.gov.pk/Delimitation/DelimofConst.aspx>

2. For details, please see: [http://dailytimes.com.pk/default.asp?page=story\\_14-5-2002\\_pg7\\_20](http://dailytimes.com.pk/default.asp?page=story_14-5-2002_pg7_20)

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claim that particular areas belong to them and declaring certain areas as NO GO Areas under their fearful influence. Subsequently thereto, *on similar considerations, in view of relevant laws, delimitation of different constituencies has also to be undertaken with the same object and purpose*, particularly to make Karachi, which is the hub of economic and commercial activities and also the face of Pakistan, a peaceful city in the near future. The Election Commission of Pakistan may also initiate the process on its own in this behalf; .....<sup>3</sup>

The above judgment did refer to “*in view of relevant laws*” when stating that “*Delimitation of different constituencies has also to be undertaken .....*” No particular time frame for the delimitation was mentioned in the judgment.

This part of the judgment could, therefore, be interpreted to mean that whenever the new population census results are officially available, the relevant law which is the Delimitation of Constituencies Act, 1974 will be applied to delimit the constituencies in the light of the Supreme Court judgment.

If there was confusion, the Election Commission of Pakistan should have sought clarification from the Honourable Court. In the absence of the results of a new population census, there is really no sound basis of reviewing the delimitation of constituencies in a material sense.

3. Italics and emphasis added by the writer of this paper for clarity.



## Options for the ECP

If the ECP agrees to review the delimitation of constituencies in Karachi at this stage without the new census, there could be similar demands from many other parts of the country because it is unreasonable to believe that delimitation of constituencies in rest of the country was perfect and only the Karachi constituencies were wrongly drawn.

Unfortunately, the statistics of objections filed against the delimitation of constituencies in Karachi in 2002 are not available but the ECP report of the General Elections 2002 gives province-wise breakdown of complaints. According to these statistics, on the average 1.49 complaints were filed per constituency in Balochistan (Total complaints: 97 for 14 National Assembly and 51 Provincial Assembly Constituencies) compared to average 1.25 complaints per constituency in Sindh province (Total complaints: 238 for 61 National Assembly and 130 Provincial Assembly Constituencies). Khyber Pakhtunkhwa (then NWFP) had on the average 1.23 complaints per constituency (Total complaints: 165 for 35 National Assembly and 99 Provincial Constituencies) which is almost the same as in Sindh. These statistics roughly indicate that there was nothing extraordinary in the number of objections raised against the delimitation in Sindh province.

Pashtuns living in Balochistan have long contended that their number was not accurately recorded in the 1998 population census as they had boycotted the census and hence they were under-represented. Karachi can also demand greater number of seats on the basis of a disproportionately high rate of increase in its population due to migration from upcountry during the recent years. Revision of delimitation of constituencies at this stage when the general election is maximum 6 months away can open a Pandora's box.

The ECP, in its Press release of May 23, 2007, had taken a very clear position on the delimitation of constituencies in the absence of a new population census. The Press Release is reproduced below:

“The ECP in its meeting held on 7th May 2007 considered and approved the proposal for re-description of NA and PA s constituencies in all such case where changes in the administrative boundaries had taken place so that the actual

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areas of the constituencies on ground are maintained and that the extent of all relevant constituencies where changes in the administrative boundaries had taken place were simply re-described as per new administrative setup. Besides the EC also considered and examined proposals regarding fresh delimitation of certain National and Provincial assemblies constituencies. All such request were declined by the commissions on the grounds of *census related embargo on fresh delimitation of constituencies/re-allocation of seats contained in Article 51(3) the constitution as well as section 7(2) of the Delimitation of constituencies Act 1974*. It confined itself to the established practices of re-description/renaming of constituencies in the event of creation of new district tehsils and administrative units during the interregnum from 2002 to 2007. Kanwar Muhammad Dilshad, Federal Secretary, Election Commission of Pakistan has issued this official statement on behalf of Chief Election Commissioner.”<sup>4</sup>

This is the position which the ECP needs to very respectfully but effectively communicate to the Honourable Supreme Court.

4. Please see <http://ecp.gov.pk/ViewPressReleaseNotific.aspx?ID=429&TypeID=0>

## **Challenges before the ECP**

### **Error-Free Electoral List**

At this stage of the electoral calendar, it is more important to make the electoral rolls free from all errors and inaccuracies and make such arrangements that allow people to express their will in the next election without and coercion and hindrance. A number of complaints have been received by the ECP both from individual voters and political parties that the door-to-door verification process of the ECP, carried out as a part of the preparation of fresh electoral rolls during 2011, was ineffective with the result that a large number of voters who are residing in Karachi for the last many years and who wish to vote in Karachi in the next election have been listed as voters at their permanent addresses located far away from their normal places of residence without their consent. The ECP has a responsibility to reach all those voters who have not been reached earlier to seek their preference for the place of voting.

### **Re-Verification of Electoral Roll in Karachi**

The Supreme Court of Pakistan in its judgment of December 5, 2012 in the Electoral Rolls Case has directed the Election Commission of Pakistan 'to carry out proper and complete door-to-door verification in Karachi so as to ensure that no voter is disenfranchised or dislocated and all other discrepancies are rectified as early as possible' This is a huge responsibility and ECP has failed to discharge it once. Now the failure is not an option.

### **Use of Technology**

The ECP should also ensure that only the bonafide voters cast their votes after proper and fool-proof identification. Use of voter's thumb impression and / or cameras in polling stations to register the voter's identity are being suggested and the ECP should very seriously consider employing technology to ensure free and fair election.

### **Safeguard against Voter Coercion**

There are apprehensions that certain militant groups may coerce the voters to cast votes for certain parties or candidates against their will. Use of armed forces to safeguard the polling stations are also being proposed by some political parties. These suggestions also merit serious consideration.

These are the issues which deserve much more focused attention of the ECP than the fresh delimitation of constituencies before the new population census.



**Head 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)