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Policy Brief

The unfinished Agenda of Electoral Reforms in Pakistan

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Printed in Pakistan

Published: September 2012

ISBN: 978-969-558-286-2

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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; Web: www.pildat.org

July 2012

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PREFACE

Citizens Group on Electoral Process-**CGEP** in 2006 contributed 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 since after the election has been working to institute and promote Electoral Reforms in Pakistan.

Electoral Reforms by CGEP is a sincere contribution to this process at this crucial stage.

This Brief contains proposals about placing checks on the office of the President and the Governors from influencing the electoral process. The disclosure and declarations by the candidates in their nomination forms should be made public through the internet before every election. There is a need for changing the eligibility criteria for the members of the Election Commission and for the post of the CEC.

CGEP also advocates for reforms such as live posting of polling stations-wise (progressive) voting results on the ECP website; an agreed Code of Conduct by political parties; strict compliance of Laws by the ECP to control Government influence; setting up of a realistic ceiling on maximum election expenses and application of electoral rules and laws on all.

The CGEP also proposes that the number of polling stations should be increased. CGEP also proposes that polling staff should not be deputed in the district of their original posting to save them from the pressure of the local influential persons who may have played a role in their appointment and who may be expecting return of the favor during election time.

CGEP has also proposed that the system of Constituency Observers recently introduced by the ECP should be further strengthened by appointing more senior observers and providing extensive orientation / training to the observers. It is also proposed that dedicated Election Tribunals should be appointed in sufficient numbers so that all election complaints are decided within the period of four months as stipulated in the law.

Disclaimer

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

Introduction

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 since after the election has been working to institute and promote Electoral Reforms in Pakistan.

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 three years. Providing for full-time members of the Election Commission; Bi-partisan process to appoint members of the election commission and Chief Election Commissioner; Making Computerised National Identification Card (CNIC) mandatory for registration as a voter and for casting the vote; Preparation of Computerised 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 are some of the key reforms which have been instituted through Constitutional amendments, Acts of Parliament and administrative actions by the Election Commission as of this date. This is an impressive record by any standard but a number of reforms are yet to be introduced.

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. Now when the General Election is less than a year away, the policy brief on the updated proposals on Electoral Reforms by CGEP, therefore, is a sincere contribution to this process at this crucial stage.

This Brief contains proposals about placing checks on the office of the President and the Governors from influencing the electoral process. The disclosure and declarations by the candidates in their nomination forms should be made public through the internet before every election. There is a need for changing the eligibility criteria for the members of the Election Commission and for the post of the CEC.

CGEP also advocates for reforms such as live posting of polling stations-wise (progressive) voting results on the ECP website; an agreed Code of Conduct by political parties; strict compliance of Laws by the ECP to control Government influence; setting up of a realistic ceiling on maximum election expenses and application of electoral rules and laws on all.

The CGEP also proposes that the number of polling stations should be increased to an extent that no polling station is more than 2 kilometres from the population it serves. CGEP also proposes that polling staff should not be deputed in the district of their original posting to save them from the pressure of the local influential persons who may have played a role in their appointment and who may be expecting return of the favour during election time.

CGEP has also proposed that the system of Constituency Observers recently introduced by the ECP should be further strengthened by appointing more senior observers and providing extensive orientation / training to the observers.

It is also proposed that dedicated Election Tribunals should be appointed in sufficient numbers so that all election complaints are decided within the period of four months as stipulated in the law.

The Unfinished Electoral Reforms

Following is an account of the CGEP proposals on the unfinished Agenda of Electoral Reforms in Pakistan:

Computerised Voting Lists

Number of CNIC holders in Pakistan, as of June 30, 2012, stands at 84.36 million of which 47.77 million or 56% are male and 36.59 million or 43.37% are female. These are the likely numbers of registered voters on the Final Electoral Rolls yet to be made public by the ECP.

Citizens Group makes the following recommendations for reform:

- i. The Final Electoral Rolls (FERs) scheduled to be printed by July 31, 2012 should be made easily accessible to political parties, civil society organizations and other stake holders so that they may scrutinize the rolls and may point out any gaps or flaws to the ECP.
- ii. The Computerised Voters List should be available at the ECP website, and for a nominal fee, available in the form of CDs
- iii. In case political parties, civil society organizations or ordinary voters point out a large number of discrepancies in the FERs, the ECP may arrange for a third party validation of the Rolls.
- iv. The Election Commission of Pakistan (ECP) together with the National Database and Registration Authority (NADRA) should institute a system whereby future voter registration is automatically carried out at the time of issuance of Computerised National Identification Cards (CNICs) by NADRA. Provision for extra information such as the preferred location for voting may be instituted at the time of registration for CNICs.
- v. The NADRA should also be directed to ensure issuing CNIC (Computerised National Identification Card) to all eligible voters in Pakistan within a period of next six months.

President and Governors

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, ethnic or linguistic or faith. Since the offices of the President and the Governors are symbols of the unity of the State, the holders of these cannot act partisan at anytime. However, the present ground realities in Pakistan are different where President of the country is also co-chairman (de-facto head) of the largest ruling party PPP and Governors are also active party faithfuls.

It is therefore important that the electoral laws be amended and the Election Code of Conduct be tailored in view of the ground realities. The relevant electoral laws and the code of conduct should provide for certain restrictions on the possible partisan conduct of the President and Provincial Governors 6 months preceding the expiry of the term of the National Assembly, of the President/Governors or from the date of dissolution of the National Assembly whichever of the three occurs earlier.

- 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 to contest elections. The restrictions applicable to the Prime Minister and Chief Ministers during a bye-election should be equally applicable to the President and Provincial Governors.
- ii. 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 or with effect from the dissolution of the National Assembly whichever occurs earlier.

Public Access to Disclosure and Declaration

The ECP obtains key information through nomination papers that each candidate has to submit. This form includes declaration of information about each candidate such as educational qualification, list of criminal cases, amount of income tax and land revenue paid and statement of assets and liabilities of the candidate, and candidate's status of nationality, etc.

However, despite getting all this information, the ECP does not publicise it for the voters' knowledge and information. Even though Nomination Papers are considered a public document, a bureaucratic and time-consuming procedure is in place to access these disclosures. The CGEP proposes that:

- i. The ECP should make arrangements to upload all disclosures received through Nomination Papers for each constituency on the ECP website before every Election and within 24 hours of filing of the nomination forms.
- ii. The availability of this information at ECP website be publicised for public knowledge.

The ECP had made a commitment in its **Five-Year Strategic Plan 2010-2014** to Publish the financial statements of parliamentarians and political parties on the ECP website. The ECP had set the deadline of October 2010 for this task.¹ So far this commitment has not been realized.

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

Since a neutral caretaker government will be in place at the time of the General Election, as required by the constitution, the misuse of government resources during the period of the caretaker government does not seem to be a major issue any more.

The role of the President and the Provincial Governors, however, needs to be restricted by law during the election period.

As the current trend indicates, both the federal and provincial governments have allocated and started spending huge sums on advertisements publicizing the 'achievements' of their governments during the past four years. 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.

In addition, the role of the partisan governments should also be regulated during the by-elections so that public resources are not misused by the federal or provincial governments to influence the by-elections.

During the by-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.

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.

Polling Staff from Other Districts

CGEP proposes that polling staff should not be deputed in the district of their original posting to save them from the pressure of the local influential persons who may have played a role in their appointment and who may be expecting return of the favour during election time.

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

It is 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.

The ECP has taken some welcome steps to ensure the compliance of electoral laws regarding the election expenses after the Supreme Court judgment of July 8, 2012. These steps include:

- I. Instructions to candidates to open a single bank account for election expenses, submission of weekly

1. The ECP's Five Year Strategic Plan 2010-2014: Strategic Goal No # 12: Political Parties and Candidates, page 45

- statement of account for election expenses to the ECP,
- ii. Deployment of constituency monitors to check the election expenses
- iii. Prohibition on provision of transport to voters on the Election Day etc.

These steps have been implemented during the by-election in constituency NA-151 Multan held on July 19, 2012.

It is very important that the ECP reviews the feedback on these steps and makes these steps more effective and meaningful before the general election. Apparently the decision to provide transport to voters from those areas where polling stations were located at a distance greater than 2 kilometres from population centres needs to be reviewed. It may be better to increase the number of polling stations to make these more accessible to voters instead of providing transport at ECP expenses.

Increase Polling Stations and make them Permanent

The CGEP proposes that 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.

The ECP should also 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.

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 2010.² The ECP had also aimed to Establish permanent polling stations across the country in consultation with the public up to June 2011. Progress on

this objective as of June 2012 is 10%.³ The ECP 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. Progress on this objective as of June 2012 is 0%.⁴

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 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.

Gender disaggregated data of voters from each polling station

In some areas of the country, women have been barred by their male family members from voting. It is important to analyse this problem and identify where this problem persists so that suitable arrangements be made to address the problem. As a first step, ECP should make sure that the polling station-wise gender disaggregated data of voters turn-out be made available after every election. This means that the total number of voters and the number of votes cast be recorded and announced separately for men and women for each polling station.

Appointment of Election Observers by the Election Commission

The Election Commission should appoint Constituency Election Observers from amongst senior government officials to ensure that political parties and candidates carry on their election campaign according to enacted

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

3. Citizens Report on State of Electoral Reforms – 3rd Quarter Report, PILDAT. July 2012.

4. Ibid.

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. In 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. The two types of observers are appointed in India - General Observers and Election Expenditure Observers. The same practice may also be considered in Pakistan.

The ECP took the very welcome step to deploy four teams of Constituency Monitors each consisting of 3 persons including a video cameraman during the by-election for the National Assembly Constituency NA-151 on July 19, 2012. It is important that such an arrangement be further strengthened by appointing more senior officers at the head of each team. In addition, these teams should be thoroughly briefed and given extensive orientation about the electoral laws and what they need to monitor and report.

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. 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.

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 should consist of provisions over and above the electoral laws.

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. Progress on this objective as of June 2012 is 60%.⁵

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. Delay in posting the polling-station-wise results should be declared illegal and the Election Commission should be assigned the responsibility to ensure web-posting of results as these come in. This measure will preclude any manipulation after the result is compiled and will enhance public confidence in the electoral process.⁶

The ECP has mentioned the objective, in its **Five-Year Strategic Plan 2010-2014** to Publish polling stations-wise results on the ECP website immediately after the results are available. The ECP has set the deadline of June 2013 to achieve this goal – the year when next General Elections are due to be held. Progress on this objective as of June 2012 is 0%.

The ECP, in its Strategic Plan, had also set the deadline of December 2011 to Redesign the ECP website to facilitate greater public access to information on the electoral process, including voter information, polling stations, complaint tracking and timely election results. Progress on this objective as of June 2012 is 75%.⁷

Background of the Members of the Election Commission and the Chief Election Commissioner (CEC)

The CGEP proposes following changes:

- i. **Chief Election Commissioner (CEC) and Other Members of the Election Commission Do Not Have To Be Necessarily from the Judiciary:** The CEC and

5. Citizens Report on State of Electoral Reforms – 3rd Quarter Report, PILDAT. July 2012.

6. Ibid.

7. Ibid.

other members of the Election Commission do not have to be necessarily from the Judiciary. This, too, 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. The CGEP 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 ECP and the CEC have already been appointed through a bi-partisan process, CGEP proposes 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 lead by the Election Commission between 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.

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 2014⁸ to achieve this objective.

During the past one and half year, the ECP culture had undergone a major transformation and it had established two separate forums of consultation with political parties and the civil society. The ECP started holding periodic

consultations which did enhance transparency and credibility of the ECP. Due to change in ECP leadership during the past few months (since the Secretary ECP, **Mr. Ishtiaq Ahmed Khan** resigned on March 2, 2012 and the CEC **Justice (Retired) Hamid Ali Mirza** retired on March 23, 2012, this culture of consultation seemed to have weakened. It is important that the culture of consultation and openness at the ECP should not only be maintained but rather enhanced.

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 be **gradually** applied in Pakistan to introduce accuracy and efficiency in the counting procedure.

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 four-month period. A period should also be fixed within which the appeals should also be decided.

8. 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



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 | Web: www.pildat.org