

# PAKISTAN ELECTION LAWS AND INTERNATIONAL STANDARDS

A REFERENCE GUIDE ON LEGISLATIVE GAPS AND VULNERABILITIES

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## ABOUT DEMOCRACY REPORTING INTERNATIONAL

*Democracy Reporting International* is an independent, non-partisan and not-for-profit organisation which operates on the conviction that democratic, participatory governance is a human right and that governments need to be accountable to their citizens.

Through careful assessment of the institutional aspects of the democratic process such as elections, the role of parliaments and constitutional arrangements *Democracy Reporting International* seeks to provide citizens, legislators, the media, and the international community with specialist analysis. *Democracy Reporting International* also offers policy advice and recommendations on how improvements can be made in line with international standards and engages political actors to advocate for these reforms.

The project *Supporting advocacy for electoral reforms*, funded by the European Union, seeks to engage stakeholders in a debate for a more credible and inclusive electoral process in line with Pakistan's international obligations. DRI also works with the media to improve the quality of coverage on electoral reform.

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## ABOUT RESEARCH SOCIETY FOR INTERNATIONAL LAW

The Research Society of International Law (RSIL) is an institution that seeks the promotion of international law in Pakistan. RSIL endeavors to maintain its role as a private sector, non-partisan, non-political international law think tank promoting awareness of international law.

The goal of RSIL is to improve the individual, institutional and cultural understanding of the sanctity of international legal commitments within the framework of an international legal community. Greater awareness of international law improves the development of international policy and helps Pakistan remain compliant with its international commitments, thus solidifying its reputation as a responsible member of the international community.

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# TABLE OF CONTENTS

ELECTION ADMINISTRATION	07	
POLITICAL PARTIES	20	
DELIMITATION	27	
VOTER REGISTRATION	30	
CANDIDATE REGISTRATION	40	
VOTER EDUCATION	46	
CAMPAIGN	49	
MEDIA	53	
VOTING AND RESULTS PROCESS	56	
ELECTION DISPUTE RESOLUTION	70	
ELECTION OBSERVATION	77	
PARTICIPATION OF WOMEN	83	
PERSONS WITH DISABILITIES (PWDS)	94	

## EXECUTIVE SUMMARY

This report identifies areas for reform of Pakistan's election-related legislation using a framework of international law. International law provides an objective means for identifying how to strengthen legislation and practice. Pakistan ratified<sup>1</sup> the International Covenant on Civil and Political Rights (ICCPR) in 2010. The ICCPR, to which 165 states have acceded, is the main reference of this report; however, other treaties ratified by Pakistan containing commitments relating to civil and political rights are also referred to. By ratification of the ICCPR the state of Pakistan committed itself to respect all obligations included in the Covenant.

This report is focused on Pakistan's legislation, identifying where there are shortcomings, and making recommendations for changes in law accordingly. Shortcomings in practice are only referred to the extent that they inform the need for changes in law. Reforms of Pakistan's legislation would result in an electoral legal framework that provides for improved election processes as well as compliance with Pakistan's internationally legally-binding commitments under the ICCPR and other treaties.

Certain areas of election-related law were assessed as inconsistent with Pakistan's international commitments (in treaties and related documents). These include subjective candidacy criteria and the presence of a separate electoral roll for the Ahmadi community, a religious minority.

Furthermore, there is a lack of legal provisions to safeguard certain commitments such;

- Enhancing transparency of the election administration and electoral processes;
- Establishing administrative mechanisms for access to remedy;
- Availability of sex-disaggregated data; and
- Promoting routine consultations with groups representing women and Persons with Disabilities.

Additionally, certain areas of election-related legislation were identified as vulnerable, where the law is weak and does not strongly provide for compliance with Pakistan's international commitments. Strengthening the law in these areas could help prevent problems in administrative practice and demonstrate Pakistan's commitment to improved democratic functioning, and strong commitment to fulfilment of human rights obligations. Among various issues detailed in this report; some key issues of vulnerability include the requirement for "presidential approval" in functions of the election administration and the overlapping of judicial and executive functions.

In total, this report makes fifty three recommendations for reform in Pakistan's election related legislation. Six recommendations call for a change in the constitution while others refer to changes in the primary legislation. Further changes in the law may also be beneficial, as would changes to administrative practice, but this report is focused mainly on issues related to Pakistan's legislation providing for compliance with international commitments. Human rights obligations related to elections are the stated aspiration of the Pakistani state; it is therefore necessary to provide for fulfilment of these rights through a strong legal framework for elections.

## INTRODUCTION

Pakistan has seen two competitive elections since 2008, with successful transition of government and fairly broad acceptance of results. The 18th, 19th and 20th Amendments to the Constitution have strengthened democratic processes in the country, however, there are remaining areas of concern in the legal electoral framework. Strengthening the electoral framework will be crucial for ensuring that it is able to endure the stress of closely contested elections when margins of victory are narrower than they have been in the past and for supporting the continuation of Pakistan's democratic journey.

In order to honour its commitments to democratic progress; Pakistan ratified the International Covenant

<sup>1</sup> Ratification of a treaty signifies a state's consent to be legally bound by the terms of a treaty. To ratify a treaty, the State first signs it and then seeks required approval for the treaty at domestic level from national organs such as the Parliament, Senate etc. whereby a formal decision to be party to the treaty is made and submitted to the United Nations Secretary General. [http://treaties.un.org/Pages/Overview.aspx?path=overview/glossary/page1\\_en.xml](http://treaties.un.org/Pages/Overview.aspx?path=overview/glossary/page1_en.xml)

on Civil and Political Rights (ICCPR) in 2010, which contains commitments relating to the civil and political rights and the conduct of elections, as well other international treaties containing elections related commitments.

This report aims to assess the implementation of Pakistan's obligations under international law relating to elections. In doing so, the report considers what is written in the treaties themselves (obligations) as well as what is written in the authoritative interpretation and recommendations of treaty bodies.

The report looks at different aspects of the election process and within each area it examines the gaps and vulnerabilities that exist in the legal electoral framework in light of Pakistan's international commitments. To make such assessments, consideration is given to what happens in practice. For this some secondary sources of information have been used, such as reports from observer groups. The report offers recommendations for addressing these shortcomings in the legal framework for greater compliance with Pakistan's human rights commitments related to democratic processes.

## WHY IS INTERNATIONAL LAW RELEVANT?

When a country signs up to an international treaty, it is choosing to honour the obligations contained in the document. The ICCPR and other human rights treaties are a set of legal commitments Pakistan has chosen to make. The provisions contained in the treaty provide a sound framework for assessing an election process, as they are objective and consistently applied to all countries which choose to be bound by them. The 2013 elections were the first national level elections to be held since Pakistan committed to the main international human rights treaty on civil and political rights, the International Covenant on Civil and Political Rights (ICCPR). As well as being legally binding, the ICCPR has strong authority as over 165 countries around the world have committed to it.

International law provides a sound framework for objectively assessing an election framework and process. This helps identification of shortcomings and development of agreement on ways forward. International law also provides a framework for electoral reform, which can lessen antagonistic disputes between parties and build consensus about how to strengthen democratic processes and institutions. Compliance with international human rights treaties can help a country's standing in the world and relationship with other countries, which may then have other benefits such as improved trade relations.

## WHAT IS COMPLIANCE AND DOES IT MATTER?

"Compliance" is about fulfilment of the obligations contained within a treaty. Sometimes it is clear when there is breach of an obligation. However at other times the degree of compliance or non-compliance is not immediately clear. Compliance is explained and reviewed by "treaty bodies" that make official interpretations of treaty articles and give guidance on different aspects of treaties, authoritatively elaborating how to comply with the obligations. Treaty bodies are also responsible for reviewing regular reports by those countries that have committed to the treaty, known as States Parties.

Pakistan's compliance with its electoral obligations would mean that Pakistan would have better quality election processes, and there would be more agreement over election reform and reduced risk of violence during election processes. Pakistan's international standing would also be enhanced.

Compliance requires the legal framework to be consistent with treaty obligations. It also requires that implementation of laws, i.e. what happens in practice (*de facto*) is consistent with these obligations. Thus both the legislation and the reality should be assessed to see how they compare to what's contained in the letter and the spirit of a treaty.

## INTERNATIONAL LAW IN PAKISTAN

Pakistan has ratified a number of treaties that contain important election-related commitments and are referred to in the analysis presented in this report. These include:

- The International Covenant on Civil and Political Rights (ICCPR)<sup>ii</sup>. Reference will be made to article 25 and General Comment 25 regarding electoral participation and General Comment 34 regarding freedom of expression and the right to information.
- The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).<sup>iii</sup> Reference will be made to General Recommendation 23 regarding women's political participation.
- The International Convention on the Elimination of Racial Discrimination (CERD).<sup>iv</sup>
- The International Convention on the Rights of Persons with Disabilities (CRPD).<sup>v</sup>
- The Convention Against Corruption (CAC).<sup>vi</sup>

## DOMESTIC IMPLEMENTATION OF PAKISTAN'S TREATY OBLIGATIONS

Pakistan is bound to harmonize and give legal effect to its international legal commitments by implementing appropriate domestic legislation under international law's well-established principle of *pacta sunt servanda* (agreements must be kept) as well as customary international law. Such implementing legislation must be comprehensive as well as consistent with Pakistan's international legal obligations. The Constitution of Pakistan tasks the Federal Government with ensuring the domestic implementation of international treaties and agreements by drafting or amending relevant legislation and instituting enforcement mechanisms throughout the territories of Pakistan.<sup>vii</sup>

Significantly, once incorporated into domestic law via implementing legislation, Pakistan's treaty obligations acquire the legal force and status of primary federal legislation.

### NB

- Parts of quotes have been emphasised by the authors of this report through the use of **bold** (which is not part of the original text).
- Some ECP regulations such and codes of conduct, although not primarily legislation, have been referred to because of their binding nature and their impact on de facto compliance.
- All references to ECP's strategic plan are in regard to ECP's Five Year Strategic Plan 2010-2014

ii Pakistan ratified the ICCPR in June 2010.

iii Pakistan acceded to CEDAW in December 1996.

iv Pakistan ratified CERD in December 1966.

v Pakistan ratified CRPD in May 2011.

vi Pakistan ratified the CAC in August 2007.

vii International treaties, conventions and agreements and International arbitration are included in the Federal Legislative List in the Fourth Schedule of the Constitution of Pakistan.

# ELECTION ADMINISTRATION

Independence of the  
Electoral Authority

Promoting and enhancing transparency  
in public administration

Notes

## ELECTION ADMINISTRATION

# Independence of the Electoral Authority

## INTRODUCTION

The 18th and 19th constitutional amendments provide for a more inclusive and transparent mechanism for appointment of the CEC and ECP members; consequently providing opportunity for a more independent election management body. However, requirements for presidential approval, the provision stipulating a Supreme Court Judge to serve as acting CEC, and lack of explicit provisions regarding financial autonomy in the legislative framework undermine complete independence of the ECP. Furthermore, the ECP has underutilized its exercising powers to provide for a comprehensive regulatory framework for elections.<sup>1</sup>

## INTERNATIONAL STANDARD

- ICCPR, GC25 para. 20, “an **independent** electoral authority should be established”

## LEGISLATION

- Constitution of Pakistan 1973 Art. 213(2A) “The Prime Minister in consultation with Leader of Opposition of National Assembly, forward three names for appointment of the Commissioner to a Parliamentary Committee”
- Constitution of Pakistan 1973 Art. 215(2) “The Commission [or a member] shall not be removed from office except in the manner prescribed in Article 209 for the removal from office of a Judge”
- Constitution of Pakistan 1973 Art. 218(2) “The Election Commission shall consist of (b)four members each of whom...appointed by the President in the manner provided for appointment of the Commissioner”
- Constitution of Pakistan 1973 Art. 218 (3) “It shall be the duty of the Election Commission constituted in relation to an election to organize and conduct the election and to make such arrangements as are necessary to ensure that the election is conducted honestly, justly, fairly and in accordance with law, and that corrupt practices are guarded against.”
- Constitution of Pakistan 1973 Art. 81 “The following expenditure shall be expenditure charged upon the **Federal Consolidated Fund**:-...(ii) the Chief Election Commissioner...(b) the administrative expenses, including remuneration payable to officers and servants of ...the Office of the Chief Election Commissioner and of the Election Commission”
- Constitution of Pakistan 1973 Art. 82 (1) “...the Annual Budget Statement as relates...Federal Consolidated Fund ,may be discussed in, **but shall not be submitted to the vote of, the National Assembly.**”

<sup>1</sup> This issue is further discussed under various headings of other chapters relating to Election Dispute Resolution and Participation of Women.

## ELECTION ADMINISTRATION

# Independence of the Electoral Authority

## SHORTCOMINGS

### LAW

- There are several laws that mandate that the ECP “may” act “with the approval of the President”, which interferes with the independence of the ECP.<sup>1</sup>
- The Constitution contains a provision for a judge of the Supreme Court to act as Commissioner in absence of the CEC, this overlapping of executive and judicial functions undermines the independence of the Commission.<sup>2</sup>

### PRACTICE

- There is lack of the complete financial autonomy referred to in ECP’s Five Year Strategic Plan.<sup>3</sup>
- The ECP has been reluctant and inconsistent in exercising its regulatory powers where necessary to ensure the improvement in the electoral process.<sup>4</sup>

## RECOMMENDATIONS

1. The addition of the word “independently” to the **Constitution** and all relevant legislation that refers to the conduct requirements of the ECP.<sup>5</sup>
2. Removal of provisions in various acts that refer to the requirement for presidential approval.
3. Removal of **constitutional** provisions for role of the Supreme Court in absence of the CEC.
4. Legal provision for the strengthening the financial autonomy of the ECP.

## ELECTION ADMINISTRATION

# Promoting and enhancing transparency in public administration

## INTRODUCTION

The right of citizens to have access to information of public importance was strengthened under the 18<sup>th</sup> constitutional amendment, however, the ECP still lacks transparency in providing timely and accessible information of public interest. Additionally, while there is some level of financial accountability of the ECP, no systems are in place for accountability of its performance, functions and financial management.

## INTERNATIONAL STANDARD

- CAC Art. 7.4 “Each State Party shall... endeavour to adopt, maintain and strengthen systems that **promote transparency**”
- CAC Art. 10 “Taking into account the need to combat corruption, each State Party shall ... take such measures as may be necessary **to enhance transparency** in its public administration”
- ICCPR GC 34 para. 19 “To give effect to the right of access to information, States parties should **proactively** put in the public domain Government **information of public interest.**”
- ICCPR GC 34 para. 3 “the principles of **transparency** and **accountability**... are... essential for the promotion and protection of human rights<sup>6</sup>

## LEGISLATION

- Constitution of Pakistan 1973 Art. 19A “Every citizen shall have the right to have access to information in all matters of public importance subject to regulation and reasonable restrictions imposed by law.”
- ROPA, Sect. 45. “**Public inspection of documents.**—The documents retained by the Commission under section 44, except the ballot papers, **shall be open to public inspection** at such time and subject to such conditions as may be prescribed, and the Commission shall, upon an application made in this behalf and on payment of such **fee and subject to such conditions as may be prescribed**, furnish copies of, or extracts from, those documents.”<sup>7</sup>
- Freedom of Information Ordinance Sect. 3 “[N]o requester shall be denied access to any official record”
- ROPA 1976 Sec 47 A. “Party lists for reserved seats, etc. (1) For the purpose of election to seats reserved for women...in the National Assembly and Provincial Assemblies, the political parties contesting shall ...file separate lists for their candidates...with the Chief Election Commissioner or, as he may direct, with the Provincial Election Commissioner, who shall forthwith cause such lists to be **published for information of the public at large.**”<sup>8</sup>

## ELECTION ADMINISTRATION

# Promoting and enhancing transparency in public administration

## SHORTCOMINGS

LAW	PRACTICE
<ul style="list-style-type: none"> <li>• There is no specific requirement that the ECP ensures timely and easy accessibility of <i>all</i> information of public interest.</li> <li>• There are no legal provisions that provide for systematic accountability of ECP's performance on regular basis.<sup>9</sup></li> <li>• The law does not specify a timeline for the publication of list of candidates for reserved seats by the ECP.</li> </ul>	<ul style="list-style-type: none"> <li>• The ECP lacks transparency in providing complete, publically accessible and timely information regarding its decisions, polling schemes and detailed information of election results.<sup>10</sup></li> <li>• With the increase in independence of the ECP, there has not been a corresponding increase in its accountability.<sup>11</sup></li> <li>• Although the ECP is required to make the list of candidates for reserved seats in the National and Provincial Assemblies public, there have been instances of ECP publishing the lists well after the elections.<sup>12</sup></li> </ul>

## RECOMMENDATIONS

5. Legal requirements for ECP transparency in real time.
6. Legal requirement for ECP to submit reports to the Parliament and the Senate on an annual basis and after each electoral event or upon request from the Parliament.
7. The ECP be required to publish the list of candidates for reserved sets at the same time as lists of candidates for general seats.

## ELECTION ADMINISTRATION

## Notes

1

SHORTCOMINGS IN LAW (INDEPENDENCE OF THE ELECTORAL AUTHORITY)	
<b>Constitution of Pakistan, 1973</b>	<p>Article 221</p> <p>Until Majlis-e-Shoora (Parliament)] by law otherwise provides, the Election Commission may, <b>with the approval of the President</b>, make rules providing for the appointment by the Election Commission of officers and servants to be employed in connection with the functions of the Election Commission and for their terms and conditions of employment.</p>
<b>Election Commission Order, 2002</b>	<p>Section 9E</p> <p>The Commissioner may, <b>with the approval of the President</b>, make rules for carrying out the purposes of this Order.</p> <p>Section 9F</p> <p>If any difficulty arises in giving effect to any of the provisions of this Order, <b>the President may make such provision</b> for the removal of the difficulty as he may deem fit.</p>
<b>Conduct of General Elections Order, 2002</b>	<p>Section 9(1)</p> <p>The <b>President may make rules</b> for carrying out the purposes of this Order</p>
<b>Political Parties Order, 2002</b>	<p>Section 19</p> <p>The Election Commission may, <b>with approval of the President</b>, make rules for carrying out the purposes of this Order.</p>
<b>Representation of the People Act, 1976</b>	<p>Section 107</p> <p>The Commission may <b>with the approval of the President</b>, make rules for carrying out the purposes of this Act.</p>
<b>Electoral Rolls Act, 1974</b>	<p>Section 28(1)</p> <p>The Commissioner may, <b>with the approval of the President</b> and by notification in the official Gazette, make rules for carrying out the purposes of this Act.</p> <p>Section 28A</p> <p>If any difficulty arises in giving effect to any of the provisions of this Act, <b>the President may make such provision</b> for the removal of the difficulty as he may deem fit.</p>

2

SHORTCOMINGS IN LAW (INDEPENDENCE OF THE ELECTORAL AUTHORITY)	
Constitution of Pakistan, 1973	<p>Article 217 At any time when –</p> <p>(a) the office of the Commissioner is vacant, or (b) the Commissioner is absent or is unable to perform the functions of his office due to any other cause,</p> <p>A Judge of the Supreme Court nominated by the Chief Justice of Pakistan shall act as Commission</p>

3

SHORTCOMINGS IN PRACTICE (INDEPENDENCE OF THE ELECTORAL AUTHORITY)	
ECP Five Year Strategic Plan 2010 - 2014	<p>The ECP states that one of its main goals is to attain financial autonomy. It also requests permanent legislation to replace the existing superficial office memorandum in order to guarantee financial independence. The impact as the ECP explains, “will be an environment where the ECP is able to make decisions on merit without relying on external factors leading to efficiency in its work and the effective use of resources.” <a href="http://ecp.gov.pk/sp/goals-objectives.html">http://ecp.gov.pk/sp/goals-objectives.html</a></p>
Media reports	<p>Presidential approval is required for any change in nomination forms, however, the ECP took initiative to print new nomination forms without president’s approval for the 2013 general elections: <a href="http://tribune.com.pk/story/519507/election-2013-ecp-to-print-nomination-forms-without-presidents-nod/">http://tribune.com.pk/story/519507/election-2013-ecp-to-print-nomination-forms-without-presidents-nod/</a></p>

4

SHORTCOMINGS IN PRACTICE (INDEPENDENCE OF THE ELECTORAL AUTHORITY)	
Civil Society	<p>The ECP demonstrates conflicting responses in exercising authority: For the 2013 general elections the ECP printed nomination forms without required presidential approval, however in 2011 when women were barred from voting in the Shangla district of KP, the ECP argued that it “<i>could not annul a vote in such circumstances on its own initiative, but must await an official complaint from an aggrieved person despite having the power to annul polls where elections cannot be conducted fairly due to coercion.</i>”</p> <p>In italics from DRI paper, No Voice: The Exclusion of Women from Voting. <a href="http://www.democracy-reporting.org/files/dri_briefing_paper_15-_no_voice_the_exclusion_of_women_from_voting.pdf">http://www.democracy-reporting.org/files/dri_briefing_paper_15-_no_voice_the_exclusion_of_women_from_voting.pdf</a></p> <p>The ECP has not used its broad powers to establish a complete regulatory framework, EU EOM Preliminary Statement, May 2013, <a href="http://www.eueom.eu/files/dmfile/eom-pakistan-preliminary-statement-13052013-en.pdf">http://www.eueom.eu/files/dmfile/eom-pakistan-preliminary-statement-13052013-en.pdf</a></p>

<b>Media Reports</b>	<p>“Election 2013: ECP to print nomination forms without president’s nod.”</p> <p><a href="http://tribune.com.pk/story/519507/election-2013-ecp-to-print-nomination-forms-without-presidents-nod/">http://tribune.com.pk/story/519507/election-2013-ecp-to-print-nomination-forms-without-presidents-nod/</a></p>
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#### RECOMMENDATIONS (INDEPENDENCE OF THE ELECTORAL AUTHORITY)

<b>Constitution of Pakistan, 1973</b>	<p>Article 218(3)</p> <p>It shall be the duty of the Election Commission constituted in relation to an election to organize and conduct the election and to make such arrangements as are necessary to ensure that the election is conducted <b>honestly, justly, fairly</b> and in accordance with law, and that corrupt practices are guarded against.</p>
<b>Election Commission Order, 2002</b>	<p>Section 5(3)</p> <p>It shall be the duty of the Election Commission constituted in relation to an election to organize and conduct the election and to make such arrangements as are necessary to ensure that the election is conducted <b>honestly, justly, fairly</b> and in accordance with law, and that corrupt practices are guarded against.</p>
<b>Representation of the People Act, 1976</b>	<p>Section 103(c)</p> <p>Save as otherwise provided, the Commission may issue such instructions and exercise such powers, and make such consequential orders, as may in its opinion, be necessary for ensuring that an election is conducted <b>honestly, justly and fairly</b>, and in accordance with the provisions of this Act and the rules.</p>

INTERNATIONAL COMMITMENT (PROMOTING AND ENHANCING TRANSPARENCY IN PUBLIC ADMINISTRATION)	
<b>Convention Against Corruption</b>	<p>Article 7(4)</p> <p>Each State Party shall, in accordance with the fundamental principles of its domestic law, endeavour to adopt, maintain and strengthen systems that promote transparency and prevent conflicts of interest</p> <p>Article 10</p> <p>Taking into account the need to combat corruption, each State Party shall, in accordance with the fundamental principles of its domestic law, take such measures as may be necessary to enhance transparency in its public administration, including with regard to its organization, functioning and decision-making processes, where appropriate. Such measures may include, inter alia:</p> <p>(a) Adopting procedures or regulations allowing members of the general public to obtain, where appropriate, information on the organization, functioning and decision-making processes of its public administration and, with due regard for the protection of privacy and personal data, on decisions and legal acts that concern members of the public;</p> <p>(b) Simplifying administrative procedures, where appropriate, in order to facilitate public access to the competent decision-making authorities; and</p> <p>(c) Publishing information, which may include periodic reports on the risks of corruption in its public administration.</p>
<b>ICCPR General Comment 34</b>	<p>Paragraph 19</p> <p>To give effect to the right of access to information, States parties should proactively put in the public domain Government information of public interest. States parties should make every effort to ensure easy, prompt, effective and practical access to such information.</p>
<b>ICCPR General Comment 34</b>	<p>Paragraph 3</p> <p>Freedom of expression is a necessary condition for the realization of the principles of transparency and accountability that are, in turn, essential for the promotion and protection of human rights.</p>

7

## DOMESTIC LAW (PROMOTING AND ENHANCING TRANSPARENCY IN PUBLIC ADMINISTRATION)

**Representation of Peoples Act, 1976**

## Section 44

**Documents to be sent to, and retained by, the Commission.—**

The Returning Officer shall forward to the Commission—

- (a) the packets containing the ballot papers each of which shall be sealed with the seal of the Presiding Officer, or, if opened by the Returning Officer, with the seal of the Returning Officer;
- (b) the packets containing the counterfoils of issued ballot papers;
- (c) the packets containing the marked copies of the electoral rolls;
- (d) the packets containing the ballot paper account;
- (e) the packets containing the tendered ballot papers, the challenged ballot papers, the tendered votes list and the challenged votes list; and
- (f) such other papers as the Commission may direct

8

## DOMESTIC LAW (PROMOTING AND ENHANCING TRANSPARENCY IN PUBLIC ADMINISTRATION)

**Constitution of Pakistan, 1973**

## Article 19A

Every citizen shall have the right to have access to information in all matters of public importance subject to regulation and reasonable restrictions imposed by law.

## Article 218(3)

It shall be the duty of the Election Commission constituted in relation to an election to organize and conduct the election and to make such arrangements as are necessary to ensure that the election is conducted honestly, justly, fairly and in accordance with law, and that corrupt practices are guarded against.

<p><b>The Representation of the People Act, 1976</b></p>	<p>Section 8  <b>Polling stations</b> (2) Subject to the direction of the Commission, the District Returning Officer may make such alterations in the list of polling stations submitted under subsection (1) as he deems necessary and shall, at least fifteen days before the polling day, publish in the official Gazette the final list of polling stations specifying the electoral area the electors whereof will be entitled to vote at each polling station.</p> <p>Section 11  <b>Notification of Election</b> (1) As soon as [ may be necessary and practicable] the President makes an announcement of the date or dates on which the polls shall be taken, the Election Commission 3[, not later than thirty days of such announcement] shall, by notification in the official Gazette,</p> <p>Section 15  <b>Publication of list of candidates.</b>—(1) The Returning Officer shall, after the scrutiny of nomination papers, prepare and publish in the prescribed manner a list of validly nominated candidates.</p>
<p><b>Electoral Rolls Act, 1974</b></p>	<p>Sections 8-16</p>
<p><b>The Delimitation of Constituencies Act, 1974</b></p>	<p>Section 10</p>
<p><b>Freedom of Information Ordinance, 2002</b></p>	<p>Section 3</p> <p>(1) Notwithstanding anything contained in any other law for the time being in force, and subject to the provisions of this Ordinance, no requester shall be denied access to any official record other than exemptions as provided in section 15.</p> <p>(2) This Ordinance shall be interpreted so as (ii) to facilitate and encourage, promptly and at the lowest reasonable cost, the disclosure of information</p> <p>Section 15</p> <p>(1) Information may be exempt if its disclosure would be likely to cause grave and significant damage to the interests of Pakistan in the conduct of international relations.</p> <p>(2) In the Section, “international relations” means relations between Pakistan and</p> <p>(a) the government of any other foreign State; or</p> <p>(b) an organisation of which only States are members</p>

### SHORTCOMINGS IN LAW (PROMOTING AND ENHANCING TRANSPARENCY IN PUBLIC ADMINISTRATION)

<p><b>Civil Society Reports</b></p>	<p>Procedures exist regarding some level of financial accountability of the ECP;</p> <p><i>“Article 169 of the constitution and sections 7 and 8 of Ordinance XXIII39 of 2001 require the auditor-general<sup>40</sup> to audit the accounts of the federation and the provinces. As such, its responsibilities extend to auditing the accounts of the ECP, which is funded by the federal government. The auditor-general receives the annual accounts of the ECP prepared by the accountant general of Pakistan which is responsible for the centralised accounting and reporting of federal transactions<sup>41</sup> and provides consolidated monthly accounts (to the federal finance division).”</i></p> <p>The description of this procedure has been extracted from DRI briefing paper, Independence and Accountability of the ECP, <a href="http://www.democracy-reporting.org/files/dri_briefing_paper_21-_independence_and_accountability-_the_election_commission_of_pakistan_v1_2011-12-09.pdf">http://www.democracy-reporting.org/files/dri_briefing_paper_21-_independence_and_accountability-_the_election_commission_of_pakistan_v1_2011-12-09.pdf</a></p>
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### SHORTCOMINGS IN PRACTICE (PROMOTING AND ENHANCING TRANSPARENCY IN PUBLIC ADMINISTRATION)

<p><b>Civil Society Reports</b></p>	<p>EU Election Observation Mission, Preliminary Statement, May 2013</p> <p>“[T]he ECP still lacks transparency with information of public interest not always being made available. For example meetings of the Commission are closed and the decisions of meetings are not made public.”</p> <p><a href="http://www.eueom.eu/files/pressreleases/english/eom-pakistan-preliminary-statement-13052013-en.pdf">http://www.eueom.eu/files/pressreleases/english/eom-pakistan-preliminary-statement-13052013-en.pdf</a></p> <p>In the preliminary report of the May 2013 General Elections, FAFEN notes that the experience of interacting with ECP officials on various positions of administration across the country indicates that, although they had considerable success in obtaining information from ECP officials, the openness to sharing of information by officials is inconsistent. The report also notes that vital information regarding the complaints process is inaccessible to public.</p> <p><a href="http://www.fafen.org/site/v6/press-releases/preliminary_statement_on_general_election_2013_2013_05_13_1278">http://www.fafen.org/site/v6/press-releases/preliminary_statement_on_general_election_2013_2013_05_13_1278</a></p>
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### SHORTCOMINGS IN PRACTICE (PROMOTING AND ENHANCING TRANSPARENCY IN PUBLIC ADMINISTRATION)

<p><b>Civil Society Reports</b></p>	<p>Commenting that the ECP's lack of accountability has played part in limiting its ability to effectively administer elections, See Reforming Pakistan's Electoral System, ICG, March 2011, Asia Report No. 203, <a href="http://www.crisisgroup.org/en/regions/asia/south-asia/pakistan/203-reforming-pakistans-electoral-system.aspx">http://www.crisisgroup.org/en/regions/asia/south-asia/pakistan/203-reforming-pakistans-electoral-system.aspx</a>.</p> <p>FAFEN advocates for submission of reports by ECP to the Parliament.</p> <p>FAFEN, Jun 2011, Unification of Pakistan's Election Legislation Including Model Provisions for Reform. See: <a href="http://www.fafen.org/site/v4/admin/contents/PDF/502_696.pdf">http://www.fafen.org/site/v4/admin/contents/PDF/502_696.pdf</a>.</p> <p><i>"There have not, however, been corresponding moves towards creating a formal system for holding the increasingly independent ECP to account to the people of Pakistan."</i></p> <p>Democracy Reporting International, Independence and Accountability of the ECP, <a href="http://www.democracy-reporting.org/files/dri_briefing_paper_21-_independence_and_accountability-_the_election_commission_of_pakistan_v1_2011-12-09.pdf">http://www.democracy-reporting.org/files/dri_briefing_paper_21-_independence_and_accountability-_the_election_commission_of_pakistan_v1_2011-12-09.pdf</a></p>
<p><b>ECP Five Year Strategic Plan 2010 – 2014</b></p>	<p>Under objectives for Goal 7, the Plan states the following:</p> <p><i>"The ECP will increase its interaction with political parties and general public with regard to electoral matters and build an environment of trust and transparency."</i></p> <p><a href="http://www.ecp.gov.pk/sp/goals-objectives.html">http://www.ecp.gov.pk/sp/goals-objectives.html</a></p>

### SHORTCOMINGS IN PRACTICE (PROMOTING AND ENHANCING TRANSPARENCY IN PUBLIC ADMINISTRATION)

<p><b>Media Reports</b></p>	<p>"The Election Commission of Pakistan (ECP) continues to keep secret documents it is supposed to make public forthwith under the law.</p> <p>The documents are the lists submitted by political parties for seats reserved for women and minorities in the national and provincial assemblies and Section 47-A of the Representation of the People Act, 1976, required their immediate publication for information of public." <a href="http://dawn.com/news/1013410/ecp-keeps-lists-for-reserved-seats-secret">http://dawn.com/news/1013410/ecp-keeps-lists-for-reserved-seats-secret</a>.</p>
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## POLITICAL PARTIES

Promoting democratic practices within political parties

Enhancing transparency in funding of political parties

Notes

## POLITICAL PARTIES

# Promoting democratic practices within political parties

## INTRODUCTION

Internal democratic structures within parties are weak and not adequately provided for in domestic legislation. Parties hold elections but the limited transparency and lack of scrutiny of these elections often leads to questioning of their credibility.

## INTERNATIONAL STANDARD

- ICCPR GC25 para. 26 “Political parties and membership in parties play a significant role in the conduct of public affairs and the election process. **States should ensure that, in their internal management, political parties respect the applicable provisions of article 25** in order to enable citizens to exercise their rights thereunder.”

## LEGISLATION

- Political Parties Order 2002 Sect. 4(1)(g) “Every political party... shall formulate its constitution ... **procedure for-election of party leader and other office-bearers**”<sup>13</sup>
- Political Parties Order 2002 Sect. 11(1) “The party leader and other office-bearers of every political ... shall be elected **periodically** ... through secret ballot based on a **democratic and transparent system**.”<sup>14</sup>

## SHORTCOMINGS

LAW	PRACTICE
<ul style="list-style-type: none"> <li>• Lacks specificity regarding how periodic such elections have to be.</li> <li>• Only one penalty is referred to, withholding of party symbol. There is no provision for varying sanction in accordance with the severity of the breach or specifying the process by which the determination for withholding is made.</li> <li>• The legal provisions of internal party democracy are limited to holding internal party elections, other mechanisms of decision making are not well defined and do not provide support for the inclusion of various sections of the parties into the decision making process.</li> </ul>	<ul style="list-style-type: none"> <li>• Although internal party elections are held periodically by parties, the credibility of these elections is often challenged and the ECP reportedly does not see itself mandated to scrutinize them.<sup>15</sup></li> </ul>

## RECOMMENDATIONS

8. More specific requirements are made of parties regarding internal democratic practices, for example with reference to the frequency and transparency of the process.
9. A mechanism is established in law for ECP monitoring of internal party democracy and a greater range of penalties are stipulated.

## POLITICAL PARTIES

# Enhancing transparency in funding of political parties

## INTRODUCTION

Under the Political Parties Order 2002, political parties are required to submit annual financial statements of account, detailing the transactions of a party, to the ECP. Lack of prescribed process for scrutinizing and enforcing of this requirement, as well as for maintenance of accounts, reduces this accountability exercise to a mere a formality without meaningful insight into transactions of parties.

## INTERNATIONAL STANDARD

- CAC Art. 7(3) “Each State Party shall also consider taking appropriate legislative and administrative measures... **to enhance transparency in ... the funding of political parties.**”<sup>16</sup>

## LEGISLATION

- Political Parties Order 2002 Sect. 4(1)(f) “Every political party ... shall formulate its constitution ... **criteria for receipt and collection of funds for the party**”
- Political Parties Order 2002 Sect. 13(1) “Every political party shall... submit to the Election Commission ... a consolidated statement of accounts of the party”<sup>17</sup>
- Political Parties Rules 2002 Sect. 6 “Where the Election Commission decides that the contributions or donations, as the case may be, accepted by the political parties are prohibited it shall, subject to notice to the political party **confiscated in favour of the State.**”<sup>18</sup>

## SHORTCOMINGS

LAW	PRACTICE
<ul style="list-style-type: none"> <li>• ECP is not required to make public the annual financial statements submitted by parties.</li> <li>• Confiscation of illegal funds is the only penalty specified for violations.<sup>19</sup></li> </ul>	<ul style="list-style-type: none"> <li>• The ECP receives statements of accounts from parties on an annual basis upon which it publishes an annual report; essentially restating what is received from parties.</li> <li>• Limited scrutiny of these accounts is carried out and there is a lack of transparency regarding the findings of this process.<sup>20</sup></li> </ul>

## RECOMMENDATIONS

10. The ECP be required to make annual statements of party funding publicly available in a timely fashion.
11. Legislation specify a greater range of penalties for non-compliance with funding reporting requirements and rules on funding itself.

## Notes

13

DOMESTIC LAW (PROMOTING DEMOCRATIC PRACTICES WITHIN POLITICAL PARTIES)	
Political Parties Order, 2002	<p>Section 14</p> <p>(1) Notwithstanding anything contained in any other law for the time being in force, a political party shall be eligible to obtain an election symbol for contesting elections for Majlis-e-Shoora (Parliament) and Provincial Assemblies on submission of certificates and statement referred to in Articles 12 and 13:</p> <p>Provided that a combination of political parties shall be entitled to obtain a common election symbol for such election only if, each party constituting such combination, submits the certificates and statement referred to in Articles 12 and 13.</p> <p>(2) Where any political party or a combination of political parties, severally or collectively, contravenes the provisions of Article 12 or 13, it <b>shall not be entitled to obtain an election symbol</b> for election to the Majlis-e-Shoora (Parliament) or the Provincial Assemblies, and the Election Commission <b>shall not allocate an election symbol</b> to such party or, as the case may be, the combination of political parties for such election.</p>

14

DOMESTIC LAW (PROMOTING DEMOCRATIC PRACTICES WITHIN POLITICAL PARTIES)	
The Constitution of Pakistan, 1973	<p>Article 63A.</p> <p>(1) If a member of a Parliamentary Party composed of a single political party in a House-</p> <p>(a) resigns from membership of his political party or joins another Parliamentary Party; or</p> <p>(b) votes or abstains from voting in the House contrary to any direction issued by the Parliamentary Party to which he belongs, in relations to-</p> <p>(i) election of the Prime Minister or the Chief Minister; or</p> <p>(ii) a vote of confidence or a vote of no-confidence; or</p> <p>(iii) a Money Bill or a Constitution (Amendment) Bill;</p> <p>he may be declared in writing by the Party Head to have defected from the political party, and the Head of the Parliamentary Party may forward a copy of the declaration to the Presiding Officer, and shall similarly forward a copy thereof to the member concerned:</p>

SHORTCOMINGS IN PRACTICE (PROMOTING DEMOCRATIC PRACTICES WITHIN POLITICAL PARTIES)	
<b>Media Reports</b>	<p>In March 2013, intra party polls held by Pakistan People's Party (PPP) were challenged by some leaders: <a href="http://dawn.com/2013/03/02/estranged-leaders-challenge-ppps-intra-party-polls/">http://dawn.com/2013/03/02/estranged-leaders-challenge-ppps-intra-party-polls/</a>.</p> <p>In 2009, Pakistan Muslim League – Q (PML-Q) split into two factions with one of the groups claiming that the party polls lacked any credibility: <a href="http://www.nation.com.pk/pakistan-news-newspaper-daily-english-online/Politics/07-Jul-2009/Q-dissidents-boycott-elections">http://www.nation.com.pk/pakistan-news-newspaper-daily-english-online/Politics/07-Jul-2009/Q-dissidents-boycott-elections</a></p> <p>The ECP reportedly does not see itself as mandated to scrutinize intra party elections: <a href="http://www.thenews.com.pk/article-91175-ECP-rejects-petition-challenging-PPPP-intra-party-polls">http://www.thenews.com.pk/article-91175-ECP-rejects-petition-challenging-PPPP-intra-party-polls</a></p>
<b>Civil Society Reports</b>	<p>The EU Election Observation Mission report on general elections in 2008 report notes that parties in Pakistan are viewed as weak on internal democracy. <a href="http://www.eeas.europa.eu/eueom/pdf/missions/eu_eom_pakistan_final_report.pdf">http://www.eeas.europa.eu/eueom/pdf/missions/eu_eom_pakistan_final_report.pdf</a></p>

INTERNATIONAL COMMITMENT (ENHANCING TRANSPARENCY IN FUNDING OF POLITICAL PARTIES)	
<b>Convention Against Corruption</b>	<p>Article 7(3)</p> <p>Each State Party shall also consider taking appropriate legislative and administrative measures, consistent with the objectives of this Convention and in accordance with the fundamental principles of its domestic law, to enhance transparency in the funding of candidatures for elected public office and, where applicable, the funding of political parties.</p>

**DOMESTIC LAW (ENHANCING TRANSPARENCY IN FUNDING OF POLITICAL PARTIES)**

<p><b>Political Parties Order, 2002</b></p>	<p>Section 13</p> <p>(1) Every political party shall, in such manner and in such form as may be prescribed or specified by the Chief Election Commissioner, submit to the Election Commission, within sixty days from the close of each financial year, a consolidated statement of accounts of the party audited by a Chartered Accountant containing—</p> <ul style="list-style-type: none"> <li>(a) annual income and expenses;</li> <li>(b) sources of its funds; and</li> <li>(c) assets and liabilities.</li> </ul> <p>(2) The statement referred to in clause (1), shall be accompanied by a certificate signed by the party leader stating that—</p> <ul style="list-style-type: none"> <li>(a) no funds from any source prohibited under this Order were received by the party; and</li> <li>(b) the statement contains an accurate financial position of the party</li> </ul>
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**DOMESTIC LAW (ENHANCING TRANSPARENCY IN FUNDING OF POLITICAL PARTIES)**

<p><b>Political Parties Rules, 2002</b></p>	<p>Section 5</p> <p><b>All financial transactions</b> within a party shall be entered in the statement of accounts submitted.</p>
<p><b>Political Parties Order, 2002</b></p>	<p>Section 6(3)</p> <p>Any contribution made, directly or indirectly, by any foreign government, multi-national or domestically incorporated public or private company, firm, trade or professional association shall be prohibited</p>

### SHORTCOMINGS IN LAW (ENHANCING TRANSPARENCY IN FUNDING OF POLITICAL PARTIES)

<p><b>Political Parties Rules, 2002</b></p>	<p>Section 6</p> <p>Where the Election Commission decides that the contributions or donations, as the case may be, accepted by the political parties are prohibited under clause (3) of Article 6, it shall, subject to notice to the political party concerned and after giving an opportunity of being heard, <b>direct the same to be confiscated in favour of the State</b> to be deposited in Government Treasury or sub-Treasury</p>
<p><b>Political Parties Order, 2002</b></p>	<p>Section 6(3)</p> <p>Any contribution made, directly or indirectly, by any foreign government, multi-national or domestically incorporated public or private company, firm, trade or professional association shall be prohibited and the parties may accept contributions and donations only from individuals.</p>

### SHORTCOMINGS IN PRACTICE (ENHANCING TRANSPARENCY IN FUNDING OF POLITICAL PARTIES)

<p><b>Media Reports</b></p>	<p>Reports indicate that no organized scrutiny of party accounts and funding is carried out by the ECP. <a href="http://www.thenews.com.pk/Todays-News-6-168841-ECP-is-yet-to-check-finances-of-political-parties">http://www.thenews.com.pk/Todays-News-6-168841-ECP-is-yet-to-check-finances-of-political-parties</a></p>
<p><b>Civil Society Reports</b></p>	<p><i>“Party accounts, including the source of funds, must be submitted to the ECP each year. However there is no requirement for these documents to be open for wider inspection.”</i> <a href="http://www.eeas.europa.eu/eueom/pdf/missions/eu_eom_pakistan_final_report.pdf">http://www.eeas.europa.eu/eueom/pdf/missions/eu_eom_pakistan_final_report.pdf</a></p>
<p><b>ECP Five Year Strategic Plan 2010 – 2014 and other ECP reports</b></p>	<p>The ECP’s Strategic Plan states that ECP aims to “Publish the financial statements of [...] political parties on the ECP website.” As of May, 2013 this has not been accomplished. The statements are published in the Gazette.</p> <p>The ECP’s strategic plan acknowledges that the system of financing of political parties requires review and reform. Reform of legislation on political finance is listed as objectives under Strategic Goal 6.12 of ECP’s Strategic Plan. However, ECP’s proposed amendments for election reform in 2013 only address the issue of enforcement of limits on campaign expenses: <a href="http://ecp.gov.pk/Misc/ROPA.pdf">http://ecp.gov.pk/Misc/ROPA.pdf</a></p> <p>A report of a workshop on political finance held in 2010 by the ECP notes that the <i>‘absence of prescribed manner for maintaining accounts of parties renders it difficult to ascertain the accuracy of the financial position of the party mentioned in the statement of accounts.’</i></p> <p>Additionally, the report states that <i>‘Over a period of time, filing of statements of accounts by political parties has become merely a formality to fulfill a requirement of law and no meaningful purpose is served.’</i> <a href="http://www.ecp.gov.pk/Reports/ECPPoliticalFinanceWorkshopReportv12010-12-14en.pdf">http://www.ecp.gov.pk/Reports/ECPPoliticalFinanceWorkshopReportv12010-12-14en.pdf</a></p>

# DELIMITATION

## Equality of suffrage

### Notes

## DELIMITATION

# Equality of suffrage

## INTRODUCTION

Variations exist among the distribution of population between constituencies of the National assembly and between Federally Administered Tribal Areas and the provinces; thereby compromising the equality of vote. Relevant legislation does not provide a limit for the variation in distribution of population between constituencies. Constituencies were delimited for the general elections held in 2002, based upon statistics from the last census, which was undertaken in 1998 and the same limits were used for all successive elections up until and including 2013.<sup>11</sup>

## INTERNATIONAL STANDARD

- ICCPR Art. 25(b) “Every citizen shall have the right and the opportunity... To vote and to be elected at genuine periodic elections, which shall be by universal and **equal suffrage**”
- ICCPR GC25 para. 21 “**the vote of one elector should be equal to the vote of another.**”

## LEGISLATION

- Delimitation Act 1974 Sect. 9 “All constituencies for general seats shall, as far as practicable, be delimited having regard to the distribution of population”<sup>21</sup>

## SHORTCOMINGS

LAW	PRACTICE
<ul style="list-style-type: none"> <li>• The law does not specify limitation on the amount of variation in distribution of population between constituencies; “As far as practicable” and “as far as may” grants ill-defined discretionary powers to the ECP.</li> </ul>	<ul style="list-style-type: none"> <li>• Large variations exist among distribution of population between constituencies of the National assembly.<sup>22</sup></li> </ul>

## RECOMMENDATIONS

12. The legislation specifies a limitation on the amount of variation in population permitted between constituencies and clearly defines the legal parameters of the ECP’s discretionary powers with respect to delimitation.
13. Significant variations could be required to be publicly explained.
14. The legislation provides for a clearly defined and more robust mechanism for delimitation that ensures regular updating in order to establish and maintain equality of the vote.

<sup>11</sup> Prior to the 2013 general election, in March of the same year, redrawing of electoral boundaries in parts of Karachi was notified by the ECP in response to a Supreme Court ruling directing the ECP to undertake fresh delimitation in Karachi to address the issue of polarisation in the city.

# Notes

21

DOMESTIC LAW (EQUALITY OF SUFFRAGE)	
<b>Delimitation Act, 1974</b>	<p>Section 9</p> <p>(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:</p> <p style="padding-left: 40px;">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.</p> <p>(2) As far as may be the constituencies for election to the same Assembly shall be equal among themselves in population.</p>

22

SHORTCOMINGS IN PRACTICE (EQUALITY OF SUFFRAGE)	
<b>Civil Society Reports</b>	<p>The EU Election Observation Mission, 2008</p> <p>“[T]here is extensive variation between FATA and the other provinces in the size of population per seat. There are also very large variations among NA constituencies in all provinces, with some constituencies having more than double the population of others.” <a href="http://www.eeas.europa.eu/eueom/pdf/missions/eu_eom_pakistan_final_report.pdf">http://www.eeas.europa.eu/eueom/pdf/missions/eu_eom_pakistan_final_report.pdf</a></p> <p>FAFEN notes “[T]here are significant discrepancies between sizes of constituencies between provinces and territories. The size of constituencies in sparsely-populated rural regions of Baluchistan can differ dramatically from that in urban areas such as Karachi in Sindh.” <a href="http://www.fafen.org/site/publications/105_502_696.pdf">http://www.fafen.org/site/publications/105_502_696.pdf</a></p>

## VOTER REGISTRATION

Ensuring ability to exercise  
the right to vote

Protection against discrimination  
on basis of religion

Protection against  
discrimination on basis of gender

Enabling convicted persons to exercise  
their right to vote

Notes

## VOTER REGISTRATION

# Ensuring ability to exercise the right to vote

## INTRODUCTION

For the general elections held in 2013, the electoral rolls were prepared by the ECP in cooperation with National Database and Registration Authority (NADRA); a process of cross-referencing electoral rolls with the civil registry was useful in decreasing the prevalence of duplicates in the previous rolls. A door-to-door voter verification exercise was undertaken by the ECP to verify and confirm registration data. However, the efficiency of the verification process came under much criticism and problems with misallocation of voters were noted by civil society and media.<sup>III</sup> A widely accessible system for routine updating of electoral rolls with corrections, additions and deletions of details of voters is missing; due to which allegations of political selectivity as well as frustration among misallocated voters have continued.

## INTERNATIONAL STANDARD

- ICCPR GC25 para. 11 “States must take effective measures to **ensure that all persons entitled to vote are able to exercise that right**. Where registration of voters is required, it should be facilitated and obstacles to such registration should not be imposed”
- ICCPR GC25 para. 11 “Any abusive interference with registration or voting as well as intimidation or coercion of voters should be prohibited by penal laws and those laws should be strictly enforced. Voter education and registration campaigns are necessary to ensure the effective exercise of Article 25 rights by an informed community.”

## LEGISLATION

- Electoral Rolls Act para. 15 “The Registration Officer shall correct the electoral roll in accordance with the decisions of the Revising Authority”
- Electoral Rolls Act, 1974 Sect.15 (ii) “The Registration Officer may further correct any clerical, printing or other error subsequently discovered in the roll, but not so as to include therein, or exclude therefrom, the name of any elector.”
- Electoral Rolls Act, 1974 Sect. 17 “An electoral roll shall be revised and corrected annually in the prescribed manner and form for correcting any entry or for supplying any omission in such roll”<sup>23</sup>

## SHORTCOMINGS

LAW	PRACTICE
<ul style="list-style-type: none"> <li>• The legislation makes little reference to voters being registered at the correct location (which is increasingly an issue with the use of the NADRA database).</li> </ul>	<ul style="list-style-type: none"> <li>• Many cases of misallocated voters were reported in the electoral rolls of 2012 hence questioning the voter verification exercise conducted by the ECP.<sup>24</sup></li> </ul>

## RECOMMENDATIONS

15. Legislation include more specific requirements for voters to be registered at the correct location.

III FAFEN, in an audit of the Preliminary Electoral Rolls in 2012 found that close to thirteen per cent voters could not be verified on the addresses listed in the rolls. See, Preliminary Electoral Rolls 2012, Accurate but Incomplete , [http://www.fafen.org/site/v5/publications/248\\_vla.pdf](http://www.fafen.org/site/v5/publications/248_vla.pdf)

# Protection against discrimination on basis of religion

## INTRODUCTION

The Ahmadi community, a religious minority, is the only minority group discriminated against under the Conduct of General Electors Order 2002 and registered on a separate electoral roll.<sup>IV</sup> Amendments in the Order suggest deletion of a voter from the unified electoral roll if, upon the voter’s belief regarding the finality of prophet hood coming under objection, he or she refuses to sign a declaration stating belief in finality of prophet Muhammad.

## INTERNATIONAL STANDARD

- ICCPR Art. 2 “Each State Party to the present Covenant undertakes to respect and to ensure ... the rights recognized in the present Covenant, without distinction of any kind, such as ... **religion**”
- ICCPR Art. 26 “[T]he law shall prohibit any discrimination and guarantee to all persons **equal and effective protection against discrimination** on any ground such as ...**religion**”
- ICCPR GC25 para. 3 “**No distinctions are permitted between citizens in the enjoyment of these rights on the grounds of** race, colour, sex, language, **religion**, political or other opinion, national or social origin, property, birth or other status.”

## LEGISLATION

- Conduct of General Election Order. Sect. 7C “In case he refuses to sign the declaration as aforesaid, he shall be deemed to be a non-Muslim **and his name shall be deleted from the joint electoral rolls and added to a supplementary list of voters** in the same electoral area as non-Muslim.”<sup>25</sup>
- Pakistan Penal Code Sect. 298C “Any person of the Quadiani group or the Lahori group (who call themselves ‘Ahmadis’ or by any other name), who directly or indirectly, poses himself as a Muslim, or calls, or refers to, his faith as Islam, or preaches or propagates his faith, or invites others to accept his faith, by words, either spoken or written, or by visible representations, or in any manner whatsoever outrages the religious feelings of Muslims shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine”

## SHORTCOMINGS

LAW	PRACTICE
<ul style="list-style-type: none"> <li>• The law is inherently discriminatory in relation to its reference to and treatment of a specific group of non-Muslims, Ahmadis.<sup>26</sup></li> </ul>	<ul style="list-style-type: none"> <li>• Ahmadis are the only religious minority registered on separate electoral rolls.<sup>27</sup></li> </ul>

## RECOMMENDATIONS

16. Establish one unified electoral roll for all voters including Ahmadi voters.

IV Ahmadis are defined as non-Muslims in the Constitution, Article 260 (3).

# Protection against discrimination on basis of gender

## INTRODUCTION

The transgender community was granted the right to obtain CNICs by the Supreme Court in 2009, recognizing them as a unique gender, although this right is currently based only on the decision of the judiciary. Since the possession of a CNIC is the legal prerequisite for registering as a voter, transgender persons were able to register as voters for the 2013 general election. However, the registration of transgender voters on the electoral roll remained low as many were unable to attain CNICs due to procedural requirements.

## INTERNATIONAL STANDARD

- ICCPR Art. 2 “Each State Party to the present Covenant undertakes to respect and to ensure ... the rights recognized in the present Covenant, **without distinction of any kind, such as ... birth or other status**”
- ICCPR Art. 26 “[T]he law shall prohibit any discrimination and guarantee to all persons **equal and effective protection against discrimination** on any ground such as ...**birth or other status**”
- ICCPR GC25 para. 3 “No distinctions are permitted between citizens in the enjoyment of these rights on the grounds of race, colour, **sex**, language, religion, political or **other opinion**, national or **social origin**, property, birth or other status.”
- ICCPR GC25 para. 11 “States must take effective measures to ensure that all persons entitled to vote are able to exercise that right. Where registration of voters is required, it should be facilitated and obstacles to such registration should not be imposed”

## LEGISLATION

- Supreme Court Pakistan, 2011, Dr. M. Aslam Khaki v. SSP Operations, RWP, para. 2 “Needless to observe that eunuchs in their own rights are citizens of this country and subject to the Constitution of the Islamic Republic of Pakistan, 1973, their rights, obligations including right to life and dignity are equally protected. Thus **no discrimination, for any reason, is possible against them as far as their rights and obligations are concerned.** <sup>28</sup>
- Pakistan Supreme Court, 2011, M. Aslam Khaki v. SSP Operations, RWP, para. 2 “[W]e direct ... Election Commission of Pakistan to collect the details regarding eunuchs from the respective Secretaries of Social Welfare Deaprtments/ICT, where the same are available and **register their names in voters’ list** within a period of two weeks”
- Pakistan Supreme Court, 2011, M. Aslam Khaki v. SSP Operations, RWP, para. 7 “There is some dispute in respect of recording the parentage of the shemales on CNIC, as they are recognized by the name of their ‘Gurru’ ... In this regard, the NADRA authorities are directed to look into the matter and decide the issue strictly in accordance with rules and regulations and make all efforts to redress their grievance.”

# Protection against discrimination on basis of gender

## SHORTCOMINGS

LAW	PRACTICE
<ul style="list-style-type: none"><li>The inclusion of transgender voters or the prohibition of discrimination against transgender voters is only preserved in a Supreme Court judgment and not by legislation/Act of Parliament.</li></ul>	<ul style="list-style-type: none"><li>Based on possession of CNIC as a legal precondition for registering as a voter, the requirement of a father's name on CNIC excludes those transgendered persons who are eligible to vote but not able to attain CNICs due to this requirement. Thereby, in practice, the right of vote of transgendered persons is dependent on association with another person rather than being an individual right.<sup>29</sup></li></ul>

## RECOMMENDATIONS

17. Legislation amended to prohibit discrimination on the basis of gender status.
18. Legislation prohibiting the current requirement for registrants to disclose the name of their father, in order to facilitate registration by transgender persons, thereby providing opportunity to participate.

# Enabling convicted persons to exercise their right to vote

## INTRODUCTION

The law grants prisoners the right to cast votes using postal ballot during elections, however it does not provide sufficient guidance on the process of registration of prisoners as voters on electoral rolls.

## INTERNATIONAL STANDARD

- ICCPR GC25 para. 14 “If conviction for an offence is a basis for suspending the right to vote, the period of such suspension should be proportionate to the offence and the sentence. Persons who are deprived of liberty but who have not been convicted should not be excluded from exercising the right to vote.”

## LEGISLATION

- ROPA 1976 Sect. 29(1)(a) “The following persons **may cast their votes by postal ballot** in such manner as may be prescribed, namely: a person referred to in sub-section (3) or sub-section (4) or **subsection (5) of section 7** of the Electoral Rolls Act, 1974”<sup>30</sup>

## SHORTCOMINGS

LAW	PRACTICE
<ul style="list-style-type: none"> <li>• Although prisoners are permitted to cast their vote by postal ballot, there is no specific procedure for voter registration in prisons nor is there any guidance illustrating the procedure to which prison administrations must adhere when prisoners cast their vote.</li> </ul>	<ul style="list-style-type: none"> <li>• No reports indicate that specific efforts are made for registration of prisoners as voters.</li> </ul>

## RECOMMENDATIONS

19. Legislation amended to require more specific voter registration procedures and postal ballot distribution in incarceration facilities.

# Notes

23

DOMESTIC LAW (ENSURING ABILITY TO EXERCISE THE RIGHT TO VOTE)	
<b>Electoral Rolls Act, 1974</b>	<p>Section 18 (2)</p> <p>Any person shall apply to the Registration Officer for the correction of any entry in an electoral roll for the time being in force</p>
<b>Electoral Rules, 1974</b>	<p><b>Section 18 Amendment of electoral roll:</b></p> <p>(1) When an electoral roll has been amended under Section 18 by the Registration Officer, corresponding amendment shall be made in the copy of the electoral roll in his custody as well as in the copies of the rolls kept at other places under rule 19.</p>

24

SHORTCOMINGS IN PRACTICE (ENSURING ABILITY TO EXERCISE THE RIGHT TO VOTE)	
<b>Civil Society Reports</b>	<p>FAFEN'S assessment of preliminary electoral rolls 2012 showed 13 per cent voters could not be verified at the address listed on the preliminary rolls. The report further notes "The misidentification of voters' residential addresses can largely be attributed to the incomplete and hurried door-to-door verification of voters conducted by the ECP in August-September 2011 when Supreme Court was pushing ECP to finalize the electoral rolls at the earliest.": <a href="http://www.fafen.org/site/v5/publications/248_vla.pdf">http://www.fafen.org/site/v5/publications/248_vla.pdf</a></p> <p>EU Election Observation Mission, Preliminary Statement, May 2013</p> <p>"The ECP undertook a door to door exercise in order for registrants to be allocated to their preferred voting location, followed by a display period, and introduction of an SMS-based verification system. However the completeness of this exercise was subject to criticism that some voters continued to be registered at incorrect addresses." <a href="http://www.eueom.eu/files/pressreleases/english/eom-pakistan-preliminary-statement-13052013-en.pdf">http://www.eueom.eu/files/pressreleases/english/eom-pakistan-preliminary-statement-13052013-en.pdf</a></p>

### DOMESTIC LAW (PROTECTION AGAINST DISCRIMINATION ON BASIS OF RELIGION)

<p><b>Conduct of General Elections Order, 2002</b></p>	<p>Section 7B</p> <p>Notwithstanding anything contained in the Electoral Rolls Act, 1974 (XXI of 1974), the Electoral Rolls, Rules, 1974, or any other law for the time being in force, including the Forms prescribed for preparation of electoral rolls on joint electorate basis in pursuance of</p> <p>Article 7 of the Conduct of General Elections Order, 2002 (Chief Executive's Order No. 7 of 2002), the status of Qadiani Group or the Lahori Group (who call themselves 'Ahmadis' or by any other name) or a person who does not believe in the absolute and unqualified finality of the Prophethood of Muhammad (peace be upon him), the last of the prophets or claimed or claims to be a Prophet, in any sense of the word or of any description whatsoever, after Muhammad (peace be upon him) or recognizes such a claimant as a Prophet or religious reformer shall remain the same as provided in the Constitution of the Islamic Republic of Pakistan, 1973.</p> <p>Section 7C</p> <p>If a person has got himself enrolled as voter and objection is filed before the Revising Authority notified under the Electoral Rolls Act, 1974, within ten days from issuance of the Conduct of General Elections (Second Amendment) Order, 2002, that such a voter is not a Muslim, the Revising Authority shall issue a notice to him to appear before it within fifteen days and require him to sign a declaration regarding his belief about the absolute and unqualified finality of the Prophethood of Muhamamd (peace be upon him) in Form-IV prescribed under the Electoral Rolls Rules, 1974. In case he refuses to sign the declaration as aforesaid, he shall be deemed to be a non-Muslim and his name shall be deleted from the joint electoral rolls and added to a supplementary list of voters in the same electoral area as non-Muslim. In case the voter does not turn up in spite of service of notice, an ex-parte order may be passed against him.</p>
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### SHORTCOMINGS IN LAW (PROTECTION AGAINST DISCRIMINATION ON BASIS OF RELIGION)

<p><b>Constitution of Pakistan, 1973</b></p>	<p>Article 260(3)(b)</p> <p>"non-Muslim" means a person who is not a Muslim and includes a person belonging to the Christian, Hindu, Sikh, Buddhist or Parsi community, a person of the Qadiani Group or the Lahori Group who call themselves 'Ahmadis' or by any other name or a Bahai, and a person belonging to any of the Scheduled Castes.</p>
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## SHORTCOMINGS IN PRACTICE (PROTECTION AGAINST DISCRIMINATION ON BASIS OF RELIGION)

<p><b>Form A: Voter Registration. 2012</b></p>	<p>Oath (only for Muslims)</p> <p>I do solemnly swear that I and all the members of my family listed above believe in the absolute and unqualified finality of the prophet hood of Muhammad (peace be upon him), the last of the Prophets, and that none of us is the follower of anyone who claims to be a Prophet in any sense of the word or of any description whatsoever after Muhammad (peace be upon him), <b>and that none of us recognizes such a claimant to be a prophet or a religious reformer nor does any one of us belong to the Qadiani Group or Lahori Group or calls himself or herself an Ahmadi.</b></p> <p>Translated from Urdu, available at: <a href="http://www.ecp.gov.pk/Misc/Section18/Form-A.pdf">http://www.ecp.gov.pk/Misc/Section18/Form-A.pdf</a></p>
<p><b>Media Reports</b></p>	<p>The Supreme Court has yet to make a decision regarding a petition against the order (as of March 2013) on grounds that the issue is sensitive and requires greater study: <a href="http://dawn.com/2013/03/12/separate-voters-list-for-ahmadis-court-summons-ag-over-discrimination-complaint/">http://dawn.com/2013/03/12/separate-voters-list-for-ahmadis-court-summons-ag-over-discrimination-complaint/</a></p>

## DOMESTIC LAW (PROTECTION AGAINST DISCRIMINATION ON BASIS OF GENDER)

<p><b>Dr. M. Aslam Khaki v. SSP Operations, RWP, 2011</b></p>	<p>Paragraph 3</p> <p>Federal and Provincial Governments are <b>equally responsible</b> to recognize their rights</p> <p>For the full text of the case see:</p> <p><a href="http://www.supremecourt.gov.pk/web/user_files/File/Const.P_43_of_2009.pdf">http://www.supremecourt.gov.pk/web/user_files/File/Const.P_43_of_2009.pdf</a></p>
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## SHORTCOMINGS IN PRACTICE (PROTECTION AGAINST DISCRIMINATION ON BASIS OF GENDER)

<p><b>Civil Society</b></p>	<p>The transgender community was granted the right to obtain CNICs recognizing their gender as not male or female, but as 'Khwaja Sara' (translated roughly as Transgendered) by the Supreme Court in 2009. <a href="http://www.lead.org.pk/hr/attachments/Compendium/01_Civil_Political_Rights/The_Third_Sex.pdf">http://www.lead.org.pk/hr/attachments/Compendium/01_Civil_Political_Rights/The_Third_Sex.pdf</a></p> <p>However there are disproportionately low number of transgender people registered to vote; i.e. six hundred and eighty seven (the number could have changed over the course of writing of this report).</p>
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<b>Media Reports</b>	After a Supreme Court verdict in 2009, NADRA facilitated the registration of transgendered persons. However, NADRA still requires them to fill in father's name on registration forms which limits their access to the process since many cannot trace paternal relations; thereby compromising their right to vote: <a href="http://tribune.com.pk/story/327396/special-report-despite-issues-transgenders-celebrate-voting-rights/">http://tribune.com.pk/story/327396/special-report-despite-issues-transgenders-celebrate-voting-rights/</a>
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DOMESTIC LAW (ENABLING CONVICTED PERSONS TO EXERCISE THEIR RIGHT TO VOTE)	
<b>Electoral Rolls Act, 1974</b>	<p>Section 7(5)</p> <p>A <b>person who is detained in prison</b> or held in other custody at any place in Pakistan shall be deemed to be resident in the electoral area in which he would have been resident if he had not been so detained or held in such custody</p>

# CANDIDATE REGISTRATION

Objective and reasonable conditions for candidacy

Protection from exclusion based on unreasonable and discriminatory requirements

Notes

# Objective and reasonable conditions for candidacy

## INTRODUCTION

Article 62 of the Constitution lays out vague and subjective criteria, such as requirements of ‘good character’ and ‘adequate knowledge of Islamic teachings’ for eligibility to become a member of the Parliament. Such requirements cannot be effectively verified and are open to arbitrary interpretation and application.

## INTERNATIONAL STANDARD

- ICCPR GC25 para. 4 “**Any conditions which apply to the exercise of the rights protected by article 25 should be based on objective and reasonable criteria...** The exercise of these rights by citizens may not be suspended or excluded except **on grounds which are established by law and which are objective and reasonable.**”
- ICCPR GC25 para. 15 “The effective implementation of the right and the opportunity to stand for elective office ensures that persons entitled to vote have a free choice of candidates. **Any restrictions on the right to stand for election, such as minimum age, must be justifiable on objective and reasonable criteria. Persons who are otherwise eligible to stand for election should not be excluded by unreasonable or discriminatory requirements** such as education, residence or descent, or by reason of political affiliation.”

## LEGISLATION

- Constitution of Pakistan 1973 Art. 62 “A person shall not be qualified to be elected or chosen as a member of Majlis-e-Shoora (Parliament) unless ....(d) he is of good character and is not commonly known as one who violates Islamic Injunctions; (e) he has adequate knowledge of Islamic teachings and practices obligatory duties prescribed by Islam as well as abstains from major sins; (f) he is sagacious, righteous and non-profligate, honest and ameen, there being no declaration to the contrary by a court of law; (g) he has not, after the establishment of Pakistan, worked against the integrity of the country or opposed the ideology of Pakistan.”<sup>31</sup>

## SHORTCOMINGS

LAW	PRACTICE
<ul style="list-style-type: none"> <li>• The constitution and primary legislation contain subjective and vague criteria that could result in arbitrary application resulting in undue and unreasonable restrictions on the right to stand.</li> </ul>	<ul style="list-style-type: none"> <li>• The criteria grants great discretion to Returning Officers (ECP representatives) in deciding candidate nominations; the subjective nature of the requirements leads to its uneven implementation and has made it prone to misuse and exploitation during the scrutiny period of nomination papers.<sup>32</sup> Additionally, since reasons for rejection of nominations on general seats are not publically accessible (on the ECP’s website), it is difficult to determine exactly how many nomination papers have been rejected under subjective components of this law.</li> </ul>

## RECOMMENDATIONS

20. All subjective and vague requirements be repealed from the Constitution and primary legislation and only objective and verifiable criteria stipulated for eligibility of candidates.

## Protection from exclusion based on unreasonable and discriminatory requirements

### INTRODUCTION

Article 63 of the Constitution includes requirements for financial integrity of candidates, disallowing utility expense payment and loan defaulters from being elected as members of Parliament. Furthermore, candidates may also be barred from contesting election if their spouse or dependents are defaulters. The dependency of the right to contest on association with another person; the lack of investigation and transparency by the ECP during the scrutiny process as well as the inconsistent application of law are problematic.

### INTERNATIONAL STANDARD

- ICCPR GC 25 para. 4 “Any conditions which apply to the exercise of the rights protected by article 25 should be based on objective and reasonable criteria... **The exercise of these rights by citizens may not be suspended or excluded except on grounds which are established by law and which are objective and reasonable.**”
- ICCPR GC 25 para. 15 “**Persons who are otherwise eligible to stand for election should not be excluded by unreasonable or discriminatory requirements** such as education, residence or descent, or by reason of political affiliation.. States parties should indicate and explain the legislative provisions which exclude any group or category of persons from elective office.”
- ICCPR GC 34 “To give effect to the right of access to information, States parties should **proactively** put in the public domain Government **information of public interest.**”

### LEGISLATION

- Constitution of Pakistan Art. 63 “A person shall be disqualified from being elected or chosen as, and from being, a member of the Majlis-e-Shoora (Parliament), if:- ...(n) he has obtained a loan for an amount of two million rupees or more, from any bank, financial institution, cooperative society or cooperative body in his own name or in the name of his spouse or any of his dependents, which remains unpaid for more than one year from the due date, or has got such loan written off; or (o) he or his spouse or any of his dependents has defaulted in payment of government dues and utility expenses, including telephone, electricity, gas and water charges in excess of ten thousand rupees, for over six months, at the time of filing his nomination papers.”<sup>33</sup>

### SHORTCOMINGS

#### LAW

- The law lacks sufficient and due process safeguards (necessary to prevent undue restrictions on the right to stand).
- The current law makes an individual's right to stand dependent on association with another person, i.e. spouse or dependents.
- The law fails to provide requisite transparency, as the ECP and the appellate tribunals are not legally bound to maintain and share record of the nomination period including the challenges and appeals process.

#### PRACTICE

- The application of financial disclosure requirements for candidates has become more stringent and public accessibility of candidates' disclosures has improved. However, upon receipt of information from relevant institutions regarding financial integrity of a candidate, no subsequent investigation is carried out by the ECP to verify the accuracy of this information. Additionally disqualification of defaulters is inconsistent.<sup>34</sup>
- Decisions of Returning Officers may be appealed in especially constituted Appellate Tribunals; however, problems persist in handling of these appeals.<sup>35</sup>

## Protection from exclusion based on unreasonable and discriminatory requirements

### RECOMMENDATIONS

21. Inclusion of procedural safeguards so as not to unduly limit the right to stand.
22. Candidacy requirements in the **constitution** be amended so that an individual's right to stand is not dependent on another person's financial conduct.
23. The ECP and the appellate tribunals be required to maintain and publically share records on nominations including records of the appeals process.

# Notes

31

DOMESTIC LAW (OBJECTIVE AND REASONABLE CONDITIONS FOR CANDIDACY)	
Representation of the People Act, 1976	Section 99(1)(d) “He is of good character and is not commonly known as one who violates Islamic Injunctions”
The Conduct of General Elections Order, 2002	Section 8D(1)(e) “[H]e is of good character and is not commonly known as one who violates Islamic Injunctions”

32

SHORTCOMINGS IN PRACTICE (OBJECTIVE AND REASONABLE CONDITIONS FOR CANDIDACY)	
Civil Society Reports	<p>“The determination by ROs of who met candidate eligibility requirements was inconsistently administered across the country, in part due their exercising broad latitude in asking personal questions to the candidates based on Articles 62 and 63. Certain high-profile candidates, including former President Pervez Musharraf and PML-N leader Chaudhry Nisar Ali Khan, were rejected in some constituencies but not in others.” NDI, Preliminary Statement, May 2013, <a href="http://www.ndi.org/files/NDI-ANFREL-Pakistan-Preliminary-Statement-FINAL-For-Printing.pdf">http://www.ndi.org/files/NDI-ANFREL-Pakistan-Preliminary-Statement-FINAL-For-Printing.pdf</a></p> <p>Regarding restrictions relating to candidate registration contained in article 63 of the constitution the EU EOM report notes that “[A]mbiguous criteria allow excessive discretion to Returning Officers [...], and are inherently open to abuse[.]” <a href="http://www.eeas.europa.eu/eueom/pdf/missions/eu_eom_pakistan_final_report.pdf">http://www.eeas.europa.eu/eueom/pdf/missions/eu_eom_pakistan_final_report.pdf</a></p>

**DOMESTIC LAW (PROTECTION FROM EXCLUSION BASED ON UNREASONABLE AND DISCRIMINATORY REQUIREMENTS)**

<b>Representation of People Act, 1976</b>	<p>Section 99(1A)(s)</p> <p>“has obtained a loan for an amount of two million rupees or more, from any bank, financial institution, cooperative society or cooperative body in his own name or in the name of his spouse or any of his dependents, which remains unpaid for more than one year from the due date, or has had such loan written off</p>
<b>Revised Nomination Form for General Elections 2013</b>	<p>Complete form available at:  <a href="http://www.ecp.gov.pk/Misc/NominationForms/NominationForm1.pdf">http://www.ecp.gov.pk/Misc/NominationForms/NominationForm1.pdf</a></p>

**SHORTCOMINGS IN PRACTICE (PROTECTION FROM EXCLUSION BASED ON UNREASONABLE AND DISCRIMINATORY REQUIREMENTS)**

<b>Civil Society Reports</b>	<p>“The inconsistently implemented candidate scrutiny process drew wide criticism from political parties, candidates, civil society, and media. Candidates and individual citizens filed 1,649 appeals to the decisions of ROs, of which 594 (36 percent) were accepted by Appellate Tribunals and overturned.” NDI, Preliminary Statement, May 2013, <a href="http://www.ndi.org/files/NDI-ANFREL-Pakistan-Preliminary-Statement-FINAL-For-Printing.pdf">http://www.ndi.org/files/NDI-ANFREL-Pakistan-Preliminary-Statement-FINAL-For-Printing.pdf</a>.</p>
<b>Media Reports</b>	<p>Media reports indicate selective application of the law: <a href="http://dawn.com/2013/04/09/ecp-releases-candidates-scrutiny-data/">http://dawn.com/2013/04/09/ecp-releases-candidates-scrutiny-data/</a>; <a href="http://dawn.com/2013/04/25/eight-defaulters-allowed-to-contest-election/">http://dawn.com/2013/04/25/eight-defaulters-allowed-to-contest-election/</a></p>

**SHORTCOMINGS IN PRACTICE (PROTECTION FROM EXCLUSION BASED ON UNREASONABLE AND DISCRIMINATORY REQUIREMENTS)**

<b>Civil Society Reports</b>	<p>“Many individuals have appealed the decisions of the RO and Tribunal-led scrutiny process to high courts, which in some cases disqualified accepted candidates and overturned the rejection of others” NDI, Preliminary Statement, May 2013, <a href="http://www.ndi.org/files/NDI-ANFREL-Pakistan-Preliminary-Statement-FINAL-For-Printing.pdf">http://www.ndi.org/files/NDI-ANFREL-Pakistan-Preliminary-Statement-FINAL-For-Printing.pdf</a></p>
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# VOTER EDUCATION

Voter education (including for women, minorities and people with disabilities)

Notes

## Voter education (including for women, minorities and people with disabilities)

### INTRODUCTION

No legislation binds the ECP to conduct organized voter education nor does it require the Commission to take special measures for voter education for women, minorities and persons with disabilities. The ECP commits to improved voter education under its Five Year Strategic Plan; however voter education efforts have mostly been the result of initiatives by the civil society.

### INTERNATIONAL STANDARD

- ICCPR GC25 para. 11 “Voter education and registration campaigns are necessary to ensure the effective exercise of Article 25 rights by an informed community”.
- CEDAW GR23 para. 45(c) requires states to “Ensure that barriers to equality are overcome, including those resulting from illiteracy, language, poverty and impediments to women’s freedom of movement”.
- CRPD Art. 29 “State Parties shall undertake to ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with other ... [e]nsuring that voting procedures, facilities and materials are appropriate, accessible and easy to understand and use”.

### LEGISLATION

- Code of Conduct for Political Parties and Candidates for General Elections 2013 Art. 43 “The Political Parties *should* carry out a comprehensive plan for voters’ education regarding marking the ballot paper, casting of vote and while doing so voters shall be informed that the secrecy of ballot shall be maintained”.

### SHORTCOMINGS

LAW	PRACTICE
<ul style="list-style-type: none"> <li>• There is no legal requirement for the ECP to conduct voter education and to take extra measures to support more marginalized communities.</li> </ul>	<ul style="list-style-type: none"> <li>• According to the ECP’s report on the progress of its Five Year Strategic Plan, plans are in place to achieve targets regarding voter education, including developing awareness materials targeted at women, marginalized groups including persons with disabilities. However, civil society has continued to urge ECP to enhance efforts to provide voter education for women and marginalized groups.</li> <li>• Most voter education activities have been initiatives of the civil society rather than the ECP.<sup>36</sup></li> </ul>

### RECOMMENDATIONS

24. The ECP be required to conduct voter education and mobilization programmes especially to promote participation by women, minorities and people with disabilities. This may include media campaigns, workshops, seminars and community mobilization in targeted areas.

# Notes

36

SHORTCOMINGS IN PRACTICE (VOTER EDUCATION, INCLUDING FOR WOMEN, MINORITIES AND PEOPLE WITH DISABILITIES)	
<p><b>Civil Society Reports</b></p>	<p>ECP urged to enhance efforts for marginalized voters: <a href="http://www.electionpakistan.org/assets/preelection/FAFEN_Pre-Election_Update_27_Marginalized_Communities.pdf">http://www.electionpakistan.org/assets/preelection/FAFEN_Pre-Election_Update_27_Marginalized_Communities.pdf</a></p> <p>EU Election Observation Mission, Preliminary Statement, May 2013</p> <p>“Voter education spots promulgating non-Muslim participation in the elections were not aired on state-owned broadcasters.”</p> <p><u>The EU’s election observation report of 2008 noted that the ECP’s voter education responsibilities were almost entirely organized by the civil society:</u></p> <p><a href="http://www.eeas.europa.eu/eueom/pdf/missions/eu_eom_pakistan_final_report.pdf">http://www.eeas.europa.eu/eueom/pdf/missions/eu_eom_pakistan_final_report.pdf</a></p>
<p><b>ECP Five Year Strategic Plan 2010-2014</b></p>	<p>Progress report on ECP’s Strategic Plan, <a href="http://www.ecp.gov.pk/Reports/SPProgd19_8thRep_May10-Dec12_2012-12-13.pdf">http://www.ecp.gov.pk/Reports/SPProgd19_8thRep_May10-Dec12_2012-12-13.pdf</a></p>

# CAMPAIGN

## Safeguarding free will of the electors

### Notes

# Safeguarding free will of the electors

## INTRODUCTION

Electoral laws define limits for the expenses that candidates may incur during campaigning for elections. Sections of the Code of Conduct for political parties issued by the ECP for the 2013 general elections hold only candidates and not political parties accountable for adhering to expenditure limits. Neither law nor practice contain a systematic procedure for effectively enforcing or monitoring these expenses and ensuring transparency in the process.

## INTERNATIONAL STANDARD

- ICCPR GC25 para. 19 “**Reasonable limitations on campaign expenditure may be justified where this is necessary** to ensure that the free choice of voters is not undermined or the democratic process distorted by the disproportionate expenditure on behalf of any candidate or party.”
- CAC Art. 7(3) “Each State Party shall also consider taking appropriate legislative and administrative measures... **to enhance transparency in the funding of candidatures for elected public office.**”

## LEGISLATION

- ROPA 1976 Sect. 49 “Restriction on election expenses.- (1) No person other than the candidate shall incur any election expenses of such candidate ... (2) The election expenses of a contesting candidate shall not exceed, in the case of an election to a seat in the National Assembly, one million and five hundred thousand rupees and, in the case of an election to a seat in a Provincial Assembly, one million rupees. (3) A candidate shall, through bills, receipts and other documents, vouch for every payment made in respect of election expenses, except where the amount is less than five hundred rupees.”<sup>37 38</sup>

## SHORTCOMINGS

LAW	PRACTICE
<ul style="list-style-type: none"> <li>• Existing legislation does not define a monitoring mechanism and specifies only token punishments for violators.</li> </ul>	<ul style="list-style-type: none"> <li>• Responsibility of enforcement of campaign expenditure restrictions under the Code of Conduct are delegated to Returning Officers and District Returning Officers, who are recruited not from ECP’s staff but from other state departments; there is lack of oversight by the ECP over the functions of these officials.<sup>39</sup></li> <li>• No procedures are in place for systematic scrutiny of elections expenses.<sup>40</sup></li> </ul>

## RECOMMENDATIONS

25. The financial limitation on election expenses of individual candidates be reviewed and amended to a more reasonable amount in order to deter violations.<sup>41</sup>
26. Transparency measures are required to be implemented.
27. A monitoring system is established with meaningful punishments specified.

DOMESTIC LAW (TRANSPARENCY OF ELECTION FINANCES)	
<p><b>Representation of the People Act, 1976</b></p>	<p>Section 42(3A)</p> <p>Every returned candidate shall, within ten days from the poll of an election, submit a return of election expenses in accordance with the provisions of section 50.</p> <p>Section 50</p> <p>(1) Every contesting candidate, other than the returned candidate, shall submit the return of his election expenses within thirty days of the publication of the name of the returned candidate.</p> <p>(2) The return of election expenses of the returned candidate referred to in sub-section (3A) of section 42 and of every contesting candidate referred to in sub-section (1) shall be submitted to the Returning Officer in the prescribed form containing—</p> <p>(a) a statement of all payments made by him together with all bills and receipts;</p> <p>(b) a statement of all disputed claims;</p> <p>(c) a statement of all unpaid claims, if any</p>
<p><b>Political Parties Order, 2002</b></p>	<p>Section 6(3)</p> <p>Any contribution made, directly or indirectly, by any foreign government, multi-national or domestically incorporated public or private company, firm, trade or professional association shall be prohibited and the parties may accept contributions and donations only from individuals.</p>

DOMESTIC LAW (TRANSPARENCY OF ELECTION FINANCES)	
<p><b>Code of Conduct for political parties and candidates for General Elections 2013</b></p>	<p>Section 21</p> <p>No transaction towards the election expenses shall be made through an account other than the account opened for the purpose.</p> <p>Section 22</p> <p>All transactions relating to the election expenses shall be entered into with GST registered firms / persons, wherever it is possible</p>

<b>ECP Proposed Bill, 2013</b>	ECP's draft Bill for election amendments includes proposal to amend the law so that the Returning Officer has full authority to take action against those who violate the expenditure limit: <a href="http://ecp.gov.pk/Misc/ROPA.pdf">http://ecp.gov.pk/Misc/ROPA.pdf</a> . The status of progress of the bill is unclear.
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39

**SHORTCOMINGS IN PRACTICE (TRANSPARENCY OF CAMPAIGN FINANCES)**

<b>Civil Society Reports</b>	<p><i>“ROs and DROs were positioned virtually outside of the ECP’s management, with the ECP leadership explicit that they are from the judiciary and that the ECP has no authority over them. The ECP devolved responsibility for resolution of alleged violations and breeches of the Code of Conduct for Political Parties and Candidates to ROs, with no oversight conducted.”</i></p> <p>EU EOM Preliminary Statement, May 2013, <a href="http://www.eueom.eu/files/dmfile/eom-pakistan-preliminary-statement-13052013-en.pdf">http://www.eueom.eu/files/dmfile/eom-pakistan-preliminary-statement-13052013-en.pdf</a></p>
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**SHORTCOMINGS IN PRACTICE (TRANSPARENCY OF CAMPAIGN FINANCES)**

<b>Civil Society Reports</b>	During by-elections in Multan in 2012, PILDAT observed that the ECP failed to monitor campaign expenses incurred by candidate’s supporters: <a href="http://www.pildat.org/CGEP/News/18072012.asp">http://www.pildat.org/CGEP/News/18072012.asp</a>
<b>ECP Reports</b>	<p>During the political finance workshop conducted by ECP in 2010, the Centre for Civic Education noted that estimated campaign costs during the general elections in 2008 were greater than the that those mentioned in the accounts submitted to the ECP. The report notes that the flow of money during elections is not transparent, further noting that <i>[a]dditional spending is usually camouflaged as expenditures by supporters that according to the relevant law are to be treated as expenditures made by the candidate concerned’.</i></p> <p>In the report, ECP states that ‘complexity of procedure’ for scrutiny of filed election expenses makes it a difficult exercise.</p> <p>For full report on the workshop see: <a href="http://www.ecp.gov.pk/Reports/ECPPoliticalFinanceWorkshopReportv12010-12-14en.pdf">http://www.ecp.gov.pk/Reports/ECPPoliticalFinanceWorkshopReportv12010-12-14en.pdf</a></p>

41

**RECOMMENDATIONS (TRANSPARENCY IN ELECTION FINANCES)**

<b>ECP Finance Workshop, 2010</b>	According to the recommendations made in the ECP Finance Workshop 2010, the financial limitation on election expenses for candidates of provincial assemblies be raised to Rs. 3-4 million and for candidates of National Assembly be increased to Rs. 5-6 million.
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# MEDIA

## Enhancing freedom of expression

### Notes

# Enhancing freedom of expression

## INTRODUCTION

The Constitution safeguards freedom of expression, however it also provides room for imposing limitations in this regard through “reasonable restrictions”. No supporting legislation exists for protection of freedom of speech and expression.

## INTERNATIONAL STANDARD

- ICCPR Art. 19(2) “Everyone shall have the **right to freedom of expression**; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.” (3)The exercise of the ...may...be subject to certain restrictions, but these shall only be such as are **provided by law and are necessary**.”
- ICCPR GC 34 para. 13 “A free, uncensored and unhindered press or other media is essential in any society to ensure freedom of opinion and expression and the enjoyment of other Covenant rights... This implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion. The public also has a corresponding right to receive media output.”
- ICCPR GC 34, paragraph 22 “Restrictions may be imposed: the restrictions must be ‘provided by law’; ... and they must confirm to the strict tests of **necessity and proportionality**”.

## LEGISLATION

- Constitution of Pakistan Art. 19 “Every citizen shall have the right to freedom of speech and expression, and there shall be freedom of the press, subject to any **reasonable restrictions** imposed by law.”<sup>42</sup>

## SHORTCOMINGS

LAW	PRACTICE
<ul style="list-style-type: none"> <li>• The law stipulates a requirement of “reasonable” restriction, rather than a “necessary” restriction.</li> </ul>	<ul style="list-style-type: none"> <li>• Undue interference and pressure by authorities and political influence have restricted freedom of media during election period in the past.<sup>43</sup></li> </ul>

## RECOMMENDATIONS

28. The Constitution to define conditions for restrictions in order to better ensure freedom of media.
29. There is a legal requirement for state media to have transparent policies and procedures relating to its news and public affairs coverage being impartial and providing for equitable coverage, so that candidates and parties may express their views and voters may make an informed choice.

42

DOMESTIC LAW (ENHANCING FREEDOM OF EXPRESSION)	
	<p>Elements of a long list of ordinances and regulations also affect the freedom of media in Pakistan. These include:</p> <p>Press and Publication Ordinance (PPO), the Printing Presses and Publications Ordinance 1988, the Freedom of Information Ordinance of 2002, the Pakistan Electronic Media Regulatory Authority (PEMRA) Ordinance of 2002, the Defamation Ordinance of 2002, the Contempt of Court Ordinance of 2003, the Press, Newspapers, News Agencies and Books Registration Ordinance 2003, the Press Council Ordinance 2002, the Intellectual Property Organisation of Pakistan Ordinance 2005, Television Broadcast Station Operations Regulations 2012, Radio Broadcast Station Operations Regulation 2012, PEMRA Rules 2009, PEMRA Content Regulations 2012, Distribution Service Operations Regulations 2011.</p>

43

SHORTCOMINGS IN PRACTICE (ENHANCING FREEDOM OF EXPRESSION)	
<b>Civil Society Reports</b>	<p>Recent curbs on the media prohibit coverage of election rallies, live call-ins, live talk shows, live coverage of protests, or any live broadcasts that could show the government in a negative light, severely restricting the right to free expression ahead of Pakistan’s election on February 18, 2008. <a href="http://www.hrw.org/news/2008/02/15/pakistan-media-restrictions-undermine-election">http://www.hrw.org/news/2008/02/15/pakistan-media-restrictions-undermine-election</a></p> <p>The Musharraf regime tried its best to gag the free media, especially private TV channels, through the Pakistan Electronic Media Regulatory Authority (PEMRA), which was empowered to impose bans on TV channels and impound their transmission equipment on the basis of complaints. Transmissions of all local and foreign news TV channels were, in fact, restricted for a brief period and the import of dish antennas was banned for some time, Asia Pacific Institute for Broadcasting Development, 2008, <a href="http://www.aibd.org.my/node/1095">http://www.aibd.org.my/node/1095</a></p> <p>Commenting on the freedom of media during the 2002 general elections, the EU observation mission noted that weeks before the elections, the government introduced various media laws which contained content that “raised concern about press freedoms.” <a href="http://www.eeas.europa.eu/eueom/pdf/missions/finalreport-pakistan-2002.pdf">http://www.eeas.europa.eu/eueom/pdf/missions/finalreport-pakistan-2002.pdf</a></p>
<b>Media</b>	<p>A Freedom of Information Bill was drafted in 2008, but it was referred to the relevant committee in 2011 and had not been passed into law up until the writing of this paper. <a href="http://tribune.com.pk/story/564277/proposed-law-more-to-hide-than-reveal/">http://tribune.com.pk/story/564277/proposed-law-more-to-hide-than-reveal/</a></p>

# VOTING AND RESULTS PROCESS

Opportunity to vote for every citizen

Ability to vote freely without coercion or intimidation etc.

Transparency of the results process

Notes

# Opportunity to vote for every citizen

## INTRODUCTION

The Constitution guarantees the opportunity for all eligible voters to cast votes. However legislation does not require the ECP to take special measures to register women, minorities and other marginalised groups on electoral rolls or to inform them of their allocation to polling stations. Observation reports of the civil society note that considerable problems are faced by women and PWDs on polling day due to conditions of or access to polling stations and undertraining of polling staff, among other reasons. There is also lack of timely availability of easily accessible information regarding allocation of voters to polling station.

## INTERNATIONAL STANDARD

- ICCPR Art. 25(b) “Every citizen **shall have the right and the opportunity ... [t]o vote** and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors”
- ICCPR GC 25 para. 10 “The right to vote at elections and referenda must be established by law and **may be subject only to reasonable restrictions**”
- ICCPR GC 25 para. 11 “**States must take effective measures to ensure that all persons entitled to vote are able to exercise that right.**”
- ICCPR GC 25 para. 12 “**Positive measures should be taken to overcome specific difficulties**, such as illiteracy, language barriers, poverty, or impediments to freedom of movement which prevent persons entitled to vote from exercising their rights effectively. Information and materials about voting should be available in minority languages. Specific methods, such as photographs and symbols, should be adopted to ensure that illiterate voters have adequate information on which to base their choice.”

## LEGISLATION

- The Constitution of Pakistan 1973 Art. 51 (2) and 106 (2), “A person shall be entitled to vote if (a) he is a citizen of Pakistan, (b) he is not less than eighteen years of age, (c) his name appears on the electoral roll and, (d) he is not declared by a competent court to be of unsound mind”<sup>44</sup>
- ROPA 1976 Sect. 8 “[A]t least fifteen days before the polling day, publish in the official Gazette the final list of polling stations”
- Supreme Court Pakistan, 2012, Workers’ Party Pakistan v. Federation of Pakistan para. 50 “[T]he voters may be transported by vehicles, **owned, rented or affiliated with the Election Commission**. The routes of such vehicles should be widely advertised in the print and electronic media for information of the general public”.<sup>45</sup>

# Opportunity to vote for every citizen

## SHORTCOMINGS

LAW	PRACTICE
<ul style="list-style-type: none"><li>• There is no legal requirement to inform voters of the polling station to which they have been assigned or the location of that polling station.</li><li>• There is no legal requirement for the ECP to take positive steps to provide for voting by disadvantaged voters (i.e. women, persons with disabilities, persons with financial barriers etc.).</li></ul>	<ul style="list-style-type: none"><li>• Inadequate polling arrangements and means for provision of information relating to voter registration and location of polling stations to voters and inadequate training of polling staff during electoral exercises have historically compromised opportunity to vote for women, persons with disabilities and internally displaced persons.<sup>46</sup></li></ul>

## RECOMMENDATIONS

30. Legislation requires that information regarding updated electoral rolls, assignment to polling stations, location of polling stations, etc. be made widely publicly available within an acceptable period of time in order to facilitate voting.
31. The ECP be required to take additional measures to provide for voting by otherwise disadvantaged and marginalized populations.
32. No requirement be made regarding ECP transportation of voters as this may not lead to increased opportunity while maintaining the integrity of the process; rather the ECP be required to place polling stations in accessible locations for voters.

# Ability to vote freely without coercion or intimidation etc.

## INTRODUCTION

While legal provisions that establish the use of intimidation as “corrupt practice”, punishable with imprisonment or fines, are in place, there is no effective enforcement of these provisions. Investigation and action are seldom undertaken against such election offences. Along with the problem of enforcement of these provisions, penalties stated in the law are disproportionate.

## INTERNATIONAL STANDARD

- ICCPR Art. 25(b) “Every citizen shall have the right and the opportunity ... [t]o vote and to be elected at **genuine** periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors”
- ICCPR GC 25 para. 19 “Persons entitled to vote must be ... free to support or to oppose government, **without undue influence or coercion of any kind which may distort or inhibit the free expression of the elector’s will**”
- ICCPR GC 25 para. 20 “This implies that **voters should be protected from any form of coercion or compulsion to disclose how they intend to vote or how they voted, and from any unlawful or arbitrary interference with the voting process.**”

## LEGISLATION

- ROPA 1976 Sect. 32(1) “The Presiding Officer shall keep order at the polling station and may remove or cause to be removed any person who misconducts himself”
- ROPA 1976 Sect. 78(4) “A person is guilty of corrupt practice if he calls upon or persuades any person to vote, or to refrain from voting, for any candidate on the ground that he belongs to a particular religion, province, community, race, caste, bradari, sect or tribe”<sup>47</sup>
- ROPA 1976 Sect. 82 For committing corrupt practices, a person “shall be punishable with imprisonment for a term which may extend to **three years**, or with fine which may extend to **five thousand rupees**, or with both”<sup>48</sup>

## SHORTCOMINGS

LAW	PRACTICE
<ul style="list-style-type: none"> <li>• The penalties associated election violations are not always proportionate and a mechanism of response to violations is not elaborated.</li> </ul>	<ul style="list-style-type: none"> <li>• Observers and media report instances of candidates and political parties acting as source of intimidation and hindrance to voters’ ability to vote freely.<sup>49</sup></li> <li>• ECP and its officials are viewed as inconsistent in investigating incidents of election offences and taking action against election offenders.<sup>50</sup></li> </ul>

## RECOMMENDATIONS

33. Election offences be reviewed to have more specific and proportionate penalties and more effective mechanisms for their enforcement.

# Transparency of the results process

## INTRODUCTION

Current legislation provides for public access to and display of election results, however, the law does not effectively address transparency through requirements for timely display of results at each polling station and on ECP's website after compilation. Historically, swift public access to results has been problematic as polling station wise results become available after significant delay. For the 2013 general elections, the ECP reformed its Results Management System to improve and digitize tabulation of results, including gender disaggregated data on voters at each polling station. However the new system could not be effectively enforced and at the time of writing of this report, detailed breakdown of polling station results had not been available on the ECP website more than two months after elections were held.

## INTERNATIONAL STANDARD

- ICCPR GC 34 para. 19 "To give effect to the right of access to information **States parties should proactively put in the public domain Government information of public interest. States parties should make every effort to ensure easy, prompt, effective and practical access to such information.** States parties should also enact the necessary procedures, whereby one may gain access to information, such as by means of freedom of information legislation."

## LEGISLATION

- Constitution of Pakistan Art. 19A "**Every citizen shall have the right to have access to information**"
- ROPA 1976 Sects. 38, 42 detail the procedures to be followed at the close of the poll and for declaration of results.<sup>51</sup>
- ROPA 1976 Sect. 45 "The documents retained by the Commission ... **shall be open to public inspection** at such time and subject to such conditions as may be prescribed"<sup>52</sup>

## SHORTCOMINGS

LAW	PRACTICE
<ul style="list-style-type: none"> <li>• There is no specific legal requirement for polling station results to be displayed at polling stations.</li> <li>• There is no specific time period indicated within the legislation for return or public display of election results or for displaying results with a breakdown by polling station.</li> </ul>	<ul style="list-style-type: none"> <li>• Display of detailed polling station results on ECP website has often been delayed and observers have problems accessing certain stages of the results process.<sup>53</sup></li> </ul>

## RECOMMENDATIONS

34. Establish requirement for polling station results to be posted swiftly at the polling station and on the ECP website, well within the period for submitting petitions (to allow time for analysis by parties and candidates).

# Notes

44

DOMESTIC LAW (OPPORTUNITY TO VOTE FOR EVERY CITIZEN)	
<b>Electoral Rolls Act, 1974</b>	<p>Section 6 (2)A person shall be entitled to be enrolled as a voter in an electoral area if he</p> <p>(a) is a citizen of Pakistan;</p> <p>(b) is not less than eighteen years of age and possesses National Identity Card issued by National Database and Registration Authority constituted under the National Database and Registration Authority Ordinance 2000, (VIII of 2000), or comes in possession of such National Identity Card on the last date fixed for inviting claims, objections and applications for corrections, if any, for the purpose of preparing or revising the electoral rolls:</p> <p style="padding-left: 40px;">Provided that National Identity Card issued by National Database and Registration Authority shall be deemed valid for the purpose of registration as voter or casting vote at a poll, notwithstanding the expiry of its validity period;</p> <p>(c) is not declared by a competent court to be of unsound mind; and</p> <p>(d) is, or is deemed under section 7 to be, resident in the electoral area</p>

45

DOMESTIC LAW (OPPORTUNITY TO VOTE FOR EVERY CITIZEN)	
<b>Workers' Party Pakistan v. Federation of Pakistan, 2012</b>	<p>The Supreme Court ruling also states: "As regards the handing over of <i>Perchis</i> to the voters at election camps, the Election Commission must take steps to provide the requisite information to the voters by other means"</p> <p>For the full text of the case, please refer to:  <a href="http://www.supremecourt.gov.pk/web/user_files/File/Const.P.87of2011.pdf">http://www.supremecourt.gov.pk/web/user_files/File/Const.P.87of2011.pdf</a></p>
<b>ECP Code of Conduct for political parties and candidates, General Elections 2013</b>	<p>"[t]he Election Commission will provide the SMS facility to the voters through which each voter can get the information regarding his serial number at the voters' list and name and location of the polling station."</p> <p><a href="http://ecp.gov.pk/ViewPressReleaseNotificDetail.aspx?ID=1841&amp;TypeID=1">http://ecp.gov.pk/ViewPressReleaseNotificDetail.aspx?ID=1841&amp;TypeID=1</a></p>

## SHORTCOMINGS IN PRACTICE (OPPORTUNITY TO VOTE FOR EVERY CITIZEN)

## Civil Society Reports

According to Final Electoral Rolls 2012, there are about 11 million fewer women registered as voters than men despite population estimates showing number of men and women as almost the same: <http://ecp.gov.pk/ER/VoterStatFER2012.aspx> ; <http://asiafoundation.org/in-asia/2012/04/04/why-are-10-million-women-missing-from-pakistans-electoral-rolls/>

According to an IFES report, many barriers to electoral participations of PWDs exist and '[a]necdotal evidence shows us that very few persons with disabilities are registered to vote, and cast their ballot on Election Day.'

Following the Supreme Court judgment making solely the ECP responsible for dispatching information to voters regarding location of their polling stations, the ECP introduced an SMS service for voters to obtain this information during the general elections in 2103. Despite the acclaimed wide outreach of this service, preliminary observation statements from Aurat Foundation and Gender Concerns International noted that uneducated women and women from rural areas remained dependent on political parties to get information regarding where to vote. [http://www.genderconcerns.org/article.php?id\\_nr=3893&id=Press%20Release:%20Pakistan%20Elections%202013](http://www.genderconcerns.org/article.php?id_nr=3893&id=Press%20Release:%20Pakistan%20Elections%202013)

Stakeholders expressed concerns regarding “voter disenfranchisement of internally displaced persons (IDPs) from the conflict-affected areas of Balochistan, FATA, and Khyber Pakhtunkhwa. While election administrators took measures to enable IDPs to vote, including setting up polling stations in IDP camps and other locations where IDPs live and in food distribution facilities, these measures were not expected to reach all IDPs. Notably, many who consider themselves IDPs are not registered as such by Pakistani authorities, and without official IDP registration, they could not vote at the polling stations set up for IDPs.” NDI, election observation mission preliminary statement, May 2013, , <http://www.ndi.org/files/NDI-ANFREL-Pakistan-Preliminary-Statement-FINAL-For-Printing.pdf>

Identifying reasons for exclusion of women from the door-to-door voter verification exercise conducted by the ECP in 2012, “the lack of women working as ECP verification officers could have had a particularly prohibitive effect in certain areas given prevailing social codes regarding women’s contact with men. Out of 140 registration officers and 2,292 assistant registration officers working on voter registration across the country, the number of women officers was reportedly less than one percent.” Aurat Foundation and DRI briefing paper on women’s political participation in the 2013 election, [http://www.democracy-reporting.org/files/dri-pk\\_bp37\\_cedaw.pdf](http://www.democracy-reporting.org/files/dri-pk_bp37_cedaw.pdf)

During general elections in 2008 and 2013, EU observers found that female booths had inferior conditions to male booths, including the presence of male polling staff at female polling stations/booths.

**DOMESTIC LAW (OPPORTUNITY TO VOTE FOR EVERY CITIZEN)**
**Representation  
of the People Act,  
1976**
**Section 78(4)-(6)**

A person is guilty of corrupt practice if he—

(4) calls upon or persuades any person to vote, or to refrain from voting, for any candidate on the ground that he belongs to a particular religion, province, community, race, caste, bradari, sect or tribe;

(5) knowingly, in order to support or oppose a candidate, lends, employs, hires, borrows or uses any vehicle or vessel for the purposes of conveying to or from the polling station any elector except himself and members of his immediate family; or

(6) causes or attempts to cause any person present and waiting to vote at the polling station to depart without voting.

**Section 82**

Any person guilty of corrupt practice shall be punishable with imprisonment for a term, which may extend to three years, or with fine, which may extend to five thousand rupees, or with both

### DOMESTIC LAW (ABILITY TO VOTE FREELY WITHOUT COERCION OR INTIMIDATION ETC.)

#### Representation of People Act, 1976

Sect. 78. Corrupt practice.—A person is guilty of corrupt practice if he—

(6) causes or attempts to cause any person present and waiting to vote at the polling station to depart without voting.

#### Section 85

For illegally canvassing in or near a polling station, “A person is guilty of an offence punishable with fine which may extend to **one thousand rupees** if he [canvasses] within a radius of four hundred yards of the polling station, on the polling day

#### Section 86

For disorderly conduct near a polling station, “A person is guilty of an offence punishable with imprisonment for a term which may extend to **three months**, or with fine which may extend to **one thousand rupees**, or with both”

#### Section 88

For interfering with the secrecy of voting, “A person is guilty of an offence punishable with imprisonment for a term which may extend to **six months** or with fine which may extend to **five hundred rupees**, or with both”

#### Section 90

If Election officials and those working in connection with the election are found to be influencing voters, they will be found “guilty of an offence punishable with imprisonment for a term which may extend to **six months**, or with fine which may extend to **one thousand rupees**, or with both

### SHORTCOMINGS IN PRACTICE (ABILITY TO VOTE FREELY WITHOUT COERCION OR INTIMIDATION ETC.)

#### Civil Society Reports

“Candidates were observed in many constituencies intimidating voters primarily voters who are dependent for their livelihoods on landowners, employers, or others – in order to gain support”, FAFEN, Election Day Process Analysis 2008.

#### Media Reports

“Instances were reported where some of these unauthorized persons were attempting to persuade voters to favour a certain political party or candidate at five polling stations.” <http://www.thenews.com.pk/Todays-News-2-121931-Fafen-report-on-NA-151-by-election>

### SHORTCOMINGS IN PRACTICE (ABILITY TO VOTE FREELY WITHOUT COERCION OR INTIMIDATION ETC.)

#### Civil Society Reports

In 2008, the EU elections observation noted that prosecutions for election offences are extremely rare. The report states that the powers of magistrate granted to public officials on election day have rarely used these powers in the past elections. [http://www.eeas.europa.eu/eueom/pdf/missions/eu\\_eom\\_pakistan\\_final\\_report.pdf](http://www.eeas.europa.eu/eueom/pdf/missions/eu_eom_pakistan_final_report.pdf)

### DOMESTIC LAW (TRANSPARENCY OF THE RESULTS PROCESS)

#### Representation of the People Act, 1976

#### Section 38

(1) The Presiding Officer shall count the votes immediately after the close of the poll in the presence of such of the contesting candidates, election agents and polling agents as may be present.

(2) The Presiding Officer shall give such of the contesting candidates, election agents and polling agents as may be present reasonable facility of observing the count and give them such information with respect thereto as can be given consistent with the orderly conduct of the count and the discharge of his duties in connection therewith.

(3) No person other than the Presiding Officer, the Polling Officer, any other person on duty in connection with the poll, the contesting candidates, their election agents and polling agents shall be present at the count.

(4) The Presiding Officer shall—

(a) open the used ballot box or ballot boxes and count the entire lot of ballot papers taken out therefrom;

(b) open the packet bearing the label “Challenged Ballot Papers” and count them;

(c) count, in such manner as may be prescribed, the-votes cast in favour of each contesting candidate excluding from the count the ballot papers which bear—

(i) no official mark and [signature] of the Presiding Officer ;

(ii) any writing or any mark other than the official mark, the signature of the Presiding Officer and the prescribed mark or to which a piece of paper or any other object of any kind has been attached

(iii) no prescribed mark to indicate the contesting candidate for whom the elector has voted; or

(iv) any mark from which it is not clear for whom the elector has voted:

Provided that a ballot paper shall be deemed to have been marked in favour of a candidate if the whole or more than half of the area of the prescribed mark appears clearly within the space containing the name and symbol of that candidate and, where the prescribed mark is divided equally between two such spaces, the ballot paper shall be deemed invalid.

(5) The Presiding Officer may recount the votes—

(a) of his own motion if he considers it necessary; or

(b) upon the request of a contesting candidate or an election agent present if, in his opinion, the request is not unreasonable.

(6) The valid ballot papers cast in favour of each contesting candidate shall be put in separate packets and each such packet shall be sealed and shall contain a certificate as to the number, both in letters and figures, of the ballot papers put in it and

shall also indicate the nature of the contents thereof, specifying the name and symbol of the contesting candidate to whom the packet relates

(7) The ballot papers excluded from the count shall be put in a separate packet indicating thereon the total number both in letters and figures of the ballot papers, contained therein.

(8) The packets mentioned in sub-sections (6) and (7) shall be put in a principal packet which shall be sealed by the Presiding Officer.

(9) The Presiding Officer shall, immediately after the count, prepare a statement of the count in such form as may be prescribed showing therein the number of valid votes polled by each contesting candidate and the ballot papers excluded from the count.

(10) The Presiding Officer shall also prepare in the prescribed form a ballot paper account showing separately—

- (a) the number of ballot papers entrusted to him;
- (b) the number of un-issued ballot papers;
- (c) the number of ballot papers taken out of the ballot box or boxes and counted;
- (d) the number of tendered ballot papers;
- (e) the number of challenged ballot papers; and
- (f) the number of spoilt ballot papers.

(11) The Presiding Officer shall give a certified copy of the statement of the count and the ballot paper account to such of the candidates, their election agents or polling agents as may be present and obtain a receipt for such copy.]

(12) The Presiding Officer shall seal in separate packets—

- (a) the un-issued ballot papers;
- (b) the spoilt ballot papers;
- (c) the tendered ballot papers;
- (d) the challenged ballot papers;
- (e) the marked copies of the electoral rolls;
- (f) the counterfoils of used ballot papers;
- (g) the tendered votes list;
- (h) the challenged votes list; and
- (i) such other papers as the Returning Officer may direct.

(13) The Presiding Officer shall obtain on each statement and packet prepared under this section the signature of such of the contesting candidates or their election agents or polling agents as may be present and, if any such person refuses to sign, the Presiding Officer shall record that fact.

(14) A person required to sign a packet or statement under sub-section (13) may, if he so desires, also affix his seal to it.

(15) After the close of the proceedings under the foregoing subsections, the Presiding Officer shall, in compliance with such instructions as may be given by the Commission in this behalf cause the packets, the statement of the count and the ballot paper account prepared by him to be sent to the Returning Officer together with such other records as the Commission may direct.

#### Section 42

(1) The Returning Officer shall, after obtaining the result of the count under section 39 or of the drawal of the lots under section 41, intimate the results of the count to the Commission which shall declare by public notice the contesting candidate who has or is deemed to have received the highest number of votes to be elected.

(2) The public notice shall contain the name of, and the total number of votes received by, each contesting candidate as a result of consolidation under section 39 or as a result of drawal of lots under section 41.

(3) The Returning Officer shall, immediately after the count, submit to the Commission a copy of the consolidated statement in the prescribed form.

(3A) Every returned candidate shall, within ten days from the poll of an election, submit a return of election expenses in accordance with the provisions of section 50].

(4) The Commission shall publish in the official Gazette the name of the returned candidate.

Provided that the result of a returned candidate shall not be published who fails to submit the return of expenses specified in subsection (3A).

## DOMESTIC LAW (TRANSPARENCY OF THE RESULTS PROCESS)

**Representation  
of the People Act,  
1976**

## Section 44

(1) The Returning Officer shall forward to the Commission—

- (a) the packets containing the ballot papers each of which shall be sealed with the seal of the Presiding Officer, or, if opened by the Returning Officer, with the seal of the Returning Officer;
- (b) the packets containing the counterfoils of issued ballot papers;
- (c) the packets containing the marked copies of the electoral rolls;
- (d) the packets containing the ballot paper account;
- (e) the packets containing the tendered ballot papers, the challenged ballot papers, the tendered votes list and the challenged votes list; and
- (f) such other papers as the Commission may direct.

(2) The Returning Officer shall endorse in each packet forwarded under sub-section (1) the description of its contents, the date of the election to which the contents relate and the name and number of the constituency for which the election was held.

(3) The Commission shall retain the documents contained in the packets received under sub-section (1) for a period of one year from the date of their receipt and thereafter shall, unless otherwise directed by a Tribunal, cause them to be destroyed.

## Section 45

The documents retained by the Commission under section 44, except the ballot papers, shall be open to public inspection at such time and subject to such conditions as may be prescribed, and the Commission shall, upon an application made in this behalf and on payment of such fee and subject to such conditions as may be prescribed, furnish copies of, or extracts from, those documents.

### SHORTCOMINGS IN PRACTICE (TRANSPARENCY OF THE RESULTS PROCESS)

#### Civil Society Reports

Polling station results of the 2008 general elections were made available on ECP's website long after elections were held and the deadline for submission of petitions.

FAFEN's by-election observation reports reveal instances of observers being withheld from observing the consolidation of results process, [http://www.fafen.org/site/v5/detail-restrictions\\_on\\_observation,\\_police\\_interference\\_and\\_violence\\_mark\\_low\\_turnout\\_by-elections!518](http://www.fafen.org/site/v5/detail-restrictions_on_observation,_police_interference_and_violence_mark_low_turnout_by-elections!518)

During the 2008 general elections, six EU observer teams were denied access to aggregation of polling results and at nearly two thirds of one hundred and fifty five the polling stations visited by the EU observers, results were not publicly displayed. [http://www.eeas.europa.eu/eueom/pdf/missions/eu\\_eom\\_pakistan\\_final\\_report.pdf](http://www.eeas.europa.eu/eueom/pdf/missions/eu_eom_pakistan_final_report.pdf)

"Counting was more negatively assessed, with 9 out of 59 stations rated as poor or inadequate. In 16 cases party agents did not receive a copy of the results form. In half of the stations, the results form was not displayed for public scrutiny. [I]n 10 cases observers and agents were not able to follow the entire process unhindered." NDI, election observation mission preliminary statement, May 2013, <http://www.ndi.org/files/NDI-ANFREL-Pakistan-Preliminary-Statement-FINAL-For-Printing.pdf>

# ELECTION DISPUTE RESOLUTION

Independent and impartial  
elections tribunals

Access to effective remedy

Access to effective judicial procedure

Access to effective remedy for all  
whose rights or freedoms are violated

Notes

# Independent and impartial elections tribunals

## INTRODUCTION

Election Tribunals are appointed by the ECP for adjudication of challenges to elections results.<sup>V</sup> Since ECP is the executive authority on elections, its appointments of the tribunals undermines their independence by involvement of the executive in judicial function.

## INTERNATIONAL STANDARD

- ICCPR. GC 25 para. 20 “[T]here should be...access to judicial review or other equivalent process so that electors have confidence in the security of the ballot and the counting of the votes.”
- ICCPR GC 32 para. 18 “The notion of a ‘tribunal,’ regardless of its denomination that is established by law, is independent of the executive and legislative branches of government.”
- ICCPR GC 32 para. 19 “The requirement of competence, independence and impartiality of a tribunal is an absolute right that is not subject to any exception.”
- ICCPR GC 31 para. 15 “[A]dministrative mechanisms are particularly required to give effect to the general obligation to investigate allegations of violations promptly, thoroughly and effectively through and independent and impartial bodies.”

## LEGISLATION

- Constitution of Pakistan 1973 Art. 219: “The [Commission] shall be charged with the duty of, (c) “appointing Election Tribunals.”<sup>54</sup>

## SHORTCOMINGS

LAW	PRACTICE
<ul style="list-style-type: none"> <li>• By granting the powers of appointing tribunals to the ECP, the existing law co-mingles executive and judicial functions that fail to ensure independence and accountability of election tribunals.</li> <li>• Requirement for presidential approval of tribunal commissioners undermines the independence of the tribunals (especially when the president is from a political party).</li> </ul>	<ul style="list-style-type: none"> <li>• The ECP appoints the tribunals and also is responsible for administering them; thereby compromising the provision of an independent review process.</li> </ul>

## RECOMMENDATIONS

35. The **constitution** and primary legislation provide for an independent and consultative mechanism for tribunal appointments and security of tenure, removing ECP and presidential discretion, in order to promote stakeholder confidence.

V In 2009, electoral laws were amended to enable challenging of decisions made by these tribunals to Supreme Court.

# Access to effective remedy

## INTRODUCTION

The law does not require the ECP to establish a formal mechanism for filing and handling of complaints to the ECP regarding the electoral process. Despite having the powers to create such a mechanism, the ECP relies on ad hoc measures for receiving and addressing complaints during the election period. Civil society has repeatedly noted a lack of tracking mechanism for and systematic response to the complaints regarding to polling staff and public officials, location of polling stations, violations of Code of Conduct by candidates etc.

## INTERNATIONAL STANDARD

- ICCPR Art 2(3)(a) “To ensure that any person whose rights or freedoms as herein recognized are violated shall have an **effective remedy**, notwithstanding that the violation has been committed by persons acting in an official capacity.”
- ICCPR. GC 25 para. 20 “**there should be ... access to judicial review or other equivalent process** that electors have confidence in the security of the ballot and the counting of the votes.”
- ICCPR GC 31 para. 15 “[A]dministrative mechanisms are particularly required to give effect to the general obligation to investigate allegations of violations **promptly, thoroughly and effectively** through and independent and impartial bodies”

## LEGISLATION

No relevant legislation is in place.

## SHORTCOMINGS

LAW	PRACTICE
<ul style="list-style-type: none"> <li>• No legislation is in place to impose the creation of a formal administrative mechanism for lodging complaints with the ECP.</li> </ul>	<ul style="list-style-type: none"> <li>• Lack of formal procedure for complaints causes confusion among stakeholders and undermines their opportunity to seek effective legal remedy.</li> <li>• There is lack of information and transparency regarding complaints to the ECP, making it difficult to monitor and assess the process. <sup>55</sup></li> </ul>

## RECOMMENDATIONS

36. Require the ECP to have a transparent system for efficiently and consistently managing and addressing administrative complaints.
37. Require the ECP to make the procedure for filing a complaint fully accessible and easy to understand for all potential complainants.

# Access to effective judicial procedure

## INTRODUCTION

In 2009, legislation was amended by altering the timelines for disposal of election petitions by Election Tribunals and decisions by Supreme Court on appeals to decisions of election tribunals. Additionally, some safeguards against adjournment were introduced. However, lengthy judicial procedures for and absence of sufficient information regarding the filing of petitions have traditionally hindered the process of providing effective remedy.

## INTERNATIONAL STANDARD

- ICCPR Art 2(3)(a) “To ensure that any person whose rights or freedoms as herein recognized are violated shall have an **effective remedy**, notwithstanding that the violation has been committed by persons acting in an official capacity.”
- ICCPR. GC25 para. 20 “**there should be ... access to judicial review or other equivalent process** that electors have confidence in the security of the ballot and the counting of the votes.”

## LEGISLATION

- ROPA 1976 Sec. 67 (1A) “The Election Tribunal shall proceed with the trial of the election petition... and the decision thereof **shall be taken within four months from its receipt**”
- ROPA 1976 Sec. 67 (3) “Any person aggrieved by a decision of the Tribunal may, within thirty days of the announcement of the decision, appeal to the Supreme Court which should be decided **within thirty days** and the decision of the Supreme Court on such appeal shall be final.”

## SHORTCOMINGS

LAW	PRACTICE
<ul style="list-style-type: none"> <li>• No judicial procedures for election tribunals</li> <li>• The current timelines for decisions on appeals of election petitions by the Supreme Court do not ensure timely disposal of such petitions.</li> </ul>	<ul style="list-style-type: none"> <li>• A lengthy administrative filing channel of post-election petitions, traditional civil procedural code constraints and the culture of litigation practice cause severe delays in disposal of petitions regarding election results within the prescribed time limit of four months.</li> <li>• No regulations or rules are in place to define the official file channel of election petitions.<sup>56</sup></li> </ul>

## RECOMMENDATIONS

38. The law give greater specification over the mechanism for decision of post-election related cases, to provide sufficient means for speedier electoral justice.

# Access to effective remedy for all whose rights or freedoms are violated

## INTRODUCTION

Under current legislation, only candidates are allowed to file petitions to Election Tribunals to challenge elections results.

## INTERNATIONAL STANDARD

- ICCPR Art. 2(3)(a) “To ensure that **any person** whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity.”

## LEGISLATION

- ROPA 1976 Sec. 52 (1): “No election shall be called in question except by an election petition made by a candidate for that election.”

## SHORTCOMINGS

LAW	PRACTICE
<ul style="list-style-type: none"> <li>• Only candidates are permitted to file election petitions under existing legislation.</li> </ul>	<ul style="list-style-type: none"> <li>• Voters and other electoral stakeholders do not have access to effective remedy in relation election results.</li> </ul>

## RECOMMENDATIONS

39. Expansion of the category of those permitted to file election petitions to include political parties, civil society organizations and voters.

# Notes

54

DOMESTIC LAW (INDEPENDENT AND IMPARTIAL ELECTIONS TRIBUNALS)	
<p><b>Representation of the People Act, 1976</b></p>	<p>Section 57:</p> <p>“(1) For the trial of election petitions under this Act, the Commission shall appoint as many Election Tribunals as may be necessary.</p> <p>(2) An Election Tribunal shall consist of a person who has been, or is, or, at the time of his retirement as a District and Sessions Judge, was qualified to be, a Judge of a High Court.”</p>

55

SHORTCOMINGS IN PRACTICE (ACCESS TO EFFECTIVE REMEDY)	
<p><b>Civil Society Reports</b></p>	<p>“Plaintiffs lodged complaints simultaneously at various administrative and judicial levels. No deadlines or procedures for their resolution were put in place. This lack of clearly defined competences and procedures created confusion among stakeholders and undermined opportunity for effective legal redress.” EU Election Observation Mission, Preliminary Statement, May 2013 , <a href="http://www.eueom.eu/files/pressreleases/english/eom-pakistan-preliminary-statement-13052013-en.pdf">http://www.eueom.eu/files/pressreleases/english/eom-pakistan-preliminary-statement-13052013-en.pdf</a></p> <p>“However, the ECP does not have clear procedures in place for filing complaints, investigating and addressing complaints and ensuring the Code is enforced equitably, or sharing information about complaints with stakeholders. Because there is no transparent procedure in place to address these complaints, citizens and stakeholders cannot assess the process or understand how and when complaints are resolved. “ FAFEN, preliminary report on general elections, May 2013.</p>

### SHORTCOMINGS IN PRACTICE (ACCESS TO EFFECTIVE JUDICIAL REVIEW)

<p><b>Civil Society Reports</b></p>	<p>Regarding petitions challenging election results:</p> <p>“[T]he administrative and court processing protocols currently in place as petitions wend their way through the file channel, serve as a substantial impediment to effective and timely redress for Petitioners.”</p> <p>“[L]egal practitioners report to IFES that they estimate conducting a civil trial from filing to final order at minimum (best case scenario) takes between six to eight months. However, most practitioners told IFES that in reality three years is the general rule.”</p> <p>“It is worth noting that ECP has promulgated no regulations and no rules exist providing for this file channel process”</p> <p>IFES, Election Tribunal Monitoring Project, Final Report, Jan. 2009, <a href="http://www.ifespakistan.org/docs/IFES-PK-DRL%20ETMP%20Final%20Project%20Report%20v4%202009-01-23%20en.pdf">http://www.ifespakistan.org/docs/IFES-PK-DRL%20ETMP%20Final%20Project%20Report%20v4%202009-01-23%20en.pdf</a></p>
<p><b>Media Reports</b></p>	<p>27 out of 107 petitions filed against parliamentarians after the 2008 elections were still pending as of November 2011. <a href="http://www.pakistantoday.com.pk/2011/11/11/news/national/election-tribunals-yet-to-give-verdict-on-29-petitions-against-mnas-senators/">http://www.pakistantoday.com.pk/2011/11/11/news/national/election-tribunals-yet-to-give-verdict-on-29-petitions-against-mnas-senators/</a></p> <p>Cumbersome procedures for recording and forwarding complaints contribute to causes for delayed disposal of petitions. <a href="http://www.crisisgroup.org/~media/Files/asia/south-asia/pakistan/b137-election-reform-in-pakistan.pdf">http://www.crisisgroup.org/~media/Files/asia/south-asia/pakistan/b137-election-reform-in-pakistan.pdf</a></p>

# ELECTION OBSERVATION

Independent scrutiny of the electoral process

Notes

# Independent scrutiny of the electoral process

## INTRODUCTION

Although the Constitution provides for right of citizens to access information of public importance, in the absence of explicit reference to independent election observation, electoral laws do not protect or enable this right. Consequently, the ECP uses its discretion in allowing access to independent observers for scrutiny of the electoral process. Although ECP's position on allowing access full access to observers has been positive in most cases, it does remain inconsistent. Additionally, the ECP relies on *ad hoc* procedures rather than issuing clear regulation to issue accreditation to elections observers.

## INTERNATIONAL STANDARD

- CAC Art. 7(4) "Each State Party shall, in accordance with the fundamental principles of its domestic law, endeavour to adopt, maintain and strengthen systems that promote transparency and prevent conflicts of interest."<sup>57</sup>
- ICCPR GC 25 para. 1 "Article 25 of the Covenant recognizes and protects **the right of every citizen to take part in the conduct of public affairs**, the right to vote and to be elected and the right to have access to public service"
- ICCPR GC 25 para. 20 "[T]here should be **independent scrutiny of the voting and counting process** ... so that electors have confidence in the security of the ballot and the counting of the voter"
- ICCPR GC 34 para. 19 "To give effect to the right of access to information, States parties should proactively put in the public domain Government information of public interest"

## LEGISLATION

- Constitution of Pakistan 1973 Art. 19A "Every citizen shall have the right to have access to information in all matters of public importance subject to regulation and reasonable restrictions imposed by law."<sup>58</sup>
- ROPA Section 38(3) "No person other than the Presiding Officer, the Polling Officer, **any other person on duty in connection with the poll**, the contesting candidates, their election agents and polling agents shall be present at the count"

## SHORTCOMINGS

LAW	PRACTICE
<ul style="list-style-type: none"> <li>• No legal provisions safeguard observer access.</li> </ul>	<ul style="list-style-type: none"> <li>• The ECP has used its discretion to disallow observers from observation on polling day.</li> <li>• Observers have had problems accessing certain stages of the electoral process such as aggregation of results.<sup>59</sup></li> <li>• There is no of formal procedure for accreditation of observers.<sup>60</sup></li> </ul>

# Independent scrutiny of the electoral process

## RECOMMENDATIONS

40. Explicit provision in the law to provide election observers be given rights to observe all phases of electoral process including access to public documentation at any time during the election cycle.
41. A provision in the law requiring ECP to make regulations creating a clear and transparent system for accreditation of observers.
42. The ECP encourage observers to endorse and adhere to the internationally recognized standards on election observation established in the *“Declaration of Global Principles for Non-Partisan Election Observation and Monitoring by Citizen Organizations.”*<sup>61 VI</sup>

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VI The Declaration outlines the role of citizen observation in promoting integrity of elections and provides standards for accountability among nonpartisan election monitoring organizations. See: <http://www.gndem.org/declaration-of-global-principles>

# Notes

**INTERNATIONAL COMMITMENT (INDEPENDENT SCRUTINY OF THE ELECTORAL PROCESS)**

**Convention against Corruption**

Article 10

Taking into account the need to combat corruption, each State Party shall, in accordance with the fundamental principles of its domestic law, take such measures as may be necessary to **enhance transparency in its public administration**, including with regard to its organization, functioning and decisionmaking processes, where appropriate. Such measures may include, inter alia:

- (a) Adopting procedures or regulations allowing members of the general public to obtain, where appropriate, information on the organization, functioning and decision-making processes of its public administration and, with due regard for the protection of privacy and personal data, on decisions and legal acts that concern members of the public;
- (b) Simplifying administrative procedures, where appropriate, in order to facilitate public access to the competent decision-making authorities; and
- (c) Publishing information, which may include periodic reports on the risks of corruption in its public administration.

Article 13

1. Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption. This participation should be strengthened by such measures as:

- (a) Enhancing the transparency of and promoting the contribution of the public to decision-making processes;
- (b) Ensuring that the public has effective access to information;
- (c) Undertaking public information activities that contribute to nontolerance of corruption, as well as public education programmes, including school and university curricula;
- (d) Respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption. That freedom may be subject to certain restrictions, but these shall only be such as are provided for by law and are necessary:

	<p>(i) For respect of the rights or reputations of others;<sup>16</sup></p> <p>(ii) For the protection of national security or ordre public or of public health or morals.</p> <p>2. Each State Party shall take appropriate measures to ensure that the relevant anti-corruption bodies referred to in this Convention are known to the public and shall provide access to such bodies, where appropriate, for the reporting, including anonymously, of any incidents that may be considered to constitute an offence established in accordance with this Convention</p>
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58

DOMESTIC LAW (INDEPENDENT SCRUTINY OF THE ELECTORAL PROCESS)	
<b>Freedom of Information Ordinance, 2002</b>	<p>Section 3(1)</p> <p>Access to information not to be denied.- (1) Notwithstanding anything contained in any other law for the time being in force, and subject to the provisions of this Ordinance, no requester shall be denied access to any official record other than exemptions as provided in section 15.</p> <p>Section 15</p> <p>(1) Information may be exempt if its disclosure would be likely to cause grave and significant damage to the interests of Pakistan in the conduct of international relations.</p> <p>(2) In the Section, “international relations” means relations between Pakistan and</p> <ul style="list-style-type: none"> <li>(a) the government of any other foreign State; or</li> <li>(b) an organisation of which only States are members.</li> </ul>

59

SHORTCOMINGS IN PRACTICE (INDEPENDENT SCRUTINY OF THE ELECTORAL PROCESS)	
<b>Civil Society Reports</b>	<p>In 2012, FAFEN was denied accreditation for by-election in Multan: <a href="http://www.fafen.org/site/v5/detail-ecp_disallows_fafen_from_monitoring_multan_by-polls!853">http://www.fafen.org/site/v5/detail-ecp_disallows_fafen_from_monitoring_multan_by-polls!853</a></p> <p>During they general elections of 2013, FAFEN observers were barred from polling stations in 74 cases. <a href="http://www.fafen.org/site/v6/press-releases/preliminary_statement_on_general_election_2013_2013_05_13_1278">http://www.fafen.org/site/v6/press-releases/preliminary_statement_on_general_election_2013_2013_05_13_1278</a></p> <p>Also see endnote 45.</p>

### SHORTCOMINGS IN PRACTICE (INDEPENDENT SCRUTINY OF THE ELECTORAL PROCESS)

#### Civil Society Reports

EU election observers noted problematic accreditation arrangements for domestic observers during the 2008 and 2013 general elections.

See: [http://www.eeas.europa.eu/eueom/pdf/missions/eu\\_eom\\_pakistan\\_final\\_report.pdf](http://www.eeas.europa.eu/eueom/pdf/missions/eu_eom_pakistan_final_report.pdf) and <http://www.eueom.eu/files/dmfile/eom-pakistan-preliminary-statement-13052013-en.pdf>

### RECOMMENDATIONS (INDEPENDENT SCRUTINY OF THE ELECTORAL PROCESS)

#### Media Reports

In April 2013, domestic election observation organisations endorsed international standards in observation.

<http://www.thenews.com.pk/Todays-News-6-169663-Observation-organisations-endorse-international-standards>

### SHORTCOMINGS IN PRACTICE (GENDER DISAGGREGATED DATA )

#### Civil Society Reports

Data is available on the number of women registered to vote in each district; however this data is not broken down into smaller units such as by constituency. Aurat Foundation and DRI briefing paper on women's political participation in the 2013 election, [http://www.democracy-reporting.org/files/dri-pk\\_bp37\\_cedaw.pdf](http://www.democracy-reporting.org/files/dri-pk_bp37_cedaw.pdf)

The practice of recording gender disaggregated data on voter turnout at each polling station was introduced during the 2013 general elections. However, preliminary statements from the observers noted that this information was not recorded at all polling stations. Furthermore, to date, results displayed at the EC P website also do not contain this information.

# PARTICIPATION OF WOMEN

## Gender-disaggregated data

Measures to eliminate discrimination against political participation of women (Women in political parties and as candidates)

Measures to eliminate discrimination against political participation of women (Women as voters)

## Consultation with women's groups

## Notes

# Gender-disaggregated data

## INTRODUCTION

There is a lack of requirement in legislation and of administrative practice in providing election related gender-disaggregated data for key components of the electoral process. While there are a few instances of such data being available, it is not available in the kind of detailed breakdown that would allow meaningful insight and analysis of issues related to electoral participation of women.

## INTERNATIONAL STANDARD

- CEDAW GR 23 para. 48(d) “States should take steps to “**Include statistical data, disaggregated by sex**, showing the percentage of women relative to men who enjoy those rights “

## LEGISLATION

- There is no relevant legislation.

## SHORTCOMINGS

LAW	PRACTICE
<ul style="list-style-type: none"> <li>• No legislation requires the collection or public distribution of gender disaggregated data before, during or after the election process.</li> </ul>	<ul style="list-style-type: none"> <li>• There is lack of administrative practice to provide publically accessible gender disaggregated data, broken down at constituency level, for different steps of the electoral process.<sup>62</sup></li> </ul>

## RECOMMENDATIONS

43. ECP be required to publicly provide gender-disaggregated electoral roll and voter turnout information with a breakdown by National Assembly and Provincial Assembly constituencies.
44. Parties be required to provide regular and standardized information about the number and proportion of women in their executive and leadership positions. Such information should be publicly available for scrutiny.

## Measures to eliminate discrimination against political participation of women (Women in political parties and as candidates)

### INTRODUCTION

Currently there are no legal or administrative requirements for parties to create and promote gender policies, or to have a certain proportion of women in positions of authority within the party. A very small percentage of women are seen executive or decision making positions within parties. The civil society has routinely reported on the lack of involvement of women in development of parties' policies, budgets, etc. Furthermore, parties do little to promote women candidates on general seats.

### INTERNATIONAL STANDARD

- CEDAW Art. 7(b) "States Parties to ensure that women have the right to participate fully in and be represented in public policy formulation in all sectors and at all levels. This would facilitate the mainstream gender issues and contribute a gender perspective to public policy-making."
- ICCPR Art. 3 "The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant."<sup>63</sup>

### LEGISLATION

- Constitution of Pakistan 1973 Art. 25 "There shall be no discrimination on the basis of sex"
- Constitution of Pakistan 1973 Art. 25(3) "Nothing in this Article shall prevent the State from making any special provision for the protection of women and children"
- Constitution of Pakistan 1973 Art. 34 "Steps shall be taken to ensure full participation of women in national life"

### SHORTCOMINGS

LAW	PRACTICE
<ul style="list-style-type: none"> <li>• There are no specific requirements for political parties to ensure or promote the participation of women within the party.</li> </ul>	<ul style="list-style-type: none"> <li>• Women in political parties do not hold leadership and decision making decisions.<sup>64</sup></li> <li>• Minimal percentages of women are nominated as candidates on directly elections seats by their parties.<sup>65</sup></li> <li>• The state is doing little to promote equal participation of women in parties.<sup>66</sup></li> </ul>

### RECOMMENDATIONS

45. Political parties be required to establish within their constitutions, policies on the participation of women.
46. Require parties to nominate a minimum proportion of women candidates.

## Measures to eliminate discrimination against political participation of women (Women as voters)

### INTRODUCTION

The Constitution contains provisions that support “full participation” of women in public life, prohibits “discrimination on the basis of sex” and provides powers to the state to take special measures for the “protection” of women. Problems lie in the consistent and effective implementation of these provisions. In the final Electoral Rolls for the 2013 general elections, there were approximately 11 million fewer women than men, whereas population estimates indicate an almost equal number of both sexes. One of the reasons for this gap is the low penetration of Computerised National Identity Cards (CNICs) among the female population. The conditions of women polling stations and the training of women polling staff are often found to be inadequate by domestic and international observers. Furthermore, the ECP does not sufficiently exercise its powers to address the issue of barring of women voters through alleged agreements between public officials and political parties. Special measures to safeguard the participation of women voters proposed by the ECP for inclusion in legislation have not been pursued by political parties and the Parliament.

### INTERNATIONAL STANDARD

- CEDAW Art. 7(a) “States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right ... [t]o vote in all elections and public referenda and to be eligible for election to all publicly elected bodies”
- CEDAW GR 23 para. 18 “The Convention obliges States parties in constitutions or legislation to take appropriate steps to ensure that women, on the basis of equality with men, enjoy the right to vote in all elections and referendums, and to be elected. These rights must be enjoyed both de jure and de facto”
- CEDAW GR 23 para. 23 “The enjoyment of the right to vote by women should not be subject to restrictions or conditions that do not apply to men or that have a disproportionate impact on women”<sup>67</sup>

### LEGISLATION

- Constitution of Pakistan 1973 Art. 25 “There shall be no discrimination on the basis of sex”.
- Constitution of Pakistan 1973 Art. 25(3) “Nothing in this Article shall prevent the State from making any special provision for the protection of women and children”.
- Constitution of Pakistan Art. 34 “Steps shall be taken to ensure full participation of women in national life”.<sup>68</sup>

## Measures to eliminate discrimination against political participation of women (Women as voters)

### SHORTCOMINGS

LAW	PRACTICE
<ul style="list-style-type: none"><li>Few positive steps taken by the ECP to establish policies specifically targeted at ensuring that women fully participate in the voting process (i.e. requiring at least one female polling staff member be present at all polling stations).</li></ul>	<ul style="list-style-type: none"><li>Women are underrepresented on the electoral rolls.</li><li>Women polling stations are more susceptible to electoral fraud and there is lack of female staff at polling stations to accommodate women voters.</li><li>Although the ECP has proposed legal measures to address negligible participation of female voters, it has not itself taken concrete action against exclusion of women voters.<sup>69</sup></li></ul>

### RECOMMENDATIONS

- ECP establish more specific policies to increase the participation of women in the voting process; these would cover specialized voter education, making polling more accessible for women voters by increasing the number of female polling staff, and conducting research on the value of women's only versus combined stations etc.

# Consultation with women's groups

## INTRODUCTION

Although the ECP has initiated a degree of consultation with groups broadly representative of women's views for its gender policies, this is not undertaken in a routine or systematic manner. The ECP is not required by law to undertake such consultations.

## INTERNATIONAL STANDARD

- CEDAW GR23 para.26 "State parties have a responsibility ... as a matter of course to consult and incorporate the advice of groups which are broadly representative of women's view and interests."

## LEGISLATION

- No relevant legislation is in place.

## SHORTCOMINGS

LAW	PRACTICE
<ul style="list-style-type: none"> <li>• There is no requirement for the ECP to consult with women's groups during the election process</li> </ul>	<ul style="list-style-type: none"> <li>• Some consultations have been undertaken with women's groups however, meaningful, regular and more systematic consultations with women's groups is still lacking.<sup>70</sup></li> </ul>

## RECOMMENDATIONS

48. Parliament undertake consultation with groups broadly representative of women's views on how legislation can promote development of women's participation in the election process.
49. The ECP be required to regularly undertake meaningful consultation, leading to policy and practice development, with groups broadly representative of women's views at central and lower levels, looking at all aspects of the election process.

# Notes

INTERNATIONAL COMMITMENT (WOMEN IN POLITICAL PARTIES AND AS CANDIDATES)	
<p><b>CEDAW General Recommendation 23</b></p>	<p>Paragraph 22</p> <p>The system of balloting, the distribution of seats in Parliament, the choice of district, all have a significant impact on the proportion of women elected to Parliament. <b>Political parties must embrace the principles of equal opportunity and democracy</b> and endeavour to balance the number of male and female candidates.</p> <p>Paragraph 26</p> <p>States parties have a responsibility, where it is within their control, both to appoint women to senior decision-making roles and, as a matter of course, to consult and incorporate the advice of groups, which are broadly representative of women’s views and interests.</p> <p>Paragraph 28</p> <p>While States parties generally hold the power to appoint women to senior cabinet and administrative positions, <b>political parties also have a responsibility to ensure that women are included in party lists and nominated for election in areas where they have a likelihood of electoral success.</b> States parties should also endeavor to ensure that women are appointed to government advisory bodies on an equal basis with men and that these bodies take into account, as appropriate, the views of representative women’s groups. It is the Government’s fundamental responsibility to encourage these initiatives to lead and guide public opinion and change attitudes that discriminate against women or discourage women’s involvement in political and public life.</p> <p>Paragraph 32</p> <p>An examination of the reports of States parties demonstrates that, on the few occasions when information concerning political parties is provided, women are under-represented or concentrated in less influential roles than men. As political parties are an important vehicle in decision-making roles, Governments should encourage political parties to examine the extent to which women are full and equal participants in their activities and, where this is not the case, should identify the reasons for this.</p>

	<p><b>Political parties should be encouraged to adopt effective measures, including the provision of information, financial and other resources, to overcome obstacles to women’s full participation and representation and ensure that women have an equal opportunity in practice to serve as party officials and to be nominated as candidates for election.</b></p> <p>Paragraph 42</p> <p>States parties are under an obligation to take all appropriate measures, including the enactment of appropriate legislation that complies with their Constitution, <b>to ensure that organizations such as political parties</b> and trade unions, which may not be subject directly to obligations under the Convention, <b>do not discriminate against women</b> and respect the principles contained in articles 7 and 8</p>
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64

SHORTCOMINGS IN PRACTICE (WOMEN IN POLITICAL PARTIES AND AS CANDIDATES)	
<p><b>Civil Society Reports</b></p>	<p>Aurat Foundations Alternative report on implementation of CEDAW in Pakistan, published in 2012, notes that women are ignored in the decision-making process and are largely excluded from major affairs of the party.</p> <p>“[W]omen remain marginalized from the party structures and leadership positions.” “Political Parties in Pakistan, Organization and Power Structure”, Mohammad Waseem and Mariam Mufti, Lahore University of Management Sciences (LUMS), November 2012</p>

65

SHORTCOMINGS IN PRACTICE (WOMEN IN POLITICAL PARTIES AND AS CANDIDATES)	
<p><b>Civil Society Reports</b></p>	<p>For the 2013 general election, according to statistics proved by UN Women, 2.9% of the total candidates for directly elected seats of the National and Provincial assemblies are women where 75% of total women candidates on general seats contested the election as independent candidates. All political parties nominated less than 10 percent women as candidates on general seats.</p>
<p><b>Media Reports</b></p>	<p>“According to details of candidates filed by eight mainstream political parties, there is no significant increase in the number of women candidates in the 2002, 2008 and 2013 elections.” <a href="http://dawn.com/2013/04/21/number-of-women-candidates-not-rising/">http://dawn.com/2013/04/21/number-of-women-candidates-not-rising/</a></p>

### SHORTCOMINGS IN PRACTICE (WOMEN IN POLITICAL PARTIES AND AS CANDIDATES)

<p><b>Civil Society Reports</b></p>	<p>“Currently there are no legal or administrative requirements for parties to provide gender information, to have gender policies, or a proportion of women in positions of authority within the party.” Aurat Foundation and DRI briefing paper on women’s political participation in the 2013 election, <a href="http://www.democracy-reporting.org/files/dri-pk_bp37_cedaw.pdf">http://www.democracy-reporting.org/files/dri-pk_bp37_cedaw.pdf</a></p> <p>In its Concluding observations on the fourth periodic report of Pakistan, adopted by the Committee at its fifty-fourth session (11 February–1 March 2013), the Committee on the Elimination of Discrimination against Women states, “The Committee reiterates its concern at the low level of participation of women in political and public life, especially in decision-making positions and in the local administration, as well as in the diplomatic service.” The report goes on to recommend that the state and state parties adopt further measures to increase participation of women in political and public life.”</p> <p><a href="http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G13/422/89/PDF/G1342289.pdf?OpenElement">http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G13/422/89/PDF/G1342289.pdf?OpenElement</a></p>
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### INTERNATIONAL COMMITMENT (WOMEN AS VOTERS)

<p><b>ICCPR</b></p>	<p>Article 3</p> <p>The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant</p>
<p><b>CEDAW</b></p>	<p>Article 3</p> <p>States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men</p> <p>Article 4(1)</p> <p>Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved</p>

## DOMESTIC LAW (WOMEN AS VOTERS)

**Constitution of  
Pakistan, 1973**

## Article 51(2)

A person shall be entitled to vote if:

- a. He is a citizen of Pakistan; He is not less than eighteen years of age;
- b. His name appears on the electoral roll; and
- c. He is not declared by a competent court to be of unsound mind

## Article 263(1)(a)

In the Constitution

Words importing the masculine gender shall be taken to include females

### SHORTCOMINGS IN PRACTICE (WOMEN AS VOTERS)

<p><b>Civil Society Reports</b></p>	<p>The EU election observation reported that the “EU EOM was told by women’s organisations that those who enter into such agreements have never been prosecuted, although there is signed written evidence of some of these agreements.” Furthermore, the EU mission’s reports, “ECP informed the EU EOM that it cannot annul a vote in such circumstances on its own initiative, but must await a complaint from an aggrieved person. This is a narrow reading of its powers, which include extensive powers to ensure just and fair conduct of the elections.”</p> <p>DRI’s paper on the issue of disenfranchisement of women voters states that “a continuing problem lies with implementation of existing obligations, as well as inconsistency and a degree of passivity by the ECP when it comes to taking the initiative in cases where women have been prevented from voting or are alleged to have been prevented from voting.” <a href="http://www.democracy-reporting.org/files/dri_briefing_paper_15-_no_voice-_the_exclusion_of_women_from_voting.pdf">http://www.democracy-reporting.org/files/dri_briefing_paper_15-_no_voice-_the_exclusion_of_women_from_voting.pdf</a></p> <p>Reporting on a by-election in Shangla in 2011 where women were barred from voting as a result of agreement between political parties and election officials, FAFEN noted that the ban on women voting was reinforced by election officials deputed at the polling stations who did not set up female polling booths despite having been notified by the ECP in the Polling Scheme for the constituency.” <a href="http://www.fafen.org/site/v5/detail-more_than_59,000_women_voters_barred_from_voting_in_shangla_by-election!497">http://www.fafen.org/site/v5/detail-more_than_59,000_women_voters_barred_from_voting_in_shangla_by-election!497</a></p> <p>ECP proposed legislation for measures to annul and declare void polling station results where less than ten percent women of registered women voters cast their votes.</p> <p><a href="http://www.dailytimes.com.pk/default.asp?page=2012%5C09%5C27%5Cstory_27-9-2012_pg7_4">http://www.dailytimes.com.pk/default.asp?page=2012%5C09%5C27%5Cstory_27-9-2012_pg7_4</a></p> <p>For women on electoral rolls and female polling stations, see endnote 39</p>
<p><b>ECP Five Year Strategic Plan 2010 - 2014</b></p>	<p>In the lack of action the ECP demonstrates in instances of women being barred from voting, it violates the spirit of the guiding principles in its Strategic Plan that state, “The ECP will always endeavour to create favourable conditions for women, minorities and persons with disabilities with regard to the electoral process.”</p> <p><a href="http://www.ecp.gov.pk/sp/goals-objectives.html">http://www.ecp.gov.pk/sp/goals-objectives.html</a></p>

### SHORTCOMINGS IN PRACTICE (CONSULTATION WITH WOMEN GROUPS)

<p><b>Civil Society Reports</b></p>	<p>The ECP has undertaken some consultations with women’s groups, for example in developing its voter education plan. It is also working with UN Women regarding development of gender mainstreaming policies. Aurat Foundation and DRI briefing paper on women’s political participation in the 2013 election, <a href="http://www.democracy-reporting.org/files/dri-pk_bp37_cedaw.pdf">http://www.democracy-reporting.org/files/dri-pk_bp37_cedaw.pdf</a></p>
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# PERSONS WITH DISABILITIES (PWDS)

Consultations with groups representing PWDS

Additional special measures for PWDS

Independent assistance for voting

Terminology  
(Persons with Disabilities)

Notes

# Consultations with groups representing PWDs

## INTRODUCTION

The law does not require the ECP to undertake routine consultations with groups representing PWDs regarding the electoral process. However, the ECP has undertaken some consultations with organizations working for empowerment of PWDs.

## INTERNATIONAL STANDARD

- CRPD Art. 4(3) “[S]tates Parties shall closely consult with and **actively involve persons with disabilities**, including children with disabilities, through their representative organizations”<sup>71</sup>
- ICESCR GC 5 para.14 “It has been consistently acknowledged by the international community that policy-making and programme implementation in this area should be undertaken on the basis of close consultation with, and involvement of, representative groups of the persons concerned.”

## LEGISLATION

- No relevant legislation is in place.

## SHORTCOMINGS

LAW	PRACTICE
<ul style="list-style-type: none"> <li>• No such provision in law to consult with groups broadly representative of PWDs.</li> </ul>	<ul style="list-style-type: none"> <li>• Some consultation with groups representative of PWDs have taken place which resulted in inclusion of objectives in ECP’s Five Year Strategic Plan relating to improving electoral access for PWDs and incorporation of sensitization to needs of PWDs in the trainings for polling officials. However, a more systematic and routine consultation process is urged by the civil society.<sup>72</sup></li> </ul>

## RECOMMENDATIONS

50. The ECP and parliament undertake regular meaningful consultations with groups broadly representative of PWD on all aspects of the election process.

# Additional special measures for PWDs

## INTRODUCTION

The law does not contain specific provisions that require the ECP to take special measures to facilitate PWDs in all aspects of the electoral process. The ECP commits to promote and facilitate improvement of electoral participation of PWDs under its Five Year Strategic Plan; however civil society reports indicate a lack of sufficient measures for participation of PWDs in the electoral process.

## INTERNATIONAL STANDARD

- CRPD Art. 4(1) “States Parties undertake to ensure and promote the **full realization of all human rights and fundamental freedoms for all persons with disabilities** without discrimination of any kind on the basis of disability”
- CRPD article 5.4 “Specific measures which are necessary to accelerate or achieve de facto equality of persons with disabilities shall not be considered discrimination under the terms of the present Convention.”
- CRPD Art. 29 “Ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others, directly or through freely chosen representatives, **including the right and opportunity for persons with disabilities to vote and be elected**” <sup>73</sup>
- ICESCR GC 5 para. 9 “The obligation of States parties to the Covenant to promote **progressive realization of the relevant rights to the maximum of their available resources clearly requires Governments to do much more than merely abstain** from taking measures which might have a negative impact on persons with disabilities” <sup>74</sup>

## LEGISLATION

- No relevant legislation is in place.

## SHORTCOMINGS

LAW	PRACTICE
<ul style="list-style-type: none"> <li>• No specific requirement for ECP to undertake additional special measures for PWDs.</li> </ul>	<ul style="list-style-type: none"> <li>• Under its Five Year Strategic Plan, the ECP pledges to take measures to ensure participation of PWDs. However, media reports suggest that most polling stations remain inaccessible to PWDs and that polling staff is unfamiliar with necessary procedures; both of which result in low turnout of voters with disabilities. <sup>75</sup></li> </ul>

## RECOMMENDATIONS

51. The ECP be obliged to take and publicly account for the additional special measures it is taken to provide de facto equality of opportunity for PWD’s participation in the electoral process.

# Independent assistance for voting

## INTRODUCTION

Although legislation provides for assisted voting where needed, it does not protect the secrecy of the ballot by explicitly stating the need for impartiality of such assistance.

## INTERNATIONAL STANDARD

- CRPD Art. 29 “States Parties shall guarantee to **persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others**”<sup>76</sup>
- ICCPR GC 25 para. 20 “Assistance provided to the disabled, blind or illiterate should be **independent**”<sup>77</sup>

## LEGISLATION

- ROPA 1976 Sect. 33(7) “Where an elector is blind or is otherwise so incapacitated that he cannot vote without the assistance of a companion, the Presiding Officer shall allow him such assistance”<sup>78</sup>
- Presidential Election Rules 1988 Sect. 22(1) “Where a voter is blind or is otherwise so incapacitated that he cannot vote without the assistance of a companion, the Presiding Officer shall allow him such assistance and, in case the disability is such that the voter cannot mark the ballot paper himself, the person accompanying the voter may mark the ballot paper as indicated by the latter”
- Presidential Election Rules, 1988 Sect. 22(3) “The Presiding Officer or a polling officer shall in no case mark the ballot paper on behalf of a blind or otherwise incapacitated voter”

## SHORTCOMINGS

LAW	PRACTICE
<ul style="list-style-type: none"> <li>• No specific requirement for ECP to provide <i>impartial</i> voting assistance to PWDs.</li> </ul>	<ul style="list-style-type: none"> <li>• No special measures have been taken to ensure secrecy of ballot of PWDs.</li> </ul>

## RECOMMENDATIONS

52. The law make stronger provision for assistance and maintaining the integrity of assisted voting (for example for allowing those assisting to only help a limited number of people to avoid opportunity for abuse).

# Terminology (Persons with Disabilities)

## INTRODUCTION

Legislation and ECP’s training materials contain outdated language when referring to PWDS.

## INTERNATIONAL STANDARD

- ICESCR GC 5 para. 4 “In accordance with the approach adopted in the Standard Rules, this General Comment uses the term “persons with disabilities” rather than the older term “disabled persons”. It has been suggested that the latter term might be misinterpreted to imply that the ability of the individual to function as a person has been disabled.

## LEGISLATION

- ROPA 1976 Sect. 33(7) “Where an elector is blind or is otherwise so **incapacitated**”
- Disabled Persons (Employment and Rehabilitation) Ordinance, 1981 Sect. 10 “Establishments to employ disabled persons”<sup>79</sup>

## SHORTCOMINGS

LAW	PRACTICE
<ul style="list-style-type: none"> <li>• The relevant legislation uses outdated terminology such as “incapacitated” and “disabled”.</li> </ul>	<ul style="list-style-type: none"> <li>• ECP’s training hand books for polling officials uses outdated terminology.</li> </ul>

## RECOMMENDATIONS

53. Promote and incorporate the use of updated terminology i.e. “persons with disabilities”.

# Notes

71

INTERNATIONAL COMMITMENT (CONSULTATIONS WITH GROUPS REPRESENTING PWDS)	
CRPD	<p>Article 4(3)</p> <p>In the development and implementation of legislation and policies to implement the present Convention, and in other decision-making processes concerning issues relating to persons with disabilities, States Parties shall closely consult with and <b>actively involve persons with disabilities</b>, including children with disabilities, through their representative organizations.</p>

72

SHORTCOMINGS IN PRACTICE (CONSULTATIONS WITH GROUPS REPRESENTING PWDS)	
ECP Handbook, 2013	<p>ECP handbooks for polling officials include section on addressing needs of PWDS: <a href="http://undp.org.pk/component?option=com_practices/Itemid,101/limitstart,0/">http://undp.org.pk/component?option=com_practices/Itemid,101/limitstart,0/</a></p>

73

INTERNATIONAL COMMITMENT (ADDITIONAL SPECIAL MEASURES FOR PWDS)	
CRPD	<p>Article 29</p> <p>States Parties shall guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others, and shall undertake to:</p> <p>a. Ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others, directly or through freely chosen representatives, including the right and opportunity for persons with disabilities to vote and be elected, inter alia, by:</p>

	<ul style="list-style-type: none"> <li>i. Ensuring that voting procedures, facilities and materials are appropriate, accessible and easy to understand and use;</li> <li>ii. Protecting the right of persons with disabilities to vote by secret ballot in elections and public referendums without intimidation, and to stand for elections, to effectively hold office and perform all public functions at all levels of government, facilitating the use of assistive and new technologies where appropriate;</li> <li>iii. Guaranteeing the free expression of the will of persons with disabilities as electors and to this end, where necessary, at their request, allowing assistance in voting by a person of their own choice</li> </ul>
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74

INTERNATIONAL COMMITMENT (ADDITIONAL SPECIAL MEASURES FOR PWDs)	
ICESCR General Comment 5	<p>Paragraph 9</p> <p>The obligation of States parties to the Covenant to promote progressive realization of the relevant rights to the maximum of their available resources clearly requires Governments to do much more than merely abstain from taking measures which might have a negative impact on persons with disabilities. The obligation in the case of such a vulnerable and disadvantaged group is to take positive action to reduce structural disadvantages and to give appropriate preferential treatment to people with disabilities in order to achieve the objectives of full participation and equality within society for all persons with disabilities. This almost invariably means that additional resources will need to be made available for this purpose and that a wide range of specially tailored measures will be required.</p>

75

SHORTCOMINGS IN PRACTICE (ADDITIONAL SPECIAL MEASURES FOR PWDs)	
Media Reports	<p>“The Election Commission of Pakistan (ECP) violated its strategic goal by not making polling stations accessible to persons with disabilities (PWDs) across the country, depriving them of their legal right to vote due to which their turnout remained less than one per cent.” <a href="http://tribune.com.pk/story/549316/marginalising-the-disabled-lack-of-facilities-dissuaded-pwds-from-casting-votes/">http://tribune.com.pk/story/549316/marginalising-the-disabled-lack-of-facilities-dissuaded-pwds-from-casting-votes/</a></p>

## INTERNATIONAL COMMITMENT (INDEPENDENT ASSISTANCE FOR VOTING)

CRPD	<p>Article 29</p> <p>States Parties shall guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others, and shall undertake: (a) To ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others, directly or through freely chosen representatives, including the right and opportunity for persons with disabilities to vote and be elected, inter alia, by: (i) Ensuring that voting procedures, facilities and materials are appropriate, accessible and easy to understand and use; (ii) Protecting the right of persons with disabilities to vote by secret ballot in elections and public referendums without intimidation, and to stand for elections, to effectively hold office and perform all public functions at all levels of government, facilitating the use of assistive and new technologies where appropriate; (iii) Guaranteeing the free expression of the will of persons with disabilities as electors and to this end, where necessary, at their request, allowing assistance in voting by a person of their own choice.</p>
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## INTERNATIONAL COMMITMENT (INDEPENDENT ASSISTANCE FOR VOTING)

ICCPR General Comment 25	<p>Paragraph 20</p> <p>The security of ballot boxes must be guaranteed and votes should be counted in the presence of the candidates or their agents. There should be independent scrutiny of the voting and counting process and access to judicial review or other equivalent process so that electors have confidence in the security of the ballot and the counting of the votes. <b>Assistance provided to the disabled, blind or illiterate should be independent.</b> Electors should be fully informed of these guarantees.</p>
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## DOMESTIC LAW (INDEPENDENT ASSISTANCE FOR VOTING)

Representation of the People Act, 1976	<p>Section 33(7)</p> <p>Where an elector is blind or is otherwise so incapacitated that he cannot vote without the assistance of a companion, the Presiding Officer shall allow him such assistance and thereupon such elector may do with such assistance anything which an elector is required or permitted to do under this Act.</p>
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## DOMESTIC LAW (TERMINOLOGY - PERSONS WITH DISABILITIES)

**Disabled Persons  
(Employment and  
Rehabilitation)  
Ordinance, 1981**

## Section 10

(1) Not less than 2[two percent] of the total number of persons employed by an establishment at any time shall be disabled persons whose names have been registered with the Employment Exchange of the area in which such establishment is located and against whose names in the register maintained under section 12 an endorsement exists to the effect that they are fit to work.

(2) The disabled persons employed against any post in pursuance of sub-section (1) shall be entitled to the terms and conditions which are not less favourable than those of the other persons employed by the establishment against similar posts.

(3) When calculating the percentage of the posts in an establishment for the purposes of employment of disabled persons, the fraction of 0.5 and above shall count as a whole number.

# List of Abbreviations

<b>CCE</b>	Centre for Civic Education
<b>CEC</b>	Chief Election Commissioner
<b>CAC</b>	Convention Against Corruption
<b>CEDAW</b>	Convention on the Elimination of All Forms of Discrimination Against Women
<b>CNIC</b>	Computerized National Identity Card
<b>DRI</b>	Democracy Reporting International
<b>DRO</b>	District Returning Officer
<b>ECP</b>	Election Commission of Pakistan
<b>EU</b>	European Union
<b>EU EOM</b>	European Union Election Observation Mission
<b>FAFEN</b>	Free and Fair Election Network
<b>FATA</b>	Federally Administered Tribal Areas
<b>GC</b>	General Comment
<b>GST</b>	Goods and Services Tax
<b>ICCPR</b>	International Covenant on Civil and Political Rights
<b>ICESCR</b>	International Covenant on Economic, Social, Cultural Rights
<b>CERD</b>	International Convention on the Elimination of Racial Discrimination
<b>CRPD</b>	International Convention on the Rights of Persons with Disabilities
<b>ICG</b>	International Crisis Group
<b>IDP</b>	Internally Displaced Person
<b>IFES</b>	International Foundation for Electoral Systems
<b>KP</b>	Khyber Pakhtunkhwa
<b>LUMS</b>	Lahore University of Management Sciences
<b>NA</b>	National Assembly
<b>NADRA</b>	National Database and Registration Authority
<b>NDI</b>	National Democratic Institute
<b>ROPA</b>	Representation of the People Act
<b>PEMRA</b>	Pakistan Electronic Media Regulatory Authority
<b>PILDAT</b>	Pakistan Institute for Legislative Development and Transparency
<b>PML-N</b>	Pakistan Muslim League Nawaz
<b>PML-Q</b>	Pakistan Muslim League- Q
<b>PPP</b>	Pakistan People's Party
<b>PWD</b>	Persons with Disability
<b>PPO</b>	Press and Publication Ordinance
<b>PA</b>	Provincial Assembly
<b>RWP</b>	Rawalpindi
<b>RO</b>	Returning Officer
<b>SMS</b>	Short Message Service
<b>UN</b>	United Nations

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