

SUPPORT TO ELECTORAL
REFORM IN PAKISTAN

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INDEPENDENCE AND ACCOUNTABILITY: THE ELECTION COMMISSION OF PAKISTAN

SUMMARY

The 18th amendment to the constitution of Pakistan strengthened parliamentary democracy and the independence of the Election Commission of Pakistan (ECP). The independence of an election commission can help facilitate a credible election process when balanced with proper measures for transparency and accountability. Such measures are recognised as essential elements of democracy.

Balancing independence—including the ability to regulate, security of tenure, control over staffing and a guaranteed budget—with accountability mechanisms, such as reporting requirements, is a challenge in every country. In Pakistan, the 18th amendment to the constitution,¹ as well as the ECP's strategic plan for 2010 to 2014 provide a framework for further strengthening ECP independence and accountability, and the role that parliament plays in this.

Recent years have seen an increase in ECP independence, but additional mechanisms are needed to enhance ECP public accountability. Although the ECP has a history of issuing public reports following general elections, no official procedures exist to make public ECP decision-making, efficiency and general performance. Formal routine accountability mechanisms specific to the ECP are currently restricted to financial matters.

Parliament can play a key role in increasing ECP accountability, given its responsibility for oversight of public institutions. Oversight contributes to transparency, policy and practice development and, ultimately, to confidence in public institutions.

Parliament can evaluate ECP work without interfering in it or undermining ECP independence. This involves ongoing scrutiny and discussion to promote professional, transparent and efficient public service delivery. It should not involve issuing instructions or directives to the ECP.

Since parliamentary oversight of the very body dealing with the election of its members can create a conflict of interest, it is important to have a clear mechanism for oversight that has well defined limits and that the ECP and the public can have confidence in.

Consideration could be given to the following mechanisms:

- Regular reporting by the ECP annually and on election events could be legally required, with follow-up by parliament; these reports should immediately be made public.
- A responsible parliamentary committee composed of wide cross-party membership could be appointed; such a committee could take a proactive and regular approach to its activities.
- Clear written rules governing parliamentary scrutiny could be drafted in consultation with the National Assembly, the Senate and provincial assemblies, along with the ECP, non-governmental organisations, recognised election experts and civil society organisations. These could include requiring parliamentary visits to the ECP to be multi-party and by appointment.

¹ For DRI's in-depth analysis of the 18th amendment to Pakistan's constitution and electoral reform, see: http://www.democracy-reporting.org/files/dri_briefing_paper_5_-_comments_to_the_18th_amendment.pdf.

1. INTRODUCTION

The independence and accountability of public institutions are critical parts of a healthy system of checks and balances, inherent to any democracy. Although an election management body (EMB) is often independent from government, it is nonetheless accountable to the public because, along with other public institutions, it spends public funds, carries out public functions and is responsible for processes that are integral to a state and which affect all of its citizens.²

The UN General Assembly declares that ‘the essential elements of democracy include... transparency and accountability in public administration’.³ The Inter-Parliamentary Union (IPU) states, “Public accountability, which is essential to democracy, applies to all those who hold public authority, whether elected or non-elected, and to all bodies of public authority without exception.”⁴ In its recent General Comment 34 on Article 19 of the International Covenant on Civil and Political Rights (ICCPR), the Human Rights Committee reiterates that ‘the principles of transparency and accountability... are... essential for the promotion and protection of human rights’.⁵

The independence, impartiality, integrity, transparency, efficiency and service-oriented approach⁶ of an EMB are vital for the conduct of genuine elections in which stakeholders can have confidence. The simultaneous pursuit of both independence and accountability can result in a difficult balancing exercise; one seeks to increase the power and authority of a body in a certain area, the other to check it through scrutiny.

The unfettered power of any single institution is incompatible with democratic principles. Unfettered powers create a risk of an unaccountable institution. At the same time, accountability needs to have limits to guarantee independence. Along with establishing the independence of an EMB in line with a state’s international obligations, there should also be system for ensuring a

corresponding level of accountability to mitigate risks of inappropriate use of discretion and deviation from the law. In recent years, there has been an increase in the independence of the Pakistan’s EMB, the ECP. Moves towards greater independence for the ECP have been sought by political parties, as envisaged in the Charter of Democracy,⁷ and by ECP leadership. Such moves as have taken place so far have also been welcomed by domestic civil society organisations, such as the Free and Fair Election Network (FAFEN) and the Pakistan Institute for Legislative Development and Transparency (PILDAT),⁸ as well as by international groups, including the European Union, the International Foundation for Electoral Systems (IFES),⁹ the National Democratic Institute (NDI)¹⁰ and the International Crisis Group (ICG).¹¹

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. The need for accountability has been recognised in, for example, FAFEN’s 2011 report on election law reform, which recommends a statutory basis for the ECP to submit reports to parliament.¹² The ICG has also commented that, “The ECP’s lack of independence, accountability and effectiveness has severely limited its capacity to oversee a credible election and an orderly political transition.”¹³ Such a system of accountability may be addressed through scrutiny by Pakistan’s legislature.¹⁴

The legislature, composed of elected representatives, has a key role to play in scrutinising the work of an independent EMB. In light of the 18th amendment to the constitution of Pakistan in 2010, which aims to increase

² Other types of public bodies may include: independent or advisory commissions; monitoring or watchdog bodies that oversee specific government functions (such as prisons or equality in public service); specialised tribunals (such as property and employment); auditor generals and ombudsmen offices.

³ Adopted 20 December 2004, the resolution was officially published in 2005. See: <http://www.undemocracy.com/A-RES-59-201.pdf>. This resolution builds on a similarly worded UN Human Rights Commission resolution from 2003 (UN Human Rights Commission Resolution 2003/36, UN Doc E/CN.4) and other legally-binding international treaties that include many aspects of the essential elements of the declaration from 2004, most notably the International Covenant for Civil and Political Rights (ICCPR). Respectively, see: http://ap.ohchr.org/documents/alldocs.aspx?doc_id=5000; and <http://www2.ohchr.org/english/law/ccpr.htm>.

⁴ Point 14, Universal Declaration on Democracy, Inter-Parliamentary Council, Cairo, 16 September 1997. See: <http://www.ipu.org/cnl-e/161-dem.htm>.

⁵ See: <http://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>.

⁶ These are the guiding principles of election management recognised by International IDEA and the ACE Project. Respectively, see: <http://www.idea.int/publications/emdl/> and <http://aceproject.org/ace-en/topics/em/em20>.

⁷ The Charter of Democracy was signed in 2006 by Nawaz Sharif of the Pakistan Muslim League-Nawaz (PML-N) and Benazir Bhutto of the Pakistan People’s Party (PPP). It outlines steps to end the military rule established by the 1999 Pakistani *coup d’etat* led by General Musharraf and to restore civilian democratic rule. It calls for ‘an independent, autonomous, and impartial election commission’. See: <http://www.stateofpakistan.org/time-to-implement-the-charter-of-democracy-and-bury-the-legacies-of-arm>.

⁸ PILDAT (2008), *How Independent is the Election Commission in Pakistan?* See: <http://www.pildat.org/Publications/publication/elections/ECPinPakistan.pdf>. All subsequent references to this text are drawn from this source.

⁹ IFES (2009), *Compendium of Electoral Reform Proposals*, Version 2. See: http://www.ifespakistan.org/docs/ESG_Compendium_of_Electoral_Reform_Proposals_v2_2009-01-20_en.pdf.

¹⁰ NDI (21 October 2007), “Statement of the NDI Pre-election Delegation to Pakistan”. See: http://www.ndi.org/files/2208_pakistan_peam_stam_102107.pdf.

¹¹ For example, see *Reforming Pakistan’s Electoral System*, ICG (30 March 2011) Asia Report No. 203, which also recommends parliamentary oversight of the ECP. See: <http://www.crisisgroup.org/en/regions/asia/south-asia/pakistan/203-reforming-pakistans-electoral-system.aspx>. All subsequent references to this text are drawn from this source.

¹² FAFEN (15 June 2011), *Unification of Pakistan’s Election Legislation Including Model Provisions for Reform*. See: http://www.fafen.org/site/v4/admin/contents/PDF/502_696.pdf. All subsequent references to this report are from this source.

¹³ *Reforming Pakistan’s Electoral System*, ICG (30 March 2011) Asia Report No. 203.

¹⁴ Pakistan has a bicameral parliament, or *Majlis-e-Shoora*, which comprises a lower house, the National Assembly; and an upper house, the Senate. Both houses have standing committees corresponding to all federal ministries, as well as additional standing committees including: the public accounts, government assurances and business advisory committees in the National Assembly.

the role of parliament in governance,¹⁵ Pakistan's legislature has an opportunity to fulfill its oversight responsibilities more fully by conducting more comprehensive and systematic scrutiny of the ECP as a public institution. The legislature is correspondingly accountable to the electorate.

An IPU publication defines parliamentary oversight as 'the review, monitoring and supervision of government and public agencies, including the implementation of policy and legislation'.¹⁶ Thus, parliamentary oversight includes in its scope public agencies, institutions or bodies, such as EMBs, not just the executive branch of government. The IPU describes some key functions of parliamentary oversight: to detect and prevent abuse, arbitrary behaviour, or illegal and unconstitutional conduct on the part of government and public agencies in order to protect the rights and liberties of citizens; to hold the government to account in how it uses taxpayer money; and to improve the transparency of government operations and enhance public trust in the government.¹⁷

Oversight in this context does not extend to giving instructions. The authority of an oversight body may be far reaching in relation to access to information, but such authority does not extend to annulling, amending or overruling any decisions and must be used responsibly in the interests of the public. It should not undermine the independence of the body under scrutiny, nor empower any other body, including the oversight body, to make decisions that fall within the jurisdiction of the institution being scrutinised. Oversight should contribute to transparency, policy development and, ultimately to confidence in public institutions.

2. WHY ARE BOTH INDEPENDENCE AND ACCOUNTABILITY REQUIRED?

Formal recognition of the importance of an independent EMB lies in the official interpretation of the International Convention on Civil and Political Rights (ICCPR), the primary source of international obligations related to elections.¹⁸ The body responsible for monitoring ICCPR

implementation, the UN Human Rights Committee, states in paragraph 20 of General Comment 25 that, "An independent electoral authority should be established to supervise the electoral process and to ensure that it is conducted fairly, impartially and in accordance with established laws which are compatible with the Covenant."¹⁹ Independent EMBs have also been recognised as both appropriate and more effective in practice:

Permanent, independent electoral authorities are emerging as the preferred form of EMBs in widely different states that have undertaken electoral reform... Historical evidence, coupled with conclusions by observers and advocacy by electoral professionals, almost unanimously indicates that independent electoral bodies serve democratic stability better than elections run by the executive branch...²⁰

Mechanisms for securing independence include allowing a body to self-regulate and self-organise, granting security of tenure to key decision-making staff (such terms may last longer than a term of parliament), and providing protection for the body's budget from governmental influence.

What is equally important for the conduct of genuine elections is that EMBs are formally accountable for their actions. Accountability may be described as meaning that 'an EMB is responsible for its activities, and must periodically provide evidence to its stakeholders and the public that its activities are effective and meet its prescribed legal, ethical, service and financial standards'.²¹ Institutional accountability forms a key part of an EMB's credibility and public confidence in the EMB, without which election results and the electoral process itself can be undermined. The importance of public confidence is acknowledged in paragraph 20 of General Comment 25 of the Human Rights Committee, which asserts, "There should be independent scrutiny... and access to judicial review... so that electors have confidence in the security of the ballot and the counting of the votes."

¹⁵ This is reinforced by article 91(6) of Pakistan's constitution, which states, "The cabinet, together with the Ministers of State, shall be collectively responsible to the Senate and the National Assembly." See: <http://pakistanconstitution-law.org/>. All subsequent references to the constitution of Pakistan are drawn from this source.

¹⁶ Hironori Yamamoto (2007), *Tools for Parliamentary Oversight: A Comparative Study of 88 National Parliaments*, Inter-Parliamentary Union, page 9. See: <http://www.ipu.org/PDF/publications/oversight08-e.pdf>.

¹⁷ *Ibid.*

¹⁸ Article 25 of the ICCPR states, "Every citizen shall have the right and the opportunity, without any distinction... and without unreasonable restrictions; a) To take part in the conduct of public affairs, directly or through freely chosen representatives; b) To 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; c) To have access, on general terms of equality, to public service in his [or her] country."

¹⁹ For the full text of General Comment 25, see:

[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/d0b7f023e8d6d9898025651e004bc0eb?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/d0b7f023e8d6d9898025651e004bc0eb?Opendocument). All subsequent references to General Comment 25 are drawn from this source.

²⁰ *Electoral Management Bodies as Institutions of Governance*, a report commissioned by the United Nations Development Programme (UNDP), page 11. See: <http://www.pogar.org/publications/other/undp/elections/electoralmgmtbodies-e.pdf>.

²¹ *The International IDEA Handbook on Electoral Management Design* (2006), page 223. See: <http://www.idea.int/publications/emd/>. All subsequent references to this document are from this source.

Various mechanisms, such as independent commissions, ombudsmen and judicial review,²² can provide accountability checks on public bodies, including EMBs. A legislature has a special responsibility to hold public institutions to account, given that one of its core functions is oversight. Its roles as representative of the people—the principal stakeholders in elections—and scrutiniser of government, allow for oversight that is integral to state structures (which sets it apart from other scrutinising agents; e.g., observer groups). It provides for questions to be posed on behalf of the people, its multi-party composition allows for a broad range of views to be expressed and it helps build public and political confidence in electoral processes.

These principles apply for all electoral activities. The ECP's constitutional responsibility for local elections under the new provisions of article 140 in the constitution of Pakistan should also be subject to scrutiny.²³

In order to protect the independence of the ECP, its accountability to parliament should be laid down in clear and precise rules. Civil society, the media and the general public also have a role to play in ensuring parliament is accountable to the electorate.²⁴

3. INDEPENDENCE, ACCOUNTABILITY AND THE ELECTION COMMISSION OF PAKISTAN

While the ECP is a constitutionally mandated²⁵ and relatively powerful body,²⁶ it has historically lacked full administrative and financial independence. The 2008 European Union Election Observation Mission (EU EOM) report recommends two measures for developing the independence and transparency of the ECP: first, a wider

recruitment process for ECP leadership and stronger ECP control of election staff; and second, that the ECP be accountable to parliament.²⁷

A move towards greater financial independence for the ECP came in 2000 with the transfer of certain budgetary powers from the Ministry of Finance to the chief election commissioner (CEC). While increased control of the ECP over its own finances is a positive factor in increasing its independence, it should be noted that the transfer of powers which altered the extent of the ECP's authority took place as the result of a decision within the executive branch, without the involvement of the legislature.²⁸

The 18th amendment to the constitution further increases the ability of the ECP to work independently. Replacing presidential appointment, it creates a consultative parliamentary appointment process for the CEC and the four members of the commission,²⁹ requires the members to be retired instead of sitting high court judges,³⁰ increases the tenure of the CEC to five years³¹ and removes presidential powers to decide what elections for public offices shall be held.³²

The ECP has developed a strategic five-year plan³³ comprising a number of goals, objectives and guiding principles, two of which are independence and integrity.³⁴ It is also preparing a legislative reform proposal that is expected to include several recommendations related to greater ECP administrative and financial independence, such as power to hire, depute and discipline staff for elections and budgetary autonomy. In its 2011 report on election law reform, FAFEN suggests that a number of reforms are necessary to achieve full independence of the ECP, including fixing the tenure of commission members³⁵

²² This is a process by which the judicial branch may exert a check on the executive branch by way of reviewing the legality (but not the merits) of executive decisions.

²³ Article 140A(2), as inserted by the 18th amendment of Pakistan's constitution states, "Elections to the local governments shall be held by the Election Commission of Pakistan."

²⁴ FAFEN currently has a Parliament Watch Programme, see: <http://www.fafen.org/site/v4/project.php?id=377>. PILDAT also undertakes assessment of parliamentary performance, see: www.pildat.org.

²⁵ Article 218 of Pakistan's constitution establishes a permanent election commission for elections to both houses of parliament, provincial assemblies and other public offices, and prescribes the duty of the commission: "It shall be the duty of the Election Commission... 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."

²⁶ Article 220 of Pakistan's constitution requires the executive authorities to 'assist' the commission in discharging its function; article 222 prevents any act of parliament from 'taking away or abridging' any of the powers of the commissioner or commission; and section 6 of the Election Commission Order, 2002 gives the commission 'power to issue such directions or orders as may be necessary for the performance of its functions and duties, including an order doing complete justice in any matter pending before it and an order for the purpose of securing the attendance of any person... or production of any document' and invests any such orders with the force of an order made by the high court. See: <http://pakistanconstitution-law.org/category/12-the-election-commission-order-2002/>.

²⁷ EU Election Observation Mission, Pakistan, Final Report (2008), recommendations 7-20. See: http://www.eueompakistan.org/PDF/final%20report/EU_EOM_Pakistan_Final_Report.pdf.

²⁸ The transfer of powers followed a proposal by the ECP which was approved by then President Musharraf, and the subsequent transfer of powers by the Ministry of Finance. The CEC was given powers to re-appropriate funds from one head of account to another within the budget, to sanction budget expenditure on any item, and to change nomenclature and upgrade or downgrade any post provided for within the budget as the result of a ministry decision. However, creation of new posts, for example, still requires ministry approval. This decision comes from the Finance Division, Government of Pakistan - Office Memorandum No F.3(7) Exp-111/2000 (25 July 2000), cited in PILDAT (2008), *How Independent is the Election Commission in Pakistan?*

²⁹ Amendment to article 213 of the constitution of Pakistan.

³⁰ Amendment to article 218 of the constitution of Pakistan.

³¹ Amendment to article 215 of the constitution of Pakistan.

³² Amendment to article 218 of the constitution of Pakistan. While the 18th amendment limits presidential powers, some primary legislation (i.e., acts of parliament) remains out of sync with the spirit of a stronger parliament. A number of acts also contain provisions stating that where a 'difficulty' arises, the president may 'make such provision for the removal of the difficulty as he may deem fit'. Such clauses can be found in the Election Commission Order (Section 9F), Conduct of General Election Order (Section 10.1), Electoral Rolls Act (Section 28A), and the Delimitation of Constituencies Act (Section 10B).

³³ See: <http://ecp.gov.pk/sp/index.html>. All subsequent references to the ECP's strategic plan are drawn from this source.

³⁴ See: <http://ecp.gov.pk/sp/guiding-principles.html>.

³⁵ DRI understands that the fixed tenure of commission members is currently under consideration by the government.

and guaranteeing in law the full financial autonomy of the ECP, a goal which the ECP shares in its five-year plan.³⁶

There has, however, been less emphasis on increasing the accountability of the ECP. ECP decisions may be challengeable in the courts, but because this process is dependent on a claimant bringing a case and therefore takes place on an *ad hoc* rather than systematic and continual basis, it provides only limited accountability.

The ECP acknowledges the importance of transparency and accountability in its five-year strategic plan, stating as objectives that it will ensure 'transparency by providing better access to observers' (goal 3), build an environment of trust and transparency with political parties and the general public, and increase transparency in the delimitation process (goal 11). With respect to internal procedures, the ECP plan states that '[c]urrent procurement policies will be assessed in order to enhance quality and accountability' (goal 5), a 'comprehensive human resources policy' and a 'transparent accountability system' will be implemented (goal 7) and a research and evaluation wing with a stated intention for monitoring and evaluation will be 'built into all work undertaken by the ECP' (goal 9). It does not, however, refer to strengthening reporting to parliament as part of ensuring its own transparency and accountability.

Formal routine accountability mechanisms specific to the ECP are currently restricted to financial matters (see below) and leave a gap when it comes to the overall performance of the ECP. While some general accountability functions in Pakistan are held by the office of the ombudsman (*Mohtasib*),³⁷ this does not provide a suitable vehicle for increasing the accountability of the ECP. The office of the ombudsman only has jurisdiction for agencies established or controlled by the federal government. It therefore does not have jurisdiction over the ECP, and is not mandated to address complaints against the ECP.³⁸

³⁶ Strategic goal number 8.

³⁷ Created by The Establishment of the Office of *Wafaqi Mohtasib* (Ombudsman) Order, 1983 (I of 1983), Article 2(1), the Ombudsman has jurisdiction 'to diagnose, investigate, redress and rectify any injustice done to a person through mal-administration of... a Ministry, Division, Commission or office of the Federal Government or a statutory body, corporation or other institution established or controlled by the Federal Government'. See: <http://www.ma-law.org.pk/pdflaw/The%20Establishment%20of%20the%20Office%20of%20Wafaqi%20Mohtasib.pdf>. All subsequent references to this order are drawn from this source.

³⁸ The ombudsman is also appointed by the president. Consequently, there may be a lack of confidence in his/her ability to work on a fully independent basis (although s/he is required to undertake the functions of this office 'independently of the executive' according to article 3 of the Ombudsman Order 1983). Lacking *suo moto* powers (i.e., ability to act on its own initiative), the office of the ombudsman is further limited by being complaints-driven. Authority for the enforcement of the ombudsman's recommendations ultimately lies with the president (according to article 12 of the Ombudsman Order 1983). As such, any ombudsman authority over the ECP could compromise its independence.

Financial Accountability

Article 169 of the constitution and sections 7 and 8 of Ordinance XXIII³⁹ of 2001 require the auditor-general⁴⁰ 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 transactions⁴¹ and provides consolidated monthly accounts (to the federal finance division).⁴² The secretary of the ECP is responsible for preparation of these accounts⁴³ and is answerable to the parliamentary public accounts committee (PAC).⁴⁴

The office of the auditor-general provides staff which is seconded to the ECP and its provincial offices on a rotation basis to conduct both general accounting functions and audits. The auditor-general's office also sends a team to conduct an annual external audit at the direction of the auditor-general.

If financial irregularities are noted in the external audit report, a director from the auditor-general's office meets with ECP management to discuss and agree a list of outstanding issues. These form the subject of draft paragraphs. The draft paragraphs are presented to the National Assembly's PAC,⁴⁵ which may summon and put questions to the secretary of the ECP, who is also the principal accounting officer (PAO) for the ECP (also see

³⁹ For the full text of Ordinance XXIII, see: <http://www.agp.gov.pk/docs/AGP%20Ordinances%202001,%20Audit%20%20&%20Accounts%201973.Doc>.

⁴⁰ Established by article 168 of Pakistan's constitution to audit 'the accounts of the Federation and the Provinces and any authority or body established by the Federation or a Province'.

⁴¹ *Accounting Policies and Procedures Manual, Government of Pakistan* (13 February 1999). See: <http://www.agpr.gov.pk/APPM.pdf>. Subsequent references to this manual are drawn from this source. As Government of Pakistan, Finance Division. Office Memorandum No.F.3(2)Exp.III/2006 (13 September 2006) states, "(2) He shall ensure that payments are correctly classified under the appropriate heads of accounts and that departmental accounts are regularly reconciled every month with the figures communicated by the Controller General of Accounts (CGA)/Accountant General of Pakistan Revenues (AGPR)..." See: <http://www.hec.gov.pk/InsideHEC/Divisions/Finance/Documents/System%20of%20Financial%20Control%20and%20Budgeting%20%28Publicatin%20of%20Finance%20Division%20GoP,%20September%20-%202006%29.pdf>. Subsequent references to this memorandum are drawn from this source.

⁴² *Accounting Policies and Procedures Manual, Government of Pakistan* (13 February 1999).

⁴³ "The Secretary shall be the Principal Accounting Officer of the Ministry/Division, Attached Departments and Subordinate Offices in respect of the expenditure incurred against the budget grant (s) of the Ministry/Division." Government of Pakistan, Finance Division, Office Memorandum No.F.3(2)Exp.III/2006 (13 September 2006).

⁴⁴ *Ibid.* "The Principal Accounting Officer is responsible not only for the efficient and economical conduct of the Ministries/Divisions/Departments, etc., but also continues to be personally answerable before the Public Accounts Committee..."

⁴⁵ The PAC is the direct accountability institution of parliament, which has the power to summon the financial heads (PAOs) of all federal government institutions. In the past, a backlog of work, along with changes in committee membership, has hindered the effectiveness of the PAC; e.g., in 2005, the PAC was still doing the accounts from 1999. The present government appointed the leader of the opposition as the chairperson of the PAC. In addition to clearing outstanding work, he has effectively taken up the issue of accountability for government institutions. The PAC now has several subcommittees and its secretariat support has been strengthened. Recently, developments related to the expansion of the role of parliament have also helped the PAC emerge as a strong accountability arm of parliament.

below). The responses to and correspondence with the PAC are prepared by a departmental accounts committee (DAC), which is headed by the ECP secretary/PAO.

While this can provide some visibility for ECP financial matters, the system may not ensure sufficient financial transparency to serve as a full accountability mechanism. This is because the legislature does not have the opportunity to check detailed financial information.⁴⁶ The PAC must rely instead on an interpretation of such information in the form of the draft paragraphs. Although these paragraphs may be based on a correct interpretation, they are not transparent and therefore may not sufficiently serve the purpose of building public trust and holding the ECP fully to account. Moreover, showing only summary information to the PAC would seem to be contrary to the National Assembly's rules of procedures: rule 203(3)(b) states that the PAC shall 'examine the statement of accounts showing the income and expenditure of autonomous and semi-autonomous bodies'.⁴⁷

Further, the fact that responsibility for both the internal and external audits rests with the same body may challenge the integrity of the audit process. One role of an external audit is to assess the effectiveness of internal auditing mechanisms. However, if both audits are undertaken by the same body then there may be insufficient independence of the external audit function.

Service Accountability

While a financial audit checks the finances of an institution, it leaves a gap in oversight because it cannot check if money spent was best used to meet organisational responsibilities or how the organisation is performing overall. At present, the ECP's reporting requirements to parliament are confined to the role of the PAO *vis-à-vis* the PAC. Thus there is a need for parallel checks to be made on decision-making, efficiency and overall performance. Presently, no periodic official mechanisms exist to check these aspects or to scrutinise whether the ECP is effectively meeting its constitutional responsibilities of conducting elections honestly, justly, fairly and in accordance with law.

There are, however, some *ad hoc* mechanisms. For example, there is an established ECP practice of responding to parliamentary questions on a priority basis,

but this practice is not formalised. Although the media covers these events, the questions and answers presented are not routinely made available to the public who are reliant on media decisions to report on the events. In the past, the ECP has also published a report after general elections. Previous reports have been general in nature, reporting results on a constituency basis; e.g., number of votes polled, party position, winners and runners up, etc. These reports are classed as public documents to be distributed to stakeholders and the international community, but they do not routinely appear on the ECP's website and the report on the 2008 general elections has not yet been produced. The effectiveness of these *ad hoc* mechanisms is limited by the fact that they appear to be inconsistent and are not comprehensive in scope.

4. RECOMMENDATIONS FOR A FRAMEWORK FOR PARLIAMENTARY OVERSIGHT

Pakistan's National Assembly has a committee system that could be used to undertake more robust oversight/scrutiny of the ECP.⁴⁸ Senate committees could also be involved.

Parliamentary oversight of the ECP could include: 1) an assessment of the performance of the ECP's delivery on its legal responsibilities through scrutiny of its activities, strategies, policies, decisions, use of non-monetary resources, and internal performance accountability mechanisms; and 2) more rigorous scrutiny of its accounts, financial statements and internal financial accountability mechanisms.

Consideration could be given to the following parliamentary oversight mechanisms.

Regular Reporting by the ECP

There could be a legal requirement for regular reports to be submitted by the ECP to the legislature on an annual basis and after each electoral event,⁴⁹ including local government elections (with reports submitted to provincial assemblies) and by-elections. Reports could include recommendations for improvements to election legislation and election administration. The rules about reporting should be clear; e.g., they should cover what should be included and the timing of submission.

The structure and content of reports could be prescribed by the responsible parliamentary committee. Content

⁴⁶ This could include, for instance, balance sheets and cash flow, breakdown of costs, projected expenditure, increases or decreases in spending, costs of external contracts and fluctuations in currency exchange rates. In addition, a private members bill recently has been tabled that all ministries should first present and discuss their budgets in the respective standing committees, which would then approve those budgets before being tabled in the house. At the date of publication, however, parliament has not yet passed legislation to this effect.

⁴⁷ For the full text of the National Assembly's rules of procedure, see: http://www.na.gov.pk/uploads/documents/1308926618_396.pdf. Subsequent references to these rules are drawn from this source.

⁴⁸ The National Assembly's procedural manual states, "The parliamentary committees provide the settings where the functions of law-making, supervision of administration and meeting obligations to the electorate are realized." See: http://na.gov.pk/uploads/documents/1308928052_477.pdf.

⁴⁹ In its 2011 report (page 127), FAFEN recommends a statutory basis for the ECP to submit reports on its activities to parliament annually and after each general election.

could cover: electoral events, electoral preparation, consultations, transparency measures, research, development and innovation, response to recommendations (e.g., from parliament, political parties, observers, recognised election experts and civil society organisations), challenges to compliance with international and national legal obligations and measures taken to overcome these. Reports could be required to be factual, descriptive and analytical.

In addition, the ECP could be required by law to produce reports as requested by the National Assembly and Senate at other times in the electoral cycle, for instance a preparedness report ahead of an electoral event, or on a particular topic, such as updating of the electoral roll, and on specific by-elections. Introducing a legal requirement for such reports by the ECP would supplement existing National Assembly powers with a more secure arrangement which would be binding in nature. All such ECP reports (and follow-up by parliament) should immediately be documented and made publicly available.

A Responsible Parliamentary Committee

Responsibility for oversight/scrutiny of the ECP could be given to a dedicated parliamentary committee. Possible committees could be the law, justice and parliamentary affairs committee (LJPA) or the human rights committee. Wide cross-party representation on the committee would strengthen the process of building both public and political confidence.

The given committee could scrutinise and consider any changes in election-related legislation that could be beneficial to the process. The committee should take a proactive and regular approach to its responsibilities. The given committee should be empowered to investigate *suo moto* (i.e., on their own initiative) without waiting for referral.⁵⁰

The work of the responsible committees in the respective houses of parliament could cover active scrutiny of ECP reports and activities, information about which could be obtained from a wide range of sources, including the ECP itself, as well as civil society organisations, recognised election experts, community groups, women's and minorities' organisations and constituents.

The recommendations and reports of such committees could be immediately made publicly available and referred to the main house. There is currently no requirement to make such reports public. The benefits of doing so could include increased confidence in both the ECP and the legislature.

⁵⁰ This is currently the case at the national level, but not at the provincial level, where in three provinces the relevant committee must first be asked by the house to investigate or consider a matter.

Further ECP-Parliamentary Activities

National Assembly representatives could exercise existing powers to call for papers, records and documents,⁵¹ or produce its own reports on subjects it deems necessary to bring to the attention of the speaker or the Assembly.⁵²

There could be clear written rules governing oversight, and which respect both the need to scrutinise and the independence of the ECP. These could state, for example: that the National Assembly and Senate may not obstruct the work of the ECP, for instance, by taking up too much ECP time in busy periods; that parliamentarians do not have authority to issue instructions to the ECP; arrangements for visits to the ECP; and that information should be immediately made public. These rules could be drafted on the basis of consultation between the National Assembly, the Senate and provincial assemblies, the ECP and domestic and international non-governmental organisations, recognised election experts and civil society organisations.

The ECP practice of responding to questions from parliament on a priority basis could be formalised. An official question and answer mechanism, with a response deadline, could be established. Parliamentary questions could be oral or written, with an obligation on the recipient to reply within a certain period of time. The ECP should have some discretion over the level of representative it chooses to send for more minor matters. Matters for which the CEC may be called could be clearly established. Such questions and answers should be made available to the public.

The ECP could be required to receive official visits from the National Assembly, Senate and provincial assemblies to help keep the legislature up to date and informed about ECP activities and developments. Such visits could be primarily led by committee chairs and take place on a regular basis. In order to protect the ECP from attempts at political interference, such visits could be required to be multi-party in composition, from a parliamentary body (e.g., a committee) and by prior appointment. These could exist alongside current powers to compel⁵³ certain ECP members, the CEC and secretariat staff to attend parliament in order to respond to questions in specific circumstances.

Individual parliamentarians, parliamentary caucuses and cross-chamber committees could also be able to

⁵¹ Rule 227 of the National Assembly's rules of procedure states that, "A [Committee] shall have power to require the attendance of persons or the production of papers or records if such course is considered necessary for the discharge of its duties..."

⁵² Rule 234 of the National Assembly's rules of procedure states that, "A Committee may, if it thinks fit, make a special report on any matter that arises or comes to light in the course of its work which it may consider necessary to bring to the notice of the Speaker or the Assembly."

⁵³ These powers are given in the National Assembly's rules of procedure under rule 227. See footnote 51 above.

undertake scrutiny in response to enquiries from constituents, or on their own initiative. The scope of their authority should be clearly defined. Actions they could take include written questions to the ECP, visits to ECP offices (on a pre-arranged multi-party basis) and initiating debates within committees or within the house.

Areas for Scrutiny

As part of ensuring the accountability of the ECP for meeting its domestic and international legal obligations, and delivering the best service to stakeholders, the following areas could be subject to consideration:

- Implementation of recent electoral events
- Planning and preparedness for future electoral events
- The extent to which the legal framework, management structure and activities of the ECP meet Pakistan's international obligations under the ICCPR and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)
- The extent to which the ECP's short- and medium-term strategies are in line with its mandate, and the extent to which it meets its own goals
- How efficient the ECP is: measuring cost against output, and quality assessments of output
- Representation of women and minorities in the ECP and effectiveness of activities to encourage their full participation in elections
- Transparency measures taken by the ECP: the availability and publication of information to stakeholders, for example, the immediate publication of election results by polling station both at the polling station and on the ECP website
- The extent to which the ECP consults with stakeholders in its policy development
- Responsiveness to recommendations of observers and stakeholder consultations
- Public confidence in the ECP: seeking the views of constituents, relevant civil society organisations and observer groups
- The ECP's internal accountability mechanisms and the importance it places on them; e.g., its own internal management and reporting structures;⁵⁴ how ECP managers hold staff to account and how managers are held to account, including performance reviews and disciplinary measures

As part of ensuring more rigorous financial accountability of the ECP, the following areas could be subject to consideration:

- Full financial statements for the fiscal year
- Whether the ECP can fully account for the money it has spent, what it plans to spend in the future and

justification for proposed expenditure, including public funds and funds from other sources

- Whether the ECP's management of funds complies with its own rules and regulations, and any legal requirements related to public sector financial requirements
- Whether financial statements accurately represent the financial status of the ECP
- Whether internal financial controls are appropriately designed and well implemented
- Whether the ECP may consider moving its accounting function in-house to strengthen the integrity of its auditing process

5. CONCLUSION

Parliamentary oversight of public institutions is about accountability and transparency. The 18th amendment to Pakistan's constitution extends the powers of parliament, including in the appointment of the CEC and ECP members. It provides for greater independence of the ECP and re-asserts the oversight function of the legislature in general. If Pakistan were to establish a system that strengthens the accountability of the ECP while providing for its independence to continue to grow, it would be an important step towards improved electoral management.

Elections are the means by which access to positions of power is decided and the legitimacy of an election and an EMB is built on the performance of that EMB and public faith in the institution. Transparent and independent decision-making by the ECP and full accountability for its actions is therefore paramount.

Currently, only one official routine mechanism for ECP accountability is practiced by the legislature and this is limited in impact. It is restricted to financial matters only and fails to provide for the submission of full financial information to the legislature for scrutiny.

Use of further oversight/scrutiny mechanisms would allow for a more thorough examination of ECP activities across a wider range of its work for federal, provincial and local government elections. Such oversight tools need to be used judiciously, with the utmost regard for the independence of the ECP. Without such mechanisms, it may be argued that the legislature will not be fully fulfilling its oversight responsibilities, and the ECP will not be held fully accountable to stakeholders for its performance. With the commitment and will of both institutions to meet their constitutional responsibilities and to put formalised mechanisms in place, the democratic legitimacy of both institutions can be increased, as can the democratic legitimacy of the process of elections.

⁵⁴ *The International IDEA Handbook on Electoral Management Design* (2006), page 229, states, "To meet internal and external accountability requirements, an EMB needs mechanisms that can assess its activities, and assure itself and its stakeholders of the quality, effectiveness and probity of its operational and financial management. These... include internal quality controls, audits, evaluations, peer reviews and external oversight."

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Democracy Reporting International (DRI) is a non-partisan, independent, not-for-profit organisation registered in Berlin, Germany. DRI promotes political participation of citizens, accountability of state bodies and the development of democratic institutions world-wide. DRI helps find local ways of promoting the universal right of citizens to participate in the political life of their country, as enshrined in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

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