

# **REFORMING PAKISTAN'S ELECTORAL SYSTEM**

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## REFORMING PAKISTAN'S ELECTORAL SYSTEM

### EXECUTIVE SUMMARY AND RECOMMENDATIONS

Electoral rigging has hampered Pakistan's democratic development, eroded political stability and contributed to the breakdown of the rule of law. Facing domestic pressure for democracy, successive military governments rigged national, provincial and local polls to ensure regime survival. These elections yielded unrepresentative parliaments that have rubber-stamped extensive constitutional and political reforms to centralise power with the military and to empower its civilian allies. Undemocratic rule has also suppressed other civilian institutions, including the Election Commission of Pakistan (ECP), which is responsible for holding elections to the national and four provincial assemblies, and local governments. With the next general election in 2013 – if the Pakistan Peoples Party (PPP)-led government completes its full five-year term – the ruling party and its parliamentary opposition, as well as the international community, should focus on ensuring a transparent, orderly political transition through free, fair and transparent elections.

General Pervez Musharraf's eight-year rule gravely eroded the ECP's already limited independence, impartiality and competence, reducing the institution to providing a façade of legitimacy to military rule. Handpicked chief election commissioners (CECs) oversaw widespread rigging of two local government elections, a presidential referendum, and a general election. Musharraf's Legal Framework Order, enshrined in the constitution through the seventeenth amendment, massively distorted the political system, tilting the electoral playing field towards the military's civilian allies, including the Islamist parties.

These constitutional distortions were repealed in April 2010, when parliament unanimously passed the eighteenth amendment to the constitution, undoing Musharraf's political legacy and introducing new provisions to strengthen parliamentary democracy. The amendment package enhanced the ECP's independence by making the appointment of its key officials more transparent and subject to parliamentary oversight. The CEC and other ECP members, previously appointed by the president, will now be selected through consultations between the prime minister and the leader of the opposition in the National Assembly, and subsequently vetted and approved by a joint parlia-

mentary committee comprising, equally, government and opposition members. While encouraging, this is only the first step in a longer process of electoral reform.

To curtail opportunities for the military to manipulate the political process, the ECP must be made independent, impartial and effective. The commission remains poorly managed, inadequately resourced, under-staffed and under-trained. Promotion prospects for ECP personnel are limited, and recruitment policies fail to attract strong candidates; top positions tend to be filled by civil servants from the regular federal bureaucracy, primarily because ECP officials lack the necessary skills. There are no systematic training programs for ECP staff, and the organisation devotes few if any resources to researching and analysing past elections and raising important electoral issues.

Electoral reform on all fronts is urgently needed. Highly inaccurate voters lists are responsible for disenfranchising millions. Polling procedures are often manipulated; accountability mechanisms for candidates and political parties seldom employed; and the electoral code of conduct routinely flouted. Dysfunctional election tribunals, characterised by corruption and prolonged delays, prove incapable of resolving post-election disputes. Such internal weaknesses constrain the ECP from overseeing credible elections and an orderly political transition.

The ECP has taken some steps to address these problems. In May 2010, it produced a strategic five-year plan, with significant international assistance, listing fifteen broad electoral reform goals, divided into 129 detailed objectives with specific timeframes, which range from improvements in voter registration and election dispute management procedures, to the creation of a comprehensive human resource policy. Although there were some, albeit limited, steps towards meeting targets for 2010, more substantive progress is unlikely unless parliament assumes political ownership over the plan, oversees its implementation, and holds the ECP accountable for unsatisfactory progress.

Credible elections, however, require far more than just structural reforms. Many discriminatory laws remain in place, including easily manipulated qualification criteria

requiring electoral candidates to be of good Islamic character. Moreover, an interventionist military high command appears bent on shaping the political order to its liking. Although the PPP's main opposition, Nawaz Sharif's Pakistan Muslim League (PML-N) has repeatedly expressed its support for the democratic transition and refusal to unseat the elected government via unconstitutional means, it must match rhetoric with action. In the past, both the PML-N and the PPP have instead chosen to collude with the military at times.

A new population census, originally due in 2008, is scheduled for August-September 2011, presumably followed by a large-scale redistricting exercise. The last redistricting, under Musharraf in 2002 and 2005, ahead of national and local elections respectively, was designed to serve narrow political objectives. Political violence and ethnic conflict could be sparked countrywide by a flawed census, gerrymandering and a rigged election.

The international community, too, particularly the U.S. and EU, should realise that a flawed general election in 2013, if not sooner, would pose a serious threat to Pakistan's stability. Donors and Western capitals should immediately shift their programs and advocacy to support for a smooth political transition, rather than wait for the election season to begin.

## RECOMMENDATIONS

### To the National and Provincial Governments of Pakistan:

1. Transform the parliamentary subcommittee on electoral reform to a permanent, full committee.
2. Increase the independence and improve the functioning of the ECP by:
  - a) appointing without delay new members of the ECP, according to the provisions of the eighteenth and nineteenth constitutional amendments;
  - b) granting the ECP complete financial autonomy by passing legislation providing for budgetary allocation to the commission, reflecting to the extent possible its determination of needs;
  - c) making the ECP's code of conduct part of the electoral law, and requiring the ECP to revise it for each electoral cycle;
  - d) requiring that the ECP's nominees for election tribunals be approved by the permanent parliamentary committee on electoral reform;
  - e) ensuring that all federal and provincial executive authorities assist the ECP, as required by law, particularly in enforcing the code of conduct, in-

cluding provisions relating to the use of government resources for electoral purposes;

- f) ensuring that all executive officers deputed to electoral duties are subject to ECP supervision, and not of their parent department; and
  - g) removing the condition that the CEC and members of the ECP be retired judges, instead opening up the selection process to people of integrity and experience.
3. Submit the ECP's five-year strategic plan for review and a vote by the permanent parliamentary committee on electoral reform which should make amendments where necessary; require regular reports by ECP officials on steps taken to achieve the plan's objectives; and hold ECP officials accountable for unsatisfactory progress.
  4. Ensure that a new population census is carried out in August-September 2011, as scheduled, as well as a credible redistricting exercise ahead of the next local or general election, based on the new census; empower the permanent committee on electoral reform in the National Assembly, and similar committees in the provincial assemblies, to hold public hearings on the ECP's redistricting exercise, to review and approve the redistricting plan for national and provincial constituencies; and subject final approval to vote in the relevant legislature.
  5. Remove all qualification criteria for electoral candidacy that are based on vague definitions of moral suitability, including adherence to Islamic injunctions.

### To the Election Commission of Pakistan:

6. Prioritise the timely implementation of the Five-Year Strategic Plan (2010-2014).
7. Enhance accountability of voting processes, election officials and electoral candidates by:
  - a) ensuring to the extent possible that all electoral constituencies are roughly equal in population size, and abide by other criteria in the Delimitation of Constituencies Act, 1974;
  - b) revising the code of conduct for each electoral cycle;
  - c) barring temporary election staff from officiating in their home districts, and taking action against those found guilty of corruption or bias;
  - d) instituting an independent mechanism for challenging the appointment of polling officials;
  - e) providing election observers unfettered access to polling stations;
  - f) rejecting the proposed incorporation of electronic voting machines (EVMs), and instead improving

- the existing system of paper ballots and manual counts through better training and neutral observation;
- g) simplifying complaints and appeals procedures by reducing the number of administrative personnel tasked with processing petitions, and streamlining all relevant administrative mechanisms; and
  - h) introducing robust measures for scrutinising annual statements of assets and liabilities filed by parliamentarians, and prescribing punishments, to be administered by the ECP, for elected officials filing false statements.
8. Improve the polling process by:
- a) prohibiting candidates from contesting elections in more than one constituency;
  - b) implementing complete computerisation of the voter registration process, including photographs of voters as a further guarantee against bogus voting; publishing the final voters list on the ECP's website; and abiding by the new constitutional requirement for revising the list annually;
  - c) preparing a permanent list of polling stations through consultations with all stakeholders, providing their locations on the ECP website and providing written explanations for any changes made by district returning officers; and
  - d) expediting the pilot project on computerised electoral rolls and expanding it countrywide.
9. Improve infrastructure, enhance training and research, and increase human resource capabilities by:
- a) implementing a comprehensive human resource policy, preparing job descriptions for all positions and devising a clearly defined path of career progression for all permanent staff;
  - b) recruiting ECP officials in Basic Pay Scale (BPS)-17 through the Federal Public Service Commission, and establishing an Electoral Service of Pakistan along the lines of other occupational groups in the federal civil service;
  - c) recruiting qualified people from the non-government sector as temporary staff for election day duties, rather than strictly from the executive; and determining the terms and conditions for temporary staff recruitment, investigating misconduct and taking disciplinary action against polling officials found guilty of misconduct;
  - d) developing specialised courses in electoral administration, taught by professional instructors;
  - e) expanding the role of the Federal Election Academy by equipping it with trained staff and improved facilities;
  - f) adopting a comprehensive training program with two components: a basic orientation course that familiarises recruits with the history, functions and powers of the ECP, and its conduct of previous elections; and specialised instruction in specific areas of electoral administration, such as the preparation of electoral rolls, delimitation of constituencies and electoral dispute resolution; and
  - g) establishing training programs for all temporary staff recruited for electoral duties on the role and functions of the ECP, responsibilities in managing assigned polling stations, and effective response to poll-related violence.
- To the International Community:**
- 10. Support a still fragile democratic transition by prioritising democratisation programming, sending unambiguous signals to the military high command that any interference in the political process will be unacceptable and would result in the suspension of military assistance; and shift the focus of programming and engagement towards ensuring a credible and orderly political transition after the next general election.
  - 11. Acknowledge that elections are not a purely technical but an intensely political process and adjust programming to engage beyond the bureaucracy with the full spectrum of stakeholders, including parliament and political parties, and secure political ownership at the national and provincial levels over election-related programs.
  - 12. Support the development of specialised training programs for dedicated instructors in electoral administration.
  - 13. Provide the ECP with technical support towards timely completion of its five-year strategic plan, with particular focus on:
    - a) developing a comprehensive ECP information technology (IT) policy, including modernising the ECP's IT Directorate, as well as supporting a strong IT infrastructure at the ECP secretariat, provincial election commission offices and field offices;
    - b) computerising electoral rolls and building a serviceable electronic voter database;
    - c) establishing linkages between all polling stations, and between polling stations and the computerised voter rolls;
    - d) building a serviceable electronic database to track electoral complaints; and

- e) providing geographical information systems to digitally map electoral areas and ensure that constituency delimitation takes place along scientific lines.
14. Insist that the Strategic Plan Management Committee (SPMC) and the Review, Assistance and Facilitation Team (RAFT), be activated and made accountable to donors.

**Islamabad/Brussels, 30 March 2011**

## REFORMING PAKISTAN'S ELECTORAL SYSTEM

### I. INTRODUCTION

Pakistan's chief electoral management body, the Election Commission of Pakistan (ECP), has historically colluded with the civil-military bureaucracy to manipulate polls. During General Pervez Musharraf's military rule, a succession of pliant chief election commissioners oversaw widespread rigging of two local government elections, a presidential referendum, and a general election from 2001 to 2005.<sup>1</sup> Repeatedly rigged elections, aimed at consolidating authoritarian rule, have eroded already weak public confidence in electoral institutions and fuelled domestic alienation and violence. The likelihood of the civil-military bureaucracy selectively rigging yet another election remains high, which would derail the democratic transition and hence the stability of an increasingly fragile state.

The current democratic transition is weak because of electoral manipulation in the 2008 national polls. Although Musharraf's main opposition, the Pakistan Peoples Party (PPP) and the Pakistan Muslim League (Nawaz) (PML-N) defeated the pro-military Pakistan Muslim League – Quaid-i-Azam (PML-Q) in the elections, rigging resulted in a hung parliament. No party managed to win a majority, so the PPP, with the largest segment of the popular vote, was forced to form unstable coalitions at the centre and in the provinces with parties allied with the military, most notably the Muttahida Quami Movement (MQM). As for the PML-Q, despite its lack of popular support and organisational weaknesses, it won sufficient seats in the federal and provincial parliaments to influence political bargaining and competition at the national level and within Punjab, Pakistan's largest province.

The ECP's lack of independence, accountability and effectiveness has severely limited its capacity to oversee a credible election and an orderly political transition. While extremely powerful on paper, it is an impotent organisation whose directives are flouted by the civil-military bureaucracy, politicians and even its own officials. Its financial autonomy is circumscribed, and its powers to prevent and punish electoral malpractice are neither exercised nor complied with. According to a former ECP secretary, "legally, all executive authorities are bound to come to the aid of the ECP but in reality, the military ignores it and the bureaucracy defies it with impunity".<sup>2</sup>

Belying many observers' predictions, the PPP-led government in Islamabad has survived a third year in office. If it lasts until 2013, it will become the first democratically elected government since 1977 to complete a full term without being prematurely dismissed either through an army-manipulated intervention or a direct military coup. The democratic transition will only last, however, if the electoral institutions are able to oversee credible polls that ensure the peaceful transfer of power from one elected government to another.

It is encouraging that the PPP and the main opposition party, the PML-N, have cooperated to pass major political and constitutional reforms to strengthen the ECP's independence, most notably the eighteenth amendment to the constitution, unanimously adopted in April 2010 and the nineteenth amendment passed in January 2011. The PPP-led government is currently negotiating with opposition parties to reconstitute the ECP according to the new constitutional provisions. As of this writing, the National Assembly (lower house of parliament) has constituted a twelve-member joint parliamentary committee, including eight members of the National Assembly and four senators, to appoint ECP members.

Such steps mark a welcome shift from the 1990s when the PPP and the PML-N colluded with the military to undermine each other. Nevertheless, with a thin parliamentary majority and an ambitious military high command bent on undermining civilian rule, the PPP-led government cannot afford to delay more extensive reforms to a

<sup>1</sup> See Crisis Group Asia Briefing N°74, *After Bhutto's Murder: A Way Forward for Pakistan*, 2 January 2008; Crisis Group Asia Briefing N°70, *Winding Back Martial Law in Pakistan*, 12 November 2007; Crisis Group Asia Report N°137, *Elections, Democracy and Stability in Pakistan*, 31 July 2007; Crisis Group Asia Briefing N°43, *Pakistan's Local Polls: Shoring Up Military Rule*, 22 November 2005; Crisis Group Asia Report N°102, *Authoritarianism and Political Party Reform in Pakistan*, 28 September 2005; Crisis Group Asia Report N°77, *Devolution in Pakistan: Reform or Regression?*, 22 March 2004; and Crisis Group Asia Report N°40, *Pakistan: Transition to Democracy?*, 3 October 2002.

<sup>2</sup> Crisis Group interview, Islamabad, 30 September 2010.

deeply flawed electoral system. The eighteenth amendment's electoral reforms were necessary but not sufficient. Their implementation has been slow, and several faulty by-elections have occurred since the amendment passed in April 2010. If the next general election, currently scheduled for 2013, is similarly flawed, it would undermine a civilian transition in which the elected leadership is struggling to wrest control over security and foreign policy from the military. It will also allow the military, as in the past, to portray the civilian leadership as corrupt, undemocratic and unfit to rule.

A flawed election would likely fuel violent ethnic conflict, including in Karachi, Pakistan's financial hub and the capital of Sindh province. Heightened political, ethnic and sectarian violence in the city is straining already tenuous relations between the Sindhi-dominated PPP and the Mohajir-dominated<sup>3</sup> Muttahida Qaumi Party (MQM), a coalition partner in both the centre and the Sindh government. With the death toll mounting in almost daily violent clashes between activists from the MQM, PPP and the Pashtun-dominated Awami National Party in Karachi, a distorted electoral process would fail to confer legitimacy on the next government, and could provoke violent street agitation as the only option for political change. It would also embolden extremists rather than strengthen the moderate majority that supports the PPP, PML-N and other mainstream parties.

Analysing Pakistan's troubled electoral history and structure and examining the institutions, laws and processes that govern electoral administration, this report identifies measures to improve the ECP's ability to hold free and fair elections. It is based on extensive interviews with a range of stakeholders including parliamentarians, government officials, public policy analysts, representatives of local and international organisations working on electoral reforms, and serving and retired ECP officials.

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<sup>3</sup> Mohajirs, mostly concentrated in Sindh province's urban centres, are Urdu-speaking migrants from India and their descendants.

## II. A TURBULENT ELECTORAL HISTORY

### A. DEMOCRACY DELAYED

During its first decade of independence, Pakistan was theoretically a parliamentary democracy but practically governed by bureaucrats, with the military as a junior partner.<sup>4</sup> Pakistan's founding party, the Muslim League, failed to transform itself from an independence movement into a political force with a strong support base and increasingly relied on the civil-military bureaucracy to retain hold over government in the face of growing domestic opposition. Its weaknesses enabled those bureaucracies to annex the powers of state and to impede democratic development. Provincial elections were marred by allegations of widespread rigging and manipulation; national elections were not held and un-elected heads of state, or governors-general, practically assumed the role of the British Viceroy, appointing and dismissing governments at will.<sup>5</sup>

Frustrated by the ruling party's failure to consolidate democracy, including its unwillingness to adopt a political formula representative of the Bengali majority, a number of politicians broke ranks to form opposition parties, most notably the Awami National League (renamed the Awami League) and the Krishan Sramik Party, which combined forces to defeat the Muslim League in East Pakistan's 1954 provincial elections.<sup>6</sup> That sent "a signal to the central Muslim League headquarters in Karachi that the party had not only lost its monopoly (in the East) but also faced a stark reality of being defeated in the provinces of western Pakistan as well".<sup>7</sup>

Fearing that the Bengali majority could come to power democratically, the Muslim League, backed by the West Pakistan-dominated civil and military bureaucracies, nullified the results, imposed central rule on the East and suspended all political activity. Similar tactics were later replicated in West Pakistan, where the growing popularity of a new democratic movement, the National Awami Party (NAP), which sought regional autonomy, threatened the

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<sup>4</sup> See Crisis Group Report, *Pakistan: Transition to Democracy?*, op. cit.

<sup>5</sup> From 1947 to 1958, Pakistan had seven prime ministers, each serving no more than two years. See Andrew R. Wilder, *The Pakistani Voter: Electoral Politics and Voting Behaviour in the Punjab* (Karachi, 1999), p. 18.

<sup>6</sup> East Bengal was the only province in Pakistan that had not held provincial elections by the end of 1953, in large part due to the Muslim League's fears of defeat.

<sup>7</sup> Lawrence Ziring, *Pakistan in the Twentieth Century: A Political History* (Oxford, 1997), p. 155.



bureaucracies, whose instrument the ruling Muslim League had become.<sup>8</sup>

In 1956, Pakistan adopted its first constitution, but only after Governor-General Iskander Mirza (1955-1958), a former bureaucrat,<sup>9</sup> pressured the Constituent Assembly to accept him as the first president of the newly formed republic.<sup>10</sup> The constitution provided for elections to national and provincial assemblies on the basis of universal adult franchise, with an election commission, headed by a chief election commissioner, authorised to prepare and revise electoral rolls and organise and conduct elections. Although the constitution prescribed a federal parliamentary form of government, it nevertheless gave the president the power to dismiss the prime minister, a provision that Mirza used frequently.<sup>11</sup>

Although Mirza had the military's backing, with army chief General Mohammed Ayub Khan also serving as defence minister, as the first direct general elections approached, Ayub abrogated the 1956 constitution and imposed martial law in October 1958 to prevent the opposition parties from winning power.<sup>12</sup> The military government banned political parties and in 1959 enacted the Elective Bodies Disqualification Order (EBDO), the first systematic bid to exclude its opposition from the electoral process.<sup>13</sup>

To give military rule the façade of democracy, Ayub created a system of local government called "Basic Democracy". In 1960, Ayub used this new institution to hold a referendum in which, after blatant rigging, 95.6 per cent of

voters confirmed him as president for five years.<sup>14</sup> Ayub's 1962 constitution created a highly centralised presidential form of government, with the Basic Democrats serving as the local councils as well as the electoral college for the presidency and members of the unicameral National Assembly and provincial legislatures on a non-party basis. At the end of his first five-year term in 1965, Ayub was re-elected, defeating his principal civilian opponent, Fatima Jinnah, the sister of the country's founder, Muhammad Ali Jinnah, in a contested but badly flawed election.<sup>15</sup>

In 1969, facing countrywide opposition to military rule, Ayub stepped down but only to hand over power to Army Chief General Mohammad Yahya Khan. Abrogating the 1962 constitution, and scrapping the Basic Democracy system, Yahya promulgated a Legal Framework Order that provided the basis of Pakistan's first general election in 1970. Believing that the agitation would dissipate, no party would gain a parliamentary majority, and the military could continue to rule behind yet another democratic façade, the military was dismayed when the Awami League swept the polls.<sup>16</sup> Refusing to cede power to their Bengali opponents, the high command instead launched a military operation in East Pakistan, triggering civil war, Indian military intervention and the Pakistan military's defeat in a war that resulted in the formation of Bangladesh.

In the truncated country, the military high command reluctantly handed over power to Zulfikar Ali Bhutto, whose PPP had won a majority in West Pakistan.<sup>17</sup> Soon after forming government, Bhutto, with the support of a majority of parties, adopted a consensus constitution in 1973 that created a federal parliamentary form of government, with direct elections to the National Assembly, the lower house of the parliament, and the provincial legislatures to take place at least every five years. The provincial assemblies also served as the electorate for members of the upper house, the Senate.

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<sup>8</sup> In September 1955, the provinces of Punjab, Sindh, Northwest Frontier Province (NWFP) and Balochistan were merged into one single unit, West Pakistan, in a move to counter the Bengalis' numerical majority, alienating Sindhis, Baloch and Pashtuns who became minorities in the one Punjab-dominated province.

<sup>9</sup> At Pakistan's independence, Mirza was the senior most Muslim civil servant and became the new country's first defence secretary.

<sup>10</sup> Under the 1956 constitution, Pakistan ceased to be a dominion of the British Empire and became a republic. The head of state, therefore, became the "president" instead of the "governor-general".

<sup>11</sup> During the two years of Mirza's presidency, Pakistan had four different prime ministers.

<sup>12</sup> With elections due in February 1959, the coup was meant to forestall "all potential challenges to a position of privilege [the civil-military nexus] had long enjoyed" posed by "a major realignment of political forces". Ayesha Jalal, *Democracy and Authoritarianism in South Asia: A Comparative and Historical Perspective* (Lahore, 1995), p. 54.

<sup>13</sup> While officially prohibiting "anyone from holding public office who used his political position for personal advantage, or to the detriment of the State", EBDO was selectively used against opposition politicians, with some 60,000 politicians disqualified before it was repealed in 1966. Philip E. Jones, *The Pakistan Peoples Party: The Rise to Power* (Oxford, 2003), p. 30.

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<sup>14</sup> Crisis Group Report, *Authoritarianism and Political Party Reform in Pakistan*, op. cit., p. 3.

<sup>15</sup> Election irregularities included gerrymandering of constituencies, preparation of faulty voters lists, bogus voting, misuse of official machinery and public money, and election commission biases towards the incumbent president. See Hamid Khan, *Constitutional and Political History of Pakistan* (Karachi, 2001), pp. 304-310.

<sup>16</sup> The Awami League won 160 out of 162 seats in East Pakistan, but none in West Pakistan.

<sup>17</sup> The PPP won 81 out of 138 seats in West Pakistan, but none in the East.

## B. RIGGED ELECTIONS AND MILITARY RULE

In March 1977, voters went to the polls for the second time, with the PPP securing nearly four fifths of the seats in the National Assembly – but through widespread pre-poll and polling day rigging.<sup>18</sup> The main opposition grouping, formed under military tutelage and spearheaded by the Islamist parties, the Pakistan National Alliance (PNA), rejected the election results and boycotted the subsequent provincial elections. On 5 July 1977, using widespread civil unrest as justification, Army Chief General Mohammad Zia-ul-Haq imposed martial law, dissolving the legislature and suspending the constitution. While Zia promised elections within the constitutionally mandated period of 90 days, he repeatedly reneged on his pledge and in 1978 appointed himself president. In April 1979, the military regime executed Bhutto on a false murder charge.

Like Ayub, Zia created a democratic façade, relying on a three-tiered local government system to legitimise military rule. These local bodies served as the military's civilian base in return for economic and political benefits. Elections to union (village) council committees were held on a non-party basis in 1979, 1983 and 1987.<sup>19</sup> These counsellors served as the electoral college for the heads of *zila* (district) and *tehsil* (sub-district) councils.<sup>20</sup> Unlike Ayub's devolution plan, Zia's local councillors did not form the electoral college to elect the president. Instead, Zia extended his tenure for another five years through a blatantly rigged referendum.<sup>21</sup> With turnout low, election officials stuffed the ballot boxes with affirmative votes. Nevertheless, the chief election commissioner validated

the poll as free and fair and declared a 97.7 per cent affirmative vote.<sup>22</sup>

Having secured another presidential term, Zia held national and provincial elections, on a non-party basis, in 1985. With the main opposition alliance, the Movement for Restoration of Democracy (MRD), boycotting the polls, pliable local elites formed the core of a new rubber-stamp parliament. Through the eighth constitutional amendment, the parliament ratified the military regime's distortions of the 1973 constitution, including Article 58 2 (b) that gave the president, the indirectly elected head of state, the power to dismiss elected governments. The amendment also gave the president the power to appoint the chief election commissioner. As domestic unrest increased, spurred by demands for the restoration of democracy, the military's chosen faction of the Muslim League, headed by Prime Minister Mohammad Khan Junejo, was forced to distance itself from its creator. Zia retaliated by dismissing the government in May 1988, and announced fresh elections later that year in a bid to find a more pliant political ally. Instead, Zia was killed in a mid-air explosion in August 1988, bringing Pakistan's third military government to an abrupt end.

## C. FLAWED DEMOCRACY AND MANIPULATED ELECTIONS

After Zia's death, since continued military rule would have faced civilian resistance and was unlikely to gain international acceptance, the generals formally transferred power to civilians, while protecting their institutional interests, including their control over foreign and defence policy, through pressure on elected governments. Relying on bribery, coercion and electoral manipulation, the military repeatedly disrupted democratic functioning between 1988 and 1996. The indirectly elected president, acting as the military's proxy, used powers conferred by Zia's eighth amendment to dismiss three successive elected governments; none was allowed to serve its full five-year term.<sup>23</sup> Caretakers were installed following each dismissal to ensure the electoral defeat of the ousted ruling party.

In the first election held after Zia's demise in November 1988, the high command was particularly unwilling to risk a free and fair election in case the PPP, headed by Bhutto's daughter and the party the military distrusted the most, emerged with a comfortable majority in the national

<sup>18</sup> The PPP received 58.1 per cent of the vote and won 155 of the 200 contested National Assembly seats. The PNA won 35.4 per cent and 36 seats. Crisis Group Report, *Elections, Democracy and Stability in Pakistan*, op. cit., p. 3.

<sup>19</sup> Crisis Group Report, *Devolution in Pakistan: Reform or Regression?*, op. cit.

<sup>20</sup> In rural areas, there were union councils, *tehsil* councils and *zila* councils. In urban areas, there were town committees, municipal committees and municipal/metropolitan committees.

<sup>21</sup> Zia's advisers recommended that the referendum seek an endorsement for the general's Islamisation process to deter voters from voting against the president. The question posed to the electorate in the referendum, therefore, was: "Whether the people of Pakistan endorse the process initiated by General Muhammad Zia-ul-Haq, the President of Pakistan, for bringing the laws of Pakistan in conformity with the injunctions of Islam as laid down in the Holy Quran and *Sunnah* of the Holy Prophet (PBUH) and for the preservation of the ideology of Pakistan, for the continuation and consolidation of that process, and for the smooth and orderly transfer of power to the elected representatives of the people". Quoted in Hamid Khan, op. cit., p. 660.

<sup>22</sup> Ibid.

<sup>23</sup> Prime Minister Benazir Bhutto's first PPP government lasted from 1988 to 1990, the second from 1993 to 1996. Prime Minister Nawaz Sharif's first government lasted from 1990 to 1993, the second from 1997 until it was ousted by Musharraf's October 1999 coup.

parliament. The military and its intelligence arm, the Inter-Services Intelligence Directorate (ISI), helped forge an opposition alliance, the Islami Jamhoori Ittehad (IJI). The alliance was headed by the Muslim League faction led by Nawaz Sharif, Zia's former finance minister and Punjab chief minister, whose party had held power in all four provinces under the Zia regime. The IJI also included the military's Islamist allies such as the Jamaat-i-Islami.<sup>24</sup> The PPP won the largest number of seats in the National Assembly but rigging deprived it of a majority,<sup>25</sup> forcing it to form a coalition with smaller parties.<sup>26</sup> Sharif's military-backed IJI won a strong presence in the National Assembly and formed the government in Punjab, the country's largest province.<sup>27</sup>

Army Chief General Mirza Aslam Beg finally allowed Bhutto to form a government but only after she agreed to cede control over foreign, security and economic policy to the military. She also agreed to vote for its nominee, acting President Ghulam Ishaq Khan, in the presidential election, a compromise that was to cost her the government. In August 1990, the president, working at the military's behest, used his constitutional powers to dismiss Bhutto, accusing her government of corruption and nepotism, and ordering fresh elections.

The president entrusted the supervision of the 1990 elections to a caretaker cabinet comprising IJI and other opposition members.<sup>28</sup> The state machinery, including the military's intelligence agencies, ensured an IJI victory, with Lt. General Asad Durrani, then Director General of the ISI, disbursing millions of rupees to prominent IJI candidates.<sup>29</sup>

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<sup>24</sup> See Crisis Group Report, *Pakistan: Transition to Democracy?*, op. cit.

<sup>25</sup> For instance, voters without national identity cards were barred, a decision that disproportionately affected the PPP, many of whose supporters were from the lowest classes and lacked this documentation.

<sup>26</sup> The PPP won 92 and the IJI 53 of the 217 seats in the National Assembly.

<sup>27</sup> At the directive of the army chief, the ISI reportedly helped organise the IJI's election campaign and distributed Rs. 140 million (then roughly \$7 million) to key IJI parties.

<sup>28</sup> Ghulam Mustafa Jatoi, an IJI member, was appointed caretaker prime minister while provincial caretaker governments were also drawn mainly from the IJI and its allies.

<sup>29</sup> Hasan Askari Rizvi, *Military, State and Society in Pakistan* (Lahore, 2003). In 1996, former air marshal Asghar Khan filed a petition in the Supreme Court against Army Chief Beg and Durrani for their misuse of public money for electoral manipulation. During a hearing, an affidavit signed by Durrani was presented in court in which the former ISI head confessed to distributing the money on Beg's orders, providing the names of all recipients, along with receipts of the amounts received. Crisis Group interview, Air Marshal (r) Asghar Khan, Islamabad, December 2010. The Supreme Court has not held a hearing on the case since 1999, nor has the Election Commission taken

Nawaz Sharif's government was to prove short-lived too, dismissed by the president at the military's behest in 1993.<sup>30</sup> The October 1993 elections restored Benazir Bhutto to power only to see her second government dismissed by the president in 1996.<sup>31</sup>

The repeated dismissal of governments before they completed their five-year term, followed by electoral manipulation, led to public disillusionment. Voter turnout declined with each successive election, from 45.46 per cent in the 1990 elections to 40.28 per cent in the 1993 elections. In the 1997 elections, in which Sharif's Muslim League won a two-thirds majority, the voter turnout declined to an all time low of 35 per cent.<sup>32</sup>

Hoping to gain or retain power, throughout the 1990s, the PML-N and the PPP repeatedly succumbed to the military's divide-and-rule policies. But in April 1997, the two parties unexpectedly joined hands in an attempt to end military intervention and passed the thirteenth constitutional amendment, repealing the provision that allowed the president to dismiss elected governments. In October 1999, however, army chief General Pervez Musharraf opted for direct military rule, ousting Sharif's government in a coup d'état.

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any action against the recipients, many of whom remain in active politics. Ardeshir Cowasjee, "We never learn from history-3", *Dawn*, 11 August 2002.

<sup>30</sup> A Supreme Court ruling restored Sharif's government but, as the president and the prime minister clashed, army chief Abdul Waheed Kakar forced both to resign.

<sup>31</sup> Although Bhutto succeeded in electing a PPP member, Farooq Leghari, to the presidency after Ghulam Ishaq Khan's resignation, Leghari chose to side with the military and dismissed her government.

<sup>32</sup> President Leghari claimed that the actual figure was around 26 per cent. See "Voter turnout data for Pakistan", Institute for Democracy and Electoral Assistance website, [www.idea.int/vt/country\\_view.cfm?country=PK](http://www.idea.int/vt/country_view.cfm?country=PK).

### III. ELECTIONS UNDER THE MUSHARRAF REGIME

#### A. CONSOLIDATING MILITARY RULE

Like Zia and Ayub, Musharraf relied on constitutional manipulation and electoral rigging. He revived Zia-ul-Haq's three-tiered system of local government to provide his regime a semblance of legitimacy and created a new civilian elite to counter his political opposition and consolidate his power.<sup>33</sup> The first local elections were held in 2001 on a non-party basis, with the military using coercion and cooption to ensure favourable results. Tactics included supporting pro-Musharraf candidates for union councilors, the lowest tier of local government, who then elected *nazims* (mayors), the heads of district governments. Electoral manipulation was blatant, including soliciting senior leaders of the pro-military PML-Q<sup>34</sup> to identify potential candidates for *nazims* and then using corps commanders and heads of military and civilian intelligence agencies to ensure their victory.<sup>35</sup>

In April 2002, Musharraf used a rigged referendum to extend his self-assumed presidency for five years. The chief election commissioner, Justice (ret'd) Irshad Hasan Khan, reported that 97.5 per cent had voted for Musharraf, citing an implausible 71 per cent voter turnout, even as independent observers estimated the turnout at 10 per cent.<sup>36</sup> In March 2000, Khan, as chief justice of the Supreme Court, had presided over the bench that validated Musharraf's coup on the grounds of "state necessity". Musharraf appointed him as chief election commissioner after he retired from the bench.

Musharraf then promulgated a number of executive orders to consolidate his rule, which distorted the 1973 constitution and drastically favoured the military's civilian allies. The Qualification to Hold Public Offices Order 2002 established a two-term limit on prime ministers, an anom-

aly in a parliamentary democracy, to prevent Sharif and Bhutto from running for office. The 2002 Legal Framework Order revived the presidential power to dissolve parliament and to appoint the chief election commissioner, the service chiefs, superior court judges and provincial governors. The Conduct of General Elections Order 2002 required candidates for elected office to hold a bachelor's degree or its equivalent, thus disqualifying hundreds of party leaders and office holders, including former parliamentarians, from the moderate parties. However, the ECP recognised madrasa certificates as the equivalent of mainstream degrees, to the benefit of the Islamist parties, such as the Jamiat Ulema-e-Islam (JUI).<sup>37</sup>

The military regime then rigged the October 2002 national elections by selectively violating or applying election rules to favour its civilian allies, most notably the PML-Q and the six-party Islamist alliance, the Muttahida Majlis-e-Amal (MMA). Pro-military *nazims* were allocated massive funds to "boost the electoral prospects of like-minded candidates".<sup>38</sup> The National Accountability Bureau (NAB) was used to coerce opposition members to defect to the PML-Q.<sup>39</sup> The campaigns of opposition parties and their candidates, particularly the PPP and the PML-N, were impeded by either overt repression or denying them permission to hold public rallies. The ECP's Central Grievance Cell, created to handle complaints, existed only in name, while the regime and its supporters flouted the code of conduct. The candidate nomination process was also inconsistent. Election officials in some constituencies rejected the documents of candidates that were accepted in others. Pro-military candidates who should have been disqualified for having bad loans written off were allowed to contest, while opposition candidates were disqualified for legitimately rescheduled loans. The European Union Observation Mission called the polls "deeply flawed".<sup>40</sup>

Because the rigging was selective, the PML-Q, which had no domestic standing, failed to obtain a simple parliamentary majority; instead, the PPP won the largest segment of the popular vote. The constitutional bar on floor-crossing in parliament was then held in abeyance to allow for defections from the PPP and PML-N to a PML-Q-led coalition government at the centre and in three of the four provinces. The MMA formed the government in Northwest Frontier Province (NWFP) (now Khyber Pakhtunkhwa, or KPK), and in coalition with the PML-Q in Balochistan.

<sup>33</sup>The provincial governments elected in 2008 have scrapped Musharraf's devolution scheme, and plan to hold polls after establishing new local government systems in each province. While the Balochistan Assembly passed a new local government law in May 2010 that requires elections to be held within one year, the other three provinces are either in the process of drafting new laws or are still building a consensus on the proposed changes.

<sup>34</sup>The PML-Q was created by the military regime, comprising mostly defectors from Nawaz Sharif's PML.

<sup>35</sup>Crisis Group Report, *Devolution in Pakistan: Reform or Regression?*, op. cit.

<sup>36</sup>In a press conference, Justice (ret'd) Irshad Hasan Khan declared that the voter turnout was "the highest in the history of Pakistan", with 43,907,950 votes cast. Massoud Ansari, "How the referendum was won", *Newsline*, May 2002.

<sup>37</sup>Crisis Group Report, *Pakistan: Transition to Democracy?*, op. cit.

<sup>38</sup>Muhammad Waseem, *Democratisation in Pakistan: A Study of the 2002 Elections* (Karachi, 2006), p. 189.

<sup>39</sup>See Crisis Group Report, *Authoritarianism and Political Party Reform in Pakistan*, op. cit.

<sup>40</sup>"European Union Election Observation Mission Final Report on Pakistan Election 2002", 10 October 2002.

Having won an unprecedented number of parliamentary seats as a result of the military's electoral engineering and secured the government's backing for its Islamisation agenda in Balochistan and NWFP,<sup>41</sup> the MMA returned the favour by providing the parliamentary votes Musharraf needed to incorporate his Legal Framework Order into the constitution. Passed in December 2003, the seventeenth constitutional amendment validated the October coup and subsequent distortions of the constitution, such as the president's right to dismiss an elected parliament. Musharraf was also allowed to retain the dual posts of army chief and president.

The Musharraf government blatantly rigged the 2005 local elections in a bid to further weaken the mainstream opposition parties and to lay the ground for its supporters to dominate any future national election. Gerrymandering districts, particularly in Sindh, discussed in more detail below, split the PPP's vote bank in favour of the Muttahida Qaumi Movement, a PML-Q coalition ally. As in the 2002 national elections, the civil and military bureaucracies, including intelligence agencies, were used to ensure PML-Q victories. This was necessary because the ruling party had failed to transform from a disparate group of defectors and factions into an independent political party.

The regime opted once again to conduct the elections on a non-party basis, restricting parties from organising openly and the ECP disqualifying candidates with known political party links. However, it chose to overlook the massive abuse of state resources to assist candidates backed by PML-Q.<sup>42</sup> Officials were reshuffled to ensure those favourable to the military would control local government in key areas. Polling stations were moved from traditional sites and the nomination process was marked with irregularities, with election officials rejecting opposition candidates. The partiality of election staff and law enforcement agencies was evident on election day, which was marred by widespread ballot stuffing, intimidation and seizure of polling stations.<sup>43</sup>

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<sup>41</sup> The Islamist alliance won 52 out of 99 seats in the NWFP assembly, fourteen out of 51 in Balochistan, and initially had the third largest number of seats in the national legislature until engineered defections transformed it into the second largest party in the National Assembly. Also see Crisis Group Asia Reports N°95, *The State of Sectarianism in Pakistan*, 18 April 2005; N°73, *Unfulfilled Promises: Pakistan's Failure to Tackle Extremism*, 16 January 2004; N°49, *Pakistan: The Mullahs and the Military*, 20 March 2003; and N°36, *Pakistan: Madrasas, Extremism and the Military*, 29 July 2002.

<sup>42</sup> Crisis Group Briefing, *Pakistan's Local Polls, Shoring up Military Rule*, op. cit.

<sup>43</sup> Ibid.

## B. 2008 ELECTIONS

In 2007, the rubber stamp national and provincial assemblies re-elected Musharraf president shortly before the end of his as well as the legislature's five-year terms. Moderate political parties, media and civil society strongly criticised Musharraf's decision to also retain the dual position of army chief and president, thus maintaining his personal and the military's control for another five years. His main opponent in the election, retired Supreme Court judge Wajihuddin Ahmed, challenged the legality of his candidacy as a holder of two offices – president and army chief.<sup>44</sup> Unsurprisingly, the ECP rejected his appeal.<sup>45</sup> Ahmed challenged the ECP's decision in the Supreme Court. The court declined to stay the presidential election, but it instructed the ECP to withhold the official result until it disposed of petitions challenging Musharraf's eligibility to stand for re-election in uniform.<sup>46</sup>

Although the Supreme Court had validated Musharraf's October coup and even authorised him to amend the constitution, by 2007 the growing opposition to military rule led the superior judiciary to rethink the personal and institutional costs of continuing to side with the high command. Musharraf dismissed Chief Justice Iftikhar Mohammad Chaudhry on 3 March, concerned that the Supreme Court would rule against him on one of two grounds: that it was illegal to hold both offices of army chief and president or that he was bound by the bar on senior military officers standing for public office until two years after retirement.<sup>47</sup> As efforts to suppress the widespread protests that followed Chaudhry's dismissal further fuelled public anger, Musharraf imposed martial law on 3 November, two days before the Supreme Court was to resume its hearing on his re-election. He suspended the constitution and issued in its place a Provisional Constitutional Order.<sup>48</sup>

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<sup>44</sup> Article 43(1) of the constitution prohibits the president from holding any office of profit in the service of Pakistan or any other position carrying the right to remuneration for the rendering of services. The President to Hold Another Office Order, 30 November 2004, which came into force on 31 December of that year, provided legal cover for Musharraf to hold both positions until 2007, but in violation of the constitution.

<sup>45</sup> Khaleeq Kiani, "Wajih takes re-election case to CEC", *Dawn*, 29 September 2007.

<sup>46</sup> Iftikhar A. Khan, "SC keeps Musharraf's fate in its hands: Go-ahead for presidential polls", *Dawn*, 6 October 2007.

<sup>47</sup> On 20 July, the Supreme Court ruled Chaudhry's dismissal as illegal, and reinstated him. Crisis Group Asia Report N°160, *Reforming the Judiciary in Pakistan*, 16 October 2008.

<sup>48</sup> The PCO prohibited the courts from challenging any presidential action. All judges were required to take a fresh oath to the PCO, but a large majority refused; as many as 64 out of 97 judges of the superior courts in Pakistan, including the Supreme Court chief justice and the chief justices of three of four pro-

With martial law imposed, the judiciary purged and hand-selected by the military, scores of political leaders and thousands of political workers arrested, along with lawyers and human rights activists, and the media muzzled, Musharraf announced that general elections would be held in January 2008.<sup>49</sup> He then appointed federal and provincial caretaker governments, composed mainly of PML-Q and other pro-military nominees, in mid-November after the dissolution of parliament.<sup>50</sup> Condemning the decision to hold the elections under the state of emergency, the opposition was also convinced that Musharraf's appointee to the position of chief election commissioner, Justice (ret'd) Qazi Mohammad Farooq, would once again oversee a rigged election.<sup>51</sup>

These concerns were well-founded. In December 2007, the ECP rejected the nomination papers of former prime minister Nawaz Sharif, as well as those of his brother and former Punjab chief minister, Shahbaz Sharif, on the grounds that they were ineligible to stand for public office.<sup>52</sup> The ECP's unwillingness to address the opposition parties' complaints about the flawed voters list also reinforced perceptions that the electoral body would not ensure that the polls would be free and fair.

With donor assistance, the ECP had prepared a computerised electoral roll of 52 million voters in mid-2007, 20 million fewer voters than in 2002. The opposition insisted that a partisan and flawed registration exercise had disenfranchised 27 million voters, mainly from opposition constituencies.<sup>53</sup> For instance, in Karachi pro-MQM enumerators had wilfully ignored voters in opposition constituencies. In the face of ECP inaction, opposition parties took the case to the Supreme Court, which ordered a fresh exercise to enrol missing voters. In July 2007, the ECP added 25 million names, albeit without verification. The final, up-

dated list was "riddled with duplicates, errors and omissions", increasing the chances of electoral fraud.<sup>54</sup>

Nor did the ECP act on opposition complaints of extensive pre-poll rigging by the PML-Q-dominated federal and provincial caretaker administrations. In the lead-up to the elections, the caretaker administrations re-employed retired provincial civil servants and police officials known to support the PML-Q.<sup>55</sup> Even the PML-Q's election cell was headed by serving civil servants in blatant disregard of rules prohibiting government officials from using their offices for political ends.<sup>56</sup> In the districts, the *nazims* again acted as the PML-Q's proxies, using state machinery, especially the police, to harass the military's political opponents and state resources to provide financial and administrative support to PML-Q and other pro-military candidates.<sup>57</sup>

As opposition to military rule grew, so did the generals' concerns that Musharraf's position of army chief would undermine their institutional interests. The lack of support from the military high command, combined with the international community's concerns about instability and U.S. pressure, forced Musharraf to give up the post of army chief on 28 November 2007, withdrawing martial law formally on 15 December and reviving the constitution.

The legitimacy of Musharraf's presidential election and his refusal to restore the dismissed judges or void the repressive decrees he had issued remained matters of concern for his political opponents. However, Benazir Bhutto's PPP and Sharif's PML-N reluctantly agreed to participate in the 8 January 2008 elections, motivated primarily by

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vincial high courts, were replaced. See Crisis Group Report, *Reforming the Judiciary in Pakistan*, op. cit.

<sup>49</sup> Crisis Group Briefing, *Winding Back Martial Law in Pakistan*, op. cit.

<sup>50</sup> Caretaker Prime Minister Mohammadmian Soomro had been elected Senate Chairman by the PML-Q and its allied parties. A majority of caretaker federal and provincial ministers were either members of the PML-Q or rewarded for their loyalty to Musharraf.

<sup>51</sup> In January 2008, Musharraf filled the two vacancies in the ECP that had been kept vacant while the body deliberated on his eligibility for re-election.

<sup>52</sup> After the Supreme Court allowed the Sharif brothers to contest elections in 2009, Nawaz opted against standing for public office, while Shahbaz contested a Punjab provincial assembly by-election and is now Punjab chief minister.

<sup>53</sup> Crisis Group Report, *Elections, Democracy and Stability in Pakistan*, op. cit., pp. 15-16.

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<sup>54</sup> "Final Report, National and Provincial Assembly Elections 18 February 2008", European Union Observation Mission (EOM), 16 April 2008, p. 27. In March 2011, the National Database and Registration Authority (NADRA) disclosed that a verification exercise of the 2008 electoral rolls found that 2.1 million entries were based on invalid Computerised National Identity Cards (CNICs); there were 6.49 million duplicate CNIC entries and 6.46 million multiple entries of manual National Identity Cards (NICs), while the record of 11.05 million manual NICs did not exist in NADRA's database. NADRA also disclosed that the names of 36.5 million Computerised National Identity Card (CNIC) holders were missing from the 2007 electoral rolls. "Supreme Court asks Election Commission, Nadra to explain position", *Dawn*, 16 March 2011; Iftikhar A. Khan, "37 million electoral roll entries questioned", *Dawn*, 6 March 2011.

<sup>55</sup> "Election 2008: Pre-Poll Rigging Fact-Sheet", PML-N Central Election Monitoring Cell, 11 February 2008, pp. 20-22.

<sup>56</sup> See Crisis Group Asia Report N°185, *Reforming Pakistan's Civil Service*, 16 February 2010.

<sup>57</sup> "Election 2008: Pre-Poll Rigging Fact-Sheet", op. cit., pp. 31-39. "We published a fact sheet specifying instances of pre-poll rigging but there was never any follow-up by the ECP on any of them", said a PML-N parliamentarian. Crisis Group interview, Islamabad, 11 January 2011.

the desire to expose Musharraf's intention to rig the polls. Stacked courts, a partial caretaker government, a subservient ECP, the gagging of the media, curbs on political party mobilisation and association and the actions of the security agencies all undermined the conditions for free and fair elections. Bhutto's assassination on 27 December 2007, however, ended Musharraf's prospects of prolonging his rule.<sup>58</sup>

Bhutto's popularity and the widespread belief that Musharraf and his associates were responsible, directly or indirectly, for her death provoked violent protests countrywide, compelling Musharraf to delay the elections from 8 January to 18 February 2008.<sup>59</sup> With blatant rigging in the aftermath of Bhutto's death likely to provoke serious protests, the 2008 polls were arguably freer than any other election held under Musharraf's watch. But this election too was selectively rigged. The polling process faced far more rigorous scrutiny by Musharraf's political opposition, civil society and the media, but there was not a level playing field. Martial law was lifted only a day before campaigning began, a flawed legal framework, including the retention of the education or madrasa degree requirement for contesting candidates, remained in place and an unreliable electoral roll was used. The ECP's actions were not independent and transparent and it refused to resolve many of the more than 2,000 electoral complaints. The result was an "overall process [that] fell short of a number of international standards for genuine democratic elections".<sup>60</sup>

Benefiting from selective rigging, Musharraf's party won 50 seats in the National Assembly. In Punjab, where the PML-N was clearly the strongest contender, the PML-Q also won a surprisingly high number of seats.<sup>61</sup> However, given popular disaffection with the military government, the electorate delivered a clear verdict against Musharraf and his allies and voted overwhelmingly for the PPP and the PML-N at the centre, in Sindh and Punjab. The secular Pashtun-dominated Awami National Party (ANP), now a coalition partner with the PPP in the centre and in KPK, defeated the Islamist parties in the province.<sup>62</sup> With major

Baloch nationalist parties boycotting the polls, the PPP formed the provincial government there in coalition with a bloc of PML-Q defectors, who were ironically the beneficiaries of anti-PPP electoral fraud.<sup>63</sup>

The electoral victories of the popular mainstream and regional opposition parties succeeded in defusing the potential for violence, which would have resulted had the election been massively rigged. However, the manner in which the February 2008 election was held, including the ECP's lack of independence, the flawed legal structure, the imperfect electoral roll, and the general lack of transparency, all underscore the urgent need for comprehensive electoral reform. There is no time to lose, given the fragility of the democratic transition.

Early elections, before the PPP ends its five-year term in 2013, cannot be ruled out. In February 2011, the PML-N-led Punjab provincial government ended its coalition with the PPP and removed PPP ministers from the provincial cabinet. This has increased tensions at the centre between the PPP and the PML-N-led opposition. Some analysts believe that the opposition could push, with the military's support, for the polls before March 2012 when elections are due for one half of the Senate.<sup>64</sup> Given deep flaws in the electoral system and an increasingly interventionist military high command, the government and opposition should commit to comprehensive electoral reform to ensure that the next general election will not revert to the pattern of the past, with blatant or selective rigging provoking countrywide violence and instability.

<sup>58</sup> Following her assassination, Bhutto's son Bilawal Bhutto Zardari was named chairman, and her widower, Asif Ali Zardari, currently the president of Pakistan, co-chairman of the PPP.

<sup>59</sup> See Crisis Group Briefing, *After Bhutto's Murder: A Way Forward for Pakistan*, op. cit.

<sup>60</sup> "Final Report, National and Provincial Assembly Elections 18 February 2008", op. cit., pp. 3-4.

<sup>61</sup> The PML-Q's total, including reserved seats, was 81 in Punjab. Election Commission of Pakistan website, [www.ecp.gov.pk](http://www.ecp.gov.pk).

<sup>62</sup> Party positions, including reserved seats, were as follows: out of 342 seats in the National Assembly: PPP, 127; PML-N, 90. In Punjab, out of 371 seats: PML-N, 171; PPP, 107; in Sindh, out of 168 seats: PPP, 93; MQM, 51; in NWFP (now Khyber-Pakhtunkhwa), out of 124 seats: PPP, 30; ANP, 48. The Islamist parties, dominated by the JUI-F, that had formed a government

in NWFP under Musharraf and had run Balochistan in coalition with PML-Q, won only fourteen seats in NWFP and nine out of 65 seats in Balochistan. Ibid.

<sup>63</sup> In Balochistan, where ongoing military operations had created a groundswell of opposition to the Musharraf regime bent on retaining control over the province, the military resorted to blatant rigging, resulting in the pro-military PML-Q winning nineteen seats, emerging as the single largest party in the provincial legislature. Ibid. See also Crisis Group Asia Reports N°119, *Pakistan, The Worsening Conflict in Balochistan*, 14 September 2006; and Crisis Group Asia Briefing N°69, *Pakistan: The Forgotten Conflict in Balochistan*, 22 October 2007.

<sup>64</sup> At present, the PML-N has only seven seats in the Senate, while the PPP has 27 seats. Crisis Group interviews, Islamabad, 28 February 2010. See also, "PML-N views next Senate polls as critical", *The News*, 1 March 2010.

## IV. ELECTORAL INSTITUTIONS, LAWS AND PROCESSES

The constitution mandates an Election Commission of Pakistan (ECP) to conduct national, provincial and presidential elections. A Chief Election Commissioner (CEC), a serving or retired senior judge, heads the ECP. Two ECP members, selected from provincial high court benches, assisted the CEC until 2002 when Musharraf's Election Commission Order, 2002, raised the number to four. Although theoretically independent, the ECP has functioned under effective federal control and remains financially and operationally dependent on the central government.

Article 218 of the constitution provides for an autonomous, independent and permanent election commission to hold elections to the National Assembly and the Senate, the four provincial assemblies, and local governments within each province. The commission must ensure that elections are conducted "honestly, justly, fairly and in accordance with law, and that corrupt practices are guarded against".<sup>65</sup> It is also mandated to conduct elections to "other public offices as may be specified by law",<sup>66</sup> the most important being the presidency.<sup>67</sup> All executive authorities in the federation and in the provinces are constitutionally required to assist the election commission in its functions.<sup>68</sup> Moreover, the commission may requisition property, including "any such vehicle, vessel or animal", for transporting election material such as ballot boxes or staff.<sup>69</sup> The commission is also tasked with preparing electoral rolls for the National Assembly and provincial assembly elections, and revising these rolls annually; filling casual vacancies in parliament or in the provincial assemblies; and appointing tribunals to settle electoral complaints.<sup>70</sup>

### A. ADMINISTRATIVE FRAMEWORK

The Election Commission of Pakistan comprises a chief election commissioner (CEC) as its chairman, and four members, one from each province. The CEC must be a serving or retired judge of the Supreme Court or a serving or retired high court judge, qualified for elevation to the Su-

preme Court.<sup>71</sup> Zia-ul-Haq's eighth constitutional amendment (1985) gave the president sole authority to appoint the CEC and the ECP members.<sup>72</sup> The eighteenth amendment to the constitution, passed in April 2010, withdrew the president's discretionary power, transferring appointing authority to the prime minister, who must consult with the opposition leader, and requires future appointments to be approved by a joint parliamentary committee.<sup>73</sup>

The ECP has its headquarters in Islamabad, and has offices in each provincial capital as well as divisional and district-level units countrywide. While the CEC and other ECP members are all drawn from the superior judiciary, the permanent staff, of more than 1,800 officials, is mostly long-term employees.<sup>74</sup> A federal secretary, the most senior official in the federal bureaucracy, heads the ECP secretariat, assisted by an additional secretary, four joint secretaries, seven deputy secretaries and seventeen section officers.<sup>75</sup> The four joint secretaries manage the ECP's four wings: election operations; training, research and evaluation; human resource and administration; and budget and finance. There are also two directorates – for information technology (headed by a director-general) and public relations (headed by a director).<sup>76</sup>

The provincial offices have similar staffing structures, with each provincial election commission headed by a provincial election commissioner (PEC), appointed by the CEC. The PEC is assisted by a joint provincial election commissioner in the provincial secretariat and by deputy election commissioners, assistant election commissioners and election officers in the field. A deputy election commissioner is assigned to each of Pakistan's 26 revenue divisions and serves as the principal liaison between the divisional and district electoral administration, as well as other stakeholders.<sup>77</sup> The lowest tier of the ECP's organisational set-up is at the district level, where an assistant election commissioner supervises electoral administration. Aided by an election officer, the assistant election commissioner establishes links with the district admini-

<sup>65</sup> Article 218(3) of the constitution.

<sup>66</sup> Article 218(1) of the constitution.

<sup>67</sup> According to the procedure for electing the president, laid down in the Second Schedule of the constitution, the presidential electoral college consists of bicameral national legislature – the National Assembly and the Senate – and the four provincial assemblies.

<sup>68</sup> Article 220 of the constitution.

<sup>69</sup> Section 6(1) of the Representation of the People Act, 1976.

<sup>70</sup> Article 219 of the constitution.

<sup>71</sup> Article 213(2) of the constitution. The Supreme Court is Pakistan's highest court, while there is a high court in each province.

<sup>72</sup> The constitution earlier stipulated that the CEC shall be appointed by the president "at his discretion".

<sup>73</sup> Text of the eighteenth amendment to the constitution, available on the National Assembly website: [www.na.gov.pk/passed\\_bill/passed\\_bill\\_2010/constitution\\_eighteenth\\_amendment\\_act2010\\_080410.pdf](http://www.na.gov.pk/passed_bill/passed_bill_2010/constitution_eighteenth_amendment_act2010_080410.pdf).

<sup>74</sup> "Five-Year Strategic Plan, 2010–2014", Election Commission of Pakistan, available at: [www.ecp.gov.pk/sp/downloads.html](http://www.ecp.gov.pk/sp/downloads.html).

<sup>75</sup> For more on civil service positions, see Crisis Group Report, *Reforming Pakistan's Civil Service*, op. cit.

<sup>76</sup> "Five-Year Strategic Plan", op. cit.

<sup>77</sup> A revenue division consists of numerous districts.



stration and other executive authorities, and maintains the district's electoral rolls.<sup>78</sup>

Besides the ECP and the provincial election commissions, the other key institution is the election tribunal, a judicial body tasked with settling election-related disputes, and vested with the same powers as a civil court under the 1908 Code of Civil Procedure.<sup>79</sup> The constitution and functioning of election tribunals is discussed in more detail below.

## B. LEGAL FRAMEWORK

The legal framework governing elections is not encapsulated within a single unified law, but encompasses a number of laws, ordinances and rules. During the last general elections in February 2008, the operative framework included:

- Articles 213-226 of the constitution, dealing with the powers and functions of the CEC, the composition of the ECP, and the conduct of elections.
- The Representation of the People Act, 1976, governing the conduct of elections to the National Assembly and provincial assemblies so as to “guard against corrupt and illegal practices and other offences at or in connection with such elections and for the determination of doubts and disputes arising out of or in connection with such elections”.<sup>80</sup>
- The Representation of the People (Conduct of Election) Rules, 1977, framed under the Representation of the People Act, 1976.
- The Election Commission Order, 2002, which increased the number of ECP members from two to four, including one from each province.
- The Conduct of General Elections Order, 2002, which fixed the number of National Assembly seats at 342, including 60 seats reserved for women and ten for non-Muslims.
- The Political Parties Order, 2002, and the Political Parties Rules, 2002, promulgated by Musharraf primarily to weaken political opposition to his rule. For instance, it extended Article 63 of the constitution, which bars anyone convicted of a crime from standing for elections, to include anyone charged with commit-

ting a crime, who fails to appear before a court, a provision clearly aimed at disqualifying former prime minister Benazir Bhutto, then in exile in Dubai.<sup>81</sup>

- The Code of Conduct for Political Parties and Contesting Candidates for General Elections, 2007-08; directives issued by the Election Commission of Pakistan; and Schedule for General Elections, 2007-08.<sup>82</sup>

A former ECP official argued: “In the interests of legal clarity and more efficient functioning of the ECP, all these diverse legal instruments should be combined into a single, all-encompassing electoral law”.<sup>83</sup> However, many of these legal instruments, as discussed below, are in need of major reform if international standards are to be met.

Elections to the Senate are held according to the Senate (Election) Act, 1975; the Senate (Election) Rules, 1975; and the Senate (Members from Federal Capital) Order, 1985. The Electoral Rolls Act, 1974 and related rules address the preparation, annual revision, amendment and maintenance of the list of eligible voters. The Delimitation of Constituencies Act, 1974 governs delimitation of constituencies for the National Assembly and the four provincial assemblies.

Under Article 222 of the constitution, parliament is authorised to legislate on areas such as the allocation of seats in the National Assembly; the delimitation of constituencies by the election commission; the preparation of electoral rolls; and the residential requirements in a constituency. It may also pass laws regarding the conduct of elections and election petitions and the “decision (on) disputes arising in connection with elections”; matters relating to “corrupt practices and other offences in connection with elections”; and “all other matters necessary for the due constitution of the two Houses and the Provincial Assemblies”. Parliament is, however, barred from enacting any law deemed to be “taking away or abridging any of the powers of the (Chief Election) Commissioner or an Election Commission”.<sup>84</sup>

Under Article 221, the election commission may, with the approval of the president and “until such time as Parliament by law provides”, make rules for the appointment of “officers and servants to be employed in connection with the functions of the Commissioner or an Election Commission and for their terms and conditions of employment”.<sup>85</sup>

<sup>78</sup> “Five-Year Strategic Plan”, op. cit.

<sup>79</sup> The Code of Civil Procedure, 1908, was enforced by the British in India to consolidate and amend the laws relating to the procedure of the courts of civil judicature. After independence, Pakistan adopted both the Code of Civil Procedure as well as the Code of Criminal Procedure, 1898.

<sup>80</sup> The Representation of the People Act, 1976.

<sup>81</sup> See Crisis Group Report, *Authoritarianism and Political Party Reform in Pakistan*, op. cit.

<sup>82</sup> “A Brief for National/International Observers: General Elections 2007-08”, Election Commission of Pakistan, p. 22.

<sup>83</sup> Crisis Group interview, Asmat Malik, former ECP deputy secretary, Rawalpindi, 7 October 2010.

<sup>84</sup> Article 222 of the constitution.

<sup>85</sup> Section 82, text of the eighteenth amendment to the constitution, op. cit.

Prior to the eighteenth amendment, the chief election commissioner was authorised to make such rules, but that power has since been transferred to the entire commission.

### C. ELECTORAL FRAMEWORK

The ECP must conduct a general election to the national and provincial assemblies within 60 days after the expiry of the legislature's fixed five-year term, and the official results must be declared within fourteen days of polling day.<sup>86</sup> If the National Assembly or a provincial assembly is dissolved before the end of its five-year term, a general election must be called within 90 days of the dissolution.<sup>87</sup> After the president announces the election date(s), the ECP is bound to announce the election schedule within 30 days.<sup>88</sup> The schedule calls on each constituency to elect its representatives and specifies dates for filing nomination papers, their scrutiny, appeals against their acceptance or rejection, and decisions on such appeals. It also establishes deadlines for candidates' withdrawal, publication of the revised list of candidates, and the publication of polling booth locations.<sup>89</sup>

While general seats are filled by direct voting in single-member constituencies on a first-past-the-post basis,<sup>90</sup> each of the legislatures also has seats reserved for women and religious minorities that are filled through a proportional representation system, based on party lists.<sup>91</sup> The ECP also conducts elections for two general seats for the federal capital and twelve National Assembly seats from the Federally Administered Tribal Areas (FATA), the latter on a non-party basis. In November 2009, as a result of the government's Gilgit-Baltistan (Empowerment and Self-

Governance) Order, the ECP conducted elections for the first time to a new Gilgit-Baltistan Legislative Assembly.<sup>92</sup> Azad Jammu and Kashmir (AJK), has its own election commission that performs identical functions to those of the ECP.<sup>93</sup>

The total membership of the Senate is 100, with elections conducted on the basis of proportional representation by means of a single transferable vote. Under Article 59 of the constitution, each provincial assembly elects 22 senators, from fourteen general seats, with four reserved for technocrats and *ulama* (Islamic clergy), and four reserved for women. The federal capital has four general seats, elected by the entire National Assembly – two general seats, one reserved for women and one for technocrats/*ulama*. FATA has eight general seats, elected by FATA members of the National Assembly. While the term of Senate members is for six years, half its members retire every three years.

Presidential elections, with the national and provincial legislatures acting as the electoral college, take place not later than 30 days after the expiry of a fixed five-year term. In case of a premature exit, presidential elections must take place within 30 days of the office becoming vacant.<sup>94</sup>

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<sup>86</sup> Article 224(1) of the constitution.

<sup>87</sup> Article 224(2) of the constitution.

<sup>88</sup> Section 11(1) of the Representation of the People Act, 1976.

<sup>89</sup> Section 11(1) (a-g) of the Representation of the People Act, 1976.

<sup>90</sup> Of this type of seat, currently, there are 272 general National Assembly seats and a combined total of 577 general provincial assembly seats, 51 in Balochistan, 99 in Khyber Pakhtunkhwa, 297 in Punjab and 130 in Sindh.

<sup>91</sup> In the National Assembly, 60 seats are allocated to women on a province-wide basis, with each political party represented in the legislature providing a list of candidates based on the total number of National Assembly seats it has won from a particular province. Ten seats are reserved for non-Muslims and are filled in proportion to the number of seats secured by each party represented in the assembly. In the provinces, the reserved seats for both women and non-Muslims are filled according to the number of seats won by each political party in the provincial assembly. The breakdown of seats for women and non-Muslims in the provinces is as follows: Balochistan: eleven women and three non-Muslim seats; Khyber Pakhtunkhwa, 22 women and three non-Muslim seats; Punjab, 66 seats for women and eight non-Muslim seats; Sindh, 29 women and nine non-Muslim seats.

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<sup>92</sup> Previous elections were held by the Ministry for Kashmir Affairs and Northern Areas.

<sup>93</sup> For more on administrative arrangements in AJK and Gilgit-Baltistan, see Crisis Group Asia Briefing N°106, *Steps Towards Peace: Putting Kashmiris First*, 3 June 2010; Crisis Group Asia Report N°131, *Discord in Pakistan's Northern Areas*, 2 April 2007; and Crisis Group Asia Report N°70, *Kashmir: Learning from the Past*, 4 December 2003.

<sup>94</sup> Grounds for removing the president include physical and mental incapacity, and violation of the constitution or gross misconduct.

## V. REFORMING THE ECP

### A. IMPLEMENTING THE EIGHTEENTH AND NINETEENTH AMENDMENTS

The ECP's lack of autonomy and authority underscores its failure to oversee free, fair and transparent elections. To ensure that the commission's leadership is independent and non-partisan, the current parliament has changed the appointment process of the CEC and the four ECP members to be more open and consultative.

According to the eighteenth constitutional amendment, the prime minister, in consultation with the leader of the opposition, would forward the names of three candidates for CEC to a joint parliamentary committee consisting of an equal number of representatives from the treasury and opposition benches. The nineteenth amendment, which came into force on 1 January 2011, has increased the parliamentary committee from eight to twelve, with one third to be drawn from the Senate. After hearings on potential candidates, the parliamentary committee must confirm one of the three names. If the prime minister and the leader of the opposition fail to agree on the nominees, they would send separate lists to the committee, which would then approve any name on the two lists.<sup>95</sup>

The appointment of the four ECP members follows the same procedure. While the ECP members were previously required to be serving high court judges, they must now be retired high court judges.<sup>96</sup> The tenure of the CEC, who is appointed for a single term, like other ECP members, has been increased from three to five years (once the current CEC's tenure expires).<sup>97</sup>

CEC Justice (retd) Hamid Ali Mirza's term ends in May 2011; he can only be removed before his term ends, as is the case of all other superior court judges, by the Supreme Judicial Council on the grounds of misconduct. The positions of the four ECP members are vacant, with the parliament yet to appoint the new members according to the amended constitutional provisions. The opposition is understandably concerned about the delay.<sup>98</sup> This has also caused considerable confusion about the validity of over a dozen by-elections held since the eighteenth amendment's passage because the CEC can no longer conduct polls independently of the other ECP members. Hence, according to a writ petition filed in the Lahore High Court challeng-

ing the validity of the by-elections, these elections should have been conducted by the reconstituted ECP.<sup>99</sup>

On 22 February 2011, the PPP and the opposition parties finally appointed the members of the twelve-person joint parliamentary committee.<sup>100</sup> To ensure that all future elections, including by-elections or even an early general election, are conducted under the reconstituted ECP leadership, Prime Minister Yusuf Raza Gilani and the current leader of the opposition, PML-N's Chaudhry Nisar Ali Khan, should forward the names of ECP candidates to the parliamentary committee without delay.

While parliamentary oversight of appointments will help to ensure a more independent, non-partisan ECP, the government and the opposition should consider removing the provision that restricts such positions to former judges of the superior courts. As I.A. Rehman, secretary-general of the independent Human Rights Commission of Pakistan (HRCP), rightly argued: "There is no need for judges, whether serving or retired, to run the ECP. The work of the CEC and the members is primarily administrative and has political implications, which cannot easily be handled by those possessing a purely judicial mindset".<sup>101</sup> A public policy analyst concurred: "The judiciary suffers from major institutional constraints and judges are over-cautious by training, whereas the ideal CEC must be quick to take decisions and display fearlessness in doing so".<sup>102</sup>

### B. RESOURCE CRUNCH

The ECP's fiscal autonomy rests on a tenuous 2002 federal finance ministry notification, which allows the commission to spend without limit, to transfer funds from one head to another, and to create new positions and abolish existing ones. "A government notification is not a proper way of securing the ECP's financial autonomy since it can be withdrawn at any time", said a former ECP official.<sup>103</sup> Instead, the government should pass legislation giving the ECP authority to determine its budget, create new posts and manage accounts. A former secretary of the ECP argued: "Without financial independence, the ECP will continue to be a spineless organisation, too afraid to set its budget

<sup>95</sup> Text of the eighteenth amendment to the constitution, op. cit.

<sup>96</sup> Article 218(2) (b) of the constitution.

<sup>97</sup> Article 215(1) of the constitution.

<sup>98</sup> One retired ECP official argued that this "shows that [the government] is not interested in making the ECP a fully functional and efficient organisation". Crisis Group interview, Rawalpindi, 7 October 2010.

<sup>99</sup> Faisal Kamal Pasha, "CEC has no authority to hold polls, writ filed in HC", *The News*, 24 August 2010.

<sup>100</sup> On 10 January 2011, the two main opposition parties, the PML-N and the PML-Q, submitted the names of their nominees; the PPP-led coalition government submitted the names of its representatives on 13 January 2011.

<sup>101</sup> Crisis Group interview, I.A. Rehman, Lahore, 12 October 2010.

<sup>102</sup> Crisis Group interview, Islamabad, 22 September 2010.

<sup>103</sup> Crisis Group interview, Rawalpindi, 7 October 2010.

and expand its operations for fear that its bills might be rejected by some section officer in the finance ministry".<sup>104</sup>

## 1. Infrastructure

An internal ECP organisational survey found that the commission's 26 divisional offices and 124 district offices were undermanned and poorly maintained. Most field offices were based in rented buildings, were not easily accessible to the public and had no space for public meetings, press conferences and other public outreach activities. In 2009 alone, the ECP paid 3.5 million rupees (around \$42,000) in rent.<sup>105</sup>

"It is a travesty that the ECP, a prestigious constitutional body, does not even own many of the buildings that it occupies and cannot provide adequate accommodation to its staff and their families", said a former ECP deputy secretary.<sup>106</sup> According to a district election officer: "Field offices, particularly in backward and less affluent areas, are in a terrible condition. Very few are equipped with even basic technological aids such as scanners, printers and video cameras".<sup>107</sup> Such offices also lack adequate security for staff as well as secure storage for election materials and records.<sup>108</sup> While the ECP has decided to build its own warehouses, and forwarded a request to the government to provide land and accommodation for ECP officials, an ECP official asserted that "in these times of financial stringency, it is unlikely that money will be forthcoming to an institution that has, in any case, been neglected at all times and by all governments".<sup>109</sup>

## 2. Human resources

The ECP lacks an effective recruitment and promotion policy for over 1,800 personnel working out of 155 offices countrywide.<sup>110</sup> Initial recruitment of officers takes place in grades lower than Basic Pay Scale (BPS)-17, which is the entry point for all cadres of the federal bureaucracy. "The overwhelming majority of those occupying officer-level positions in the ECP are those who have risen from lower ranks purely on the basis of the number of years they have put in, not what they achieved during those years", said a public policy analyst with experience of working with the ECP on donor-funded projects.<sup>111</sup>

Promotions within the ECP are painfully slow, so much so that one retired official who joined the ECP in BPS-16 and retired 32 years later in BPS-19,<sup>112</sup> claimed that "only when someone occupying a higher position dies or is refused an extension after retirement can one have any hope of career advancement".<sup>113</sup> When positions become vacant, the best ones tend to be filled by civil servants from the regular federal bureaucracy on the grounds that the commission's officers "simply lack the ability and training to successfully manage a large and complex organisation like the ECP".<sup>114</sup>

Serving and retired officials admit that there is a lack of expertise among career ECP officers, but attribute it to decades of government neglect, poor and at times non-existent training, and an absence of career planning mechanisms. The government should create an Election Service of Pakistan as a distinct cadre, along the lines of other occupational groups in the federal bureaucracy,<sup>115</sup> for which recruitment should take place at the BPS-17 level through an open competitive examination administered by the Federal Public Service Commission.

The ECP should also institute a systematic and specialised training program for personnel. Although officials in BPS-19 and BPS-20 receive generalised training along with officers from the civil bureaucracy at the National School of Management, there are no specialised courses in electoral administration. Existing training programs are not conducted by a dedicated team of professional instructors, but by "either serving or retired election officials themselves, who could not find a place elsewhere, or by civil service instructors who may have expertise in matters affecting the civil bureaucracy, but none in electoral issues".<sup>116</sup>

Although a Federal Election Academy was set up in 2004 as the ECP's training unit, it remained inoperative until 2009 when it was revived with support from the International Foundation for Electoral Systems (IFES). While the academy holds regular training courses for secretariat and field staff, it has just five teaching staff.<sup>117</sup> IFES has introduced Bridging Resources in Democracy, Governance and Elections (BRIDGE), an internationally recognised professional development course to provide election administrators with a better understanding of electoral processes. "While this is undoubtedly a major step in the

<sup>104</sup> Crisis Group interview, Islamabad, 30 September 2010.

<sup>105</sup> "Election Commission to get its own offices", *Gulf Times*, 5 October 2010.

<sup>106</sup> Crisis Group interview, Rawalpindi, 7 October 2010.

<sup>107</sup> Crisis Group interview, Mianwali, 19 October 2010.

<sup>108</sup> Crisis Group interview, Bhakhar, 20 October 2010.

<sup>109</sup> Crisis Group interview, Islamabad, 8 October 2010.

<sup>110</sup> "Five-Year Strategic Plan", op. cit.

<sup>111</sup> Crisis Group interview, Islamabad, 10 November 2010.

<sup>112</sup> For more on the Basic Pay Scale system of seniority in the civil service, see Crisis Group Report, *Reforming Pakistan's Civil Service*, op. cit.

<sup>113</sup> Crisis Group interview, Rawalpindi, 7 October 2010.

<sup>114</sup> Crisis Group interview, Islamabad, 10 November 2010.

<sup>115</sup> For more detail on occupational groups, see Crisis Group Report, *Reforming Pakistan's Civil Service*, op. cit.

<sup>116</sup> Crisis Group interview, former ECP deputy secretary, Rawalpindi, 7 October 2010.

<sup>117</sup> "Five-Year Strategic Plan", op. cit.

right direction, a lot more needs to be done in terms of training, particularly of polling staff, security officials and temporary election workers”, stressed an ECP official.<sup>118</sup>

The ECP should adopt a comprehensive training program with two components: a basic orientation course that familiarises staff with the history, functions and powers of the ECP, and its conduct of previous elections; and a more detailed and focused module that offers instruction in specific areas of electoral administration, such as the preparation of electoral rolls, delimitation of constituencies and electoral dispute resolution. Administrative staff should receive a similar general orientation as well as specialised training in office management. The hundreds of thousands of temporary staff that the ECP recruits to supervise polling stations on election day also need prior training on the role and functions of the ECP, responsibilities in managing polling stations and effective response to poll-related violence.<sup>119</sup>

The ECP, moreover, lacks a dedicated monitoring, research and evaluation wing, and currently has only one research officer.<sup>120</sup> Said a former ECP secretary: “Past elections in the country are not analysed, elections in other parts of the world are not monitored and there is no effort to identify and incorporate global best practices in the field of electoral research”.<sup>121</sup>

## VI. ADMINISTERING ELECTIONS

### A. PERSONNEL

For elections to the national and provincial legislatures, the ECP appoints a district returning officer (DRO) for each district, and a returning officer (RO) for each constituency within a district, with the RO assisted by an assistant returning officer (ARO). Officials of the federal government, provincial governments, local governments, and corporations controlled by these governments fill all three positions. Other election officials include polling staff, such as a presiding officer for each polling station, aided by assistant presiding officers and polling officers. Presiding officers and their aides are also drawn from a pool of federal, provincial and local officials, and are appointed by the relevant returning officer.

The DRO coordinates and supervises the electoral functioning of all constituencies within the district and acts as a liaison between the ECP and the ROs. This official is also authorised to investigate complaints of electoral irregularities and malpractices either directly received or referred by the ECP, and may also perform “such other duties and functions as may be entrusted to him by the Commission”.<sup>122</sup>

The ROs are the primary electoral officers responsible for the conduct of polls on the ground.<sup>123</sup> Their functions include receiving and scrutinising nomination papers of candidates; and preparing a list of polling stations and sending it for final approval to the DRO.<sup>124</sup> They appoint and train polling personnel, and supply election materials and equipment to polling staff at polling stations.<sup>125</sup> ROs also allocate symbols to contesting candidates,<sup>126</sup> collect results from all polling stations within the constituency,<sup>127</sup> and submit these to the ECP.<sup>128</sup> Within each polling station, the key supervisory office is that of the presiding officer, whose responsibilities include counting the votes after polls close,<sup>129</sup> maintaining law and order within and

<sup>118</sup> Crisis Group interview, Islamabad, 16 October 2010.

<sup>119</sup> Crisis Group interviews, election officers, administrative personnel and polling agents, Islamabad, Rawalpindi, Lahore, Mianwali and Bhakkhar, August-October 2010.

<sup>120</sup> According to a former ECP official, the position of research officer is widely regarded as a “useless non-job”, and those who occupy it have “very little incentive to carry out any research at all since there is no career progression along the research path.” Crisis Group interview, Rawalpindi, 7 October 2010.

<sup>121</sup> Crisis Group interview, Islamabad, 30 September 2010.

<sup>122</sup> Section 7(5) of the Representation of the People Act, 1976.

<sup>123</sup> Section 7(4) of the Representation of the People Act, 1976.

<sup>124</sup> Sections 12(3) and 14(2) of the Representation of the People Act, 1976.

<sup>125</sup> Sections 8, 9(1) and 10(2) of the Representation of the People Act, 1976.

<sup>126</sup> Section 21 of the Representation of the People Act, 1976.

<sup>127</sup> Section 26(1-10) of the Representation of the People (Conduct of Election) Rules, 1977.

<sup>128</sup> Section 28(2) of the Representation of the People (Conduct of Election) Rules, 1977.

<sup>129</sup> Section 38(4)(c) of the Representation of the People Act, 1976.

outside polling stations, and exercising magisterial powers for summary trials.<sup>130</sup>

Apart from its permanent staff, the ECP also enlists hundreds of thousands of temporary personnel countrywide, from the federal, provincial or local governments, to officiate on election day.<sup>131</sup> Said a public policy analyst: "The ECP has little control over the temporary staff since they are members of the executive and not of the commission".<sup>132</sup> There is no independent mechanism to challenge the appointment of these officials, who in the past have repeatedly overseen electoral rigging; complaints about biased officials would be addressed by the DRO, who appointed them in the first place.<sup>133</sup> According to a former union council mayor in Punjab's Mianwali district, "a candidate who is really influential in his area can prevail upon the district administration to depute people of his choice as presiding officers and other polling staff".<sup>134</sup>

Temporary personnel are invariably from the districts in which they are deputed and mostly drawn from the education department, which "corrupts the education infrastructure as it provides the government the opportunity to induct loyalists into school faculties to ensure favourable results in polls".<sup>135</sup> Said a former returning officer: "Being locals, these headmasters and teachers all have their own connections and will be more than likely to support candidates with whom they have such affiliations". The former officer added: "Moreover, it is often the case many among the polling staff would have been recruited as government employees [under the influence of] a particular candidate, thereby increasing the likelihood that they would extend undue favours to him on election day".<sup>136</sup>

The ECP should prohibit temporary staff from performing election duties in their home districts, transferring them to adjoining districts to reduce the likelihood of collusion between officials and candidates. The commission should also be empowered to determine the terms and conditions under which temporary staff are recruited and to investigate misconduct and take disciplinary action against poll-

ing officials. Executive officers deputed to perform electoral duties must be solely under the ECP's supervision and discipline, not that of their parent departments, for the duration of the electoral period. Moreover, instead of drawing temporary staff only from the executive branches of government, the ECP should be authorised to recruit qualified people from non-government sectors through an open and transparent selection process.

Under Section 5(1) of the Representation of the People Act, 1976, all executive authorities, whether federal, provincial or local, are required to assist the CEC and the ECP as the latter deem necessary. "Theoretically, this means that ECP officials in the districts can demand assistance from the district coordination officer and the district police officer", said an elections expert. "In reality, however, it is unthinkable for a lowly assistant election commissioner in BPS-17 or BPS-18 to even dream of simply walking into the office of the district administration or the police and demanding cooperation".<sup>137</sup> According to a former ECP official, ECP field officers such as deputy election commissioners and assistant election commissioners lag behind their counterparts in the judiciary, civil administration and police in terms of salary and status, and "do not have the clout and public prestige to secure the complete cooperation of key executive agencies in the districts".<sup>138</sup>

In the 2008 elections, DROs, ROs and AROs were all drawn from the subordinate judiciary. As a result of the Supreme Court's National Judicial Policy 2009, to ensure the judiciary's separation from the executive, judicial officers will no longer perform such electoral duties, with their role confined to adjudicating election-related disputes and complaints.<sup>139</sup> Several by-elections have since been managed entirely by ECP staff, but the ECP could find it difficult to fill the vacuum left by the sudden withdrawal of the subordinate judiciary in the next election.

"Holding the odd by-election is not much of a test", said a civil servant and member of the Punjab chief minister's staff, who fears that "the impotence of the ECP threatens to make the next general election the most heavily rigged in the country's history". The officer, who closely observed the 2008 elections in a Punjab district, maintained that the previous system of judges serving as election officials was certainly flawed, but ECP officials serving in the

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<sup>130</sup> Sections 86 and 86A of the Representation of the People Act, 1976.

<sup>131</sup> For example, 571,954 polling staff were recruited to manage the 2008 election. See "Final Report: Pakistan National and Provincial Assembly Elections, 18 February 2008", op. cit., p. 25.

<sup>132</sup> Crisis Group interview, Islamabad, 10 November 2010.

<sup>133</sup> "Final Report: Pakistan National and Provincial Assembly Elections, 18 February 2008", op. cit., p. 25.

<sup>134</sup> Crisis Group interview, Mianwali, 19 October 2010.

<sup>135</sup> Zubeida Mustafa, "What children learn", *Dawn*, 2 February 2011. For more detail on the use of the public school teachers in elections, and its impact on the education sector, see Crisis Group Asia Report N°84: *Pakistan: Reforming the Education Sector*, 7 October 2004.

<sup>136</sup> Crisis Group interview, Rawalpindi, 7 October 2010.

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<sup>137</sup> Crisis Group interview, Islamabad, 28 October 2010.

<sup>138</sup> Crisis Group interview, former ECP deputy secretary, Rawalpindi, 7 October 2010.

<sup>139</sup> See "National Judicial Policy 2009: A Year for Focus on Justice at the Grassroots Level", National Judicial (Policy Making) Committee, Secretariat, Law and Justice Commission of Pakistan, 2009, p. 12. Available on the Supreme Court's website at [www.supremecourt.gov.pk/njp2009/njp2009.pdf](http://www.supremecourt.gov.pk/njp2009/njp2009.pdf).

same capacity would be worse since “people know that they would have no power the day after the polls while the judges, by virtue of their retention of authority even after the elections, would more likely be obeyed”.<sup>140</sup> Similarly, a PML-N member of the Punjab provincial assembly argued: “Judges as election officials were perceived as more likely to remain neutral and more resistant to pressure. The executive, on the other hand, is regarded as completely unreliable”.<sup>141</sup>

Yet, as was evident during elections under Musharraf, the subordinate judiciary was as involved in overseeing electoral rigging and manipulation as the civilian bureaucrats on temporary electoral duty. The solution lies in enhancing the ECP's capacity and authority to perform its functions, rather than delegating responsibility to officials from another branch of government. Failing to do so could undermine the credibility of the next general election, and hence fuel post-electoral conflict.

## B. DELIMITING ELECTORAL CONSTITUENCIES

Section 3 of the Delimitation of Constituencies Act, 1974, authorises the ECP to demarcate constituencies for elections to the national and provincial assemblies. Parliament is also authorised to legislate on the allocation of seats in the National Assembly and on the ECP's delimitation of constituencies, including residential requirements.

National and provincial legislative constituencies must be delimited after every national census,<sup>142</sup> according to population distribution in geographically compact and contiguous areas, existing boundaries of administrative units, communication facilities, public convenience and “other cognate factors to ensure homogeneity in the creation of constituencies”.<sup>143</sup>

Although the ECP's jurisdiction in delimiting constituencies is also mentioned in a number of other legal documents, in practice, the process has been undertaken by agencies outside the ECP's control. For instance, before the 2002 elections, the Musharraf-created National Reconstruction Bureau (NRB) played a lead role in gerrymandering districts to dilute support for opposition parties and to strengthen those backing the military regime. The ECP received as many as 945 complaints about delimitation, the vast majority dismissed for lack of a legal basis.

In December 2004, the PML-Q-led Sindh provincial government split Larkana, Jacobabad, Dadu and Mirpurkhas districts along ethnic (Sindhi/Mohajir) lines, creating the

new districts of Kamber Shahdadt, Kashmore, Jamshoro and Umerkot.<sup>144</sup> The aim was to divide the PPP's Sindhi vote base and deliver the resulting Mohajir “enclaves” to the MQM, a coalition ally of Musharraf's PML-Q.<sup>145</sup> “Sindh's districts were carved up so that the PPP's support base could be ‘de-concentrated’, thereby making it easier for the ruling PML (Q)-MQM coalition to manipulate the elections in its favour”, said a former PPP member of the Sindh assembly.<sup>146</sup> This was particularly true in Hyderabad district, which was divided into Matiari, Tando Muhammad Khan, Tando Allahyar and Hyderabad districts to create ethnic fiefdoms for the MQM and other pro-government politicians.<sup>147</sup>

A similar exercise was carried out in Punjab, where Rawalpindi, Faisalabad, Gujranwala and Multan districts were upgraded to city districts in June 2005, and three more towns were added to the Lahore city district. Opposition politicians claimed the changes were made to increase patronage opportunities and to accommodate more PML-Q nominees as town *nazims*. The PML-Q-led coalition government in Balochistan also created or altered union councils for partisan reasons. In NWFP, six new union councils were created in Bannu, the home district of Akram Durrani, then chief minister of the MMA provincial government.<sup>148</sup>

By law, the ECP must ensure that all constituencies are “as far as may be ... equal among themselves in population”.<sup>149</sup> During the last full-scale delimitation for National Assembly constituencies, conducted for the 2002 elections, independent observers noted significant variations in the size of constituencies. There was, for example, a conspicuous difference between FATA and the four provinces in the size of population per seat.<sup>150</sup> There were also noticeable differences among National Assembly constituencies

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<sup>144</sup> Crisis Group Briefing, *Pakistan's Local Polls: Shoring Up Military Rule*, op. cit.

<sup>145</sup> See Crisis Group Report, *Authoritarianism and Political Party Reform in Pakistan*, op. cit.

<sup>146</sup> Crisis Group interview, Lal Bux Bhutto, Karachi, 4 November 2010.

<sup>147</sup> See Crisis Group Briefing, *Pakistan's Local Polls: Shoring Up Military Rule*, op. cit.

<sup>148</sup> Ibid.

<sup>149</sup> Section 9(2) of the Delimitation of Constituencies Act, 1974.

<sup>150</sup> Population quota per National Assembly seat, determined by the ECP during the 2002 delimitation, based on the 1998 census, was 264,694 for FATA and 402,618 to 506,740 for the four provinces and Islamabad. Based on its population, FATA should have been allocated seven National Assembly seats but, under the Conduct of General Elections Order, 2002, was allocated twelve. “Final Report: Pakistan National and Provincial Assembly Elections, 18 February 2008”, op. cit., p. 26.

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<sup>140</sup> Crisis Group interview, Lahore, 15 October 2010.

<sup>141</sup> Crisis Group interview, Lahore, 15 October 2010.

<sup>142</sup> Section 7(2) of the Delimitation of Constituencies Act, 1974.

<sup>143</sup> Section 9 of the Delimitation of Constituencies Act, 1974.

in all four provinces; some constituencies had more than twice the population of others.<sup>151</sup>

The last population census, held in 1998, served as the basis for delineating constituencies for two national elections – 2002 and 2008. Although a new census should have been held in 2008, it was repeatedly postponed due to insecurity, and is now scheduled for August-September 2011.<sup>152</sup> If postponed again, an ECP official warned, “the ECP cannot undertake a fresh delimitation exercise and we will continue to have constituencies based on population figures from fifteen years ago”.<sup>153</sup>

The government should undertake the new census without further delay and prevent interference in the exercise. If electoral boundaries are manipulated to favour any political or ethnic constituency, it could provoke political instability and violence, particularly in Sindh, where the provincial capital Karachi continues to witness almost daily ethnic and political killings of Mohajir, Pashtun and Balochi party workers, largely representing the MQM, ANP and PPP, respectively.<sup>154</sup> At the same time, it is necessary to revisit and revise the gerrymandering of the past, such as in Hyderabad. By bifurcating a predominantly Mohajir, pro-MQM urban centre, Hyderabad city, from its predominantly Sindhi, pro-PPP periphery, the military government provoked major clashes between Sindhis and Mohajirs, which continue to poison ethnic relations in the province.

The ECP should also abide by the other criteria laid down in the Delimitation of Constituencies Act, 1974, without exception. “Public hearings should be held not only to inform stakeholders about the delimitation process but also to get to know their concerns or opinions regarding the redrawing of boundaries”, said a member of the National Assembly.<sup>155</sup> The National Assembly and four provincial assemblies should each form a full permanent committee on electoral reform, with equal numbers of government and opposition members, tasked, among other issues, with reviewing and approving the ECP's redistricting of national and provincial constituencies respectively and

overseeing implementation, with the approved redistricting report put to a vote in the legislatures.

### C. ADMINISTERING ELECTIONS

Donors invested significant resources, largely through the Support to National Elections in Pakistan (SNEP) project (September 2006-December 2008), coordinated by the United Nations Development Programme (UNDP), to improve polling practices and facilities.<sup>156</sup> The project provided training manuals and handbooks to 120 district returning officers, and thousands of returning and assistant returning officers, presiding officers and assistant presiding officers, and polling officers.<sup>157</sup> Yet, despite the millions of dollars spent, the ECP's performance in the 2008 elections was poor. For instance, while the ECP placed the full details of the numbers of registered voters, polling stations and polling booths in each constituency on its website, the locations of polling stations, which should have been made public at least a month before election day, were only placed on the website a week before polling day.<sup>158</sup>

At present, the district returning officer has the authority to make any necessary changes to the list of polling stations up to fifteen days before an election.<sup>159</sup> However, many stakeholders, including elected representatives and electoral experts, argue that polling stations should be made permanent. The ECP should finalise a permanent list of polling stations, after extensive consultations between all stakeholders, and revise it through the same consultative process – “and not on the whims of a solitary individual”.<sup>160</sup> At the very least, district returning officers should be required to provide reasons in writing about any last-minute changes.

In addition to strictly regulating the number of excess ballot papers allocated to each polling station, the ECP should improve postal voting procedures. Postal balloting could especially help enfranchise marginalised groups such as

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<sup>151</sup> The figures for the smallest and largest National Assembly constituencies in terms of population in Khyber-Pakhtunkhwa were 307,278 and 717,649 respectively, in Balochistan 365,421 and 678,711; in Sindh 404,351 and 587,364; in Punjab 350,112 and 592,177; and in FATA 196,137 and 361,246. See “Final Report: Pakistan National and Provincial Assembly Elections, 18 February 2008”, op. cit., p. 26.

<sup>152</sup> Zia Khan, “Census to be held in 2011”, *The Express Tribune*, 9 November 2010.

<sup>153</sup> Crisis Group interview, Islamabad, 11 January 2011.

<sup>154</sup> In 2010, there were at least 748 targeted political/ethnic killings in the city, up from 272 in 2009. “Karachi targeted killings claimed 748 lives last year: HRCP”, *Dawn*, 6 January 2011.

<sup>155</sup> Crisis Group interview, Islamabad, 6 January 2011.

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<sup>156</sup> Out of a total budget of \$53.5 million, \$14.5 million was spent on program delivery. Contributions came from the UK Department for International Development (\$3.9 million); the Embassy of Japan (\$3.47 million); the Royal Netherlands Embassy (\$2.4 million); the Royal Norwegian Embassy (\$1.97 million); USAID (\$1.5 million); the European Commission (\$1.3 million); the Canadian International Development Agency (\$862,069); and UNDP itself (\$479,000). “Support to National Elections in Pakistan”, UNDP Pakistan, [http://un.org.pk/undpnew/index.php?option=com\\_content&task=view&id=841&Itemid=153](http://un.org.pk/undpnew/index.php?option=com_content&task=view&id=841&Itemid=153).

<sup>157</sup> Ibid.

<sup>158</sup> “Final Report: Pakistan National and Provincial Assembly Elections, 18 February 2008”, op. cit., p. 24.

<sup>159</sup> Section 8(2) of the Representation of the People Act, 1976.

<sup>160</sup> Crisis Group interview, elections expert, Islamabad, 30 October 2010.



women, persons with disabilities and the internally displaced, and should therefore be accompanied by outreach and publicity. Presiding officers should be required to consolidate postal ballots with the overall vote count.

In June 2010, the ECP announced it would start a phased incorporation of electronic voting machines (EVMs), initially through a pilot project before deploying them countrywide over the next five years, at a cost of 1.5 billion rupees (\$17.5 million).<sup>161</sup> According to an ECP feasibility report on EVMs, although paper ballots were considered easier to understand and use, the costs of physically managing and storing them, the high rate of incorrect marking, and woefully slow and inaccurate counting processes far outweighed the advantages.<sup>162</sup> While acknowledging that most EVMs do not lend themselves to auditing and recounting, the report maintained that they would ensure standard adjudication of ballots, eliminate bogus votes, prevent fraud, guarantee accurate tabulation, and provide for quicker and more accurate counting of votes than a manual count.<sup>163</sup> Noting the high cost of the machines, the report nevertheless cautioned that a decision on EVMs should not be based on financial considerations alone since “the use of EVMs could lead to significant improvements in the quality of democracy in Pakistan, and these improvements are difficult to quantify financially”.<sup>164</sup>

EVMs, however, currently lack effective safeguards against manipulation. Electoral officials with access to the machines can manipulate the data; computer programs can be hacked or affected by viruses.<sup>165</sup> Regular, extended power outages, common in Pakistan, would also seriously disrupt voting, even with generators. Moreover, without a reliable paper trail, the difficulties of resolving electoral disputes could jeopardise the legitimacy of the polls. Although measures could be taken to enable voters to confirm the choices they make electronically on a permanent hard-copy record, this would raise the costs significantly. Rather than invest in technology that could potentially increase opportunities for electoral fraud, the government should improve the existing system of paper ballots and manual counts through better trained electoral officers and polling agents, and ensuring neutral observers have unfettered access to every polling station.

## 1. Voter registration

A person is entitled to vote if he/she is a citizen of Pakistan, is not less than eighteen years old on 1 January in the year rolls are prepared or revised, is not declared to be of unsound mind by a competent court, and is resident in his/her electoral area.<sup>166</sup> Under Article 219(a) of the constitution, as amended by the eighteenth amendment, the ECP is responsible for preparing electoral rolls for elections to the national and provincial assemblies, and revising them annually. The government should enforce the constitutional requirement of an annual revision of the electoral rolls by the ECP, with the revised and updated lists placed on its website.<sup>167</sup>

Currently voter registration is deeply flawed, disenfranchising large segments of the population. According to a Punjab legislator: “People are registered in several different locations and votes keep being cast in their name by others”.<sup>168</sup> A former member of a provincial assembly claimed that faulty voters lists produced some 10,000 to 15,000 bogus votes in each constituency of his district of Bhakkhar, Punjab. He said: “I sent the ECP a CD containing glaring discrepancies in the voters list for my constituency but they did not even bother to send a reply”.<sup>169</sup>

In preparing electoral rolls for the 2008 election, the ECP had launched a door-to-door enumeration of voters, instead of updating the lists prepared by the National Database Registration Authority (NADRA) for the 2002 elections, which had around 72 million voters.<sup>170</sup> As discussed above, the exercise was deeply flawed. “We forced the enumerators deputed by the ECP to register people erroneously in areas where our opponent was in a majority”, admitted a former elected local government representative in Mianwali. “Sometimes the names were deliberately spelt wrong while on other occasions the addresses were falsified and the identification card numbers were altered. It was all done to make sure that many voters who were unlikely to vote for us had their votes rejected”.<sup>171</sup>

Although complete computerisation of the voter registration process would not eliminate bogus voting during the next general election, it could help to reduce it. Given the time needed for the exercise, however, this is only possible if the election is held on schedule in 2013. Photographs of

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<sup>161</sup> Irfan Ghauri, “ECP decides to use EVMs in election process”, *Daily Times*, 30 June 2010.

<sup>162</sup> “Final Report and Recommendations”, Committee on the Use of Electronic Voting Machines in Pakistan, Election Commission of Pakistan, 7 September 2010, p. 11.

<sup>163</sup> *Ibid.*, p. 13.

<sup>164</sup> *Ibid.*, p. 38.

<sup>165</sup> See Ariel J. Feldman, J. Alex Halderman and Edward W. Felten, “Security Analysis of the Diebold AccuVote-TS Voting Machine”, Center of Information Technology Policy, Princeton University, 13 September 2006. <http://itpolicy.princeton.edu/voting/ts-paper.pdf>.

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<sup>166</sup> Section 6(2) of the Electoral Rolls Act, 1974.

<sup>167</sup> In the 2008 elections, the electoral rolls were placed online just two months prior to election day. Following the elections, they remained on the ECP's website for two years without being updated, before finally being removed in January 2010.

<sup>168</sup> Crisis Group interview, Lahore, 15 October 2010.

<sup>169</sup> Crisis Group interview, Bhakkhar, 20 October 2010.

<sup>170</sup> See Crisis Group Report, *Elections, Democracy and Stability in Pakistan*, op. cit.

<sup>171</sup> Crisis Group interview, Mianwali, 19 October 2010.

voters, accompanying their names on the electoral rolls, would serve as a further guarantee against bogus voting.

In April 2009, the ECP and NADRA constituted a joint technical working group to revise electoral rolls by adding new voters, authenticating existing ones and eliminating bogus entries by crosschecking with NADRA's database. In October 2010, a pilot project was launched in four districts, one in each province, to prepare computerised rolls. While the results of the pilot have not been made public, NADRA officials describe it as successful since these voters now have a unique identity number and photo, and NADRA's database of registered Computerised National Identity Card (CNIC) holders has been verified by a door-to-door ECP exercise in fifteen electoral areas of each district.<sup>172</sup>

In January 2011, the federal cabinet approved the Election Laws (Amendment) Bill 2011, based on a June 2010 ECP draft bill, which makes possession of a NADRA-issued CNIC mandatory for voter registration and for casting a vote.<sup>173</sup> "To make it easier for the voters, there is a provision that even if a CNIC has exceeded its expiry date, it can still be used for voting purposes", said Tariq Malik, NADRA's deputy chairman.<sup>174</sup> NADRA and the ECP have agreed to extend the pilot project countrywide once the bill becomes law. The bill also prescribes a five-year jail term and a fine of 5 million rupees (around \$60,000) for anyone found guilty of breaching the secrecy, security and integrity of the data entered on the electoral rolls.<sup>175</sup>

## 2. Registration of candidates

Pakistan's electoral law permits candidates to contest elections from multiple constituencies. Since candidates who win from more than one constituency must vacate the additional seats, for which by-elections are then held, a number of experts rightly believe the practice is "wholly unjustified and thoroughly wasteful in terms of money and time".<sup>176</sup> Ending it is certainly desirable.

In August 2009, the current parliament unanimously passed the Election Laws (Amendment) Bill abolishing the requirement introduced by Musharraf before the 2002 polls that candidates must have a bachelor's degree or its equivalent.<sup>177</sup> The law had also applied to the 2008 elections. Many candidates thus used fake degrees to contest both polls. Although this discriminatory and unconstitutional requirement that had disqualified many moderate candidates, has been removed, several legislators were nevertheless forced to step down in 2010 after the Supreme Court called for the ECP to investigate fake degrees submitted by candidates for the 2008 elections.

A number of other restrictions on candidate registration remain, including provisions pertaining to a candidate's moral suitability to hold office, included in Zia-ul-Haq's eighth amendment. Drawing on Zia's reforms, Section 8D of Musharraf's Conduct of General Elections Order, 2002, which remains in place, mandates that a candidate must be "sagacious, righteous, non-profligate, honest", "of good character", "not commonly known as one who violates Islamic injunctions", and who "has adequate knowledge of Islamic teachings and practices obligatory duties prescribed by Islam as well as abstains from major sins".<sup>178</sup> As the EU EOM mission for the 2008 elections noted, these criteria are "inherently open to abuse, allowing considerable scope for inconsistent and unfair application".<sup>179</sup>

There are also restrictions regarding a candidate's political record and views. For instance, a candidate must not have "worked against the integrity of the country or opposed the ideology of Pakistan", or must not be found propagating an opinion or acting in a manner "prejudicial to the Ideology of Pakistan, or the sovereignty, integrity or security of Pakistan, or morality, or the maintenance of public order, or the integrity or independence of the Judiciary of Pakistan, or which defames or brings into ridicule the judiciary or the Armed Forces of Pakistan".<sup>180</sup> Even if not actively pursued, such restrictions can always be exploited to exclude opposition figures.

## 3. Accountability of candidates and political parties

The ECP had issued an elaborate code of conduct for candidates, political parties, election officials and the administration for the 2008 elections, but seldom responded to complaints and reports of code violations. It was particularly ineffective at enforcing bans on abuse of office

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<sup>172</sup> Crisis Group interview, NADRA officials, Islamabad, 13 January 2011.

<sup>173</sup> Subsequently, in February 2011, the Senate Standing Committee on Law, Justice and Human Rights and Parliamentary Affairs approved the bill.

<sup>174</sup> Crisis Group interview, Islamabad, 13 January 2011.

<sup>175</sup> "Law okayed to punish robber with death", *The News*, 13 January 2011.

<sup>176</sup> Crisis Group interview, Karachi, 3 November 2010. For example, immediately after the 2008 election, four by-elections were held for National Assembly seats in Punjab vacated by members who had won from more than one constituency. See ECP website, [www2.ecp.gov.pk/vsite/bye/AllResults.aspx?assemblyid=NA](http://www2.ecp.gov.pk/vsite/bye/AllResults.aspx?assemblyid=NA).

<sup>177</sup> "NA passes bill to remove graduation condition", *Daily Times*, 13 August 2009.

<sup>178</sup> Section 8.D, Conduct Of General Elections Order, 2002.

<sup>179</sup> "Final Report: Pakistan National and Provincial Assembly Elections, 18 February 2008", op. cit., p. 25.

<sup>180</sup> Section 8.D, Conduct Of General Elections Order, 2002.

and state resources and on the transfer of civil servants after the election schedule had been announced. Candidates from all parties routinely violated the code of conduct by promising development projects and donations, buying votes, harassing voters and displaying weapons at public meetings. Other than expressing its concerns over “the unending series of complaints received”, the ECP “did not take an active role in addressing these violations”.<sup>181</sup>

The ECP has also proved reluctant to take action against members of the current government who violate the code of conduct. For instance, a PML-N MPA from Sargodha complained that Prime Minister Gilani, visiting her constituency a week before a by-election, “blatantly violated the electoral code of conduct by inaugurating a gas project, announcing the construction of a bridge and the supply of electricity to parts of the constituency, distributing money and awarding land ownership deeds”. The MPA sent a written complaint on the violations to the ECP but has not received a response. “Why should I bother to talk to them in future when they cannot even reply to my complaints?”<sup>182</sup> Misuse of the security forces is also rife.

The ruling party and the opposition must realise that such tactics only weaken their legitimacy and the legitimacy of the electoral contest. The gains made by the democratic transition will also be jeopardised if public confidence in the electoral process weakens, creating opportunities for the military to portray elected politicians as corrupt and undemocratic.

Moreover, the ECP's ceilings on campaign spending are not enforced and are regularly violated.<sup>183</sup> “Contesting elections in Pakistan is a costly business”, said a member of the National Assembly from Lahore. “The current financial limits imposed by the ECP are far too restrictive to allow us to successfully run our campaigns, so we inevitably end up paying a lot more than we are entitled to”.<sup>184</sup> A Punjab MPA, however, argued: “Politics has become the preserve of the wealthy; the middle class simply cannot afford to contest an election”.<sup>185</sup> The government should review the current limitation on campaign spending to make it more realistic, but at the same time, enforce the

requirements that candidates and parties publicly declare their expenditures and sources of funds.

ECP officials insist that the commission lacks the legal muscle to enforce the code of conduct, and that the code will only have the desired deterrent effect if it is made part of the electoral law, with appropriate revisions ahead of each election.<sup>186</sup> For instance, the ECP has few effective punitive options to discipline parliamentarians who submit false statements of assets and liabilities, or do not submit a statement at all before the 30 September deadline each year.<sup>187</sup> In 2010, 602 out of a total of 1,170 lawmakers failed to file their statements on time.<sup>188</sup> Although 141 lawmakers, who had failed to file statements, even after the expiry of a two-week grace period, were suspended on 15 October 2010,<sup>189</sup> such suspensions are not an effective deterrent since they end whenever the parliamentarian finally files the statement. Suspended parliamentarians also continue to enjoy official privileges.<sup>190</sup>

While the ECP publishes the annual statement of assets and liabilities submitted by lawmakers in the official gazette, it has ruled out placing the statements on its website without a specific legal requirement.<sup>191</sup> Similarly, details of election-related expenditures by candidates remain with the relevant returning officers and are not made public. Parliament should legislate and the ECP should place these and other electoral expenses, such as campaign expenditures, on its website.

#### D. RESOLVING ELECTORAL PETITIONS AND COMPLAINTS

Election tribunals, headed by a serving or retired judge of the relevant provincial high court or a district and sessions judge who at the time of retirement was qualified to be a high court judge, handle electoral disputes.<sup>192</sup> The CEC has the power to nominate as many tribunals as deemed necessary, with each tribunal given the powers of a civil court trying a suit under the Code of Civil Procedure,

<sup>181</sup> “Final Report: Pakistan National and Provincial Assembly Elections, 18 February 2008”, op. cit., p. 33.

<sup>182</sup> Crisis Group interview, Shahzadi Tiwana, Lahore, 15 October 2010.

<sup>183</sup> The EU Election Observation Report on the 2008 elections reported that campaign financing restrictions were “routinely ignored without any response from the ECP” and that, while winning candidates did provide accounts, there was no auditing of the returns. “Final Report: Pakistan National and Provincial Assembly Elections, 18 February 2008”, op. cit., p. 25.

<sup>184</sup> Crisis Group interview, Lahore, 12 October 2010.

<sup>185</sup> Crisis Group interview, Mianwali, 19 October 2010.

<sup>186</sup> Crisis Group interviews, Islamabad, October–November 2010.

<sup>187</sup> Section 42A of the Representation of the People Act, 1974; and Section 25A of the Senate (Election) Act, 1975.

<sup>188</sup> “602 MPs including PM fail to submit asset statements”, *Daily Times*, 1 October 2010.

<sup>189</sup> “EC suspends membership of 141 lawmakers”, *Dawn*, 19 October 2010.

<sup>190</sup> See Irfan Ghauri, “Nine legislators yet to declare assets”, *The Express Tribune*, 29 October 2010.

<sup>191</sup> Hassan Abbas, “ECP rules out placing of Parliamentarians' assets on website”, *Business Recorder*, 29 September 2010.

<sup>192</sup> Section 57 of the Representation of the People Act, 1976.

1908.<sup>193</sup> An appeal against the tribunal's decision can be lodged before the Supreme Court within 30 days.<sup>194</sup>

Election tribunals are widely criticised for their lack of transparency and excessive delays in hearing and settling complaints. Under the Representation of the People Act, 1976, a tribunal must adjudicate a petition within four months.<sup>195</sup> In practice, this provision is "more honoured in the breach", according to a former federal secretary<sup>196</sup> – a view supported by the EU EOM report on the 2008 elections, which found that 39 out of the 221 petitions from the 2002 election remained unresolved after the parliament's five-year term had expired.<sup>197</sup> Indeed, many petitions from one election are commonly still pending when the next election takes place. The EU 2008 EOM concluded: "in the absence of a clear framework for the processing of complaints, rules and standards and with little apparent oversight by the ECP, there is no means of providing consistent, timely or effective redress for complaints".<sup>198</sup> With international assistance, the ECP has established a central tracking system for recording and monitoring complaints. It has failed, however, to systematically record or track complaints below the federal level.<sup>199</sup>

In January 2008, IFES launched a study on the effectiveness of election tribunals. The Election Tribunal Monitoring Project collected qualitative and quantitative data on their functioning: the period covered, from February to November 2008, saw protracted delays at all levels.<sup>200</sup> The report found that over 90 per cent of filed petitions were not resolved within the prescribed four-month period, with causes ranging from "the large number of ECP officials who are responsible for receiving, approving and forwarding petitions to the Tribunals, to the excessive numbers and competing caseloads of judges and, also, the substantial administrative protocols in place at the court management level".<sup>201</sup>

There are also widespread allegations that corruption and connivance mar the work of election tribunals and cause delays. "The entire system of electoral dispute resolution

is crooked", said a former district and sessions judge. "The tribunals keep delaying the disposal of petitions until the next election so as not to get into the bad books of the winning candidate, who more often than not belongs to the party in power".<sup>202</sup> According to a Sindh Assembly parliamentarian, "judges are bribed into granting frivolous adjournments which cause needless delays in the disposal of petitions".<sup>203</sup>

The government should reduce the unnecessarily large number of administrative personnel involved in processing election petitions. The Election Laws (Amendment) Bill 2011 calls for setting up local commissions to record evidence within ten days of a petition, which would then be forwarded to the relevant election tribunal for speedy disposal.<sup>204</sup> This is an important step forward to remove bureaucratic bottlenecks, but the ECP must in turn establish protocols to ensure that the tribunals give each petition equal importance and settle them within the prescribed period. More protocols are also needed to clarify roles and responsibilities in the complaints process, particularly for investigations, and to improve the complaint tracking system, with a complete record of complaints, responses, decisions and outcomes placed on the ECP website.

The appointment of election tribunal judges should also be transparent and consultative. With the CEC's original powers transferred to the ECP, the latter is now the appointing authority, an improvement on the past when the CEC had sole authority. Final approval should, however, rest with the permanent parliamentary committee on electoral reform, mentioned above, comprising equal numbers of government and opposition members. All voters, not just aggrieved candidates as is currently the case,<sup>205</sup> should be permitted to file petitions. A strong evidentiary threshold is necessary, and the burden of evidence should be placed on the complainant to deter frivolous complaints.

While election tribunals provide legal redress, the ECP is responsible for administrative problems such as malpractice by election officials, abuse of state resources and violations of the code of conduct. In its report on the 2008 elections, the EU EOM found that the ECP often failed to respond effectively to complaints and abdicated its responsibilities to others, including the courts and even to

<sup>193</sup> Section 64 of the Representation of the People Act, 1976.

<sup>194</sup> Section 67(3) of the Representation of the People Act, 1976.

<sup>195</sup> Section 67(1A) of the Representation of the People Act, 1976.

<sup>196</sup> Crisis Group interview, Islamabad, 30 October 2010.

<sup>197</sup> "Final Report: Pakistan National and Provincial Assembly Elections, 18 February 2008", op. cit.

<sup>198</sup> Ibid.

<sup>199</sup> Ibid.

<sup>200</sup> See IFES Pakistan website: [www.ifespakistan.org/drl/index.htm](http://www.ifespakistan.org/drl/index.htm).

<sup>201</sup> Executive Summary Booklet to the Final Report, "Post-Election Community-Based Mediation and Adjudication Program: Election Tribunal Monitoring Project Phases One and Two, February-November 2008", IFES Pakistan, January 2009, p. 5.

<sup>202</sup> Crisis Group interview, Rawalpindi, 7 October 2010.

<sup>203</sup> Crisis Group interview, Karachi, 3 November 2010. For more detail on corruption in the judiciary, see Crisis Group Asia Report N°86, *Building Judicial Independence in Pakistan*, 9 November 2004.

<sup>204</sup> "Law okayed to punish robber with death", *The News*, 13 January 2011.

<sup>205</sup> Section 52 of the Representation of the People Act, 1976.

its own subordinate officials.<sup>206</sup> An analyst added: "Many electoral complaints involve malpractices committed by electoral officials such as district returning officers and returning officers, but instead of investigating such cases itself, the ECP delegates the responsibility to the same officials against whom the complaints have been made".<sup>207</sup> Despite the powers of "superintendence, discretion and control"<sup>208</sup> over district returning officers and returning officers, the ECP, by its own admission, is often "powerless in the face of inaction" by these officials.<sup>209</sup> The ECP should assume full responsibility for resolving complaints, transferring cases to regular courts only after the prescribed timeframe has expired, or if a tribunal's decision is appealed. It must also hold its officials accountable for electoral malpractices.

## E. INTERNAL REFORM

On 25 May 2010, the ECP presented a Five-Year Strategic Plan (2010-2014), developed over a six-month period after extensive consultations with political parties, parliamentarians, civil society organisations and international agencies. This document sets fifteen major goals, divided into 129 detailed time-bound objectives, which constitute "the overall vision of the ECP for electoral reform in Pakistan". It alludes to a number of guiding principles that reflect "the overall philosophy of the ECP", including independence, impartiality, transparency, integrity, inclusion of marginalised groups, professional excellence, conducive working conditions and gender balance.<sup>210</sup>

As yet, the ECP's strategic plan is little more than a compilation of objectives; even those reforms earmarked for 2010 are yet to materialise. These included simplifying the voter registration form, which remains unchanged. Similarly, the ECP also envisaged and has since backtracked on publishing financial statements by parliamentarians on its website in October 2010.<sup>211</sup>

It seems unlikely that many of the reforms scheduled for 2011, no matter how desirable, will be achieved.

These include:

- June: Establishing permanent polling stations after public consultation; providing multiple functions skills to

senior officers to prepare them for various roles within the ECP; computerising the budget wing of the ECP; setting up a computerised electoral rolls data centre; developing and implementing a comprehensive information security and privacy policy; and strengthening the code of conduct for political parties and candidates.

- July: Ensuring appropriate legislation for development of an electoral disputes resolution system; and conducting research on voting participation of women to formulate appropriate policies.
- December: Unifying various electoral laws into a single legal instrument; reforming legislation on political finance relating to political parties and candidates; improving the display of the draft electoral rolls and their accessibility to voters, and simplifying all election-related forms; extending the computerised electoral rolls project to countrywide field offices; creating a secure link between polling stations and the computerised electoral rolls database; developing curricula for various training programs and imparting specialised IT training from authorised training centres abroad; redesigning the ECP website to facilitate greater public access to information on the electoral process, including voter information, polling stations, complaint tracking and election results; establishing a permanent media centre at the ECP; and supporting the development and adoption of legislation on the participation of voters with disabilities in the electoral process.

A former ECP secretary commented: "Ownership of the reform effort must be assumed by parliament, which at the end of the day is the biggest stakeholder when it comes to a reformed electoral system".<sup>212</sup> An analyst added: "[parliament's] efforts in the realm of electoral reform thus far have been disappointing. There is a sub-committee on electoral reform within the National Assembly's committee on law, justice and parliamentary affairs but it has done hardly anything to justify its existence thus far".<sup>213</sup> A member of the sub-committee conceded that it had held very few meetings over the last year but added "the ECP itself had bought time from us to incorporate changes in the reform agenda necessitated by the eighteenth amendment".<sup>214</sup>

The lack of parliamentary ownership of the ECP's strategic plan remains a major hurdle for implementation. The ruling party and the opposition must urgently prioritise electoral reform. As a first step, they should transform the parliamentary sub-committee on electoral reform into a full and permanent committee, which should undertake a comprehensive review of the document, making amendments where needed, including resetting timeframes, and

<sup>206</sup> "Final Report: Pakistan National and Provincial Assembly Elections, 18 February 2008", op. cit., p. 20.

<sup>207</sup> Crisis Group interview, Islamabad, 28 October 2010.

<sup>208</sup> Section 7 of the Representation of the People Act, 1976.

<sup>209</sup> "Final Report: Pakistan National and Provincial Assembly Elections, 18 February 2008", op. cit., p. 20.

<sup>210</sup> "Five-Year Strategic Plan, 2010 - 2014", op. cit.

<sup>211</sup> Hassan Abbas, "ECP rules out placing of Parliamentarians' assets on website", *Business Recorder*, 29 September 2010.

<sup>212</sup> Crisis Group interview, Islamabad, 30 September 2010.

<sup>213</sup> Crisis Group interview, Islamabad, 28 October 2010.

<sup>214</sup> Crisis Group interview, Islamabad, 12 January 2011.

then submitting the reforms to a vote first within the committee, followed by a parliamentary vote. The committee should continuously monitor implementation to ensure that stated targets are met; in case of slow or non-implementation, the committee should summon and hold ECP officials to account. By drafting the legislation needed to enact these reforms, the parliament will make a major contribution to stabilising democracy in Pakistan.

## VII. THE ROLE OF THE INTERNATIONAL COMMUNITY

### A. AVOIDING A PURELY TECHNICAL APPROACH

International donors and agencies have provided much financial and technical support to electoral reform, as discussed above, but the electoral system remains dysfunctional. This should not be surprising, since most agencies had, throughout the Musharraf years, failed to back meaningful democratic reform which would have made electoral reform possible. Despite channelling significant funds to the ECP during Musharraf's rule, the international community failed to push for substantial changes to a corrupt and inefficient electoral management body for fear that the military would push back. "The U.S., the UN and the EU all supported every election held by Musharraf, no matter how heavily rigged, because they were reluctant to destabilise his regime", said an international observer who covered the 2002 elections.<sup>215</sup> A former representative of a donor agency that invested significant funds in electoral reform during the Musharraf era claimed, "although our intention was to facilitate a return to democracy, we ended up assisting the military to prolong its rule over the country".<sup>216</sup>

Donor support for the 2008 elections came through two basket funds: one with the UNDP, which supported the ECP and voter education; the other with the Asia Foundation, which managed a network of local NGOs to support voter mobilisation and election monitoring. The U.S. provided separate support to IFES, as well as to political parties through the National Democratic Institute (NDI) and the International Republican Institute (IRI).<sup>217</sup>

The international community's focus on technical rather than the political aspects of elections proved counter-productive. Acknowledging the mistake, a 2009 report on electoral assistance by the UK Department for International Development (DFID) stressed that technical support during Musharraf's rule, was "not sufficient to reform the system overall". Although assistance during the 2008 polls was "generally well-coordinated and technically comprehensive", it "did not deal systematically with the key factors which underpin the potential for democratic politics in Pakistan"; as a result, "political and institutional realities – such as the relationship between the judiciary and the

<sup>215</sup> Crisis Group telephone interview, Islamabad, 7 January 2011.

<sup>216</sup> Crisis Group interview, Islamabad, 10 January 2011.

<sup>217</sup> "Elections in Pakistan 2008", Department for International Development (DFID), [www.dfid.gov.uk/Documents/publications1/elections/elections-pk-2008.pdf](http://www.dfid.gov.uk/Documents/publications1/elections/elections-pk-2008.pdf).

executive – were not tackled”.<sup>218</sup> According to DFID, the international community took a “purely technical and procedural approach to the election”, thus failing to address the ECP’s lack of independence. Consequently, the ECP remained:

relatively time-bound in its vision; focused on the election as an event, rather than as part of a democratic process; placed limited attention on the needs of women and other vulnerable groups; and did little to ensure that the systems it had introduced were sustainable, while opportunities for it to develop its internal capacity were lost.<sup>219</sup>

The democratic transition now provides the framework within which even technical assistance can play a major role in reforming the ECP. International financial assistance and technical expertise can help achieve many of the ECP’s objectives in its strategic plan, including computerising electoral rolls and building a serviceable voter database; and establishing linkages between all polling stations, and between polling stations and the computerised voter lists. In addition, donors should help develop a comprehensive ECP information technology (IT) policy, including modernising its IT directorate, as well as supporting a strong IT infrastructure at the ECP secretariat, provincial election commission offices and field offices. To undo the military government’s gerrymandering and prevent any more from occurring after the next census, donors could provide geographical information systems to digitally map electoral areas and to ensure that constituency delimitation takes place along credible, scientific lines.

The international community should also offer more assistance in tracking electoral complaints and improving the functioning of election tribunals. Programs should aim to standardise and refine adjudication processes to make it easier for stakeholders, including the general public, to understand how electoral complaints are handled. Donors should especially focus on enhancing the capacity of the Federal Election Academy by training qualified instructors and senior officials and helping improve the curriculum.

Effective accountability mechanisms to monitor implementation of the ECP strategic plan and ensure that international financial and technical resources are used efficiently are vital. Donors should insist that the Strategic Plan Management Committee (SPMC) and the Review,

Assistance and Facilitation Team (RAFT)<sup>220</sup> – meant to supervise and direct the implementation process and plan further reform activities – be activated and made accountable to them. In addition to the ECP officials and donor representatives who currently comprise the SPMC and RAFT, nominees of political parties, professional associations, and other credible civil society organisations and media should be added. Finally, the national and provincial public accounts committees should conduct regular hearings on election reform expenditures, with testimony from ECP, SPMC and RAFT members.

Most importantly, the international community should engage the full spectrum of stakeholders, especially parliamentarians and political parties, rather than confine their relationship to the ECP bureaucracy. In the past, most recently in the lead-up to the 2008 elections, some donor countries and agencies bypassed parties because they regarded them as corrupt and internally undemocratic.<sup>221</sup> Donors preferred technically-oriented projects, such as the multi-donor Support for Democratic and Electoral Processes in Pakistan (SDEPP) project (2000-2009) and the Support for National Elections in Pakistan (SNEP) project (2006-2008), which engaged the ECP and non-government actors, but ignored political parties. Without political party engagement, donor-supported electoral reform efforts are unlikely to succeed.

## B. BROADENING ENGAGEMENT

The interests of the international community, the U.S. and EU in particular, are best served by a politically stable, democratically-governed state, and not a military-backed government with a civilian façade. Since the 11 September 2001 terrorist attacks, the international community has pursued a lopsided relationship with the Pakistani military under the misguided belief that this will yield counter-terrorism dividends. On the contrary, religious extremism spread under Musharraf because of peace deals with FATA-based militant groups; continued patronage of India-oriented jihadi groups such as the Jaish-e-Mohammed and the Lashkar-e-Tayyaba; and the general neglect of law and order. With the military clinging to these policies, extremist violence has reached new heights in Pakistan, a trend that can only be reversed if civilian governments wrest control over national security and defence policy

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<sup>218</sup>“Electoral Assistance and Politics: Lessons for International Support”, Department for International Development (DFID), 2009, [www.dfid.gov.uk/Documents/publications1/elections/elect-asst-pol-issns-int-supp.pdf](http://www.dfid.gov.uk/Documents/publications1/elections/elect-asst-pol-issns-int-supp.pdf).

<sup>219</sup>“Elections in Pakistan 2008”, op. cit.

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<sup>220</sup>The SPMC is headed by the secretary of the ECP and includes all four provincial election commissioners, senior officials of the ECP secretariat and three representatives from IFES. Under the SPMC’s overall leadership and supervision, the RAFT, consisting of trained professionals from the ECP and IFES, helps plan activities, assists in their implementation and monitors outcomes.

<sup>221</sup> See Crisis Group Report, *Elections, Democracy and Stability in Pakistan*, op. cit.

from the military, which is only possible if the democratic transition survives.

The U.S., EU and other international actors should make a democratic, orderly political transition the focus of their engagement with Pakistan. The democratic transition remains fragile, and an ambitious and interventionist military high command appears willing to subvert it. For instance, U.S. diplomatic cables released by Wikileaks in November 2010 revealed army chief General Ashfaq Parvez Kayani's intentions in 2009 to pressure President Zardari to resign and to replace him with ANP leader Asfandyar Wali Khan, a more acceptable alternative to former prime minister Nawaz Sharif: "[R]egardless of how much [Kayani] disliked Zardari, he distrusted [Sharif] ... even more".<sup>222</sup> The international community should send strong signals, including threatening to suspend military assistance, to the high command that any move to subvert or control the political process is unacceptable.

In October 2009, President Barack Obama signed into law the U.S. Enhanced Partnership with Pakistan Act 2009, widely referred to as the Kerry-Lugar-Berman bill, to provide \$7.5 billion over five years to strengthen civilian institutions and democracy. While the legislation provides an opportunity to broaden U.S. engagement with Pakistan beyond a narrow relationship with the military, implementation has been slow. For fiscal year (FY) 2010, Congress appropriated more than \$1.5 billion but by 30 June 2010 much of the money had yet to reach the field.<sup>223</sup> After the July 2010 floods that caused damages of an estimated \$10 billion, USAID reallocated \$560 million from Kerry-Lugar-Berman funds towards flood recovery.<sup>224</sup> While this was arguably a necessary step, the U.S. should immediately resume and significantly enhance democratisation programming. Delays in implementing such programming would risk reinforcing widespread perceptions of U.S. disinterest in supporting the democratic transition.<sup>225</sup>

To continue security-related assistance, the Enhanced Partnership with Pakistan Act 2009 requires the Secretary of State to certify Pakistani cooperation in dismantling nuclear supplier networks, combating terrorist groups, and ending support by the military or its intelligence agencies to extremist groups. It also requires certification that "the security forces of Pakistan are not materially and substantively subverting the political and judicial processes of Pakistan".<sup>226</sup> General Kayani criticised the bill for undermining state sovereignty, arguing, "a sovereign state has all the rights to analyse and respond to threats in accordance with her national interest".<sup>227</sup> Subsequently, the Inter-Services Public Relations, the military's media arm, issued a press statement expressing "serious concern regarding clauses (in the bill) impacting national security", and, in a blatant bid to pressure the PPP-led government, declaring the high command's intention to give a "formal input" on the bill to the government.<sup>228</sup>

Although the military high command did not succeed in pressuring the government to decline the funding, it is likely to react just as strongly any time the U.S. considers applying political pressure to deter military interventionism. Rather than backtrack, the U.S. should focus on the purpose of the Kerry-Lugar-Berman bill – to strengthen the democratic transition and enhance the capacity of civilian institutions.

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<sup>222</sup> U.S. embassy, Islamabad, classified cable, "Subject: Little movement on reconciliation", secret section 01 of 04, Islamabad 000516, classified by Anne Patterson, 12 March 2009, 04:28. Released by Wikileaks on 30 November 2010. Available at: <http://213.251.145.96/cable/2009/03/09ISLAMABAD516.html>.

<sup>223</sup> "Quarterly Progress and Oversight Report on the Civilian Assistance Program in Pakistan: as of 30 June 2010", USAID, 2010.

<sup>224</sup> See "Quarterly Progress and Oversight Report on the Civilian Assistance Program in Pakistan: as of 31 December 2010", USAID, 2011. For analysis on the impact of and response to the floods, see Crisis Group Asia Briefing N°111, *Pakistan: The Worsening IDP Crisis*, 16 September 2010.

<sup>225</sup> The breakdown of \$1,513.9 million funds in FY 2010 is as follows. Obligated funds: \$171.2 million. Unobligated funds: \$1,163.2 million. Disbursed funds: \$179.5 million. Most civil-

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ian assistance was not obligated until 30 September when USAID signed an agreement with the Pakistan government for up to \$831 million to support programs in the following areas: health, education, economic opportunity, agriculture and energy, democracy and governance as well as targeted programs implemented in the FATA and KPK province. "Department of State's Report to Congress and U.S. Oversight of Civilian Assistance Can Be Further Enhanced", Government Accountability Office, GAO-11-310R, 17 February 2011.

<sup>226</sup> Text of the "Enhanced Partnership with Pakistan Act 2009", op. cit.

<sup>227</sup> Shakeel Shaikh, "Commanders show concern at U.S. aid bill", *The News*, 8 October 2009.

<sup>228</sup> Ibid. Iftikhar A. Khan, "Corps commanders express concern over Kerry-Lugar", *Dawn*, 8 October 2009.



## VIII. CONCLUSION

With an election in two years, if not sooner, the PPP-led government and its parliamentary opposition cannot afford to postpone implementing major electoral reforms to ensure a credible, peaceful political transition. There has yet to be a transition from one democratically elected government to the next in Pakistan's history. The leadership on both sides of the political divide should realise that flawed elections undermine civilian governments and political parties more than any other actor. If the transfer of power takes place through free, fair, transparent and democratic elections, regardless of which party forms government, it will entrench the gains made by the return to civilian rule. On the other hand, a flawed election will reduce voter confidence in the ballot box, and could encourage violence as the last option for political change. This would embolden extremist groups, as well as provide the military with an opportunity to undermine if not oust the civilian leadership, as it did after the 1977 elections.

By its own account, the ECP is poorly managed, inadequately resourced, understaffed and under-trained, with its five-year strategic plan identifying critical reforms. For this reform process to succeed, however, parliament should assume ownership by reviewing and amending the proposed reforms where necessary, and submitting the final document for parliamentary approval. At the same time, the ECP must take concrete steps to improve its infrastructure, enhance training and research and invest in human resources, instead of blaming politicians for all its ills.

Given the significant risk of political instability in the event of another flawed election, the international community should not only support the ECP, but should also engage the parliament and political parties in their reform efforts. Indeed, reforming Pakistan's dysfunctional electoral system will require a sustained commitment by the political leadership, parliament, donors and the ECP. If meaningful electoral reforms are not enacted before the next polls, a major opportunity to create the infrastructure for a credible and peaceful political transition will be lost. This would risk the current democratic transition going the way of the flawed interlude of the 1990s.

**Islamabad/Brussels, 30 March 2011**

## APPENDIX A

### MAP OF PAKISTAN



Map No. 4181 Rev. 1 UNITED NATIONS  
January 2004

Department of Peacekeeping Operations  
Cartographic Section

## APPENDIX B

### ABOUT THE INTERNATIONAL CRISIS GROUP

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The International Crisis Group (Crisis Group) is an independent, non-profit, non-governmental organisation, with some 130 staff members on five continents, working through field-based analysis and high-level advocacy to prevent and resolve deadly conflict.

Crisis Group's approach is grounded in field research. Teams of political analysts are located within or close by countries at risk of outbreak, escalation or recurrence of violent conflict. Based on information and assessments from the field, it produces analytical reports containing practical recommendations targeted at key international decision-takers. Crisis Group also publishes *CrisisWatch*, a twelve-page monthly bulletin, providing a succinct regular update on the state of play in all the most significant situations of conflict or potential conflict around the world.

Crisis Group's reports and briefing papers are distributed widely by email and made available simultaneously on the website, [www.crisisgroup.org](http://www.crisisgroup.org). Crisis Group works closely with governments and those who influence them, including the media, to highlight its crisis analyses and to generate support for its policy prescriptions.

The Crisis Group Board – which includes prominent figures from the fields of politics, diplomacy, business and the media – is directly involved in helping to bring the reports and recommendations to the attention of senior policy-makers around the world. Crisis Group is co-chaired by the former European Commissioner for External Relations Christopher Patten and former U.S. Ambassador Thomas Pickering. Its President and Chief Executive since July 2009 has been Louise Arbour, former UN High Commissioner for Human Rights and Chief Prosecutor for the International Criminal Tribunals for the former Yugoslavia and for Rwanda.

Crisis Group's international headquarters are in Brussels, with major advocacy offices in Washington DC (where it is based as a legal entity) and New York, a smaller one in London and liaison presences in Moscow and Beijing. The organisation currently operates nine regional offices (in Bishkek, Bogotá, Dakar, Islamabad, Istanbul, Jakarta, Nairobi, Pristina and Tbilisi) and has local field representation in fourteen additional locations (Baku, Bangkok, Beirut, Bujumbura, Damascus, Dili, Jerusalem, Kabul, Kathmandu, Kinshasa, Port-au-Prince, Pretoria, Sarajevo and Seoul). Crisis Group currently covers some 60 areas of actual or potential conflict across four continents. In Africa, this includes Burundi, Cameroon, Central African Republic, Chad, Côte d'Ivoire, Democratic Republic of the Congo, Eritrea, Ethiopia, Guinea, Guinea-Bissau, Kenya, Liberia, Madagascar, Nigeria, Rwanda, Sierra Leone, Somalia, Sudan, Uganda and Zimbabwe; in Asia, Afghanistan, Bangladesh,

Burma/Myanmar, Indonesia, Kashmir, Kazakhstan, Kyrgyzstan, Nepal, North Korea, Pakistan, Philippines, Sri Lanka, Taiwan Strait, Tajikistan, Thailand, Timor-Leste, Turkmenistan and Uzbekistan; in Europe, Armenia, Azerbaijan, Bosnia and Herzegovina, Cyprus, Georgia, Kosovo, Macedonia, Russia (North Caucasus), Serbia and Turkey; in the Middle East and North Africa, Algeria, Egypt, Gulf States, Iran, Iraq, Israel-Palestine, Lebanon, Morocco, Saudi Arabia, Syria and Yemen; and in Latin America and the Caribbean, Bolivia, Colombia, Ecuador, Guatemala, Haiti and Venezuela.

Crisis Group receives financial support from a wide range of governments, institutional foundations, and private sources. The following governmental departments and agencies have provided funding in recent years: Australian Agency for International Development, Australian Department of Foreign Affairs and Trade, Austrian Development Agency, Belgian Ministry of Foreign Affairs, Canadian International Development Agency, Canadian International Development and Research Centre, Foreign Affairs and International Trade Canada, Czech Ministry of Foreign Affairs, Royal Danish Ministry of Foreign Affairs, Dutch Ministry of Foreign Affairs, European Commission, Finnish Ministry of Foreign Affairs, French Ministry of Foreign Affairs, German Federal Foreign Office, Irish Aid, Japan International Cooperation Agency, Principality of Liechtenstein, Luxembourg Ministry of Foreign Affairs, New Zealand Agency for International Development, Royal Norwegian Ministry of Foreign Affairs, Slovenian Ministry of Foreign Affairs, Swedish International Development Agency, Swedish Ministry for Foreign Affairs, Swiss Federal Department of Foreign Affairs, Turkish Ministry of Foreign Affairs, United Arab Emirates Ministry of Foreign Affairs, United Kingdom Department for International Development, United Kingdom Economic and Social Research Council, U.S. Agency for International Development.

The following institutional and private foundations have provided funding in recent years: Carnegie Corporation of New York, The Charitable Foundation, Clifford Chance Foundation, Connect U.S. Fund, The Elders Foundation, Henry Luce Foundation, William & Flora Hewlett Foundation, Humanity United, Hunt Alternatives Fund, Jewish World Watch, Korea Foundation, John D. & Catherine T. MacArthur Foundation, Open Society Institute, Victor Pinchuk Foundation, Ploughshares Fund, Radcliffe Foundation, Sigrid Rausing Trust, Rockefeller Brothers Fund and VIVA Trust.

**March 2011**

## APPENDIX C

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## APPENDIX D

### INTERNATIONAL CRISIS GROUP BOARD OF TRUSTEES

#### CO-CHAIRS

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