

Citizens' Periodic Reports on the Performance of State Institutions



Citizens' Report

The Performance of the Election Commission of Pakistan

Citizens' Periodic Reports on the Performance of State Institutions



Citizens' Report

**The Performance of the
Election Commission of Pakistan**

PILDAT is an independent, non-partisan and not-for-profit indigenous research and training institution with the mission to strengthen democracy and democratic institutions in Pakistan.

PILDAT is a registered non-profit entity under the Societies Registration Act XXI of 1860, Pakistan.

Copyright © Pakistan Institute of Legislative Development And Transparency - PILDAT

All Rights Reserved

Printed in Pakistan

Published: February 2015

ISBN: 978-969-558-471-2

Any part of this publication can be used or cited with a clear reference to PILDAT.

Supported by



Islamabad Office: P. O. Box 278, F-8, Postal Code: 44220, Islamabad, Pakistan
Lahore Office: P. O. Box 11098, L.C.C.H.S, Postal Code: 54792, Lahore, Pakistan
E-mail: info@pildat.org | Website: www.pildat.org

CONTENTS

Preface

Abbreviations and Acronyms

About the Author

Executive Summary

Introduction	13
Chief Election Commissioners and Members of the Election Commission	13
Appointments of Chief Election Commissioners, Composition of the ECP, and Role and Responsibilities	14
Purpose of the Citizens' Report on the Performance of the ECP	14
Performance of the ECP	15
First Five-Year Strategic Plan (2010-2014)	16
Second Five-Year Strategic Plan (2014-2018)	18
ECPLaws: Constitutional and Legal Reforms	19
Organizational Structure of the ECP and its Provincial Set-up	19
Practices at the ECP	19
Need for Reforms in Complaint Redressing Mechanism	20
Use of Technology	20
Reforms in the System of the Appointment of the Chief Election Commissioner	20
Suggested Electoral Reforms	20
Independence of the ECP in Comparison with Other Countries	21
Comparison of the Performance of the ECP with the ECI	21
Conclusion	23
End Notes	24

PREFACE

Under the 'Democracy and Governance Programme' PILDAT has initiated to publish a series of, Citizens' Periodic Reports on the Performance of State Institutions. Within this project, PILDAT has undertaken an assessment of the Election Commission of Pakistan (ECP), the state institution that prepares and conducts elections for the National and Provincial Assemblies, the President of Pakistan, and Local Governments in Pakistan.

The role and function of the ECP as a democratic institution cannot be undermined, especially in a country such as Pakistan where the process of democratization has not been a smooth one. Free and fair elections are the hallmark of any democracy, thus, an institution like the ECP is crucial to the advancement of democracy. However, in recent years, the ECP has been heavily criticized for alleged oversight and mismanagement in carrying out its functions as the premier authority for conducting General Elections in Pakistan. We believe that it is crucial to bring the ECP into public discourse in order to debate its performance and identify what can be done to improve its performance. The purpose of this report is to highlight areas of strength, while identifying potential areas that need to be addressed so that the ECP can conduct elections in Pakistan in a more free, fair, and efficient manner.

Mr. Hasan Muhammad, a former Secretary of the ECP, has authored the **Citizens' Report on the Performance of the Election Commission of Pakistan**. This report intends to make an independent assessment on the performance of the ECP, in particular, during the past two years, from July 01, 2012 to June 30, 2014. This two-year period includes most important election activity: the General Election of 2013.

This report aims to undertake an objective appraisal of the functioning of the ECP in, the best practices, and a way forward for its functionaries as well as the Government. It is hoped that policymakers, Government officials, and politicians may benefit from the perspectives, ideas and recommendations of this report, which would further strengthen the performance of the ECP.

Acknowledgements

PILDAT gratefully acknowledges the support, the advice, and invaluable contributions of leading expert, **Mr. Hasan Muhammad**, former Secretary, the Election Commission of Pakistan.

PILDAT acknowledges with thanks the financial assistance received from the Danish International Development Agency (DANIDA), Government of Denmark, for publishing this report.

Disclaimer

The views in this report belong to the author and do not necessarily represent the views of PILDAT, DANIDA, the Government of Denmark, and the Royal Danish Embassy, Islamabad.

Islamabad
February 2015

Abbreviations and Acronyms

CCTV	Closed-Circuit Television
CNIC	Computerized National Identity Card
ECI	Election Commission of India
ECP	Election Commission of Pakistan
EVO	Enumeration Verification Officials
FAFEN	Free and Fair Election Network
FFYSP	First Five-Year Strategic Plan
GE	General Elections
IFES	International Foundation for Electoral Systems
NA	National Assembly
NADRA	National Database and Registration Authority
PA	Provincial Assembly
PO	Presiding Officer
PTI	Pakistan Tehrik-e-Insaf
RO	Returning Officer
SFYSP	Second Five-Year Strategic Plan
SMS	Short Message Service

ABOUT THE AUTHOR



Mr. Hasan Muhammad is a former Secretary, the Election Commission of Pakistan. He has supervised many General Elections held in Pakistan. After working on various junior posts in the High Quarters and field offices of ECP, in senior capacities, he remained part of the Election Management Bodies from 1985 onwards till his retirement in 2004. During this period, he held quite a few important assignments including Provincial Election Commissioner, Punjab (1992-1994), Joint Secretary Elections (1994-2000), Director General Local Government Elections (2000-2001) and Secretary ECP (2001-2004).

Mr. Hasan Muhammad has delivered a series of lectures in various workshops, seminars, etc. on topics relating to Election Managements and Election Management Bodies. He delivered a lecture in 2003 on 'Politics of Electioneering, its Interpretations and Recommendations for Pakistan' at National Defence College, Islamabad. The lecture was acknowledged by the National Development Councils as highly informative. He has the credit of holding two well-attended and covered Press Conferences in 2002-2004 on various topics of elections.

In 1994 and 1997, Mr. Hasan visited Norway as Deputy Leader and Leader of the Delegation respectively and observed the elections. On return to Pakistan, he submitted reports to ECP and Norwegian Government. In 2001 he visited Stockholm as Head of Delegation and attended Annual Function of International Institute for Democracy and Electoral Assistance.

Aside from a few columns in the national dailies, he has published research articles on 'National and Provincial Assemblies Elections in Pakistan, 1947-77: A Critical Analysis' and 'Systems of Elections and Growth of Franchise in British India.' In 2011, Mr. Hasan Muhammad wrote a paper for IFES on 'Political Financing.' He reviewed the 'Report on 1993 General Elections', then wrote 'Report on 1997 General Elections' and Edited 'Report on 2002 General Elections. After retirement, Mr. Hasan Muhammad wrote a detailed account of all the General Elections held in the country from 1947-2012 titled "General Elections in Pakistan: Some Untold Stories and Personal Experiences." The book, which is an authentic democratic history in the context of making of 1956, 1962 and 1973 constitutions, political events, and elections in Pakistan, has been well received and appreciated by cross sections of the society including judges, senior lawyers, and journalists. The last book written by him is titled 'Pakistan General Elections 2013.' Mr. Hasan Muhammad has always been a keen observer of all election activities in Pakistan.

EXECUTIVE SUMMARY

The Constitution of 1973 established the Election Commission of Pakistan, which was further strengthened by the legislation pertaining to Elections, in particular, the Representation of the People Act of 1976. The roles and responsibilities of the Election Commission of Pakistan (legal body) are laid down in Articles 218 and 219 of the Constitution, which are to hold elections to the National Assemblies, Senate, Provincial Assemblies, bye-elections, Local Government and Presidential elections; preparation of electoral rolls including their annual revision, delimitation of constituencies and appointment of Election Tribunals.

Aside from the legal body of the ECP, there is also an ECP Secretariat and its organisational setup in Islamabad with Provincial offices headed by Provincial Election Commissioners, and offices at Division and District level. Whereas the Chief Election Commissioner and members are appointed for fixed terms, the Secretariat continues working uninterrupted with slight changes in its policy guidelines with the coming in of the new Chief Election Commissioner. Four Provincial Election Commissioners are officers of the Secretariat and four members of the Election Commission are part of the Election Commission (legal body).

It is contended that the ECP had successfully held General Elections in 2013, despite the insecure environment in which terrorism was flourishing. Unfortunately, some irregularities and mismanagements in these elections earned the ECP a poor reputation. Failure to comply by Provincial Government instructions for the installation of CCTV cameras at sensitive polling stations, mismanagement at polling stations in Karachi, wrong entries in forms are amongst the mismanagements of the ECP during GE-2013.

The aggregate percentage of achievements as is claimed by the ECP in the First-Year Strategic Plan is 80%. In the Second Five-Year Strategic Plan, the ECP seeks to address the gaps in the law hindering the ECP's performance. However it is believed that while there are gaps in the law, many of the shortcomings of the ECP emerge from management issues.

In order to strengthen and improve the ECP's performance in subsequent elections, the recommendations are given as under:

- i. The ECP must give special attention to skill development of its employees at all tiers
- ii. The ECP must bring about reforms in its Complaint Redressing Mechanisms
- iii. There must be an increase in the use of modern technology for managing future elections
- iv. The Chief Election Commissioner should have the term, status and other conditions of service at par with a Supreme Court Judge similar to that of the Indian Chief Election Commissioner. Additionally, out of four Members of the Election Commission two should be retired Judges of High Court
- v. The procedure of selection of the Honourable Chief Election Commissioner should be reviewed
- vi. Article 62 of the Constitution should be amended by deleting subjective terms, such as *Ameen* and *Saleh*
- vii. There should be a right to information and transparency in elections
- viii. The Representation of the People Act should ensure effective time-bound mechanisms for dealing with pre-election and post-election complaints
- ix. The Representation of the People Act should also lay down a mechanism for ensuring the effective role of Monitoring Committees
- x. There should be provisions in the Representation of the People Act to establish a real efficient monitoring cell at the ECP Headquarters to collect information for the purpose of scrutiny of nomination papers by Returning Officers, election campaigns, polling day, and post-election matters

Introduction

Constitution making and the conduct of elections have remained matters of concern in Pakistan since independence in 1947. Five Provincial Governments, of the Punjab, Sindh, North-West Frontier Province, Balochistan, and East Bengal, following staggered programmes, and held the first direct elections on adult franchise basis granted to the Provincial Assemblies. Elections began from the Punjab Province (1951) and concluded in East Bengal (1954). Meanwhile, the Central Legislature remained indirectly elected.

Elections held in the Provinces were strongly criticised by the public and press with allegations of official interference, impersonation, tampering with ballot boxes, and the use of Government transport, (the Election Commission had not yet come into existence). Charges of irregularities were so serious and outspoken that the then Prime Minister, Chaudhry Muhammad Ali, had to appoint an Electoral Reforms Commission for examining issues involved and for suggesting reforms in the electoral system. Most of the reforms recommended by the Electoral Reforms Commission were implemented in subsequent elections.

Under the 1956 Constitution, Khan F. M. Khan, a retired senior bureaucrat, was appointed on June 25, 1956 as the first Chief Election Commissioner. Two Election Commissioners were also appointed. However, before any elections could be held under that Constitution, General Ayub Khan proclaimed Martial Law and abrogated the 1956 Constitution.

In 1962, General Ayub Khan, Chief Martial Law Administrator, who had become President through a referendum in 1960, gave his own version of the Constitution. He had earlier introduced system of Basic Democrats, which, besides Local Government functions, also served as Electoral College for indirect elections of the 1962 assemblies elections, the 1964

Presidential election, and the 1965 assemblies elections. This indirect system of elections continued until the ouster of Ayub Khan and the imposition of the second Martial Law in 1969. The first direct elections of the National Assembly and the Provincial Assemblies based on adult franchise were held in 1970. What happened thereafter is a tragic history.

Chief Election Commissioners and Members of the Election Commission

For conducting of 1962 Assemblies Elections, General Ayub Khan appointed Mr. Akhtar Hussain, a retired civil servant of good repute as the Chief Election Commissioner with two Members of the Election Commission, each of whom was a Judge of a High Court, i.e., the Dhaka and Lahore High Courts, respectively.

For the 1964 Presidential Election and 1962 Assemblies Elections Mr. Mueenuddin, a retired civil servant, was appointed as the Chief Election Commissioner, with two Judges as Members of the Election Commission. The pattern of appointments of Chief Election Commissioners from amongst retired bureaucrats continued until 1969 when Mr. Justice Abdus Sattar, a sitting Supreme Court Judge, was appointed as the Chief Election Commissioner with two High Court Judges as Members of the Election Commission for 1970 General Elections.

Though General Yahya Khan had done away with the One Unit and restored the provinces, only two Members of the Election Commission were appointed. The pattern of appointing a retired or sitting Supreme Court Judge as Chief Election Commissioner with two Judges of High Courts as Members of the Election Commission remained in vogue for GEs of 1977, 1988, 1990, 1993 and 1997. During General Zia ul Haq era, number of Members of the Election Commission remained four under transitory provisions of laws.

After the revival of 1973 Constitution in 1985, once again, the pattern of appointment of two Members of the Election Commission was revived as per the original Constitutional provisions. For GE-2002, General Pervez Musharraf again raised the number of Members of the Election Commission from two to four under Election Commission Order 2002 protected under the Legal Framework Order 2002 (Chief Executive Order No. 24 of 2002). Formally, a 4-Member provision became part of the Constitution under the 17th Amendment. Under the 18th Amendment,

The first direct elections of the National Assembly and the Provincial Assemblies based on adult franchise were held in 1970. What happened thereafter is a tragic history

changes were made in Article 219 of the Constitution and the Chief Election Commissioner lost his supremacy because now, besides holding General Elections, it was the duty of the ECP (not exclusive domain of Chief Election Commissioner) to prepare electoral rolls, Senate elections, appointment of Election Tribunals, and Local Government elections.

The General Elections held in 1977, 1985 (party-less elections), 1988, 1990, 1993, 1997, 2002 and 2008 are all now part of history. One positive outcome was that the Public Representatives Act was made applicable to all Federating units under the 1973 Constitution. It is still used, though with many amendments.

During the period 1977-2008, allegations of misconduct in the elections and the process of introducing electoral reforms continued. There were strong allegations of rigging in GE-1977 but other elections were seen as comparatively more acceptable. However, the results of a few elections were not wholeheartedly accepted by the losing parties and in polemical debates different terms were used for them, including 'Jhurlu' elections, 'Engineered' elections, and 'Voting by Angels'.

Appointments of Chief Election Commissioners, Composition of the ECP, and Role and Responsibilities

The role and responsibilities of the Election Commission (legal body) are laid down in Articles 218 and 219 of the Constitution and these are to hold elections to the National Assemblies, Provincial Assemblies, bye-elections, Local Government elections, preparation of electoral rolls including their annual revision, delimitation of constituencies, appointment of Election Tribunals, Senate Elections, and Presidential Elections.

There is also an ECP Secretariat and its organisational set-up with Headquarters in Islamabad, Provincial offices headed by Provincial Election Commissioners, and Division and District level offices. This setup is called in the narrative hereinafter as Election Management Body and/or also as ECP because it works under direct orders and control of ECP. Whereas Chief Election Commissioner and members are appointed for fixed terms, the Election Management Body, headed by the Secretary, continues working uninterrupted with slight changes in its policy guidelines with coming in of new Chief Election Commissioner. Four Provincial Election Commissioners are officers of the Election Management Body whereas four Members of the

One positive outcome was that the Public Representatives Act was made applicable to all Federating units under the 1973 Constitution. It is still used, though with many amendments

Election Commission are part of the Election Commission (legal body).

After the 18th Amendment to the Constitution, the ECP worked for about two years without Members of the Election Commission. Objections were raised in the courts with regard to legality of bye-elections conducted by the Chief Election Commissioner during this period. Finally, the then-Government appointed four Members of the Election Commission in accordance with amended Constitutional provisions and they took oath on June 13, 2012. Mr Justice Hamid Ali Mirza retired on March 22, 2013 but no regular Chief Election Commissioner was appointed. Mr Justice Mian Shakirullah Jan, a Supreme Court Judge held acting charge as Chief Election Commissioner. Mr Justice Fakhruddin G Ebrahim was appointed as regular Chief Election Commissioner on July 23, 2012. He was a consensus choice of both the Government and the Opposition and met the requirements of the 18th Amendment.

Purpose of the Citizens' Report on the Performance of the ECP

Article 218(3) of the Constitution enjoins upon the ECP making such arrangements as are necessary to ensure that "elections are conducted honestly, justly, fairly and in accordance with law and that, corrupt practices are guarded against."

The purpose of this Citizens' Report is to make an independent assessment on the performance of ECP during the past two years, from July 01, 2012 to June 30, 2014. This two-year-period includes most important election activity, i.e., General Elections 2013 held on May 11, 2013.

Performance of the ECP

With reference to GE-2013, the role of the ECP has remained in the public discourse during the last 18-20 months following the May 11, 2013 polls. It is contended that the ECP had done its job well in holding elections in the circumstances when terrorist activities were at their peak. However there were some election-day irregularities and mismanagements, which overshadowed the performance of ECP in these elections.

From the very beginning, disputes and controversies surfaced at the stages of submission, scrutiny, acceptance and rejections of nominations papers of the election candidates. These could have been managed in a more professional manner had the staff handling these matters was well-trained, and systematic checks and balances were in place to ensure that the discretionary powers were exercised in a judicious manner.

It was expected that a forum of five retired senior judges would do a lot better in conducting free, fair and transparent elections. However, criticism, uproar and unrest after polls in GE-2013 assumed awful narration. The ECP, which comprised of 5-members lacked executive skills, promptitude and acumen.

Briefly speaking, the ECP was slow in reacting to certain situations, which required fast damage controlling measures. It failed in ensuring compliance by Provincial Governments of its instructions for the installation of CCTV cameras at sensitive polling stations. There were many other serious irregularities,

It is contended that the ECP had done its job well in holding elections in the circumstances when terrorist activities were at their peak. However there were some election-day irregularities and mismanagements, which overshadowed the performance of ECP in these elections

which were mentioned in PTI's White Paper, Reports of FAFEN, the European Union, and the Observer Mission. These included mismanagements at polling stations in Karachi, extending of polling hours, wrong entries in Forms, and mentioning of number of votes polled by candidates (Form-XIV) more than the assigned number of voters.

According to other reports, polling station-wise results of counts and ballot paper accounts were not supplied to some of the polling agents of the candidates of different political parties. In some cases results were issued on plain papers instead of prescribed printed legal Forms XIV and XV and without signature or thumb impressions of the Presiding Officers.

The fact remains that the ECP did not display Forms-XIV (Counts by Presiding Officers) on its website. Admittedly, it was not a legal requirement under the Representation of the People Act, but it was a crucial need in the present circumstances and present time of advanced Information Technology. It could meet principle of 'Access to Information' and provide transparency to elections.

The ECP has seemingly not taken any action in all those cases where Returning Officers and Presiding Officers changed polling stations at the last minute. According to some unconfirmed reports, the number of such polling stations was over 4000. Last minute changes in the number of polling personnel can just be imagined. This also resulted in appointment of a number of untrained polling staff at various places.

All this apparently did not help in the proper conduct of polling at many polling stations throughout Pakistan. The European Union and the Observer Mission mentioned in its report the fact of change of polling stations and staff at the last minutes without giving specific number. The impression is that number of such changes will prove more if any Enquiry Commission or Committee makes minute enquires on this point in the near future. It is feared that the Returning Officers defied with impunity the provisions of sections 8(2) and 9(2) of Representation of the People Act, 1976, which required that no changes could be made by Returning Officers in setting polling stations and appointment of Presiding Officers during the last 15 days before the poll except with approval of the ECP. This was squarely a management issue, which unfortunately was not tackled properly by the Election Management Body. Learning from this experience, the Election Management Body will hopefully do better in future elections.

In the post election period, the ECP apparently remained insensitive to criticism and did almost nothing in spotting the weak areas or taking action against delinquent Returning Officers and Presiding Officers. Concisely, the ECP has not been successful in clearing doubts and confusion, which prevailed about fairness of GE-2013. It is noted here that the Election Management Body has not followed its past sacred tradition and has not yet published Volume-I of the ECP Report on GE-2013. It could help in clearing the mist.

First Five-Year Strategic Plan (2010-2014)

It was for the first time that the Election Management Body had full five years to work on a plan to administer effectively the process of electoral reforms. On November 19, 2009, the Election Management Body formed a 19-member strategic plan committee and 9-member core committee to formulate First Five-Year Strategic Plan. On May 25, 2010, the Election Management Body formally unveiled FFYSP for 2010-2014 (practically it became a 4-year plan from 2010 to 2013).

The FFYSP listed 15 Strategic Goals subdivided into 129 detailed 'Objectives', with specific timelines for achieving each. The IFES assisted the ECP in monitoring FFYSP and prepared progress reports. PILDAT, an organization working for Legislative Development and Democracy in Pakistan, contributed by publishing reports on progress and implementation of various stages of the Plan.

The ECP has launched Second Five-Year Strategic Plan (2014-2018) on June 05, 2014. The SFYSP gives an **overview of the ECP's achievements in the FFYSP** by stating, "according to the last Progress Report the ECP achieved nearly 80% of the set targets." The ECP claimed goal wise percentage of achievements in FFYSP as under:

1. Legal Framework (75%)
2. Registration of Voters and Electoral Rolls (98%)
3. Election Operations (90%)
4. Election Complaints & Disputes Resolution (80%)
5. Restructuring the ECP (80%)
6. Infrastructure Logistic & Equipment for the ECP Office (62%)
7. Human Resources, Staffing and Compensation (63%)
8. Finance & Budget (65%)
9. Training, Research & Evaluation (91%)
10. Information Technology (90%)
11. Public Outreach, which included Interaction with

The SFYSP gives an overview of the ECP's achievements in the FFYSP by stating, "according to the last Progress Report the ECP achieved nearly 80% of the set targets"

- Political Parties & Civil Society Organisations & the Media (90%)
12. Political Parties & Candidates (68%)
13. Participation of Voters/Civic & Voter Education (93%)
14. Marginalised Groups including Women, Minorities & Disabled Persons (68%)
15. Branding of the ECP (68%)

The aggregate percentage of achievements as is claimed by the ECP in FFYSP, as 80% appears palatable because it is spread over 129 objectives. However, the real achievement will have to be correlated with reference to the ECP's performance during GE-2013 and particularly the polling on May 11, 2013, which was the litmus test for all electoral reforms. Considering the limited scope and space for this Citizens' Report, not all the Strategic Goals and their objectives of the FFYSP can be discussed in detail. However, examination of a few important strategic goals seems pertinent.

First Strategic Goal of the FFYSP (Legal Framework): There is little doubt about the ECP's claim of 75% achievement. However, while working on Legal Framework, the ECP did not do much. The regulations on candidates' eligibility in Articles 62 and 63 of the Constitution were of subjective nature and remained the same. No provisions were made in the Representation of the People Act to make role of Monitoring Committees effective.

Second Strategic Goal (Registration of Voters and Electoral Rolls): Without challenging the claimed percentage of 98%, I would say that position at some points was slightly different. The Election Management Body had taken up task of preparation of fresh electoral rolls in collaboration with National Database and Registration Authority, which was a right

step.

On February 17, 2011, NADRA was given 81,213,620 voters data pertaining to electoral rolls used in GE-2008 for its verification from CNIC database and augmentation (inclusion of names of new CNIC holders). NADRA completed the first stage of preparation of draft electoral rolls by February 17, 2011 and returned electoral rolls to the Election Management Body. As next step, door-to-door verification by Enumeration Verification Officials (EVOs) was carried out from August 08, 2011 to September 17, 2011.

During this process, the main task of EVOs was ascertaining choice of voters as to whether they wanted to retain their names at their temporary addresses or to shift names to their permanent addresses. Here, the ECP was stuck in a quagmire in Karachi. EVOs appointed by the Election Management Body for house-to-house checking of entries in draft electoral rolls failed to perform their role to 100% satisfaction of District Election Commissioners, who also had not exercised effective supervisory control over them. Another reason was that areas assigned to EVOs were unwieldy. The result was that EVOs could not carry out verifications of the large number of voters. The ECP then took a decision to transfer names of unverified voters to their permanent addresses. This caused mayhem in Karachi where millions of voters' names belonging to Khyber Pakhtunkhwa and majority of whom wanted retention of their names at temporary addresses in Karachi, were shifted to their permanent addresses in Khyber Pakhtunkhwa. In two areas of Karachi where enquiries were held by the ECP, the number of such voters was about 235,000. The number of Baloch, Sindh and Punjabi voters, which remained uncalculated, was even higher.

The Election Management Body tried to control the

Notwithstanding all the issues faced by the Election Management Body, computerization of electoral rolls with photographs of voters is a progressive step for which the Election Management Body deserves appreciation

damage. However, the problem persisted till announcement of GE-2013 in spite of efforts made by the acting Chief Election Commissioner, Mr Justice Shakirullah Jan, and later the full-time Chief Election Commissioner, Mr Justice Fakhruddin G. Ebrahim.

Notwithstanding all the issues faced by the Election Management Body, computerization of electoral rolls with photographs of voters is a progressive step for which the Election Management Body deserves appreciation. With the exception of Karachi, electoral rolls used in GE-2013 were authentic, accurate, far better than previous elections and met the international standards.

Third Strategic Goal (Election Operations): This was the **most important** area for working by the Election Management Body as quality of polling was contingent on it. In fact, it was pinnacle of all election activities. In GE-2013, polling day operations were weaker as compared to previous elections. Scenes in NA-250 Karachi (also other places/provinces) where polling staff, polling material, ballot boxes were not available until 02:30 pm on the polling day were terrible.

All this coupled with last minute changes of polling stations and staff contradicts the ECP's 90% claimed achievement. If Objectives 3, 5, 6 and 10 relating to Election Dispute Resolution, Electoral Finance, Voter Registration and Electoral Rolls and Training and Capacity Building respectively are judged based on actual performance then a promising picture does not emerge.

The ECP was to establish database of polling staff, including a performance review system but this system apparently did not exist. Permanent polling stations were not established. CCTV monitoring of sensitive polling stations was missing. In Karachi, innumerable voters cast dozens of votes and skipped any punitive action. The 'efficient result system' was also missing. In some cases, appointments of unqualified or untrained polling staff added to the overall confusion. All these shortcomings dented the credibility of the ECP to such an extent that the ECP and Federal government are being subjected to unrelenting criticism for the last 18-20 months.

The ECP cannot claim wonders with regard to **Strategic Goal 4 (Election Complaints and Disputes Resolution)**. Claimed achievement of 86% under this strategic goal (complaints and election petitions) is doubtful. However, the ECP did remarkable work providing better equipment to the ECP High Quarters

and field offices. Up-gradation of the posts was a good step, though such wholesale and indiscriminate up-gradation made the officials complacent because it killed urge in the officials to work harder for career advancement. The fallout is already visible in the ECP setup.

The rest of the Strategic Goals were mere ornamental than practical. Time and space constraints prevent a minute examination of all the strategic goals and objectives. Seemingly, FFYSP had a tall agenda with quite a few unrealistic and unattainable objectives. Apparently, the ECP could not ensure meticulous execution of all the objectives. The ECP has made lofty claims of making reforms under the FFYSP but the assessment is that the agenda of reforms remained unfinished for reasons such as time constraints, lack of strenuous efforts by the Election Management Body, non-cooperation of legislatures, and the precarious law and order situation in the country

Second Five-Year Strategic Plan (2014-2018)

As already stated, the ECP announced on June 05, 2014 its Second Five-Year Strategic Plan (SFYSP) for 2014-2018. This has **13 Strategic Goals sub-divided into 162 Objectives**. At page 22 under subheading, 'Strategic Challenges,' ECP has written, *'any gap in the law that results in a problem is regarded as an ECP performance issue.'*¹ It is oversimplification of big challenges faced by ECP in GE-2013. All the flaws mentioned by me under the caption 'Performance of ECP' cannot simply be attributed to 'gaps in the law.' These and many other flaws in GE-2013 **were squarely management issues**.

First Strategic Goal of SFYSP (Legal Framework):

It is the most important issue that needs thorough examination and deliberations by the Special Parliamentary Committee, the ECP, Civil Society Organizations working for democracy, etc. It would finally require positive cooperation from all parliamentarians to translate suggested reforms into legal provisions. Besides other numerous amendments in various laws, subjective terms like '*Sadiq*' and '*Ameen*' or similar other terms used in Articles 62 or Article 63 of the Constitution need either specific interpretations or deletions in order to avoid confusion.

Strategic Goal 2 (Election Operations) has 29 Objectives. It is a good sign that the ECP proposes added attention to '**Polling Operation**', which is culmination point of all election activities. Objectives 1

The ECP has made lofty claims of making reforms under the FFYSP but the assessment is that the agenda of reforms remained unfinished for reasons such as time constraints, lack of strenuous efforts by the Election Management Body, non-cooperation of legislatures, and the precarious law and order situation in the country

to 4 of Strategic Goal 2, which relate to development of Operational Plans for Electronic Voting Machines, Biometric Voter Identification, Planning of the Use of Electronic Voting Machines, Development Plans for use of Electronic Voting Machines and Biometric Voter Identification, and their nation-wide rollout need careful examination and supervision at all stages. Impeccable planning and execution will be of paramount importance, keeping in view the local conditions in Pakistan with remote areas still without proper access and inadequate supply of electricity. Even strong batteries can fail. If the ECP is stuck up midway, i.e., during the polling process, it will do more harm than good.

Objective No. 26 of Strategic Goal 2 is *"to review the current system of multiple constituencies managed by one Returning Officer (RO) and replace it with one RO managing one constituency – National or Provincial."*² As the ECP is to review this objective by December 2017, this also needs due caution because in most cases, areas of one or two Provincial Assembly Constituencies fall in one National Assembly constituency and voters simultaneously poll their votes for National Assembly and Provincial Assembly seats at a Polling Station. In case of any proposed change, Presiding Officers will have to approach two different Returning Officers of National Assembly and Provincial Assemblies constituencies to receive and return polling bags, and ballot boxes. It will add to their existing onerous duties and miseries. It will be more problematic for female staff. Any proposed change will also require availability of more than double number of Returning Officers whereas availability of officers with

impeccable integrity to serve as Returning Officers is always scarce. In far-flung areas of Khyber Pakhtunkhwa and Balochistan, the number of such officers is too meager.

This analysis of Strategic Goals and Objectives of a Strategic Plan, suggests that appropriate and realistic goals and objectives are required for better management of elections aiming at improved polling arrangements.

ECP Laws: Constitutional and Legal Reforms

The electoral system in Pakistan has not considerably developed during the last 64 years (1950-2014), even though electoral reforms have been made from time to time. Still the role of ECP has always been challenged as far as the election results are concerned. The reforms, which were recommended by Electoral Reforms Commission in 1954 were implemented and followed in all elections including GE-2013. These reforms were use of one ballot box at a booth, one ballot paper with names and symbols of all candidates, ballot papers to be authenticated on its back by marking code mark stamp plus signature of the Presiding Officer. Pakistan has welcomed international observers in GE-1993 and onwards. Electoral Reforms were also made in 2002 and 2008 General Elections, for instance, the use of computerized electoral rolls, code numbering of ballot boxes, pasting of Form XIV (Result) outside Polling Stations, transparent ballot boxes, etc. All ECPs (past and present) have been making reforms earnestly, but it ultimately proved that the steps taken by the ECPs were not compatible or sufficient to meet challenges of the fast changing times.

In the present context, the ECP has already presented to the Special Parliamentary Committee a report on issues relating to the Legal Framework and Reforms for future elections in the light of lessons learnt in GE-2013. Now it depends on the Special Parliamentary Committee, the ECP and civil society organizations that look after Legislative Developments to evaluate shortcoming of existing electoral process and make recommendations for suitable amendments in electoral laws in order to avoid recurring of mistakes of GE-2013 in future.

Organizational Structure of the ECP and its Provincial Set-up

The present set-up of the Election Management Body is satisfactory. The ECP Secretariat, provincial offices

and field offices are rather overstaffed. Administrative experience tells that bigger organizations become unwieldy, lethargic and inefficient. In order to have an efficient system there is a need for optimum utilization of staff. During the last few years, the ECP Secretariat has been overstaffed due to hiring done to accommodate the influential people in the Government. The European Union and the Observer Mission note that on the other hand numerically, the ECP is missing the capacity for certain key functions.¹³ The secretariat is composed of multiple layers of permanent staff, including 4 Provincial Election Commissioners, 28 Regional Election Commissioners and 124 District Election Commissioners. However the ECP has insufficient human resources, lacks capacity within its legal department and has no training or political/campaign finances department.¹⁴

Practices at the ECP

In the First Five-Year Strategic Plan, the ECP claimed 63% achievement under Strategic Goal 'Human Resource.' Apparently, the ECP gave comparatively lesser importance to this Strategic Goal. This time 'Human Resource' has been placed further down at position No. 14 in SFYSP. Its title has also been modified as 'ECP's Organizational Structure and Human Resource.' Objective No. 2 of the Strategic Goal is 'Development of Job Description for each position in the ECP.' Although job descriptions were not formalized in the past, yet 'job descriptions' of all posts were identical to similar posts in the Federal Government only nomenclatures of the posts have been changed. Formalization in that sense might be needed but this should have been done simultaneously with the change of nomenclature of the posts whereas change of nomenclature of posts has not done any phenomenal difference in the ECP. It is not the nomenclature that counts but competence of the incumbents. Objective 5 of this Strategic Goal is 'Recruitment of Training Staff for Federal Election Academy by September 2014.' If any academy existed earlier, then trained staff should also have been there. It is urged that the ECP to work on this objective in right earnest and make an efficient and capable 'ECP Officers Trainers Team', who should further train groups of "Master Trainers" for all-important training of Polling Staff at appropriate time.

There are serious misgivings or unease about capacity of the present managers or personnel working at various tiers of the Election Management Body from top to bottom. Formula of 'right man for the right job at the right time' is missing. The ECP needs to give special attention to skill development of its employees at all

tiers and this cannot happen overnight but warrants a long-term strategy.

Need for Reforms in Complaint Redressing Mechanism

There is certainly a need to reforms complaint redressing mechanism within the ECP.

The Special Parliamentary Committee should make an amendment in the Representation of People Act for establishment of formal and time bound system to deal with pre-election complaints and post election petitions through a proper tracking system for both. The ECP cannot merely act as a post office by sending a complaint to a Chief Secretary or any other administrative authority, and has to instead play a proactive and central role regarding these issues.

Use of Technology

It will be of advantage if the ECP decides to use modern technology for managing future elections. The ECP has already earned laurels in GE-2013 by using much better computerised electoral rolls than in the past.

The next technology wonder was the 8300-SMS Service used by 55 million voters to check their registration details and location of polling station where they were to vote.

Now is the time for the ECP to experiment the use of Electronic Voting Machines and Biometric Voter Identification system. However, all this should be done with caution after going through pilot projects for their use keeping in view local conditions of various remote areas in Pakistan. Even the strongest batteries of Electronic Voting Machines can fail midway or the mid day on all-important polling day. In such eventualities,

It will be of advantage if the ECP decides to use modern technology for managing future elections. The ECP has already earned laurels in GE-2013 by using much better computerised electoral rolls than in the past

Electronic Voting Machines can prove disastrous if not provided with alternate stand-by uninterrupted power supply arrangement.

Reforms in the System of the Appointment of the Chief Election Commissioner

Needless to say that under 18th Amendment, Mr Justice Fakhruddin G. Ebrahim, was appointed as the regular Chief Election Commissioner with consensus choice of both the Government and the opposition. However, his appointment proved disastrous because of his age being 85 plus. His integrity was impeccable but the age factor proved that the selection has been wrong. At such an advanced age, human reflexes get slower and working energy is at the lowest ebb compounded with health issues.

Suggested Electoral Reforms

Due to limited scope of this report, a detailed agenda of 'Electoral Reforms' cannot be provided, which is a much wider topic needing a separate paper. However, some Electoral Reforms are suggested.

1. Following Indian experience and experience in Pakistan up to 1969, a retired civil servant of good repute should head the ECP as Chief Election Commissioner. The Chief Election Commissioner's job is 75% executive and 25% judicial. He should have the term, status and other conditions of service at par with a Supreme Court Judge like Indian Chief Election Commissioner. He should have with him two Honourable Members, who should be retired High Court Judges. The Chief Election Commissioner should be an honest, efficient and competent retired civil servant (not beyond 70 years of age). He should have experience of having served as a Federal Secretary, Chief Secretary, Home Secretary, Commissioner, Deputy Commissioner, etc. All this is necessary so that he should be able to meet the innumerable challenges faced by him as Chief Election Commissioner with promptitude at a jet speed He should have the benefit of judicial experience of two retired High Court Judges as Members. It will be appreciated that when the process of conduct of elections is on the ECP needs to work much faster by taking quick executive decisions instead of slow-paced judicial process (it is a futuristic suggestion. In the present circumstances, it is 'Mission Impossible' because it would require amendment in the Constitution).
2. The procedure of selection of the Honourable Chief Election Commissioner should be suitably

reviewed in the light of recent experience when after resignation of Mr Justice Fakhruddin G. Ebrahim on July 30, 2013 no regular Chief Election Commissioner could be appointed for about 18 months in spite of warnings by the Supreme Court.

3. The tenure of the Chief Election Commissioner and Members of the Election Commission should coincide with the term of the assemblies, i.e., for five years under the current system.
4. Article 62 of the Constitution should be amended by deleting subjective terms such as *Ameen and Saleh*. There is no need for the Returning Officers to listen to *Dawa-i-Qanoot*, and the *Sixth Kalima* from the candidates.
5. Meticulous application of all provisions of the Representation of the People Act 1976 is required including sections-8 (polling stations), section-9 (polling personnel), section-49 (restriction of elections expenses), section-50 (returns of election expenses), and section-51 (inspection of returns). There is no justification for ignoring provisions of sections 49 and 50 relating to election expenses.
6. There should be an express provision in the Representation of the People Act for ensuring the right to information and transparency in elections.
7. The Representation of the People Act should also ensure effective time-bound mechanism for dealing with pre-election and post election complaints. The Election Management Body should not act just like a post office in the matter. It should be incumbent upon the ECP to send a comprehensive reply to the complainant within 15 days. There should be no evasive routine usual replies, "the needful will be done", and "the reply received from the Chief Secretary is attached herewith."
8. The Representation of the People Act should also lay down a mechanism for ensuring the effective role of monitoring committees.
9. There should be provisions in the Representation of the People Act to establish a real efficient Monitoring cell at the ECP Headquarters to collect information for purpose of scrutiny of nomination papers by Returning Officers, election campaigns, and polling day and post election matters.

Independence of the ECP in Comparison with Other Countries

Under Articles 218 and 219 of the Constitution, the ECP is more powerful than the Election Commission of India and for that matter anywhere else. None of the Chief Election Commissioners in South Asian

The Representation of the People Act should also ensure effective time-bound mechanism for dealing with pre-election and post election complaints

countries is a sitting or retired Judge of the Supreme Court. In Pakistan, a retired Chief Justice of Pakistan also headed the ECP (2002-2004). All this made no material difference. By its formation, the ECP is the most powerful legal body in Pakistan. In India, the Chief Election Commissioner is a civil servant. The Indian Chief Election Commissioner and the two Election Commissioners (comparable with Members of the Election Commission in Pakistan) draw salaries and allowances at par with those of the Judges of the Supreme Court of India.

In most of the European countries, elections are conducted by Home Departments. The trait of 'independence' relates more to the 'state of mind.' None of our Chief Election Commissioners exercised his authority like the Indian Chief Election Commissioners did so effectively.

Comparison of the Performance of the ECP with the ECI

A comparison of performance of the ECP with the Election Commission of India (ECI) is not necessarily fair. India had a head start by holding direct elections to *Lok Sabha* (Lower house of Central Legislature) in 1950 whereas Pakistan could not do so until 1970. In Pakistan, the incorrect decision at the very outset was holding of staggered elections to Provincial Assemblies (1950-54).

Subsequently, the inability to introduce land reforms has a far-reaching consequence on elections. Then all the Indian Chief Election Commissioners belonged mostly to Administrative Service, which established their authority to conduct free and fair elections. The tenth Indian Chief Election Commissioner, Mr. T. N. Seshan (1990-1996) made tremendous efforts to end corruption and manipulations in Indian elections. He raised reputation of the ECI to its peak. His successors by zealously following him have been able to maintain

that high standard. Chief Election Commissioners in Pakistan could not set any good traditions and have been unsuccessful in establishing their authority.

A good practice in the Election Commission of India is one by which the counting of votes takes place in a central place, even if it means that the results of the elections are delayed. The problem with such a practice for Pakistan is whether politicians and candidates will accept such a system of counting votes.

Conclusion

All protests, uproars and allegations aside, the ECP should be given due credit that it was able to hold elections to the National Assembly and Provincial Assemblies on May 11, 2013 in spite of widespread scepticism and incessant terrorist attacks during pre-election period. Pre-poll arrangements of GE-2013 were also substantially fairer as compared to previous elections. Taking together all phases of elections, GE-2013 can be rated as better than previous elections. However, if only polling day performance are compared, then GE-2013 lags far behind the previous elections. It is crux of the whole matter. There were quite a few plus points of GE-2013 like use of computerized electoral rolls with photographs of voters, use of '8300-SMS Service' for checking vote number and location of polling station and fantastic voters turn out of over 55%. However, it was unfortunate that elections ended in a welter of controversy, which mostly related to irregularities, shortcomings and negative optics of polling day arrangements in many areas of the country.

Without denying the fact that meaningful 'Electoral Reforms' are needed in Pakistan it is also a fact that every country has a few mechanics or procedures of elections according to their peculiar circumstances and sometimes a tradition becomes an integral part of a country's system. In India, which is a mature democracy, the tradition of holding elections in phases

Electronic Voting Machines and Biometric Voter Identification system are worth trying seriously after experimenting them carefully in bye-polls

and counting of votes at a central place has gained firm roots. In Pakistan, there is a tradition since GE-1997 to hold simultaneous polls of National Assembly and Provincial Assemblies and of counting of votes at polling stations immediately after polling is over. It is a big question as to whether politicians will accept counting at a central place and delay of results by a few days. However, elections in phases and centralized system of counting are worth consideration for better management of elections with pre-condition that such changes are introduced by consent of all major political parties. Electronic Voting Machines and Biometric Voter Identification system are worth trying seriously after experimenting them carefully in bye-polls. The last important point is that we should develop a tradition of accepting election results and avoid polemical debates after each election. Elections are never 100% perfect anywhere in the world.

End Notes

1. ECP.gov, (2014). *Second Five-Year Strategic Plan 2014 - 2018*. [online] Available at: <http://ecp.gov.pk/ECP-SP-2014-2018.pdf>
2. ECP.gov, (2014). *Second Five-Year Strategic Plan 2014 - 2018*. [online] Available at: <http://ecp.gov.pk/ECP-SP-2014-2018.pdf>
3. European Union: Election Observation Mission, (2013). *Islamic Republic of Pakistan: Final Report General Elections May 11, 2013*.
4. European Union: Election Observation Mission, (2013). *Islamic Republic of Pakistan: Final Report General Elections May 11, 2013*.



PILDAT
Pakistan Institute of
Legislative Development
And Transparency

Islamabad Office: P. O. Box 278, F-8, Postal Code: 44220, Islamabad, Pakistan
Lahore Office: P. O. Box 11098, L.C.C.H.S, Postal Code: 54792, Lahore, Pakistan
E-mail: info@pildat.org | Website: www.pildat.org