

ISLAMIC REPUBLIC OF PAKISTAN

FINAL REPORT

**National and Provincial Assembly Elections
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I. EXECUTIVE SUMMARY

The 18 February 2008 National and Provincial Assembly Elections saw a pluralistic process in which a broad range of views were expressed, an election that was competitive and a polling process which achieved increased public confidence in comparison to previous elections. A more significant role was played in these elections by the media and civil society, including by providing greater scrutiny of the process.

However, there were serious problems with the framework and conditions in which the elections were held and a level playing field was not provided during the campaign, primarily as a result of abuse of state resources and bias in the state media in favour of the former ruling parties. As a result, the overall process fell short of a number of international standards for genuine democratic elections.¹ These include the citizen's right to take part in the government of his or her country directly or through freely chosen representatives (UDHR Article 21), freedoms of expression (UDHR Article 19) association and assembly (UDHR Article 20), the right to an effective remedy (UDHR Article 8), the right to non-discrimination (UDHR Article 2), and the right to universal and equal suffrage (UDHR Article 21). There was also a lack of transparency in the performance of the election administration and the results process.

The elections took place in a difficult security environment in which the threat of violence and an atmosphere of fear prevailed. As a result of attacks on political party gatherings, over 100 party supporters were killed during the campaign. In addition, over 50 people were reportedly killed in clashes between supporters during this period. Tragically, on 27 December 2007, Benazir Bhutto, leader of the Pakistan Peoples Party (PPP) was assassinated at a campaign rally, leading to widespread anger, violence and rioting around the country. In this context, the election process, particularly on the day of voting, saw courageous commitment to the democratic process by voters, candidates and party workers, election staff, representatives of media and civil society, and state personnel.

The election process began while emergency rule was in place and the Constitution was suspended, together with its guarantees of fundamental rights. Several thousand people, including judges and journalists, were detained. Emergency rule was lifted only one day before the beginning of the campaign period. During the period of emergency rule many judges, including the Chief Justice, were removed following an executive order, damaging public confidence in the independence of the judiciary and the rule of law. This is particularly significant given the judiciary's prominent role in the election administration as well as election adjudication.

The legislative framework for elections does not provide an adequate basis for the conduct of genuine democratic elections. A number of areas need to be more precisely regulated and brought in line with international standards. In particular there is insufficient provision for the independence of the election administration and transparency in its work, especially in regards to the results process. There are multiple deficiencies in the complaints and appeals process. The right to stand as a candidate is also breached by the legal requirement for a bachelor degree or *madrassa* qualification, which excluded the overwhelming majority of the population (circa 95%).

There was a lack of confidence among election stakeholders in the independence and efficacy of the Election Commission of Pakistan (ECP). While technical preparations were generally undertaken efficiently and on time and saw some important improvements, particularly in regards to training and

¹ In accordance with EU election observation methodology, the EU EOM to Pakistan assessed the conduct of the National and Provincial Assembly elections in line with international standards for elections. The primary source was the Universal Declaration of Human Rights (UDHR). This provides for the fundamental rights essential to a genuine democratic process.

the use of translucent ballot boxes, serious problematic issues already identified during the 2002 elections were not sufficiently addressed. The ECP lacked transparency in key areas of its working practices, and did not formally consult with political parties and other stakeholders. It did not take sufficient responsibility for various aspects of the process which should be under its control, including supervising the work of returning officers, enforcing the Code of Conduct for Parties and Candidates, staff training, voter education, complaints resolution, and re-counting and re-polling.

Almost 81 million voters were registered to take part in the elections, out of a total estimated population of approximately 160 million. However shortcomings in the voter registration process and the inclusion of 2002 data resulted in an unreliable electoral roll that includes a significant number of duplicate entries, erroneous entries and omissions. As a result, there was a lack of confidence among political parties and civil society in the accuracy and efficacy of the electoral roll. Of the 26 million entries from the 2002 data (added following a Supreme Court ruling in August 2007), a significant number of people could not vote because they did not hold the required national identification card. This affected predominantly the rural poor and women. The Ahmadis (who are not recognised by the government of Pakistan as Muslim) were required to register on a separate voter list, a discriminatory practice without adequate justification, as a result of which they boycotted the elections.

The campaign was low key and subdued, but saw a broad range of views expressed, including some criticism of the President, government and ruling parties. Most campaigning took the form of small meetings or door-to-door visits. Only a few large rallies were held. A number of political parties promoted a boycott of the process, in particular in Balochistan. *Nazims* (elected heads of a local government bodies) were directly involved in campaign activity and widespread misuse of state resources was observed, mostly on behalf of candidates of the former ruling parties. There were credible reports of police harassment of opposition party workers and agents.

Since the 2002 elections, sources of information available to citizens have significantly increased and the media environment has become more diverse and vibrant. However, restrictions and pressures placed on the media before and during the election period seriously limited freedom of expression and the public's right to receive information. In spite of this, private media outlets provided candidates and contesting parties with comprehensive and pluralistic coverage. In contrast, public broadcasters failed to live up to their responsibility to maintain balance, providing substantial coverage to the President, government and PML-Q (Pakistan Muslim League – Quaid-e-Azam), and limited coverage to other parties. Media outlets' detailed coverage of election day and the results aggregation contributed to a sense of scrutiny of the process that was seen to be significant in inhibiting attempts at fraud.

Although women's political rights are protected in the law, in practice there are heavy limitations on the exercise of these rights. Women were under-represented in all aspects of the electoral process: as voters, candidates for general seats, electoral officials, and in political parties. Insufficient measures were taken to meet legal obligations to enable women to exercise their right to vote, as is stipulated in the Constitution, the Convention on the Political Rights of Women (CPRW) and the Convention on the Elimination of Discrimination against Women (CEDAW) to which Pakistan is State Party. In addition, agreements by stakeholders to exclude women from electoral participation in some areas were not addressed by the ECP.

Civil society played a more significant role in comparison to previous elections, in particular through domestic observation before and on election day. Most notably, the Free and Fair Elections Network (FAFEN) mounted a comprehensive programme, observing and reporting on the campaign period and conducting a parallel vote tabulation on election day. While over 18,000 FAFEN observers were accredited, in one third of districts this had been an administratively problematic process. On election day FAFEN observers were not able to gain access to all polling stations or constituency results compilations.

Voting and counting was generally assessed favourably in polling stations visited by EU observers, although some disorder and procedural irregularities were noted. Positive developments included better trained polling staff than in the past and use of translucent ballot boxes and standardised voting screens for the first time. However problems were also observed, particularly in female polling stations. These included failure to protect the secrecy of the vote, incorrect application and checking of ink, general disorder and confusion, and a lack of sufficient polling booths for women. In a positive contribution to transparency, agents representing candidates were present in the vast majority of polling stations visited, and generally received copies of the results. However, in a breach of basic transparency safeguards, at nearly two thirds of polling stations visited, results were not publicly displayed.

While EU observers generally assessed the compilation and consolidation of results processes favourably in constituencies where they were present, there were further breaches of basic transparency safeguards in both cases. Observers (including from the EU EOM) were not always granted access to the compilation process and breakdowns of constituency results by polling station have not been published at constituency level or on the internet, as was promised by the ECP.

The EU EOM is aware of suspicious results in a number of constituencies, including polling stations with implausibly high turnouts and questionable margins of victory. This indicates the possibility of malpractice, which warrants investigation by the electoral authorities. However the ECP has not initiated such activities and instead made apparently sweeping rejections of complaints filed by unsuccessful candidates, thus denying a fast and effective mechanism for redress through re-counting and re-polling.

There is a widespread lack of confidence in the complaints and appeals processes. Prior to the publication of results, redress could be sought through the superior courts. However, the independence of these courts was undermined by the fact that all judges had sworn an oath under the controversial Provisional Constitutional Order (2007), and therefore are perceived to be close to President Musharraf and the former ruling parties. Following publication of the final results, judicial challenges could only be lodged by candidates to election tribunals composed of current or former judges appointed by the Chief Election Commissioner. This lack of an independent appointment mechanism, together with a record of inefficiency (39 petitions were outstanding from 2002 elections), contributed to a further lack of confidence. More generally, there is a continuing culture of impunity surrounding electoral offences, with very few prosecutions undertaken.

The election process is not yet complete. Some constituencies are still to hold polling, and some cases are outstanding at the superior courts and tribunals. Improvements to the overall election process could still be made through the publication of individual polling station results, petitions being dealt with in an efficient, transparent and prompt manner, and investigation of alleged election offences. In the longer term, it is essential that the state authorities and political parties demonstrate sufficient political will to improve the framework and conditions for elections in line with international standards. In this context, detailed recommendations are included at the end of this report. Key recommendations include:

1. Steps should be taken to ensure there is an independent judiciary, so that effective oversight of the election process can be undertaken.
2. The appointment of the Chief Election Commissioner and ECP members should be subject to stakeholder consultation and should provide for independence. The ECP should be restructured, and should take full responsibility for its mandated tasks. The election administration should operate in a transparent and consultative manner.

3. Election legislation should be reviewed in a consultative manner, for example through an all-party constitutional review committee. Specific issues to be addressed include the independence and transparency of the election administration, complaints and appeals procedures, and candidacy requirements.
4. Election appeals should be dealt with in a timely manner by judges who are independently appointed. Petitions should be permissible from a wider range of election stakeholders.
5. The law should be amended, and the ECP should issue and enforce instructions, to ensure that all counting and aggregation processes are fully open to scrutiny. This should include detailed polling station results being swiftly displayed at the constituency and on the internet.
6. The ECP should take full responsibility for the production of an accurate and complete electoral roll. It should work with National Database and Registration Authority (NADRA) to incorporate any entries not captured through its own enumeration (either from a new enumeration or the one undertaken for the Electoral Roll 07). The data captured should be subject to a comprehensive nationwide check for duplicates.
7. If only Computerised / National Identity Cards (C/NICs) are permissible for registration and/or voting, acquisition of a CNIC must be facilitated so that there is no barrier to participation.
8. Freedom of expression should be subject to “necessary” restrictions, rather than “any reasonable restrictions” (Constitution, Article 19) and reform of the legal framework regulating media activities should be undertaken. Restrictions on media content should be reduced, and clear-cut definitions should be introduced.
9. State media should institute clear and transparent procedures to ensure its news and public affairs broadcasts during an election campaign are impartial.
10. The government should intensify its efforts to reduce women’s severe under-representation in the electoral process, in accordance with its international commitments under CEDAW and CPRW. Political parties also have a significant role through their internal practices, policy agenda, candidate nomination, and voter awareness.

Some improvements have been made by the Pakistani state authorities, for example with training and the use of translucent ballot boxes. However other identified problems with the framework and conditions for elections remain outstanding. The EU EOM was pleased to note that following the elections, all parties it met with reported a strong commitment to electoral reform. The EU EOM notes the willingness of the EU and wider international community to work together with the authorities, political parties and civil society in Pakistan to improve the election process, and encourages the people of Pakistan to continue to work towards the conduct of elections in full compliance with international standards for genuine democratic elections.

II. INTRODUCTION

EU mission members arrived in Pakistan on 9 December 2007, following an invitation from the Pakistani authorities. Due to the imposition of emergency rule, the mission began as an Election Assessment Team, becoming a Limited Election Observation Mission from 27 December, and an Election Observation Mission (EOM) on 4 January 2008. The EU EOM was led by Michael Gahler, Member of the European Parliament (MEP). The EU EOM is independent from EU Member States, the European Parliament and the European Commission, in its findings and conclusions. The EU EOM adhered to the *Declaration of Principles for International Election Observation*, commemorated at the United Nations in New York in October 2005.

A total of 48 long-term observers (LTOs) were deployed throughout Pakistan covering 65% of constituencies, observing and assessing the different stages of the electoral process in accordance with international standards for elections. Over the election day period, the EU EOM was joined by a seven member delegation from the European Parliament, led by Robert Evans MEP, which endorsed the preliminary statement, issued on 20 February 2008. On election day, the mission had 131 observers, from 23 EU Member States, Norway and Canada, who visited 445 polling stations in 115 constituencies to observe voting, counting and the compilation of results. The EU EOM then observed the results consolidation, and complaints and appeals process, remaining in country until 10 March 2008.

The EU EOM wishes to express its appreciation for the cooperation and assistance it received during the course of its work from: the Ministry of Foreign Affairs, the Election Commission of Pakistan, the Ministry of the Interior, the Ministry of Information, political parties, civil society organisations, international organisations, the European Commission Delegation in Pakistan, and representatives of EU Member States and other embassies.

A: Assessment in Accordance with International Standards

In accordance with EU election observation methodology, the EU EOM to Pakistan assessed the conduct of the national and provincial assembly elections in line with international standards and best practice for democratic elections.

Given that Pakistan not a State Party to the International Covenant on Civil and Political Rights (ICCPR), the principal source of international standards for elections and committed to by 160 Member States of the United Nations,² the primary source was the Universal Declaration of Human Rights (UDHR).³ The UDHR provides for the fundamental rights and freedoms essential for the conduct of a genuine electoral process. These rights and freedoms constitute the origin of subsequent human rights treaties that include elements relating to elections, including the ICCPR. In line with EU methodology, the EU EOM also referred to General Comments of the United Nations Human Rights Committee, the body charged with providing interpretive guidance on the implementation of the rights and freedoms laid down in ICCPR. The EU EOM considers the comments of the Human Rights Committee relevant and valid as the rights to which they refer are those first laid down in UDHR. The EU EOM also considered other treaties to which Pakistan is a State Party, including the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention on the Political Rights of Women (CPRW), and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). In addition, United Nations General Assembly resolutions are considered.

² United Nations Treaty Body Database, 5 April 2008: <http://www.unhchr.ch/tbs/doc.nsf/Statusfrset?OpenFrameSet>

³ UDHR, adopted by Pakistan in 1948, is broadly accepted to form part of customary international law and was acknowledged as such by the Permanent Representative of Pakistan to the United Nations in December 2007.

The mission concluded that these elections fell short of a number of international standards, including the citizen's right to take part in the government of his or her country directly, by standing for office or through freely chosen representatives (UDHR Article 21), freedoms of expression (UDHR Article 19) association and assembly (UDHR Article 20), the right to an effective remedy (UDHR Article 8), the right to non-discrimination (UDHR Article 2), and the right to universal and equal suffrage (UDHR Article 21). There was also a lack of transparency, as called for in Article 1f(i) of the United Nations General Assembly's resolution on promoting and consolidating democracy (A/Res/55/96).

Based on its analysis of the elections, the mission makes a series of recommendations designed to assist Pakistan in meeting international standards in future elections and furthering its democratic development.

B: Restrictions on Observation

The security situation within the country resulted in the EU EOM restricting its coverage to avoid observers being subject to undue risks, consequently there was no observation of political rallies. There was also no observation at all in various parts of the country, including the Federally Administered Tribal Areas (FATA), and parts of North West Frontier Province (NWFP) and Balochistan. The Ministry of the Interior also required observers not to go to various parts of the country for reasons of security (see Annex 1). Prior to election day the Ministry of the Interior and the Ministry of Foreign Affairs required all international observers to cover a maximum of two districts. While in practice the size of districts meant that this had little impact on the EU EOM's activities, such a restriction from the host authorities is counter to observation requirements as stipulated in the *Declaration of Principles for International Election Observation*.⁴ Over the election day period, the Ministry of the Interior made additional localised restrictions on EU EOM observation in parts of Balochistan, giving security concerns for certain nationalities as the reason.

III. POLITICAL BACKGROUND

A: Elected Institutions

Pakistan's 1973 Constitution is based on a parliamentary, federal system with a strong Prime Minister. However this balance of power was altered with General Musharraf's 17th Amendment, which established a stronger presidential system.

The federation of Pakistan includes four provinces,⁵ the Federally Administered Tribal Areas (FATA),⁶ the Federal Capital of Islamabad, the Federally Administered Northern Areas (FANA), and the Pakistan-controlled part of Kashmir (Azad Kashmir). Each of the four provinces has an elected Provincial Assembly (PA) and an elected Chief Minister, as well as a Provincial Governor appointed by the President.

⁴ The *Declaration of Principles for International Election Observation* was the basis of an agreement between the European Commission and the Pakistani authorities for deployment of a mission, as stipulated in a Note Verbale, sent on 19 December by the European Commission. Point 12 of the *Declaration* refers to the host nation guaranteeing freedom of movement around the country for all members of the international election observer mission and guaranteeing that no governmental, security or electoral authority will interfere in the activities of the international election observation mission.

⁵ Punjab, North West Frontier Province (NWFP), Sindh and Balochistan.

⁶ The seven FATA are: (i) South Waziristan Agency, (ii) North Waziristan Agency, (iii) Kurram Agency, (iv) Orakzai Agency, (v) Khyber Agency, (vi) Mohmand Agency, and (vii) Bajaur Agency.

The Parliament (Majlis-e-Shoora) is bicameral, composed of the National Assembly (NA) and the Senate. While the Parliament gives representation according to population size, the Senate is intended to provide equal representation to all the units of the federation.⁷ The Senate consists of 100 members of whom 88 are elected by Provincial Assemblies (22 by each PA), and the remaining 12 represent FATA and the Federal Capital of Islamabad (elected by the NA). The Senate includes 17 reserved seats for women.

The 18 February 2008 elections were for the National and Provincial Assemblies. Both assemblies are composed of general seats, reserved seats for women (around 17% in both assemblies), and reserved seats for non-Muslims (around 3% in both assemblies).

The general seats are directly elected by simple majority in single member districts, with no minimum turnout requirement. The reserved seats are indirectly elected using a proportional system based on the number of general seats won by the each political party. For reserved seats for women and non-Muslims in the PAs, and reserved seats for women in the NA, the province to which the seat is allocated is a single constituency. For reserved seats for non-Muslims in the NA, the entire country is a single constituency. Both women and non-Muslims for the reserved seats are picked from closed party lists. As a result, independent candidates can only run for general seats and not for any of the women's or non-Muslim seats.

Elections in FATA are held on a non-party basis, with the law preventing party candidates from running, campaigning or operating an office, in breach of the right to freedom of association (UDHR Article 20).⁸ The rationale given is the preservation of tribal customs and norms.

The division of seats is as follows:

Provinces/territories	National Assembly				Provincial Assemblies			
	General	Women	Non-Muslims	Total	General	Women	Non-Muslims	Total
Punjab	148	35	-	183	297	66	8	371
Sindh	61	14	-	75	130	29	9	168
NWFP	35	8	-	43	99	22	3	124
Balochistan	14	3	-	17	51	11	3	65
FATA	12	-	-	12	-	-	-	-
Federal Capital	2	-	-	2	-	-	-	-
Nationwide	-	-	10	10	-	-	-	-
Total	272	60	10	342	577	128	23	728

The Federally Administered FANA) and the Pakistan-controlled part of Kashmir (Azad Jammu and Kashmir, AJK) are disputed territories since the first war with India about Kashmir in 1948. Both territories are governed through the Federal Ministry for Kashmir Affairs and Northern Areas, and are not included in the Pakistan Constitution. As a result their inhabitants are not represented in the

⁷ The official website states that the Senate “represents the provinces and territories of the country and promotes a feeling of equality, peace and good understanding between them, which is so essential for the growth and prosperity of a nation. Thus, the Senate in Pakistan, over the years, has emerged as an essential organ and a stabilizing factor of the federation.” <http://www.senate.gov.pk/Main.asp>

⁸ The Political Parties Order (2002) excludes the Federally Administered Tribal Areas (FATA). Article 1(2) states that the “order extends to the whole of Pakistan, excluding Federally Administered Tribal Areas”.

federal parliament. However they have been under de facto Pakistani rule and legislation without having a political representation at national level. Unlike AJK which has an elected assembly, the Northern Areas were not granted a nominal autonomy.⁹

B: Political Context

Pakistan is a democratic Islamic republic with constitutional guarantees for individual freedoms. These guarantees have, however, been challenged by frequent use of emergency legislation which has compromised the ability of the country's legal system to uphold constitutional rights. Since independence in 1947 Pakistan has experienced a tumultuous political history characterised by volatility; extensive military involvement in the political sphere, including four military coups; constitutional and judicial uncertainty; insufficient separation of the executive, judicial and legislative branches of power; rising religious extremism and terrorist attacks; and questionable electoral processes. The Army is seen as both a source of, and solution to, instability within the cycles of military and democratic civilian rule which in turn have contributed to the country's weak political institutionalisation. This weakness is characterised by personality-centred politics, lack of unity, fractured national identities and fast-changing political allegiances and opportunism.

Other factors which shape the country's political landscape and pose a challenge to democratic development include poverty, low levels of literacy, gender inequalities; religious, ethnic and nationalist rivalries, and the control of non-state actors over significant parts of the country.

An elected parliament was installed in 2002 through elections to the National and Provincial Assemblies; however, the Army remained a major force in political life in Pakistan. President Musharraf's resignation as Chief of Army Staff (COAS) on 28 November 2007 was a significant step forward in this regard. The 2008 elections were seen to be an important part of the newly-established civilian rule of Pakistan. Prior to the 2008 elections, Pakistan had never in its history experienced a democratic transfer of civilian power.

Political Background 1999-2007

Since General Musharraf's military takeover in October 1999, there has been considerable uncertainty over his regime's commitment to democratic development and respect for the rule of law. Upon seizing power, General Musharraf appointed himself Chief Executive, an extra-constitutional step later legitimised by the Supreme Court, which imposed a condition that democracy should be restored within a period of three years from the date of the coup. In 2001, however, General Musharraf proclaimed himself President and had his Presidential term extended by five years after a controversial referendum. In 2002, he presented a Legal Framework Order (LFO) which, by amending and partially reviving the Constitution, legitimised the supremacy of the military over civilian governments, through the creation of an all-powerful National Security Council (NSC) represented by Generals and chaired by the President.

An EU Election Observation Mission (EOM) to the National and Provincial Assembly elections in October 2002 concluded that unjustified interference by state authorities "*resulted in serious flaws being inflicted on the electoral process*". There was particular concern about the independence of the Election Commission of Pakistan (ECP), restrictions on political parties and candidates, misuse of state resources and deficiencies in the compilation of the voter list.¹⁰ It also noted a lack of political and public confidence in the electoral process and results.

⁹ International Crisis Group Report, *Discord in Pakistan's Northern Areas*, 2007.

¹⁰ As identified later in this final report, most recommendations from the 2002 EU EOM were not implemented.

The 2002 elections resulted in a hybrid military-civilian order, in which General Musharraf retained both the Presidency and COAS posts. A pro-Musharraf alliance of parties (PML-Q, National Alliance, PPP-S, PML-F, and PML-J) with support of independent candidates obtained a majority of seats in the National Assembly and Punjab province. The MQM became the main coalition partner to PML-Q in the federal government and in Sindh province. A coalition of Islamic parties (MMA)¹¹ made a strong showing particularly in the North West Frontier Province (NWFP), where it formed the provincial government, as well as in Balochistan, where it became a key partner to PML-Q in the ruling coalition. The National Assembly was constituted on 16 November 2002, the same day as General Musharraf took an oath as President for another five-year term, without the position having been subject to an election (as provided for in the LFO¹²).

In January 2004, immediately after adoption of the 17th Amendment to the Constitution, General Musharraf obtained a vote of confidence from Parliament as President. The 17th Amendment had provided Pakistan's armed forces with a significantly enhanced role and enabled the President to dismiss the National Assembly. In return, President Musharraf promised to give up his Army post by the end of 2004. However, he later retreated from this commitment, arguing that his military uniform was important in the campaign to rid the country of extremism.

Elections for local government bodies (for some 7,000 *nazims*¹³ at union council, tehsil/taluka, zila and city district level) were held in August 2005 on a non-party basis.¹⁴ There are reports that these local elections were subject to rigging and involved some incompetence amongst election officials. It is also argued that many of those elected, are close to the government.

In March 2007, the role of the superior judiciary became crucial following President Musharraf's decision to suspend the Chief Justice and other senior judges. This resulted in a political movement led by a large number of lawyers and supported by opposition parties, which demanded an independent judiciary and the rule of law. The Chief Justice was accused by President Musharraf of misuse of power and nepotism. On 20 July 2007 the Supreme Court dismissed the President's reference as illegal and invalidated the suspension. It is widely believed that the President wanted to subjugate the judiciary in view of his controversial claim to re-election as President by the outgoing assemblies.¹⁵ The Supreme Court decision to overturn the suspension of the Chief Justice by the President considerably weakened Musharraf's position and gave a significant boost to civil society, which was active in support of the Chief Justice.

The Presidential elections were held on 6 October 2007 with a low turnout due to legislators of the opposition parties either boycotting the elections or resigning. Out of the 685 legislators in the assemblies who cast their ballots, 671 voted for Musharraf (57% of eligible voters), and eight voted for Justice Wajihuddin, with six ballots rejected.

¹¹ The six MMA parties include the Jamaat-i-Islami Ji, Jamiat Ulema-e-Islam led by Fazlur Rehman, JUI-F, Jamiat Ulema-e-Pakistan JUP, Jamiat Ulema-e-Islam led by Samiul Haq JUI-S, Islami Tehrik Pakistan, and Jamiat Ahle Hadith.

¹² The LFO temporarily suspended implementation of Article 41 of the Constitution, according to which the President should have been elected by an electoral college comprising the members of the National Assembly, the Senate and the four Provincial Assemblies.

¹³ A *nazim* is the elected head of a local government body. There is a three-tier local government system: district/zila, tehsil/town and union. Each of these local government structures are headed by a *nazim* (mayor) and a *naib nazim* (deputy mayor).

¹⁴ The previous local elections were held in 2000/2001 as part of the Devolution of Power Plan, which was launched by the military government in 2000. The next local government elections are due to take place in 2009.

¹⁵ The President's eligibility to run for re-election by the sitting assemblies in the upcoming Presidential election was challenged by a number of petitions in the Supreme Court, arguing against President Musharraf holding two offices (i.e. that of President and COAS).

In parallel to the run-up to the Presidential election, negotiations took place between General Musharraf and Benazir Bhutto, leader of the Pakistan People's Party (PPP), on a power-sharing arrangement. On 5 October 2007 the government promulgated the National Reconciliation Ordinance (NRO), which gave indemnity to all cases, including those against Ms Bhutto, involving public office holders accused of corruption between 1986 and 1999. This effectively ensured that the PPP did not resign from the assemblies in advance of the presidential election, although there was still a last-minute walkout. The NRO did not cover cases against former Prime Minister Nawaz Sharif, of the PML-N. Significantly, before the start of the election process, Benazir Bhutto, leader of the PPP, and Nawaz Sharif, leader of the PML-N, returned to the country.¹⁶

Emergency Rule

On 3 November 2007 President Musharraf in his capacity as COAS suspended the 1973 Constitution and issued a Provisional Constitutional Order (PCO) imposing emergency rule. This was officially explained on the grounds of increased terrorist threats and activity. However the action was widely considered to have been taken to replace the increasingly independent judiciary, which was about to rule on the legality of his re-election as President. The PCO resulted in a new set of Supreme Court judges who subsequently dismissed all petitions relating to his election. Meanwhile there was a strict house arrest of former Supreme Court judges, including the former Chief Justice Iftikhar Chaudhry, and three prominent lawyers, including Aitzaz Ahsan (President of the Supreme Court Bar Association). These detentions violate, *inter alia*, freedoms of movement, assembly and association, and the right to liberty (UDHR). The lawyers' movement for the restoration of deposed judges and an independent judiciary continued with several demonstrations, as well as the lawyers' boycott of the courts every Thursday. Attempts by lawyers to reach the detained Chief Justice's residence on a number of occasions were stopped by police, who used tear gas and water cannons. Student activities in support of detained judges and lawyers were also curbed by the state authorities.

Under emergency rule, fundamental civil and political rights were suspended, including safeguards relating to arrest and detention, and freedoms of movement, assembly, association and speech. Several thousand people, including journalists and lawyers, were immediately detained. Significantly, in view of the upcoming elections in which the judiciary was to play an important role, some 60 judges of the superior courts who refused to take an oath under PCO were deposed. Several were detained, including the Supreme Court Chief Justice Iftikhar Chaudhry, and remained so throughout the election period. President Musharraf stepped down from the post of COAS on 28 November and confirmed that the elections would be held on 8 January 2008, within the time period stipulated by law. Emergency rule was lifted on 15 December 2007, a day before the start of the official campaign period, but only after key elements of the election process had been completed, including the filing of candidate nominations.¹⁷

Following the declaration of emergency rule, opposition parties, under the banner of the All Parties Democratic Movement (APDM), expressed strong objections to the conditions for the elections and threatened to boycott. However, no agreement on a boycott was reached between the PPP and PML-N, the two main opposition parties, and in the end both decided to participate. While this ended a nationally effective boycott, the remaining parties of APDM (including Imran Khan's PTI) continued to boycott and became the major political force in Balochistan province.

¹⁶ Benazir Bhutto returned on 18 October 2007, and Nawaz Sharif on 25 November (following an unsuccessful attempt in which Nawaz Sharif was deported on 10 September 2007 in violation of a Supreme Court ruling of 23 August 2007).

¹⁷ On 15 December a number of lawyers withdrew their nomination papers in a boycott of the elections, including the President of the Supreme Court Bar Association, Aitzaz Ahsan, who remained under house arrest in Lahore until March 2008.

Caretaker Government

Pakistan has a caretaker government responsible for executive administration from the dissolution of Parliament until successful candidates take up their seats following an election.¹⁸ The law does not detail the responsibilities of the caretaker government in regard to the holding of an election or working with the ECP in this regard. The federal caretaker government was appointed by the President on 15 November 2007 and at provincial level on 20 November 2007. The main opposition political parties and civil society criticised the President for a lack of consultation over the composition of the federal and provincial caretaker governments, and for their consequent lack of neutrality.¹⁹ They argued that the majority of the caretaker ministers were affiliated with the former ruling parties and pointed out that the caretaker Prime Minister, Mohamadmian Soomro, was elected Chairman of the Senate with the support of the PML-Q. The Constitution does not expressly call for a neutral or non-partisan caretaker government.

Security Environment

The elections were overshadowed by a volatile and difficult security environment in which participation required considerable personal and institutional courage and commitment. Pakistan's border areas with Afghanistan have been a major source of instability through 2007 resulting in ongoing military conflicts against militants and insurgents in FATA, Swat district and other areas of NWFP. A wave of violence swept through NWFP following the Red Mosque incident in Islamabad in July 2007, as many of the students studying in the *madrassa* affiliated with the mosque were from NWFP. The conflict between the Army and Balochi insurgents involves ongoing violence and restrictions, with reports of detentions and disappearances of leaders and thousands of supporters.²⁰

Political violence increased prior to this election period. An aborted address by the suspended Chief Justice at the Sindh High Court in Karachi on 12 May 2007 resulted in widespread political violence and more than 40 officially reported deaths. The suicide attack at Benazir Bhutto's first rally on 18 October 2007 which led to some 140 casualties pre-figured the electoral atmosphere.

From 11 December 2007 until 4 March 2008, there were over 100 bombs, suicide attacks, rocket missiles, and hand grenades or IED / time bombs reported. There were also 123 incidents involving shootings with a total 615 victims, of whom 413 were killed. The vast majority of these security incidents were in the areas of on-going conflict between tribal militants, Taliban and Baluch independence fighters, respectively in FATA, NWFP, SWAT and Balochistan.

Tragically, on 27 December 2007, Benazir Bhutto, leader of the PPP, was assassinated at a rally in Rawalpindi. This event, 12 days before the scheduled election day, brought to a sudden end all campaign activities, sparked country-wide riots and clashes between party supporters, and saw the destruction of a number of electoral buildings and materials. The province of Sindh, Bhutto's home territory, was heavily hit. The attack was unanimously condemned and President Musharraf initiated an official three-day mourning period.

¹⁸ The system of a caretaker government was introduced in 1990, with legal provision established in 2002 under President Musharraf (Legal Framework Order 2002).

¹⁹ From the date of the appointment of the caretaker government, all political parties are technically a "former" ruling or opposition party.

²⁰ International Crisis Group, Pakistan: The Forgotten Conflict in Balochistan, Asia Briefing Number 69, 22 October 2007.

On 2 January 2008, the Chief Election Commissioner (CEC) announced a postponement of election day to 18 February 2008, citing destruction of election offices, disruption of ballot-printing and the distribution of materials, and violence foreseen during the Shia mourning period of Muharram.²¹

Previous elections have involved violence to party and campaign workers. As a result of all these factors, the threat of violence and an atmosphere of fear prevailed over the electoral campaign period, seriously affecting the election environment.

C: Key Political Actors

Political parties in Pakistan range from mainstream parties committed to the democratic process to those with fundamentalist orientation which would like to re-arrange the governance of Pakistan on the basis of Islamic principles. Allegiances change rapidly, within and between parties and their various factions. There is also a history of political leaders being accused and charged with corruption.

Most parties are widely viewed as power bases for the elites, with landed and tribal figures dominating their leadership, and are weak on internal democracy. They can be characterised by a general lack of communication between the party leaders, workers and members. The relative weakness of local party branches reportedly results in candidates being chosen by the central leadership according to wealth and influence.

The largest party in the previous National Assembly and the Senate was the Pakistan Muslim League – Quaid-e-Azam (PML-Q),²² which was created following the merger of various factions in May 2004, established as the pro-Musharraf governing party. The PML-Q is a largely conservative party which has favoured the Islamisation of society and institutions on a number of occasions. It is strong predominantly in the most populous province of Punjab, although the party has been part of the coalition government in Sindh and Balochistan.

Prior to the 2008 elections, the Pakistan Peoples Party (PPP)²³ was the largest opposition party (with 81 out of 342 National Assembly seats).²⁴ It is generally considered to be a more secular party.²⁵ The party was led by its chairperson-for-life, Benazir Bhutto, who lived in self-imposed exile in Dubai and London since the late 1990s. After Benazir Bhutto's assassination, in accordance with her will, her son Bilawal Bhutto Zardari was appointed by the party committee as chairman and her husband Asif Ali Zardari became a co-chairman and actual head of the party. The party has its principal strength in rural Sindh and south Punjab.

The PML faction of former Prime Minister Nawaz Sharif, PML-N, is a largely conservative Punjab-based party. It suffered heavy losses in the 2002 elections, when a large number of its politicians were co-opted by the government and joined the PML-Q. Deposed from the post of Prime Minister during the 1999 military takeover, Nawaz Sharif together with his brother Shabaz Sharif were in exile, returning for the 2008 elections. Despite neither brother being registered as candidates by the ECP, their presence significantly boosted the PML-N's chances.

²¹ During the Islamic month of Muharram, violent clashes regularly take place between Sunni and Shia Muslims. This is usually concentrated in the northern Swat area (NWFP), typically resulting in scores of deaths.

²² The party is registered by the ECP under the name Pakistan Muslim League (PML) although the PML-Q abbreviation is widely used by its members and by media.

²³ The Pakistan Peoples Party (PPP) in order to be registered by the ECP prior to 2002 general elections created a parallel party the Pakistan Peoples Party Parliamentarians (PPPP), which was also used for these 2008 elections.

²⁴ The PPP was founded by Zulfikar Ali Bhutto in 1967 and was the first ruling party in Pakistan after the secession of Bangladesh in 1971.

²⁵ For instance, the PPP has supported recent government action taken against fundamentalists at the Red Mosque in Islamabad.

The Muttahida Majlis-e-Amal (MMA) is an alliance of six religious parties which had an impressive showing in the 2002 elections, especially in the NWFP and in Balochistan. The alliance was weakened prior to these elections by its second major party, the Jamaat-i-Islami (JI), led by Qazi Hussain Ahmad, deciding to boycott.

The Muttahida Qaumi Mahaz (MQM, United National Party), initially the party of *mohajirs*,²⁶ was part of the governing coalition in Sindh province. Strong mainly in urban Sindh, the MQM is led by Altaf Hussein, who has been in self-imposed exile in the UK since 1992. The agenda of this largely secular party focuses on issues relating to regional autonomy and opposition to Punjabi dominance. Another regional party is the Awami National Party (ANP), is strong mainly in NWFP but also in the Karachi suburbs with Pashtun workers and Afghan refugees. The MQM has a reputation for strong control, sometimes including the use of force, violence and intimidation.

PML-N was a member of the now-defunct Alliance for the Restoration of Democracy (ARD), together with the PPP and other opposition parties. Prior to the elections, when there was speculation of a possible deal between Benazir Bhutto and General Musharraf, Nawaz Sharif took the lead in the formation of the anti-Musharraf All Parties Democratic Movement (APDM), which did not include the PPP. The APDM led an active campaign for a boycott of the elections, arguing that the upcoming elections were fraudulent. After the PPP and PML-N decision to participate in these elections, JI and another Pashtu nationalist party Balochistan-based Pakhtunkhwa Awami Milli Party (PkMAP), together with Balochi nationalist parties (the Balochistan National Party and the National Party), became the most significant parties of the APDM.

In line with the Political Parties Order 2002 the ECP allotted electoral symbols to 49 political parties after receiving their internal elections certificate and annual income and expenditure statements as is required.

IV. LEGAL ISSUES

A: *Legislative Framework*

The legal framework for elections does not provide an adequate basis for the conduct of genuine electoral process in line with international standards. It is comprised of various legal instruments²⁷ including the 1973 Constitution of the Islamic Republic of Pakistan as amended, and the Representation of People Act (ROPA) 1976 as amended. Some of the most controversial provisions in the restrictive 2002 legislation were inserted into the Constitution through the 17th Amendment in 2003²⁸ as well as the so-called Sixth Schedule of Laws “*not to be altered, repealed or amended*

²⁶ Urdu-speaking migrants who fled to Pakistan in the wake of the 1947 partition.

²⁷ These include the 1973 Constitution, the Delimitation of Constituencies Act (1974), the Electoral Rolls Rules (1974), the Representation of People Act (1976) and the Electoral Rolls Act (1977). Some pieces of legislation date even further back to the time of British colonial rule, e.g. the Penal Code (1860), the Code of Criminal Procedure (1898) or the Code of Civil Procedure (1908).

²⁸ Under Article 270 (AA) in the 17th Amendment, all the presidential decrees (orders) issued by General Musharraf between 12 October 1999 and 31 December 2003, “*notwithstanding anything contained in the Constitution shall not be called in[to] question in any court or forum on any ground whatsoever.*” This means that the controversial Legal Framework Order of 2002 as well as other pieces of legislation are “protected” by the constitution and their amendment would require a two-thirds majority in parliament or another presidential decree.

without the previous sanction of the President".²⁹ A further layer of legal instruments consists of rules, instructions and notifications issued by the Chief Election Commissioner for the implementation of relevant laws. A comprehensive revision of the legislation before the 2008 elections did not take place. Instead the legal framework has become further fractured and more inaccessible by additional rules and ordinances being introduced in the year prior to the elections.³⁰

A number of areas need to be more precisely regulated and brought into line with international standards. Key issues of concern relate to insufficient provision for the independence and transparency of the election management body, as called for in Article 1f(i) of the United Nations General Assembly's resolution on promoting and consolidating democracy,³¹ excessive candidacy requirements based on morals and educational qualifications which in practice preclude the vast majority of the population from enjoying their right to take part in the government of their country by standing for election, (UDHR Article 21) (*see Section VII Registration of Candidates*); lack of transparency in the results aggregation process (*see Section XIV Results*); and lack of effective, clear and transparent complaints and appeals procedures (UDHR Article 8) (*see Section C below*).

The current legal framework also allows the President an inappropriately high level of indirect influence in the operations of the ECP and a number of areas in the wider electoral process. For example, he has the right to approve the rules issued by the Chief Electoral Commissioner,³² to approve the appointment of members of the tribunals that decide on the nomination of candidates,³³ and to intervene through the so-called "removal of difficulties" clauses, the latter and most troubling of these provisions was not used to the knowledge of the mission.³⁴

The Broader Legal Environment

These elections were overshadowed by the measures taken by General Musharraf in his capacity as Chief of Army Staff on 3 November 2007, namely the proclamation of emergency³⁵ and promulgation of a Provisional Constitution Order (PCO) which saw the Constitution suspended and the courts precluded from making orders that challenged the President or Prime Minister's authority. They also saw the Chief Justice dismissed and judges required to take an oath to uphold the PCO. Many refused to do so and were subsequently replaced.³⁶ These events delegitimised the law itself, subordinating it to the will of the executive rather than acknowledging it as the framework within which both governed and government must operate. This, in addition to the deficiencies in the election law, further weakened the legal framework for the elections and created serious problems in the overall environment in which the elections took place.

²⁹ The Election Commission Order, the Conduct of General Elections, Political Parties and the Qualification to Hold Public Offices Order.

³⁰ For example the PEMRA Ordinance (2007), the Electoral Rolls (Amendment) Ordinance (2007) and the National Reconciliation Ordinance (2007).

³¹ UN General Assembly resolution on promoting and consolidating democracy: A/Res/55/96.

³² Election Commission Order (Section 9E), Conduct of General Election Order Section 9 (1), Political Parties Order (Section 19), Representation of People Act (Section 107), Electoral Rolls Act (Section 28).

³³ ROPA 1976 Section 14(5).

³⁴ "If any difficulty arises in giving effect to any of the provisions of that Order, the President may make such provision for the removal of the difficulty as he may deem fit." Election Commissioner Order (Section 9F), Conduct of General Election Order (Section 10 .1), Electoral Rolls Act (Section 28A), Delimitation of Constituencies Act (Section 10B).

³⁵ This was not a state of emergency as envisaged by the Constitution.

³⁶ Only four Supreme Court judges took the oath, 64 out of 97 judges of superior courts were removed after they refused to take the oath.

Wide discretion was afforded to key actors, mainly the executive, in the electoral process. Under the doctrine of necessity,³⁷ the legal justification for President Musharraf's measures of 3 November 2007, this discretion extended to deciding whether the Constitution, the most basic law, is given effect to or not. In every state the executive enjoys considerable discretion in a number of areas, as do the administrative bodies through which it carries out its function. However, in order to ensure good governance and respect for the rule of law, fundamental rights, rules of natural justice and fair procedures must be adhered to in the exercise of that discretion. Rule of law includes every government authority being able to justify its actions as authorized by law, and government being conducted within a framework of recognized rules and principles which restrict discretionary power. These were directly contradicted by the measures taken on and after 3 November 2007.

Furthermore there was a continuing trend of amendments to the legal framework, including the Constitution, being made by executive order.³⁸ This had happened on three previous occasions and further such ordinances were introduced for these elections with the promulgation of the PEMRA Ordinance (2007), the Electoral Rolls (Amendment) Ordinance (2007), and the National Reconciliation Ordinance (2007). The act of lawmaking by the executive is out of keeping with democratic principles. Such a role is usually restricted to a directly elected legislature, so that legislation may more closely reflect the will of the people. In addition to being allowed to make laws, the President, according to the Constitution, may exercise discretion over when to summon Parliament and may also dissolve the National Assembly. Whilst the latter is not unusual, the combination of these powers in a single, most senior member of the executive, creates the possibility for the President to remove parliament and rule single-handedly. The power of the executive in the pre-election environment was further powerfully demonstrated by the detention of the Chief Justice and his family at their home for the duration of the electoral process without being formally charged.

Levels of executive power out of keeping with democratic principles were also seen in the structure and composition of the ECP. Firstly, the Chief Election Commissioner (CEC), the most senior member of the ECP, is appointed by the President. The other four members of the Commission are High Court judges, one from each province, appointed by the President after consultation with the Chief Justice of the Provincial High Court and the CEC. This system, used to appoint two Commission members on 5 January 2008, is intended to provide a check on the power of the executive, but failed to do so given the re-constitution of the judiciary by executive order in November 2007 with the appointments therefore in effect only requiring consultation with the President's own appointees.

An essential ingredient of the conduct of elections in line with international standards, and a democratic state, is an independent judiciary.³⁹ Such a body is vital for checking the activities of the executive and, depending on the constitutional provisions, the legislature, and for ensuring the law is applied consistently and in accordance with the Constitution. It also decides disputes over the application of the law. The judiciary must enjoy broad respect and confidence, not be dependent upon or influenced by the executive in its operations and decision-making, as part of being empowered to

³⁷ The doctrine, as developed by Pakistan's Supreme Court has drawn on the maxim *salus populi est suprema lex* (public welfare is the highest law) and also Hans Kelsen's Pure Theory of Law. Under this doctrine, the judiciary, for its part, has assumed the role of deciding whether the act of putting the constitution into abeyance is supported by the populace or not.

³⁸ The requirement to hold a degree or equivalent *madrassa* qualification and the possibility of being disqualified for outstanding or unlawfully written-off debts or even for unpaid utility bills was introduced by President Musharraf in the fourteenth amendment to the Constitution. The moral requirements contained in Article 62 were introduced by General Zia ul Haq in the Eighth Amendment to the Constitution. In both cases these amendments were originally made while the constitution was "in abeyance" with the proviso that they were not susceptible to judicial challenge and only subsequently affirmed by parliament as required by the Constitution.

³⁹ As early as eighteenth century, the Courts held that that a qualified voter has a right to vote in the absence of some valid statute denying that right he would have an action for damages against those who prevented him from exercising it. See *Ashby v White* (1703) 1 Sm LC (13th Edn) 253.

provide an effective and independent remedy for unlawful action and ensuring equality before the law to which all persons are entitled (UDHR, Article 7).

The Weakened Judiciary and the Election Process

The measures taken on 3 November 2007 severely weakened the judiciary. While it remains to be seen if the newly constituted judiciary shows itself to be an independent institution, the manner in which it was constituted reduced that likelihood and profoundly damaged public confidence. This had a major impact on the elections.

Firstly members of the judiciary lead the election administration (the CEC and ECP members). Any weaknesses in the independence of the judiciary are also therefore liable to replication in the election administration. Returning Officers (ROs) and District Returning Officers (DROs), who are appointed by the Commission without any consultation process, are predominantly comprised of session court judges. They are assigned the task of deciding a number of issues with political implications, such as candidate eligibility in the case of the former, and location of polling stations in the case of the latter. Questions over the partisanship of these nominally independent figures therefore served as a potentially destabilising factor, raising concerns of a potentially uneven playing field.

Secondly, a lack of confidence in the judiciary meant there was a lack of confidence in opportunity for judicial oversight and arbitration of the election. Article 8 of UDHR provides for the right to an effective remedy “for acts violating the fundamental rights granted him by the constitution or by law”. A robust and independent judiciary is particularly important in Pakistan which, like many common law states, does not have separate administrative tribunals to supervise administrative bodies. Appeals against decisions on candidate nominations are made to a tribunal comprised of judges selected by the Chief Election Commissioner (CEC) with the approval of the President. The judges who were to form these tribunals had all, by default, expressed their approval for the President’s measures of 3 November 2007 under the oath of allegiance they took in order to remain or take up office.

B: Election Offences

While election offences are comprehensively covered in the relevant legislation, respective sanctions are largely inadequate. Almost all violations of the election legislation are punishable as electoral offences and, irrespective of their gravity, are punished with imprisonment and/or fines. Chapter VIII of ROPA regulates more than 70 cases,⁴⁰ of which all but nine⁴¹ are punishable with imprisonment (from 6 months to 5 years) and/or with a fine, from the generally applied 1,000 rupees (€12.5) to 50,000 rupees (€625). For some offences, the threat of imprisonment seems excessive and could impinge upon some fundamental human rights such as freedom of speech. For example, the threat of imprisonment exists for contravening the limits on election expenses, affixing larger posters and banners than approved and making noise which is audible within the polling station. The CEC may in addition disqualify a person convicted of any of these offences from being elected to Parliament for up to five years.⁴² Complainants against the candidate who has benefited from the untoward participation may be rewarded with a portion of any fine imposed. However the provision for complainants to be

⁴⁰ Cases under the title of “Corrupt practice”, “Bribery”, “Personation”, “A Penalty for adversely affecting the interests of candidate”, “Undue influence”, “Capturing of polling station and polling booth”, “A Prohibition of affixing hoardings etc.”, “Prohibition of public meetings, etc, during certain period”, “Disorderly conduct near polling station”, “Tampering with papers”, “Interference with the secrecy of voting”, “Failure to maintain secrecy of voting”, “Officials not to influence voters”, “Breaches of official duty in connection with election”, “Assistance by Government servants etc., prohibited”.

⁴¹ Cases under the title of “Illegal practice” and “Prohibition of canvassing in or near polling station”.

⁴² ROPA 1976, Section 100(1).

fined or imprisoned should a complaint be found to be false, could act as a disincentive to lodging warranted complaints.

However, prosecutions for election offences are extremely rare⁴³ and a number of alleged violations of the electoral legislation, e.g. exceeding the poorly defined limits for campaign expenditure⁴⁴ remain unpunished; a factor which does not help to build respect for the law. A number of high-level figures in the justice sector reported to the EU EOM that the lack of prosecutions was attributable in part to the weakness of the prosecutorial function in Pakistan. This weakness was reported to be a result of influence of senior figures over financial and career advancement of those responsible for initiating and conducting prosecution.

Although various provisions of the legal framework make it a criminal offence for government figures and public servants to participate in a candidate's campaign, actions against government figures and public servants may only be initiated by the ECP. The EU EOM is not aware of any such prosecutions despite widespread reports of involvement of local government officials in campaigns and some requests for action by the ECP's DROs.

The rules on campaigning do not provide a sufficient legal basis for regulating electoral offences during the campaign period. Rallies, gatherings and other forms of outdoor campaigning are regulated by the Code of Conduct for Political Parties and Contesting Candidates (2002), although this was rarely enforced by the ECP. Section 144 of the Code of Criminal Procedure empowers the authorities to ban a campaign in a certain location by invoking security concerns. The latter was used selectively (*see Section VIII Election Campaign and the Pre-Election Environment*).

On election day, officers of the armed forces and officers performing duties in connection with an election may be authorised by the ECP to exercise the powers of a magistrate of the first class over certain offences⁴⁵ relating to both civil and criminal matters. Presiding Officers, who are granted this authority, are deputed from a number of state agencies, in particular the education department, and therefore do not already have such magisterial experience, and are not provided with training. To the knowledge of the EU EOM, these powers were not used in these elections, and have been rarely used in past elections. The fact that state officials other than judges can exercise criminal jurisdiction is of concern, as is the provision that an officer of the armed forces can exercise this kind of jurisdiction over civilians. Offences committed by public officers⁴⁶ can be prosecuted only upon a complaint in writing made by order of, or under authority from, the ECP or the Chief Election Commissioner, both of whom act at their discretion in initiating enquiries.

Encouraging people to boycott an election is an offence under the Penal Code, carrying penalties of up to three years imprisonment and seven years disqualification.⁴⁷ While the EU EOM was not aware of any prosecutions under this provision, it remains an unnecessary limit on the right to freedom of expression.

⁴³ Various interlocutors reported only a handful of cases since the ROPA was enacted in 1976.

⁴⁴ ROPA 1976 contains a provision for a limit (lump sum) on election expenses: 1.5m rupees (€18,750) for election to the National Assembly and 1m rupees (€12,500) for election to a Provincial Assembly). However, there does not appear to be clear justification for these amounts which were set in 1976 and do not seem to have been adjusted to the current economic situation.

⁴⁵ "Personation", "Capturing of polling station and polling booth", "Illegal practice", "Prohibition of public meetings, etc, during certain period", "Prohibition of canvassing in or near polling station", "Disorderly conduct near polling station", "Tampering with papers",

⁴⁶ "Tampering with papers" committed by an election official, "Failure to maintain secrecy of voting", "Officials not to influence voters", "Breaches of official duty in connection with election", "Assistance by Government servants etc., prohibited".

⁴⁷ Pakistan Penal Code, Section 171 (j).

C: *Complaints and Appeals*

The existing framework fails to provide an effective mechanism for the remedy for violations of electoral rights. It thus breaches UDHR Article 8 which provides for the right to “*an effective remedy ... for acts violating the fundamental rights granted ... by the constitution or by law*”.

The complaints and appeals framework is comprised of both administrative and legal avenues for resolution of violations. With regard to administrative avenues, the primary body responsible for dealing with complaints is the ECP which failed to provide an adequate response and often abrogated itself of its responsibilities in this regard. There is little guidance or stipulation provided by the law and regulations that sets out the complaints handling procedures for the election administration. A manual was provided by the ECP with the help of international assistance, but unfortunately not in enough time to serve as a guide throughout the electoral process. The ECP dealt with complaints by sending them on to other bodies and its subordinate officials, such as the DROs or ROs who, in breach of fair procedures, were frequently called upon to investigate and adjudicate complaints regarding their own activities and decisions (for example, the location of polling stations). Although the law gives the ECP extensive powers over DROs and ROs (ROPA Section 7 places DROs and ROs under “*the superintendence, direction and control of the Commission*”⁴⁸) these officials deal with complaints at their own discretion and the ECP Secretary claimed⁴⁹ on more than one occasion that the ECP was powerless in the face of inaction on the part of DROs and ROs. This is an abdication of the ECP’s responsibility in this regard.

A central system for recording and tracking complaints was introduced by the ECP for these elections with the help of international technical assistance. This increased transparency and taking of responsibility is welcomed, however, EU observers found no systematic recording or tracking of complaints received below the federal level. There was therefore a lack of comprehensive oversight or management of complaints by the election administration. Furthermore the majority of the more than 2,200 complaints centrally received went unresolved. According to the ECP’s website, the majority of these complaints related to misuse of state resources, behaviour of *nazims* and civil servants, transfer of civil servants, breaches of the Code of Conduct for Political Parties and Candidates, “violence of any kind” and “polling stations”.⁵⁰ No statistics were available from the ECP on how many complaints were finally resolved. 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.

In a small number of widely publicised high profile cases, the ECP did take active steps in dealing with complaints. The CEC rejected the Sindh Chief Secretary’s approval of the replacement of a District Coordination Officer.⁵¹ The CEC also instructed the PML-Q President to reply to a complaint against his party for allegedly promoting ethnic division through its newspaper advertisements (see *Section VIII Election Campaign and Pre-Election Environment*).⁵² The CEC also challenged large scale transfers of police in Sindh, rejecting the reasons given by the Inspector General of Police in Sindh. While these actions were a positive development, the Commission⁵³ largely failed to exercise

⁴⁸ Although the ECP Secretary claimed in various media interviews that the ECP was powerless in the face of inaction by ROs and DROs, it is clear that in accordance with Section 7 of the ROPA, 1976, ROs and DROs, whose duty it is to “to do all such acts and things as may be necessary for effectively conducting an election in accordance with the provisions of this Act and the rules” are under “the superintendence, direction and control of the Commission”.

⁴⁹ Various media interviews.

⁵⁰ Complaints on polling stations relate to the location of polling stations or allegedly inflated voter numbers.

⁵¹ The complaint was lodged by PPP National Assembly candidate Sayed Zafar Ali Shah.

⁵² The complaint was lodged by PPPP Senator Latif Khosa, Chairman of PPP Central Election Monitoring Cell.

⁵³ Commission refers to the Chief Election Commissioner and the four members of the ECP.

the wide-ranging powers vested in it to ensure elections are conducted “*honestly, justly and fairly*”⁵⁴ in accordance with electoral legislation and rules.

With regard to legal avenues, the law in Pakistan explicitly provides for judicial appeal only on issues of candidate nomination and challenges to the validity of the election and its results. For both issues, there is a specially constituted tribunal. The ability of the tribunals, which are composed of members of the judiciary, to provide effective remedy was questioned following the restructuring of the judiciary in November 2007, the increased influence of the executive over the tribunals, and consequent questions relating to their independence and legitimacy.

Tribunals for appeals against candidacy nominations (appellate tribunals) are comprised of two or three High Court judges. These judges are approved by the President for nomination and then appointed by the CEC, the head of the body whose decision is being appealed and himself appointed by the President. In addition to this, all eligible judges were drawn from a pool of those who had recently sworn the oath of allegiance required by President Musharraf, and in whom public confidence consequently seriously diminished.

In the case of tribunals that hear challenges to election results, the law provides that the CEC appoints a tribunal consisting of a person who is or has been a High Court judge, or is or has been a District and Sessions judge who is qualified to be a judge of a High Court, appointed by the CEC.⁵⁵ In practice, serving High Court judges were appointed. Appeals (“petitions”) to these election tribunals must be initiated within 45 days of the publication of official results in the Gazette. Election tribunals are required to issue decisions within four months of receipt of a petition. In practice cases take much longer to be decided. A total of 39 out of 221 petitions from the 2002 elections were still unresolved at the dissolution of the last parliament in November 2007. They are now considered moot – or no longer of practical relevance – and will not be heard.⁵⁶ This poses a clear impediment to compliance with the international standard providing for the right to an effective remedy, Article 8 of UDHR. Only candidates may initiate such processes, thus voters and other election stakeholders are denied access to the effective remedy to which they are entitled under Article 8 of UDHR.

ROPA states that decisions of the tribunal shall be final.⁵⁷ It also states “*[n]o court shall question the legality of any action taken in good faith by or under the authority of the Commission, the Commissioner, a Returning Officer, Presiding Officer or an Assistant Presiding Officer or any decision given by any of them or any other officer or authority appointed under this Act or the rules.*”⁵⁸ This appears to be intended to prevent judicial review (by writ petition to superior courts) of actions taken by or under the authority of the ECP. Although in practice, this does not seem to have prevented judicial review of the actions of the ECP (see below), it is potentially a very problematic denial of the right to apply to an independent body for an effective remedy by persons who feel their electoral rights have been violated, as it is at the court’s discretion to decide on the admissibility of such petitions.⁵⁹

For these elections writ petitions to superior courts provided an additional avenue for judicial recourse. Appeals were made to Provincial High Courts, invoking their constitutional jurisdiction in seeking a judicial review of administrative action. Decisions of the High Courts in these instances may

⁵⁴ The Election Commission Order, 2002, Section 5 (3).

⁵⁵ ROPA 1976, Section 57.

⁵⁶ Reported by the ECP legal department.

⁵⁷ ROPA 1976, Section 57 (2).

⁵⁸ ROPA 1976, Section 105.

⁵⁹ Article 184(3) and 199 of the Constitution

also be appealed to the Supreme Court. The ECP was prevented from publishing official results in 15 NA constituencies as a result of such proceedings before the superior courts.

V. ELECTION ADMINISTRATION

The Election Commission of Pakistan (ECP) is an experienced, well-resourced election management body with extensive powers. It has the resources of the state at its disposal, and the ability to make legally binding regulations. However there is a lack of confidence in the institution and there were serious shortcomings in the ECP's administration of these elections particularly in regards to complaints, consultation and transparency (essential for confidence building and increasing accountability of public institutions, and called upon by the United Nations General Assembly as part of promoting and consolidating democracy⁶⁰).

A: *Structure and Composition of the Election Administration*

The legal status, composition, main functions and powers of the ECP are regulated by Articles 213-221 of the Constitution (as amended by the LFO, 2002), the Election Commission Order (2002), different sections of the ROPA (1976) and the Delimitation of the Constituencies Act (1974).

The ECP is currently a five member permanent body chaired by a Chief Election Commissioner (CEC) who is appointed by the President. The other four members are High Court judges from each province appointed by the President after consultation with the Chief Justice of the respective Provincial High Court and the CEC. An additional fifth ECP member may be appointed in the future following the establishment of a High Court for Islamabad, created by an amendment to the Constitution in December 2007.

The ultimate authority of the President in the appointment process has resulted in a lack of confidence in the ECP's ability to operate independently. Various lawyers and parties refer to the CEC's decision to accept General Musharraf's Presidential nomination in September 2007, contrary to the weight of legal opinion, as proof of lack of how this lack of independence can influence and distort the electoral process.⁶¹ During this election process the ECP's failure to respond to the misuse of state resources and official positions, which was predominantly to the advantage of the ruling parties, was seen as evidence of bias that was influencing the process.

On 5 January 2008 the President made appointments to two vacant ECP member positions (previously the ECP was run by the CEC and two members only). Regrettably these appointments did not involve a formal consultation with political parties, and do not appear to have promoted stakeholder confidence.⁶² There were concerns on the part of the main opposition parties regarding the new members' neutrality, eligibility and personal histories which suggest affiliation to the President.⁶³

⁶⁰ UN General Assembly resolution on promoting and consolidating democracy (A/Res/55/96)

⁶¹ On 15 September 2007, the ECP changed the Presidential Election Rules (1988) which exempted the President from Article 63 of the Constitution, which contained certain clauses prohibiting General Musharraf from becoming President (Rule 5, sub rule 3).

⁶² PPP and PML-N expressed disillusionment towards involvement in a consultation process to fill the vacant ECP member seats, claiming it would make no difference to an already partisan organization.

⁶³ The new member from NWFP, Justice Zaib Rahim, wrote a letter of complaint in 2007 against the then Chief Justice Iftikhar Chaudhry. This letter was subsequently used to support the suspension of Chaudhry in March 2007. The new member from Sindh, Justice Ghulam Dastagir, is a former Additional Advocate General of Sindh (a post appointed by the Governor, who is appointed by the President) currently in his probationary period with the Sindh High Court, having taken oath as an Additional Judge in December 2007. It is unprecedented for an Additional Judge to be appointed as a member of the ECP.

There was no noticeable change in the work of the ECP following the appointment of the two new members.

The election administration is a separate branch of the public administration. The ECP secretariat is the executive branch of the Commission. The secretariat lacks various basic management components, typically found in election management bodies, such as training, legal and logistics/operations departments. The ECP has permanent subordinate structures at provincial, divisional and district level,⁶⁴ to which it delegates significant responsibilities. To date, this delegation has frequently been undertaken with minimum central oversight. This is particularly pronounced during an election period, when Returning Officers (ROs), who are temporary appointments recruited from other state agencies (primarily the judiciary), take ultimate responsibility for the election process and outcome in each constituency. LTOs characterised ECP permanent staff as playing an almost subordinate logistical role to the ROs, who with their distinguished rank (most being senior judges) are somewhat difficult to challenge.⁶⁵

The extensive involvement of members of the judiciary in all significant levels of the election administration may be regarded as problematic, given that the judiciary is responsible for oversight of the process. In this election it was particularly problematic, given the lack of confidence amongst many stakeholders in the composition of the judiciary at the time.

All temporary staff are appointed from civil servants working for the federal and provincial governments as well as institutions controlled by the state and local authorities, without any process of formal consultation or opportunity for objection. As there is a perception amongst some stakeholders that state personnel do not always act with full neutrality, the exclusive use of state officials for all election administration positions contributed to a lack of confidence in the independence of the election management.

While it is positive that the ECP has been operating a helpful website, the institution still lacks transparency. ECP members did not hold regular scheduled meetings, nor were decisions published.⁶⁶ Regulations issued are not systematically available. The ECP has also not held formal consultation meetings with political parties or other stakeholders. This has reduced the information available to the ECP, and has contributed to a lack of stakeholder confidence in the process. It also reduces the opportunity for promotion of a spirit of cooperation and compromise among election stakeholders, and with the ECP.

The ECP has the power to order all executive authorities on federal, provincial and local levels to assist the CEC and the ECP in discharging their tasks.⁶⁷ Thus the ECP is a powerful institution with a wide range of resources available to fulfill its legal obligation *“to organize and conduct the election and to make such arrangements as are necessary to ensure that the election is conducted honestly, justly and fairly and in accordance with law, and that corrupt practices are guarded against.”*⁶⁸ However despite these extensive powers, the specific recommendations the ECP has received, and the high level of international funding available to the institution, the ECP still fails to command confidence.

⁶⁴ The ECP has four Provincial Election Commissioners (PECs), and one Assistant Election Commissioner (AEC) per district, and 125 District Election Offices (DEOs).

⁶⁵ A total of 101 out of 125 District Returning Officers were from judicial ranks. The other 24 operate in FATA and Balochistan.

⁶⁶ Rather the ECP issued a press release when it considered it important to publish a decision. E.g. see <http://www.ecp.gov.pk/content/press.html>.

⁶⁷ ROPA (Section 104) and the Election Commission Order (Section 9B) regulate that *“anything required to be done for carrying out the purposes of this Order, for which no provision or no sufficient provision exists shall be done by such authority and in such manner as the Election Commission may direct.”*

⁶⁸ The Election Commission Order, 2002, Section 5 (3).

B: Administration of the Elections

The technical preparations for the elections were organised according to schedule and included a number of improvements on previous elections, including training for polling staff and the use of new materials such as translucent ballot boxes and voting screens. These innovations were largely the result of international assistance and outsourcing. The ECP also took the positive measure of requiring all polling station results to be displayed at the polling station immediately after counting. However the ECP also chose to omit various other essential transparency measures. It also interpreted its mandate narrowly, and so did not address problems arising such as violations of the Code of Conduct for Parties and Candidates, effective resolution of complaints lodged, and the misuse of state resources.

Preparations for the originally scheduled 8 January election day were disrupted by the violence in the aftermath of Benazir Bhutto's assassination and the official three-day mourning period. Various ECP offices and electoral materials were destroyed. The ECP was not consistent in reports on the number of offices destroyed, but it appears to be between 8 and 13, out of the 27 ECP offices in the PPP heartland of Sindh Province. Ballot printing was also reported to be heavily disrupted. The ECP cited these factors and the security impact of the upcoming Islamic month of mourning (Muharram) as grounds for the postponement of election day to 18 February 2008. It was not clear that such a long postponement was required on technical grounds. The ECP did not conduct a formal consultation with political parties on the new date for the election, although it maintains that informal discussions took place.

Various aspects of electoral preparations were significantly improved from previous years. This was done in particular on the basis of donor funding and assistance from international agencies.⁶⁹ These improvements show an important commitment by the ECP to developing its practice and working with external support. New equipment was purchased including voting screens and ballot boxes, which for the first time were translucent. International support also provided for a comprehensive training programme, again for the first time, of election officials and preparation of accompanying manuals. However 67,000 Presiding Officers⁷⁰ and almost 500,000 polling staff were trained. Although it should be noted that some last minute changes in polling staff meant that the benefit of such training and manuals was at times not utilized and some polling stations were still being managed by untrained workers. The ECP outsourced the training to other national organisations, which appear to have been effective in their delivery. However the organisation of the outsourcing leaves some concern about sustainability. Similarly the ECP's voter education responsibilities were almost entirely organized by UNDP/SNEP through other organizations.

On 9 January 2008, the ECP reported that the printing of over 180 million ballot papers was complete. Regrettably the EOM was informed that it would not be appropriate to observe ballot printing because of the high-level security arrangements involved. On 16 January, details were published on the ECP website about the number of registered voters, polling stations, polling booths and polling personnel in each constituency. The ECP reported publication of all polling stations in official gazettes for each constituency on 24 December 2007, 15 days before the then scheduled election day (as is legally required). However this information, which is crucial for voters and for candidates in organising their agents, was not available on the ECP website until 11 February. Also, critically, the polling station list

⁶⁹ Support to National Elections in Pakistan (SNEP) is the large-scale project coordinated by UNDP and funded by various donors including the EU.

⁷⁰ The target figure was 70,000. The lowest participation rate at the training was in Sindh. Some public sector unions had announced that their members would not participate as election staff.

sometimes did not include full addresses and did not stipulate catchment areas, thus voters were not able to identify their allocated station.

In early January the ECP reported that the recruitment of polling personnel had been finalized, with 571,954 staff appointed. The system for selection and appointment of polling personnel is limited to state employees⁷¹ and does not provide for consultation with parties or candidates. There is also a lack of an independent means of redress for complaints against appointments as any such complaints⁷² are dealt with by the DROs, who were themselves responsible for approving the appointments. The lack of centralised data on this matter fundamentally weakens opportunity for scrutiny of this issue. LTOs reported that many polling staff were transferred and replaced before election day, although again official figures on this are not available. In addition to increasing confusion and the number of untrained staff managing polling stations, this further weakened confidence as transfers were sometimes regarded by opposition candidates as being politically motivated.

On 20 November 2007, the ECP issued the Code of Conduct for Political Parties and Candidates. This is positive in that it sets out in one document a framework for behaviour and activity over the electoral period. However opposition parties expressed frustration at the lack of formal consultation with parties and stakeholders on the Code. The Code lacks provision for sufficient enforcement power and timely redress. Breaches of some provisions are criminal offences which can be dealt with through the criminal justice process, although historically and during this election process, this has been very under-used. The ECP did not itself investigate or enforce the Code. The ECP made only a small number of responses to complaints regarding the Code, taking just a few high-profile public actions (including against the PML-Q).⁷³ Such failures to act, despite its extensive powers, made the ECP appear ineffective and vulnerable to pressure.

In particular the ECP failed to effectively enforce legal bans on the misuse of state resources and official positions, and the transfer of civil servants. Faced with reports of *nazims* violating the law by being involved in campaigning, the ECP expressed its helplessness to stop this, stating that District Returning Officers (DROs) are in charge of such investigations. However, given that the law puts DROs under the control and direction of the ECP, this is an abrogation by the ECP of its responsibility.

Campaign financing restrictions in the law were routinely ignored, without any response from the ECP. Although winning candidates did provide basic accounts, the Mission is not aware of any audit or investigation of these returns. Furthermore, these were difficult to obtain with many ROs having completed their election-related activities and returned to other commitments.

The ECP placed some restrictions on observers. Its “Brief for National/International Observers” required that observer and journalist groups “*shall not make any public statement before declaration*

⁷¹ All Presiding Officers (PrOs), Assistant Presiding Officers (APOs) and Polling Officers (POs) are appointed by Returning Officers after approval of District Returning Officers “*from amongst the officers of the federal ..., provincial ..., local governments and corporations established or controlled by such governments*” (ROPA, Section 9, Chapter III) providing they are not or were not in the employment of any candidate.

⁷² As of 27 February, 68 complaints regarding polling staff were listed in the complaints central management system of ECP. Other complaints had been locally lodged, but the ECP maintains no central record of these.

⁷³ During President Musharraf’s week-long trip to Europe, the speaker of the National Assembly, Chaudhry Amir Hussain (PML-Q), became Acting President, as provided by the Constitution. Although, the electoral law does not prevent the speaker from running as a candidate, it does prevent the President from doing so, and on this basis a complaint was made by a PPP candidate (Dr. Firdous Ashiq Awan was contesting elections in the same constituency NA-111 Sialkot as acting President). Despite the absence of explicit legal reference to the position of Acting President in this regard, the ECP barred Chaudhry Amir Hussain from campaigning during the period of his acting presidency, one of their first decisions against the PML-Q.

of the unofficial result by the Election Commission of Pakistan.”⁷⁴ There were differences of opinion on the legal weight of this Brief, and therefore how strictly it should be adhered to. The major domestic observer group, the Free and Fair Election Network (FAFEN), had ongoing problems⁷⁵ with accreditation in over one third of all districts. FAFEN sent a letter in this regard to the ECP Secretary on 15 January, which resulted in three letters being issued, with inconsistent and confusing instructions as to whether accreditations can be issued locally or only at a central level.⁷⁶ The ECP’s last instruction provided for accreditation at a district and constituency level.

The ECP gave explicit permission on accreditation documents for domestic and international observers to follow the consolidation of the official results, which takes place within a few days of polling. This is significant given that there is no explicit legal provision for observer presence at the results consolidation and, in the past, this has been an opaque and therefore controversial part of the process. However, the ECP did not issue corresponding instructions to ROs, and did not respond to repeated reports of observers being denied entry to constituency aggregations. As of 28 January 2008, the ECP stated that it had accredited 2,140 election observers, including 305 internationals. No update to this information was ever given on the ECP website. The ECP was very cooperative with the EU EOM, providing a fast accreditation process and agreeing to meetings and access as required.

Constituency Delimitation

The delimitation of National Assembly (NA) constituencies was carried out for the 2002 elections, with boundaries based on total population figures from the 1998 census.⁷⁷ Civil society and the EU EOM deployed for the elections in 2002 expressed concerns over the high level of variation in size among constituencies. The law requires all constituencies to be “*as far as may be ... equal among themselves in population*”.⁷⁸ However there is extensive variation between FATA and the other provinces in the size of population per seat.⁷⁹ There are also very large variations among NA constituencies in all provinces,⁸⁰ with some constituencies having more than double the population of others. Such large variations do not comply with the principle of equal suffrage contained in UDHR Article 21. A new delimitation of constituencies will be carried out after the next census, which is scheduled for 2008.

⁷⁴ Chapter V, A ii B.

⁷⁵ Types of problems reported include DROs being unwilling to meet FAFEN observers, lack of sufficient quantities of accreditation cards, DROs requiring FAFEN to provide the list of polling stations that it was planning to observe, DROs being unclear about ECP instructions, DROs being unclear about national observer groups to be accredited, and DROs requesting additional inappropriate information about observers. FAFEN also reported threats of arrest of its observers.

⁷⁶ First letter of 23 December 2007 instructs DROs that “*accreditation cards may be issued ... under your signature*”, the second letter of 11 January 2008 informs DROs/ROs that “*accreditation cards ... are being issued from the ECP Secretariat, Islamabad*” and the third one of 26 January 2008 says that “*all DROs/ROs ... can also issue the accreditation cards ... under their own signature*”.

⁷⁷ National Assembly constituencies were delimited by the Delimitation Commission in 2002, based on the 1998 census. Re-description in 2002-2007 included only the re-description of *tehsils* (towns) and the inclusion of newly created *tehsils* within constituencies.

⁷⁸ The Delimitation of Constituencies Act, 1974, section 9 (2).

⁷⁹ Population quota per NA seat (determined by the ECP during the 2002 delimitation of constituencies based on 1998 census) is 264,694 for FATA and 402,618-506,740 for the four provinces and the Federal Capital of Islamabad. Based on its population, FATA should have seven NA general seats; however the Conduct of General Elections Order, 2002, article 5, allocated 12 seats to FATA.

⁸⁰ Smallest and largest NA constituencies in terms of population: NWFP – 307,278/717,649; FATA – 196,137/361,246; Punjab – 350,112/592,177; Sindh – 404,351/587,364; Balochistan – 365,421/678,711, Islamabad (only 2 constituencies) – 383,115/422,120.

VI. VOTER REGISTRATION

The ECP was provided with extensive international financial and technical support for creating a new voter list for these elections. A roll was produced that was generally seen as reasonably accurate, but missing a very substantial proportion of the eligible population (approximately 25 million people). As a consequence, entries from the 2002 list, which had been previously recognized by the ECP and political parties to be substantially inadequate, were included. This resulted in a final electoral roll riddled with duplications, errors and omissions. These inaccuracies undermined confidence, disenfranchised the eligible, and present increased opportunity for attempts at fraud. Despite the very evident problems with the voter list, the Federal Secretary of the ECP, Mr Dilshad, referred to the electoral roll as “*error free*.”⁸¹

A person is entitled to be registered if he/she is a citizen of Pakistan, is not less than 18 years of age on 1 January in the year in which the preparation or revision of the electoral rolls commences,⁸² is not declared by a competent court to be of unsound mind, and is deemed to be resident in the electoral area.⁸³

Under Article 219(a) of the Constitution, the CEC is responsible for preparing electoral rolls for elections to the National and Provincial Assemblies, and revising them on an annual basis. However, this last requirement had not been adhered to. Due to concerns that there might have been a large number of fake entries on the 2002 electoral roll, the ECP decided to undertake an entirely new voter registration process.

While the enumeration conducted in 2006/7 (for the Electoral Roll 07), was generally regarded as relatively effective,⁸⁴ producing a roll which stakeholders commonly reported to be reasonably accurate,⁸⁵ it was incomplete, containing only 55.7 million entries. For the 2002 elections there had been a total of 72.1 million entries on the roll, and population projections estimated the current total eligible population to be in the order of 80 million, thus the Electoral Roll 07 was seriously undersized.⁸⁶ Following a case from the PPP resulting in a Supreme Court ruling on 7 August 2007, the ECP included names from the 2002 electoral roll database, announcing a new total of just over 80 million. However the 2002 roll was widely seen as inaccurate. It was based on census data from 1998, and was thus a decade out-of-date, and had not been subject to updates. While this inclusion brought the total of people on the roll close to the total estimated number of eligible voters in Pakistan, there were strong concern amongst civil society organizations and the political parties that the roll contained a high number of omissions, duplications and invalid entries.⁸⁷ For example FAFEN conclude that “*there are still approximately 15 million eligible voters missing on the list and about 7.5 million duplicate (or potentially fake) voters.*”⁸⁸

The Supreme Court ruling allowed for people to be registered without a National Identity Card (NIC) or a Computerised National Identity Card (CNIC), as had been required for the 2006/7 registration process. While this expanded potential enfranchisement, there was no corresponding expansion for

⁸¹ See for example, *Dawn* newspaper, 21 December 2007.

⁸² This requirement was modified and young voters who became 18 before 20 November 2007 were given a chance to apply for registration.

⁸³ Electoral Rolls Act 1974, Section 6 (2).

⁸⁴ Although LTOs received repeated reports of enumeration being problematic, for example with entire streets or areas omitted, and a lack of checking procedures.

⁸⁵ For further information see FAFEN’s report “Draft electoral Roll 2007: Flawed but Fixable”. <http://www.fafen.org>.

⁸⁶ According to the United Nations Human Development Report 2007/2008, Pakistan’s total population in 2005 was assessed to be 158.1. Official government figures estimate the total population of the country to be 161,989,500 as of 14 December (www.pakistan.gov.pk).

⁸⁷ For further information see FAFEN’s report “Draft electoral Roll 2007: Flawed but Fixable”. <http://www.fafen.org>.

⁸⁸ <http://www.fafen.org/admin/products/p47b99de606f9a.pdf>

voting, as all registrants are required to show a C/NIC as a prerequisite to receiving a ballot.⁸⁹ It is widely recognized that a significant proportion of the population do not have a C/NIC.⁹⁰ For example in 2005 the CEDAW committee expressed its concern at 50% of women not holding identity cards. The ECP also acknowledged that in some parts of the country, more than 50% of women are without C/NICs. Despite this, there was no evidence of political parties or others actively promoting CNIC acquisition by their supporters prior to election day.⁹¹ Thus it is estimated that millions of registrants were not in a position to vote, despite being on the roll.

While the requirement for a C/NIC for registration or voting is an understandable safeguard against fraudulent electoral roll entries and attempts at multiple voting, the lack of current coverage of C/NICs not only disenfranchised people for this election, but is likely to do so in the future if the current arrangements continue. It is inhibitive that a CNIC costs 75 Rupees (0,9 Euro)⁹² or 150 Rupees (1.8 Euro) for a fast-track procedure, and at least two visits are required by an applicant to one of 343 centres or 189 mobile centres (with the whole procedure usually taking two to three weeks). The National Database and Registration Authority (NADRA) outreach has not been sufficient in regards to those traditionally marginalised from the electoral process, in particular rural populations, women, and nomadic people.

Citizens did have the chance to register if they missed the enumeration process, or to make corrections, claims and objections during the display period between 13 June and 18 July 2007. However this involved an onerous administrative burden and so was under-used with only around 3 million applications for inclusion of names received. This was also an opportunity for young voters to be added on to the roll, for those who became 18 after 1 January 2006, and later 2007.⁹³ Again this appears to have been under-used, resulting in a disproportionate number of young first-time voters being excluded from the process.

Changes to the Final Electoral Roll (FER) were also possible between its publication on 26 October 2007, and the announcement of the election schedule on 20 November 2007.⁹⁴ Such amendments, known as “Section 18” changes were made manually by registration officers (Assistant Election Commissioners of the districts) in the field. This appears to have been a largely unchecked process, and thus is potentially open to misuse and manipulation. The ECP has no central data on how many Section 18 changes were made.

⁸⁹ Millions of entries included from the 2002 list were missing a C/NIC number. There is no data available on the proportion of these registrants that had since acquired a C/NIC number.

⁹⁰ According to National Database and Registration Authority (NADRA), the body responsible for issuing CNICs, over 61 million have been issued by mid January with approximately 20,000 new applications being processed daily. There is no reliable data available on the number of NICs that were issued prior to their replacement by CNICs, and the number of people holding both an NIC and a CNIC.

⁹¹ The number of new CNIC applications received per day has remained stable over pre-election months. NADRA reported capacity to process up to 100,000 applications per day.

⁹² According to the United Nations Human Development Report 2007/2008, 74% of Pakistan’s population lives on less than US\$2 per day.

⁹³ A person shall be entitled to be enrolled as a voter in an electoral area if he is not less than eighteen years of age on the first day of January in the year in which the preparation or revision of the electoral rolls commences under this Act (Electoral Rolls Act, 1974, Section 6, 2b)

⁹⁴ Electoral Rolls Act, 1974, Section 18: “Any person whose name is not included in an electoral roll for the time being in force and who claims that he was or is entitled to be enrolled on that roll, may apply to the appropriate Registration Officer ... for the inclusion of his name therein, and if the Registration Officer is satisfied ... he shall for the purpose of further correcting the roll insert the name of such person in that roll.” Voters who became 18 after the end of display period and before the announcement of election schedule on 20 November 2007 could also get themselves registered under this provision

The roll was not subject to comprehensive screening for duplicate entries resulting in multiple entries for a single person. Six to eight entries per C/NIC number were not uncommon, rising to as many as 50.

FAFEN informed the EU EOM about findings of a survey it conducted regarding the accuracy of the FER.⁹⁵ The results showed up to 10% duplicate entries and up to 17% of entries may have been removed from the FER since the display period in July 2007.⁹⁶ LTOs documented numerous cases of suspicious entries in the FER, particularly in certain constituencies of Balochistan province. These include: the same CNIC numbers being used for the registration of several voters; incorrect C/NIC numbers (12 digits, not 13); suspiciously high percentage of women on the electoral rolls (80%); and implausibly high numbers of women enrolled under one household with only one registered male voter.

The Supreme Court instructed the ECP to place the updated electoral roll on its website so that it would be available for scrutiny and use by political parties.⁹⁷ On 8 January 2008 (delayed from 1 January), the FER was published on the internet as a searchable document which allowed voters, after entering their C/NIC number, to check their individual names and details. However this option was limited only to voters with internet access. With assistance from IFES, the FER was also distributed on DVD to the major political parties and 10 print-outs were due to be available at district level. However LTO teams reported that in at least three districts this was not the case, and even if it were so, a district is an extremely large geographical unit making access difficult. The availability and accessibility of the electoral roll is particularly important in Pakistan as the roll indicates a voter's serial number, thereby facilitating their identification at a polling station. As the ECP does not provide voters with this information, parties have taken on the function of informing registrants of their serial number on the roll, as well as their polling station.⁹⁸

Information about the total number of registered voters by constituency was published on the ECP website on 16 January 2008. However there were inconsistencies in the figure given in three different ECP documents.⁹⁹ There was also no by gender, constituency, or age.

The provision for Ahmadis¹⁰⁰ to register on a separate voter list, which was then integrated into the FER, was unnecessary and is unjustified discrimination. As a result, the Ahmadi community boycotted the elections.

VII. REGISTRATION OF CANDIDATES

Requirements for candidate registration are overly restrictive; the requirement for a bachelor degree or *madrassa* certificate denies opportunity to an estimated 95% of the adult population to exercise their

⁹⁵ FAFEN interviewed a sample of 6,900 voters at 506 locations countrywide during the display period in July 2007 and again in the third week of January 2008.

⁹⁶ Some or all of the missing entries may be due to deletions having been made following requests for corrections during the display period and also from some removal of duplicate entries.

⁹⁷ 10 August 2007.

⁹⁸ Electoral rolls are not ordered alphabetically or geographically, thus entry identification can be difficult. The ECP had no mechanism in place to inform voters about their polling stations and relied entirely on political parties to do so.

⁹⁹ The number is stated variously as 80,910,318 (Polling Scheme for General Elections 2008, published on 3 January 2008); 81,032,013 although this is qualified as an "approximate figure" (Electoral Rolls 2007 Vote Count, published on 1 January 2008); and 80,911,048 (Number of Registered Voters and Polling Stations, published on 16 January 2008). Following the announcement of election schedule on 20 November 2007, no changes to the Electoral Roll are permitted.

¹⁰⁰ Ahmadis consider themselves Muslims, but this is not accepted by the government of Pakistan, as long as Ahmadis do not accept the "finality of the Prophethood of Muhammad".

right to take part in the government of their country by standing for office as provided for in Article 21 of UDHR. Some other requirements are ambiguously expressed thereby providing scope for inconsistent and therefore unfair interpretations and abuse. Despite this there was a genuine sense of contest, with a slight increase in the number of successful candidate nominations than in previous years.

The requirement for candidates to have a bachelor degree or an equivalent educational certificate issued by a religious school (*madrassa*)¹⁰¹ is the most problematic restriction. In addition to excluding the vast majority of the otherwise eligible population as the result of high levels of illiteracy in the country, this requirement may ensure an unfair advantage to candidates from religious parties who can more easily produce *madrassa* certificates.¹⁰² Further, the United Nations Human Rights Committee in its General Comment 25, states that “[p]ersons who are otherwise eligible to stand for election should not be excluded by unreasonable or discriminatory requirements such as education”. This level of exclusion, in addition to unreasonably restricting the citizen’s right to stand, also perpetuates political leaders coming from a small and unrepresentative elite.

Restrictions relating to a candidate’s moral nature are also problematic. Candidates are required to be “*sagacious, righteous, non-profligate, honest*”, “*of good character*”, “*not commonly known as one who violates Islamic injunctions*”, to have “*adequate knowledge of Islamic teachings*” and to “*abstain from major sins*”.¹⁰³ These ambiguous criteria allow excessive discretion to Returning Officers in deciding candidate nominations, and are inherently open to abuse, allowing considerable scope for inconsistent and unfair application.

Other controversial provisions allow a candidate to be disqualified for outstanding or unlawfully written-off debts or even for unpaid utility bills.¹⁰⁴ There are also unreasonable restrictions relating to previous political activities and views. For example, a candidate must not have “*worked against the integrity of the country or opposed the Ideology of Pakistan*”, cannot “*propagate ... any opinion, or act ... in any 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*”, etc. These restrictions amount to an unreasonable interference in a person’s right to take part in the government of his country as stipulated in Article 21 of UDHR.¹⁰⁵

Another unusual and problematic feature of the legislative framework for candidate registration is the provision for candidates to run in more than one constituency. This arrangement can result in by-elections if a candidate wins in more than one seat. Such by-elections involve an additional expense for the state and other contestants, and unnecessarily prolong the election process.

By the deadline of 26 November 2007, 12,433 candidates had submitted nomination papers.¹⁰⁶ On 17 December 2007 the ECP announced that there were 7,335 accepted candidates for the general seats. A

¹⁰¹ The Conduct of General Election Order (2002), Section 8A. The equivalence of *madrassa* certificates to university bachelor degrees is acknowledged by the University Grants Commission under the University Grants Commission Act, 1974.

¹⁰² For example, the total number of people who obtained degrees (or equivalent *madrassa* certificates) in Pakistan in 2005-2006 is 325,993 according to the official Pakistan Education Statistics 2005 – 2006 (<http://www.moe.gov.pk/Pakistan%20Education%20Statistics-2005-2006T1.pdf>). The total population of Pakistan is 161,989,500 according to the official government figures as of 14 December (www.pakistan.gov.pk).

¹⁰³ The Conduct of General Elections Order (2002), Section 8A. Non-Muslim candidates are not subject to these criteria.

¹⁰⁴ Article 63 (q) of the Constitution.

¹⁰⁵ These measures were introduced by General Zia ul Haq, together with a provision that they were not susceptible to judicial challenge, by the eight amendment to the Constitution

¹⁰⁶ A total of 3,792 were for the National Assembly, the remainder being for the Provincial Assemblies. Of these, a total of 916 were rejected (7.36%), 265 of which were for the National Assembly elections.

total of 2,252 of these were for the NA seats¹⁰⁷ (following the withdrawal of 1,659 nominations and the rejection of 265 applications). A total of 522 candidate nominations were accepted for the reserved seats for women (169 for the NA), and 143 for the non-Muslim seats (39 for the NA). The number of candidates running for the general NA seats was a slight increase on 2002.¹⁰⁸

The ECP published full candidate data on its website, broken down by constituency. However no statistics were provided on the total number of candidates who were female, affiliated to each political party, running independently, or standing in more than one constituency. The ECP reported that, for the first time, there was not a single constituency with an unopposed candidate. Thus in numerical terms, elections in all constituencies could be regarded as competitive.

There were, however, candidate withdrawals and “retirements”, which can happen officially up till four days before the election.¹⁰⁹ Thus seat negotiations between parties continued well into the campaign period. There was no centralised data published on the total number of candidates who “retired” by the legal deadline of 14 February 2008.

Complaints Relating to Candidate Registration

Complaints relating to candidate nominations were not dealt with adequately. Appeals against candidate nomination rejection and acceptance are made to specially constituted appellate tribunal.¹¹⁰ As stated above (*Section IV Legal Issues*), the ability of the tribunals to arbitrate in an independent manner was brought into question following the PCO and levels of confidence in their work were significantly reduced. The mission was aware of some cases where those whose nominations were rejected chose not to appeal to tribunals on the basis of the assumed bias of the tribunals. ECP figures show that a total of 476 appeals were made to appellate tribunals against acceptance or rejection of nomination papers for NA and PA seats. 298 of these were rejected and 178 accepted. Details on the grounds of rejection were not available from the ECP, and therefore are not subject to analysis.

As mentioned in *Section IV Legal Issues*, appeals relating to any issue may be made via writ petition to provincial High Courts and the Supreme Court. By 29 January 2008, 23 of the 39 known writ petitions relating to candidate nomination before these constitutional courts had been decided. This resulted in a total of seven additional candidates able to run in the elections. Of the 28 cases where the grounds of the petition were known to the mission, 23 related to the requirement for candidates to have a bachelor degree or *madrassa* equivalent. Petitions relating to candidate nominations were still being processed in February 2008, with some scheduled to be heard as late as the week before the election, thereby providing only a minimal opportunity for remedy.

VIII. ELECTION CAMPAIGN AND PRE-ELECTION ENVIRONMENT

A: Overview of the Election Campaign

The campaign environment was notably less active than in the run-up to previous elections; there were lower levels of participation by party supporters with events generally attracting less attention. The competitiveness of the elections was nonetheless boosted by the return of two major opposition party

¹⁰⁷ An average of 8.28 per constituency.

¹⁰⁸ In 2002 there were 2,082 candidates for the National Assembly general seats, 44 of whom retired before the election.

¹⁰⁹ ROPA 1976 Section 17.

¹¹⁰ ROPA 1976 Section 14 (5).

leaders from exile; Benazir Bhutto and Nawaz Sharif and their active campaigning.¹¹¹ Most campaigning took the form of small meetings or door-to-door visits and the number of large rallies was around half that observed in 2002. Opposition parties attributed their muted activity to fear of violence and reluctance to recognize a flawed electoral process having begun under emergency rule.

Fear of violence and insecurity had a significant impact on the campaign environment. There were daily reports of casualties from ongoing conflicts between the Army and militants in FATA, and some areas of NWFP and Balochistan, as well as the suicide attacks and bomb blasts¹¹² in all provincial capitals. The assassination of Benazir Bhutto sparked countrywide riots, which saw the destruction of electoral buildings and materials, and led to more than 40 deaths and an increase in tension mainly between supporters of PPP and former ruling parties. There were several clashes between party supporters, some with fatal consequences, and four major attacks against political party gatherings killing more than 100 party supporters. Two political parties in particular, the PPP¹¹³ and ANP,¹¹⁴ were targeted by these terrorist attacks. Several leaders of opposition political parties and civil society organizations voiced concern that the elections would be postponed again as a result of further violence, in spite of assurances from President Musharraf that elections would go ahead as planned.

The campaign started formally on 16 December 2007, one day after emergency rule was lifted by President Musharraf.¹¹⁵ It was interrupted by the assassination of Benazir Bhutto¹¹⁶ on 27 December 2007 which indirectly led to the postponement of elections until 18 February 2008. This extended campaign period reduced the intensity of the campaign for various reasons: a deteriorating security situation, respect for the Shia mourning month of Muharram, and dwindling campaign resources (which had been planned to cover the initially shorter campaign period). The campaign only appeared to be in full swing around 10 days before election day.

Despite disagreement between political parties over the postponement of elections, all the main parties participated. The APDM led an active campaign for a boycott of the elections based on the argument that the upcoming elections were fraudulent. The protest movement organised several large meetings in major towns around Pakistan although gained momentum mainly in Balochistan, where the Baloch and Pashtu nationalist parties allied in the APDM had become the major political force in the province. Large public protest meetings organized by APDM parties dominated the scene in Balochistan, as campaigning by other parties was limited to door-to-door activities. Despite their differences, all three major opposition political forces (the PPP, the PML-N, and the APDM) agreed to co-ordinate any protest against the Musharraf regime for rigging of the elections.

The PML-N proposed that a government of national consensus should be formed before the elections in consultation with all political parties. They also proposed the establishment of a new election commission and electoral process that would give the boycotting parties of the All Parties Democratic Movement (APDM) the chance to take part. The PML-Q rejected the proposal, stating that such a government could be created after the elections. The PPP refused on the grounds that this could result

¹¹¹ Unlike Benazir Bhutto, who was cleared by the National Reconciliation Order, Nawaz Sharif was excluded from contesting on the grounds of prior criminal conviction (which he claims was politically motivated).

¹¹² On 10 January in Lahore, a suicide bomber attacked a police cordon in front of the High Court shortly before the start of the regular lawyers' protest meeting in support of detained judges. Two further bomb blasts linked to sectarian rivalries took place in Karachi on 14 January and in Peshawar on 17 January. More than 40 people died in these attacks.

¹¹³ Two PPP rallies were targeted by bomb attacks: the rally of Benazir Bhutto in Rawalpindi on 27 December and the rally of an independent candidate supporting PPP in Parachinar on 16 February killing 37 people.

¹¹⁴ A bomb blast killed more than 27 people at an Awami National Party (ANP) rally in Charsadda, NWFP on 9 February. A suicide bomber blew himself up in an ANP rally in Mirali on 12 February killing 10 people.

¹¹⁵ Nawaz Sharif and Benazir Bhutto effectively began their electoral campaigns in advance of the start of the "official" campaign period on 16 December.

¹¹⁶ Benazir Bhutto was assassinated at a PPP rally in Rawalpindi. The bomb attack killed more than 20 PPP supporters leaving many injured.

in a further postponement of the elections. Subsequent dominant issues in the campaign became the wheat flour and energy crisis¹¹⁷ over which the caretaker government faced strong criticism. Prior to Bhutto's assassination, the restoration of an independent judiciary was a central issue of the electoral campaign. Afterwards, however, this was eclipsed by the issue of the controversial investigation into Bhutto's assassination. The PPP voiced a lack of confidence in the national investigation, called for a UN enquiry, and held a 40-day mourning period.¹¹⁸

The campaign period saw restrictions on freedoms in a number of areas. Political parties and candidates were subject to restrictions on their activities, in particular large scale meetings and processions were prohibited under Section 144 of the Code of Criminal Procedure which provides local authorities with a broad discretion to ban gatherings in cases of "apprehended danger" This was used to curtail political activity. Campaigning by the APDM in support of the boycott was also limited by the authorities. Imran Khan, one of the leaders of the APDM, was not allowed to enter Karachi and the Sindh government banned the APDM from holding public rallies in the province.¹¹⁹ Such limitations on freedom of movement and assembly breach UDHR Articles 13 and 20.

Parties and other stakeholders alleged that First Information Reports (FIRs) were frequently issued without supporting evidence to harass and intimidate opposition parties and their supporters.¹²⁰ LTOs received reports of FIRs being issued against party workers from PPP and PML-N throughout the campaign, but no reports of FIRs being issued against PML-Q workers. FIRs usually name the alleged perpetrator but the law also provides for "unnamed" FIRs. Though less common, these are particularly coercive as they allow for the arrest of any suspect. Particularly in the aftermath of Benazir Bhutto's assassination, many named and unnamed FIRs were registered against PPP activists and supporters who complained that these were being used with the intention to intimidate them.

Candidates of all political parties routinely violated the Code of Conduct for Political Parties and Contesting Candidates. The ECP expressed its concerns over the unending series of complaints received, maintaining that the code was flouted constantly. However it did not take an active role in addressing these violations. The main breaches reported by EU observers included promises of development projects and donations, use of money to influence voters, display of over-sized posters, harassment of voters, and carrying and displaying fire-arms at public meetings.

B: Campaign Financing

Political parties are funded by contributions in the form of membership fees and various donations from individual donors, who must be Pakistani nationals.¹²¹ Party accounts, including the source of funds, must be submitted to the ECP each year. However there is no requirement for these documents to be open for wider inspection. Although political parties can financially support their candidates, it is typical that a campaign is financed by the candidate themselves, making it difficult for those without strong financial reserves or backing to run for office.

The extension of the campaign period had an obvious impact on candidate expenditure, but no regulations were issued by the ECP regarding adjusted financial limits. The low candidate spending

¹¹⁷ Opposition parties blame the former ruling coalition government's decision to export wheat before strategic reserves were stocked for causing an increase in the price.

¹¹⁸ The caretaker government refused this request but accepted an offer from the United Kingdom to send a forensic team from New Scotland Yard to assist in the investigation.

¹¹⁹ Although promoting a boycott is a criminal offence, this legal provision does not appear to have been applied.

¹²⁰ A First Information Report (FIR) is a written document prepared by the police upon receipt of information relating to an alleged offence. It is generally a complaint lodged with the police by the victim of an offence or by someone on his/her behalf.

¹²¹ Political Parties Order 2002, Articles 2(c)(iii) and 6(3).

limits are widely considered by many to be inadequate,¹²² and together with the lack of enforcement mechanisms this resulted in candidates openly admitting that they had exceeded these limits.¹²³ Moreover, there is no limit on party expenditure, thus candidate expense limits can be circumvented.

C: Use of State Resources

Local state officials' interference in the campaign became a topical issue with regular allegations from the opposition of widespread bias in favour of the ruling parties. There were also reports from parties of a disproportionately high number of civil servants being appointed and transferred, in an attempt to have more favourable personnel in place to influence the upcoming elections. There were calls for control of such activities, however opposition demands to temporarily suspend local government personnel over the election period were not met.

There is considerable evidence, including direct observations by LTOs, of the misuse of state resources, predominantly by *nazims* of all three levels, as well as district government officials. These state officials were directly involved in campaigning in their areas, mostly on behalf of PML-Q candidates. This misuse, sometimes a result of undue pressure from candidates, included the provision of offices, vehicles and employees in support of particular candidates. District and tehsil *nazims* also appeared in publicity materials (e.g. Attock, Lodhran and Sarghoda) and attended rallies on behalf of candidates, often family members (e.g. Nankana Sahib, Jhelum and Okara). Furthermore, ministers from the caretaker government attended PML-Q campaign events, including, on one occasion, travelling by government helicopter to a campaign event. This provides an unfair advantage to certain candidates and challenges the fairness of the elections.

The ECP stated publicly that it was powerless to control the misuse of state resources by *nazims*¹²⁴ and that the investigation of such cases was in the hands of the DROs who had not sent evidence of such abuses to the ECP. Given the ECP's wide range of enforcement powers, the clarity in the law which places DROs under the control and direction of the ECP,¹²⁵ and the existence of criminal offences covering such acts,¹²⁶ this is an evasion by the ECP of its responsibility.

IX. MEDIA AND THE ELECTIONS

The media scene in Pakistan has greatly diversified and liberalised in recent years. However during this election period, the media were heavily restricted during the election process, and operated under uncertain legal regulations. Despite limitations on topics that could be covered and various acts of censorship by state authorities, private media were able to offer a diversity of information and political views. State media did not provide neutral coverage during the campaign period. In a positive development, on election day media outlets provided rapid and comprehensive coverage of polling and the results (see *Section XIII Election Day*).

¹²² A candidate's election expenditure is limited to 1,500,000 rupees for National Assembly candidates and 1 million rupees for Provincial Assembly candidates, Section 49(2) of ROPA.

¹²³ Successful candidates must submit a return of their expenses for public inspection to the Returning Officer within 10 days of the announcement of results. Other candidates must submit a return of their expenses to the Returning Officer within 30 days of publication of the name of the winning candidate, ROPA Section 50(1).

¹²⁴ The Chief Election Commissioner's comments at a press conference were reported in *The News*. 6 February.

¹²⁵ ROPA Section 7(5) establishes that DROs are "subject to the superintendence, direction and control of the Commission".

¹²⁶ See Complaints and Appeals, above.

A. *Media Environment*

Since late 2002, when the national government authorised a number of satellite television and radio channels to operate, the Pakistani media landscape has witnessed a period of liberalisation and diversification. During this period, restrictions on the ownership of broadcast media were eased and media cross-ownership was allowed in 2003. The media landscape expanded significantly and became much more vibrant. Some 70 television channels and 140 radio stations have been in operation across the country, in addition to the state-controlled Pakistan Television Corporation (PTV) and Pakistan Broadcasting Corporation (PBC). A growing number of private cable or satellite television channels and radio stations, many of which broadcast from outside the country, have been providing news, current events programmes as well as a plurality of alternative viewpoints and opinions, thus increasing the sources of information available to citizens. Although private radio stations are regarded as community services, and therefore have not been permitted to broadcast national or international news. However, the terrestrial television sector is still nearly entirely a state monopoly, with the state-controlled television PTV and radio PBC, being the main sources of information for citizens, particularly in the rural areas.

This relative freedom was curtailed in the middle of 2007, following the media's coverage of the lawyers movement, and then on the eve of the proclamation of emergency rule when the government forced local cable operators to take all domestic and foreign news channels off air. Channels included Dawn News, ARY TV, Aaj TV, Geo, as well as BBC World, CNN and Al-Jazeera. The proclamation of emergency rule (3 November 2007) was followed by the imposition of a number of restrictions on print and electronic media (see below, *Section B. Legal Framework for the Media and Elections*).

From mid-November, most of the channels were back on air, but only after they had signed the so-called "Voluntary Code of Conduct" issued by the Pakistan Electronic Media Regulatory Authority, PEMRA (see below, *Section B. Legal Framework for the Media and Elections*) and upon cancellation of some controversial programmes. The main private TV channel, Geo TV, refused to sign the Code. As a result, cable distribution of Geo TV was blocked for 77 days, without any legal justification or notice. This considerably reduced the number of viewers that could access the channel, a limitation that was exacerbated by restrictions imposed by the Ministry of Commerce on the import of satellite dishes and digital receivers.¹²⁷ The ban on Geo TV was lifted only on 20 January when President Musharraf gave permission for Pakistani cable television operators to resume distributing the two main Geo TV channels. The agreement between the government and the Geo ownership was conditional on the suppression of news programmes hosted by two well-known anchors. A similar condition was imposed on other broadcasters (ARY, Aaj and Dawn TV) resulting in a total of seven journalists being barred from appearing. On 26 February the PEMRA chairperson explained to the mission that restrictions were necessary in order to protect the reputation and prosperity of Pakistan, and that negative information and messages from irresponsible media outlets could deter foreign investment.

The combination of the existing regulatory framework, the curbs on the media, and the arrest of more than 200 journalists in the aftermath of the declaration of emergency rule created an environment of tension and apprehension during the entire electoral period. Measures taken by state authorities, including the temporary block of cable distribution of satellite channels and regular warning notices issued by PEMRA, resulted in journalists undertaking self-censorship. Media outlet owners and media professionals openly stated that they avoided covering issues that could result in a temporary

¹²⁷ According to the Amendment in Import Policy Order 2006 [Ban on Import of all equipment used for reception, broadcast and distribution of Satellite signals pertaining to the field of electronic media such as Satellites]: "Import shall be allowed into the country only after obtaining specific permission ... from the Pakistan Electronic Media Regulatory Authority".

suspension of their channel. In particular this meant avoiding any criticism of the government, the Army and the President. Media professionals and journalist unions regularly organised demonstrations and protests to express their dissent about the situation.

B. Legal Framework for the Media and Elections

Article 19 of the Constitution provides for freedom of expression: “Every citizen shall have the right to freedom of speech and expression, and there shall be freedom of the press, subject to any reasonable restrictions imposed by law in the interest of the glory of Islam or the integrity, security or defence of Pakistan or any part thereof, friendly relations with foreign states, public order, decency or morality, or in relation to contempt of court, commission of or incitement to an offence.” However, this fails to provide adequate protection as freedom of expression is made subject to “any reasonable restrictions imposed by law”. This is not in line with the UDHR (Article 19) which states that, “everyone has the right to freedom of ... expression; ... includ[ing] freedom to ... seek, receive and impart information and ideas through any media and regardless of frontiers”. Restrictions are required to be “necessary” rather than merely “reasonable” (General Comment 10 of the United Nations Human Rights Committee).

Under the proclamation of emergency, the Constitution was held in abeyance and a judgment¹²⁸ of the newly-constituted Supreme Court ruled that while 14 of the 21 fundamental rights set out in the Constitution would remain in force, the executive could derogate from the other seven, including freedom of expression.

The Legal Framework for Electronic Media

The two main regulatory bodies for the media sector are the Ministry of Information and PEMRA. While the Ministry of Information directly controls the state-owned PTV and PBC, PEMRA has jurisdiction over private electronic media registered in Pakistan. The main document regulating private electronic media is the PEMRA (Amendment) Ordinance (2007), passed in June 2007. This ordinance curtails media freedom and was regarded as a serious set-back by civil society groups, journalist unions and human rights organisations.

By undoing some of the major provisions of a law passed by parliament in February 2007, the Ordinance:

- (i) empowered PEMRA to take action on its own against television channels which violated rules; and
- (ii) authorised PEMRA to confiscate the equipment of broadcasters and seal premises without consulting a Council of Complaints.

This law applies only to private electronic media, with PTV and PBC being subject to a separate legal regime under the Ministry of Information. State broadcasters do not seem to have any accountability regime providing for due impartiality, pluralism and fair treatment in political coverage.

The Legal Framework for Print Media

The Press, Newspapers, News Agencies and Books Registration Ordinance 2002 regulates print media. The Ordinance requires all books, pamphlets and single-sheet publications, as well as all news agencies, newspapers and periodicals to be registered with the local or provincial authorities. Failure to register or to provide correct details is punishable with imprisonment and a monetary fine.

¹²⁸ 14 November 2007.

The Press Council Ordinance 2002 provides for a Press Council for Pakistan whose purpose is to maintain the professional standards of all journalists, to help maintain the independence of the media, and to monitor and review national developments that might impact on the free flow of information in Pakistan. The Ethical Code of Practice prescribed by the Press Council Ordinance contains a number of provisions that are excessively vague and open to abuse, while others contain moral obligations that should not be subject to legal enforcement.¹²⁹ However the Press Council has never been formed because journalists refused to appoint representatives, claiming that the Press Council would not be independent or genuinely representative of the profession.¹³⁰

Legal Amendments after the Announcement of Emergency Rule

Emergency rule involved a number of restrictions being imposed on the print and electronic media. These resulted in legal uncertainty, apprehension and self-censorship in the media sector and seriously limited the right to freedom of expression contained in Article 19 of UDHR.

On 3 November, the Government passed two separate ordinances¹³¹ which barred the media from printing and broadcasting “*anything which defames or brings into ridicule the head of state, or members of the armed forces, or executive, legislative or judicial organ of the state.*”¹³² The Ordinance on Electronic Media contains severe sanctions in case of violations, including jail terms of up to three years, fines of up to 10 million Rupees, and cancellation of licences.

In addition, PEMRA issued a so-called “Voluntary Code of Conduct” agreement, which was required to be signed by all broadcasters as a pre-condition to going back on air. The Code regulated news and current affairs programmes, and specified in great detail the restrictions set in the Ordinance on Electronic Media. According to the Code broadcasters must abide with the principles of accuracy, balance and due impartiality when presenting news and controversial issues. The Code holds responsible all owners, partners of media companies and journalists, for any violations of the new restrictions.

Legal Regulation for Election Coverage

According to a notification issued by the ECP on 20 November 2007, PEMRA was mandated to supervise all television channels, including the state-run PTV, but not radio stations. However, this is contrary to what is stated in other legal texts, which give PEMRA no jurisdiction or supervisory powers over PTV.

In addition to the above mentioned PEMRA Ordinance 2007 and the so-called Voluntary Code of Conduct, an additional legal text was established for the election, the Code of Conduct for Electronic Media (Election Coverage).

¹²⁹ According to Article 19: “(...) several provisions require the press to ‘strive’ to achieve certain standards, such as to disseminate accurate information. While this is an important aspiration for all media, it cannot be enforced by law: the requirement that the press should ‘strive’ is incapable of sufficiently precise interpretation. This is most apparent in Section 1, which requires the press to ‘strive to uphold standards of morality’. The concept of ‘morality’ in itself is vague and open to different interpretations; coupled with the requirement that the press should ‘strive to uphold’ it the provision becomes incapable of precise interpretation and is open to abuse on political or other grounds.” MEMORANDUM on Press Council of Pakistan Ordinance, 2002 and Press, Newspapers, News Agencies and Books Registration Ordinance, 2002 and Defamation Ordinance, 2002, London 2002.

¹³⁰ Reporters Without Borders, Pakistan - 2003 Annual report.

¹³¹ Ordinance No. LXIV of 2007 to amend the Press, Newspapers, News Agencies and Books Registration Ordinance 2002, and Ordinance No. LXV of 2007 to amend the Pakistan Electronic Media Regulatory Authority Ordinance 2002.

¹³² Ordinance No. LXV of 2007 Section 2 inserting section 20(m) of the PEMRA Ordinance, and Ordinance No. LXIV of 2007 Section 3 inserting section 5A(c) of the Press, Newspapers, News Agencies and Books Registration Ordinance 2002.

The Code of Conduct for Electronic Media (Election Coverage) was drafted in consultation with the Pakistan Broadcasters Association,¹³³ was promulgated by PEMRA, and was issued on 24 December 2007. It includes positive provisions aimed at providing a level playing field for contestants, such as allocation of free airtime to political parties and stipulated obligations for balanced and fair coverage. However, it was unnecessarily stringent in setting a number of limitations on reporting, including a prohibition on disseminating any information about electoral procedures, regulations policy and results unless and until they publicised by the ECP. In addition, the Code was not made available to the media outlets themselves, political parties, or the general public. The adoption of a code that has legal authority, but is not public, is not conducive to effective and responsible media coverage.

During the campaign period, private electronic media were subject to undue interferences and pressures by national authorities. On a number of occasions, PEMRA issued a letter to satellite broadcasters warning them against airing live coverage and taking live telephone calls from the public which contain propaganda against Pakistan and incite people to violence. On several occasions channels that were airing programmes not approved of by the authorities were blocked from cable distribution with no prior notice.

In a welcome move, just before the two day election blackout period began (two days prior to polling day), PEMRA allowed television channels to make comments and to report on the electoral process during the blackout.

C. Monitoring of Media Coverage of the Elections¹³⁴

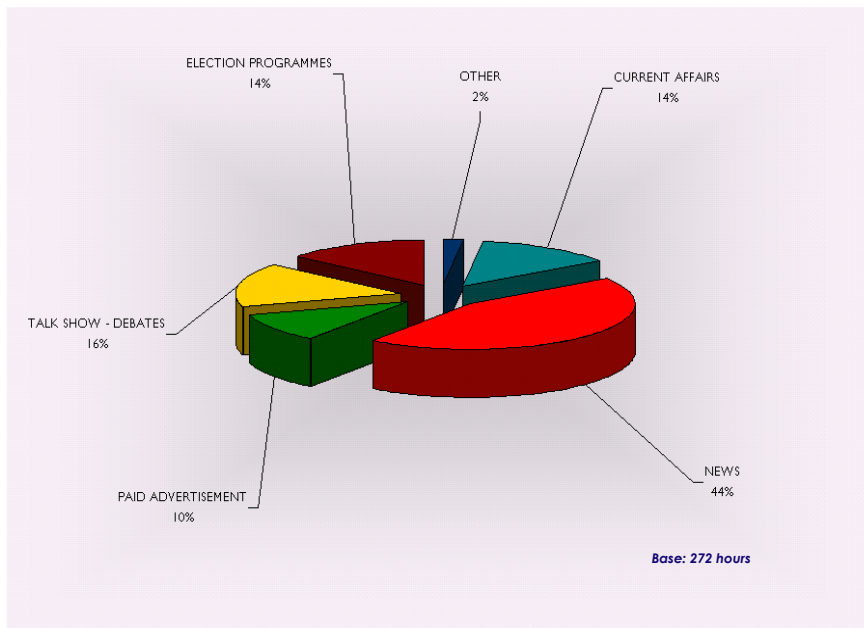
As a result of the strict regulation of media activity, journalists tended not to express comments and opinions on certain issues of public interest, including the Army and the changes in the judiciary. Political coverage in the electronic media generally lacked critical tone.

However, media coverage of the election campaign was comprehensive and used a variety of genres and formats. It provided parties and candidates with the opportunity to explain their platforms, and election administration activities were also widely covered. In the monitored period, PTV News devoted more than one hour a day to elections and political issues. Similarly the private broadcasters each devoted an average of one hour a day to elections.

¹³³ The Pakistan Broadcasters' Association is a representative body comprising both television and radio broadcasters in Pakistan. It was established in 2005.

¹³⁴ From 2 January to 16 February 2008 the EU EOM monitored a cross section of Pakistani media, making a standard quantitative and qualitative analysis of their election and political coverage. The sample of media included seven broadcast media (PTV, AJJ, ARY, ATV, Geo TV and the radio PBC AM 585 from 7:00 to 12:00 and 18:00 to 24:00), two English language newspapers (The Dawn and The News), and two Urdu publications (Jang and Nawa-i-waqat). Media monitoring uses a general index for measurement of quality. This considers the explicit judgement (evaluation) of the journalist, and the framing (value) by which the political actor is covered. These two measures are then statistically combined and analysed.

Chart 1 – Electronic Media: Genres for Election and Political Coverage



Private television stations broadcast a number of election related programmes, providing an important forum for election contestants. The three private channels monitored covered the main parties in a pluralistic manner; even though the largest airtime was devoted to PPP (AJJ devoted 29% to the PPP, while ARY and Geo 26%). The semi-private ATV provided the main actors with equitable coverage, but the PML-N received more limited attention (PPP and PML-Q received both 18%, while PML-N only 8%).

In contrast, the publicly-funded media, PTV and PBC, devoted the largest part of their political reporting¹³⁵ to the President, the government and the PML-Q, giving other parties only limited coverage. Even though two weeks prior to polling day the state television provided a more balanced visibility to the main contesting parties, overall their election period coverage of the President, the executive and the PML-Q was more than double the coverage allotted to all other parties combined. The airtime devoted by PTV Home to these ruling powers (the President, government and the PML-Q) was 82% of the total time devoted to politics and elections. Similarly with PTV News, it was 72%, and 85% with PBC. The editorial line adopted by the publicly funded media breached the duty of state-funded media to maintain balance and present the news about the election campaign in as factual, accurate and impartial a manner as possible.¹³⁶

The boycotting front received very limited coverage on all the monitored electronic media, particularly on the state controlled TV and radio.

¹³⁵ News, current affairs and talk shows.

¹³⁶ Judgement of Chief Justice Sindh High Court Mr. Ajmal Mian on Fatehyab Ali Khan's petition against PTV and PBC (1988 – Source: Jabbar, Javer and Isa, Qazi Faed – 1997, Mass Media Laws and Regulations in Pakistan, Singapore, AMIC).

Chart 2 – Electronic Media: Allocation of Airtime Time among Parties in News and Current Affairs Programmes

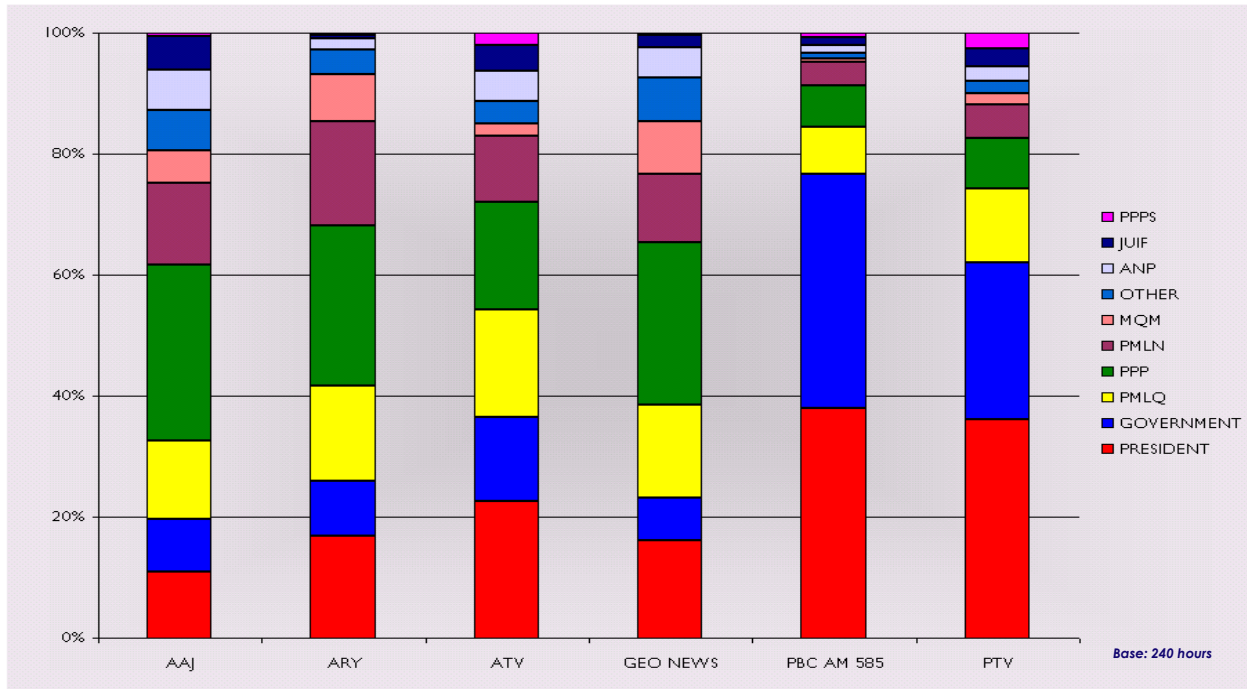
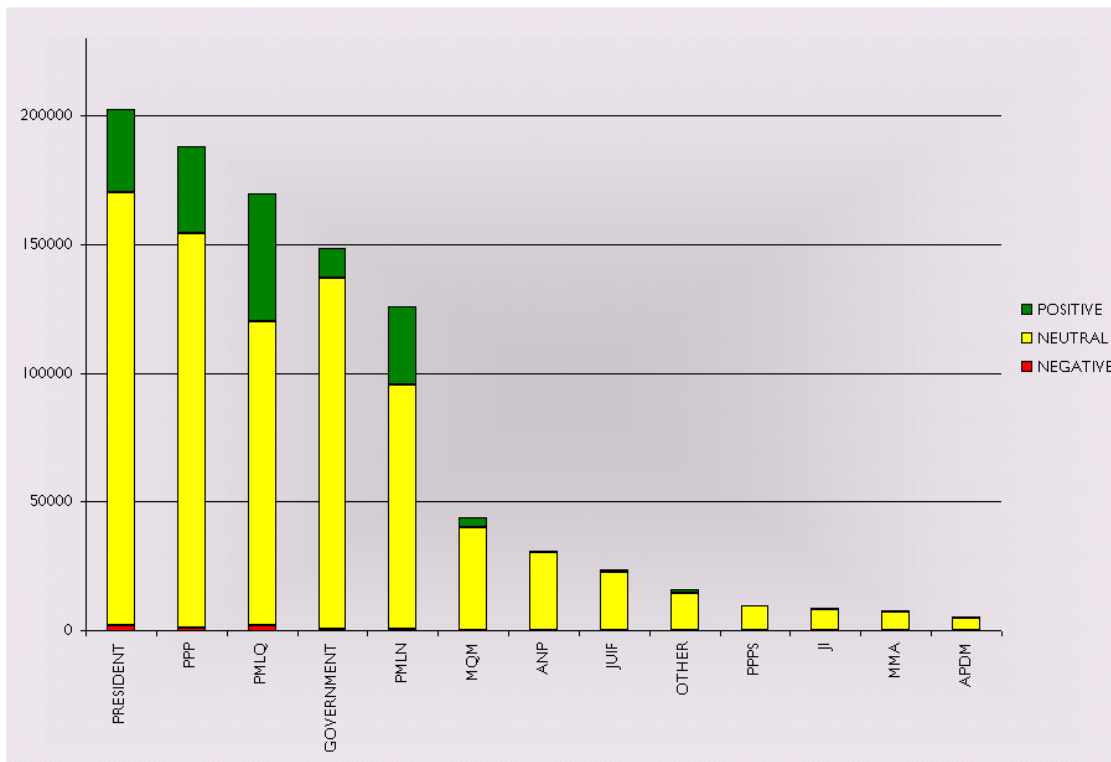
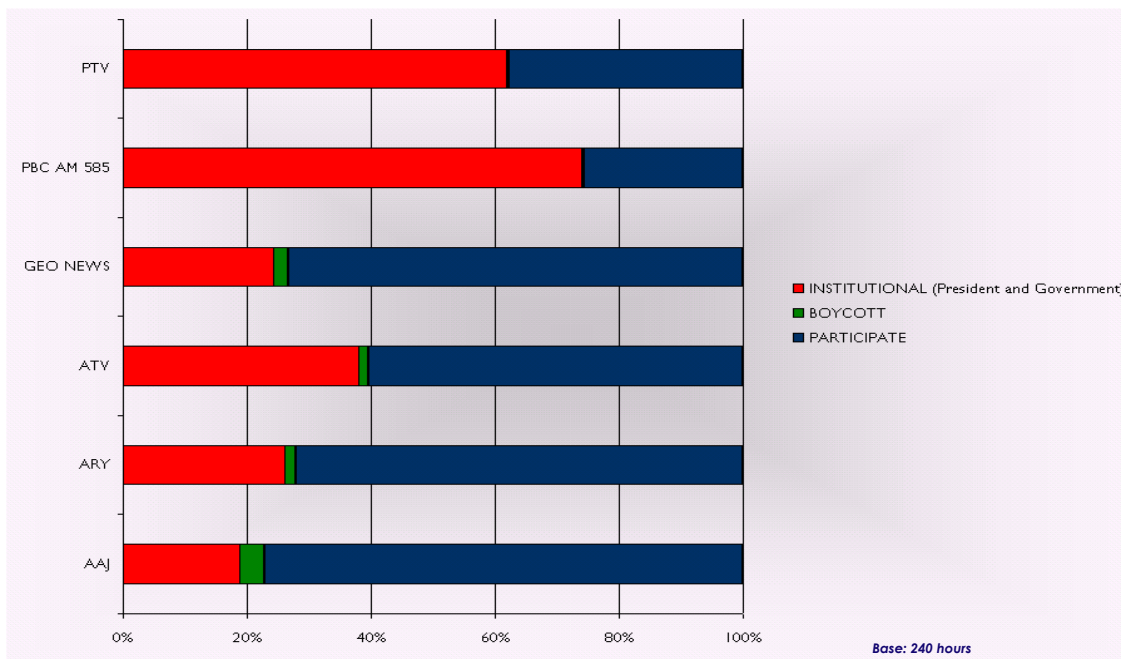


Chart 3 – Electronic Media: Tone of the Coverage¹³⁷



¹³⁷ Values are expressed in seconds.

Chart 4 – Electronic Media: Allocation of Airtime Time among Parties Contesting the Elections and the Boycott Front - News and Current Affairs Programmes



The monitored press managed to provide voters with a plurality of opinions and information. The PPP was the main focus of the coverage (Jang allotted 29% to the PPP, Nawa-i-waqat 24%, the Dawn 40% while the News allotted 38%).

Chart 5 – The Press: Allocation of Space among Parties in News and Editorials

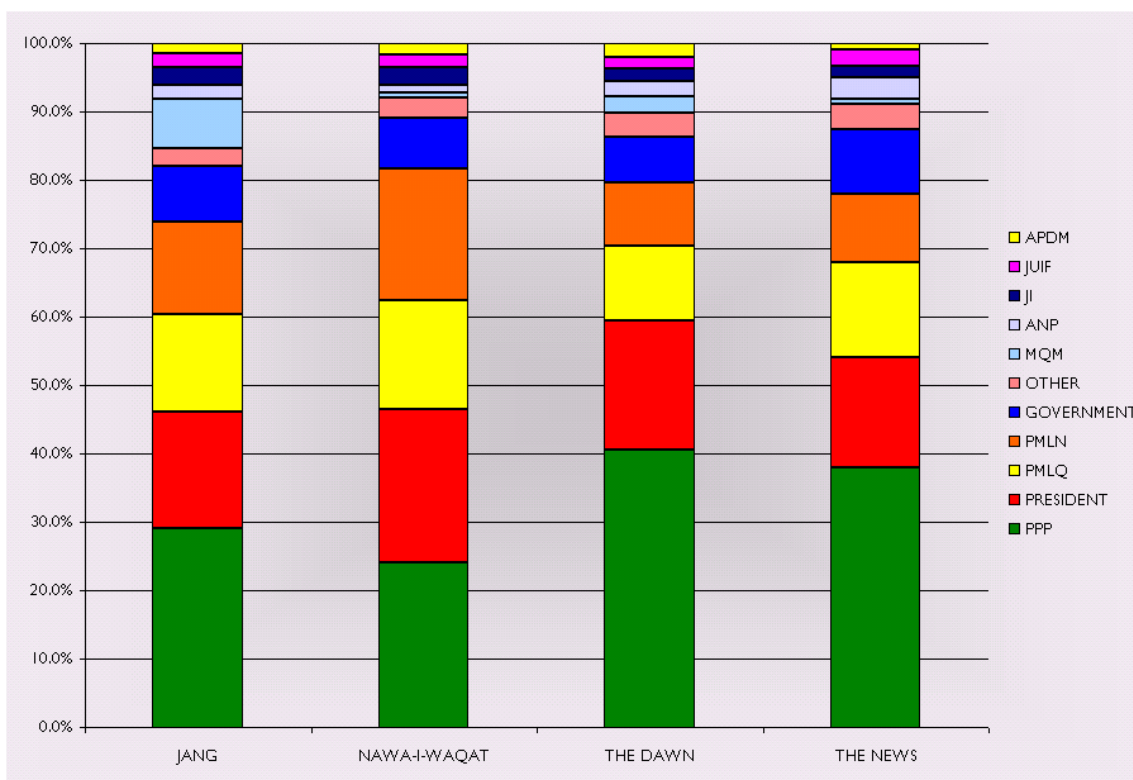
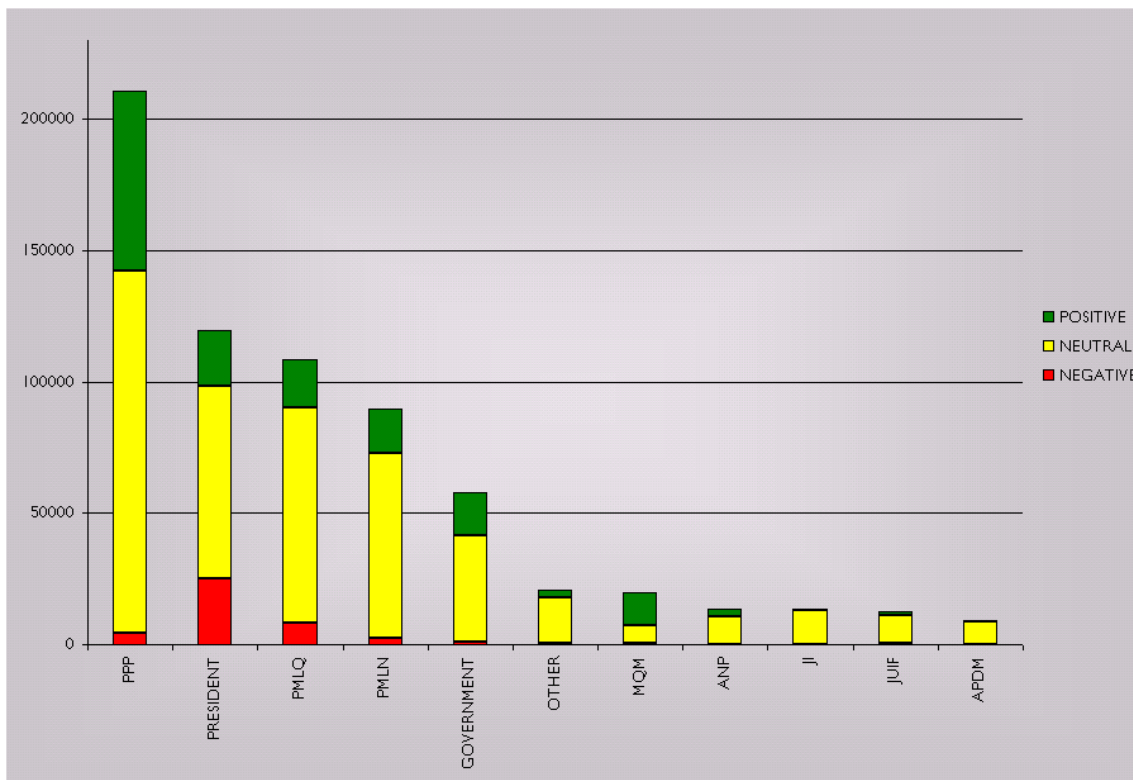


Chart 6 – Press: Tone of Coverage¹³⁸



X. PARTICIPATION OF CIVIL SOCIETY

Civil society played a far more significant role in the 2008 elections than in previous years. There were a number of election activities carried out by civil society organisations, including election observation, civic and voter education, election watch dog projects and efforts to increase women’s participation. Civil society activity was significantly strengthened by the momentum and participation around the lawyers’ movement calling for an independent judiciary (particularly from lawyers, students and other established non-governmental organisations).

A new domestic observer coalition was established, the Free and Fair Elections Network (FAFEN), who were supported by The Asia Foundation.¹³⁹ FAFEN deployed observers at constituency level during the campaign period and published regular statements on the pre-election process. These covered all important aspects of the electoral campaign period and regularly received media coverage. Accreditation of FAFEN observers was problematic (see *Section V Election Administration*) resulting in the required paperwork only being issued at a very late stage and more than 1,000 observers not receiving their accreditation in time.

On election day FAFEN deployed almost 19,000 observers, covering 12% of polling stations in 256 constituencies, and issued a preliminary statement at a press conference on 19 February. In this statement, FAFEN reported that some of its observers were not given access to polling (in up to 80 stations), and also to the compilation of results. FAFEN also reported a couple of cases of abduction and detention of their observers (in connection with their observation activities). FAFEN observers

¹³⁸ Values are expressed in square centimetres.

¹³⁹ www.fafen.org

also recorded polling station result counts, and a Parallel Vote Tabulation (PVT) was conducted, with data publicly released for 33 NA constituencies (see *Section XIV Results*).

Several leading civil society organizations with nationwide outreach such as Human Rights Commission of Pakistan (HRCP), South Asia Partnership Pakistan (SAP-PK), Aurat Foundation (AF), Strengthening Participatory Organizations (SPO), Pakistan Institute for Labor Education and Research (PILER) and others joined to form another observer network, the Pakistan Coalition for Free and Fair Democratic Elections (PACFREL). This network, although more limited in its coverage, provided additional scrutiny of the process.

In the run up to the 18 February elections, PACFREL launched the Citizens Campaign for Free and Fair Elections (CCFFE), with the objective of educating citizens on the right to vote and, sensitising contesting candidates and political parties to respect the code of conduct and promoting democratic values notably tolerance for divergent views expressed by the parties and their candidates during the campaign. More than 50 NGOs received small grants from UNDP/SNEP to conduct voter education programmes at the grass-roots level.

Organizations like the Pakistan Institute of Legislative Development and Transparency (PILDAT), and the Center for Civic Education and the Human Rights Commission of Pakistan (HRCP) were working as think tanks on the election process. They produced on-going analysis of various aspects of the election process. PILDAT released various survey reports indicating election expectations of Pakistani citizens. PILDAT formed and facilitated the Citizens Group on Electoral Process (CGEP) consisting of several well-known lawyers, academics, journalists and former politicians. The CGEP conducted a few campaign fact-finding missions into allegations of misuse of public resources and violations of the code of conduct in several districts and highlighted shortcomings in the electoral campaign.

There were also some domestic observer groups that appeared to have somewhat questionable motivations. In a meeting with the mission, and in information provided on its website, the International Human Rights Observer organization appeared to display allegiance to the government and the President. It showed itself to be poorly informed and vague on the requirements, methodologies and rationale for its own election observation efforts, fielding unrealistic numbers of observers with no formalised reporting structure or analytical framework. The Centre for Media and Democracy Pakistan (CMD) invited and paid for foreign citizens to join their domestic observation project, without making methodological or security provisions, or providing information on the organisation's funding base. It released a post-election statement that included praise of the transparency of the process.

XI. PARTICIPATION OF WOMEN

Although women's political rights are protected in the law, in practice there are a number of restrictions on the exercise of those rights. Women remained heavily under-represented in all aspects of the electoral process, seriously undermining the universality and equality of the electoral process. The fact that Pakistan had a female Prime Minister and that Benazir Bhutto was a figure of considerable political influence, regrettably does not reflect the overall status or participation of women in the political sphere.

Pakistan is a State Party to the Convention on the Political Rights of Women (CPRW) and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), with a declaration subjecting the latter to the provisions of the Constitution. The Constitution of Pakistan not only prohibits sex discrimination, but also places an affirmative obligation on the state to ensure full

participation of women in all spheres of national life.¹⁴⁰ Despite this obligation, the ECP and other state bodies have not taken sufficient measures to increase women's political participation. As an affirmative action measure, 17% of seats in the National and Provincial Assemblies are reserved for women, although there are concerns about the method used to allocate these seats.

Women's opportunity to participate in elections depends, at least in part, on the broader societal context in which they live. In an environment where women do not enjoy a great degree of equality, they are correspondingly more likely to be disadvantaged in electoral rights and political participation. According to the UN Human Development Report, Pakistani women have poorer development indicators than men, in all areas from education to health to economic empowerment.¹⁴¹ Pakistan ranks in the bottom third of both the UN Gender Development Index¹⁴² (GDI), at 124th place out of 157 countries measured; and the UN Gender Empowerment Measure¹⁴³ (GEM), 82nd out of 93 countries measured.

Pakistan's report to the CEDAW Committee stated that *"large sections of Pakistani society have deeply held traditional views about the roles of men and women in society", and that "customs, practices and misinterpretations of religion are cited as justification for indulging in acts of discrimination against women."* Nonetheless, it is the responsibility of the state to ensure that all sectors of the population can exercise their rights in practice, and to seek ways to overcome cultural obstacles.¹⁴⁴

Women as Voters

Women were under-represented on the electoral roll at 44% of registered voters, undermining the principle of universal suffrage.

Restrictive cultural norms which confine women to the private or domestic sphere, particularly in rural areas, mean that male household members are reluctant to acknowledge women in the household. The ECP's registration process of 2006-7 resulted in women making up only 39% of registered voters on the draft electoral roll.¹⁴⁵ This was partly due to a failing by the ECP, in not using any female enumerators, an essential measure in order to facilitate female registration. The proportion of women voters grew to 44% on the final electoral roll, following the Supreme Court ruling of 2007 and the merging with data from the 2002 database about which there are serious concerns of inaccuracy.¹⁴⁶ A breakdown of registration by district shows significant discrepancies with women's

¹⁴⁰ Article 25 provides that all citizens are equal, prohibits sex discrimination, and permits the state to take special measures for the protection of women. Article 34 requires the state to take steps to ensure the full participation of women in all spheres of national life.

¹⁴¹ UN Human Development Report 2007/2008. Women's literacy stands at 35%, compared with 64% for men. 32% of eligible girls are enrolled in school compared with 44% of boys. Women earn, on average, around one third of men's salary per year. According to the World Health Organisation (WHO), Pakistan has the third highest maternal mortality rate in the world. See http://www.who.int/reproductive-health/publications/maternal_mortality_2000/executive_summary.html

¹⁴² GDI is a measure of inequalities between men and women in the three basic dimensions of the human development index. Those dimensions are: a long and healthy life, knowledge and a decent standard of living.

¹⁴³ GEM is a measure of inequalities between men's and women's opportunities in a country. It takes account of inequalities in three areas: political participation and decision making, economic participation, and power over economic resources.

¹⁴⁴ CEDAW Article 5 sets out the obligation on each state *"to modify social and cultural patterns of conduct, with a view to achieving the elimination of prejudices and customary practices based on the inferiority or superiority of either of the sexes or on stereotyped roles for men and women"*.

¹⁴⁵ This was a decrease from the figure in the 2002 general elections, when women made up 46% of the electoral roll, according to Secretary Dilshad's Statistical Data Report, available on the ECP website.

¹⁴⁶ In the merger exercise, 14.6 million women and 12.1 million men were added from the 2002 database to the 2008 electoral roll.

registration; in North Waziristan Agency (FATA) only 15% of registered voters, but in Kech (Balochistan) it is 54%.

Many of the women added from the 2002 database did not have ID cards since this was not a precondition for registration at that time. Having an ID card is a requirement to vote, so without an ID card being on the electoral roll was pointless. The ECP has acknowledged that the proportion of women without an ID card, and thus unable to vote, may be over 50% in some areas but neither the ECP nor NADRA¹⁴⁷ appears to have made any efforts to address this situation, such as launching a public awareness campaign. It is likely to be more costly and require more effort to register (whether for C/NICs or for the electoral roll) the rural poor and women, since they are harder to reach. Nonetheless, as public service organizations, and under CEDAW, there is a duty on both NADRA and ECP to make these efforts. Given that the ID cards of some women do not have photographs as this is deemed inappropriate, there is increased scope for fraud and manipulation at female polling booths. A number of discrepancies were reported between the details on women's ID cards and their entry on the register, especially given that their names change with marriage and divorce.

Given the restrictions on women's movement and their significantly lower rates of literacy at around 35% compared to men's at some 64%,¹⁴⁸ women had less chance to receive information about the elections through attendance at campaign events or through printed sources. A civic and voter education campaign was carried out by NGOs and through media spots as part of the UNDP/SNEP project. The Ministry of Women Development also ran a mass media campaign encouraging women to vote. Overall, there was some targeting of women, but little targeting of *men* to explain to them why it is not only acceptable, but essential, for women to vote, although this should be part of any gender strategy.

Security concerns were reported by all interlocutors as being a particular deterrent for women voters in these elections. Many interlocutors also expressed concern that women were less likely to vote because of lower levels of education and political literacy, and a lack of confidence that voting and the political system have a connection with their lives. Nonetheless, female respondents in a survey were keen for greater engagement and a more substantial role for women in politics, despite the constraints they face.¹⁴⁹ In the 2005 local elections women's turnout was significantly lower than men's, but it is likely that female turnout in the 2008 elections will be unknown. The ECP does not plan to produce a gender breakdown of voter turnout.¹⁵⁰

Worryingly, there were reports of several agreements in tribal agencies,¹⁵¹ NWFP, and a few rural areas of Punjab and Sindh¹⁵² by local leaders, sometimes with the participation of political parties and

¹⁴⁷ NADRA informed the EU EOM in early March 2008 that of the 62 million C/NIC holders, 39 million are men and 23 million are women.

¹⁴⁸ UN Human Development Report, 2007/2008.

¹⁴⁹ See "Imagined Citizenship: Women, State and Politics in Pakistan", by Farida Shaheed, Shirkat Gah Women's Resource Centre, 2002, which is the Pakistan Country Report of the regional study "Women and Governance in South Asia: Re-Imagining the State",

¹⁵⁰ Some polling stations are single sex, and some are combined, with separate booths and voter lists for male and female voters. Obtaining turnout by gender could be possible if the total number of voters at each booth were noted on the Polling Station Statement of Count. For the 2005 local elections, estimates show that men's turnout was 57%, women's turnout was 36% (as a percentage of those registered). Data on women's turnout varied: it was estimated at 21% in Balochistan and NWFP, 24% in Sindh and 44% in Punjab. Source: ECP Secretary Dilshad's Statistical Data Report.

¹⁵¹ Such an agreement was confirmed in Khyber Agency: JUI-F confirmed to the EU EOM that they had participated in the agreement, other parties reportedly had too, although they denied this. In that agency, the local Lashkar-e-Islami leader Mangal Bagh was seen driving around the district in a convoy of 50 or 60 trucks with armed men, warning women not to vote over a loudspeaker, and announcing a shoot-to-kill policy for those who did. Similar agreements were also reported in Bajaur, Kurram and Mohmand agencies, and in Dir and Peshawar districts. At constituency results centres in three districts of Peshawar EU observers noted 87 polling stations where no women at all had voted.

candidates, banning women from voting. Such agreements violate the Code of Conduct and constitute the electoral offence of undue influence,¹⁵³ and delegitimise the elections in those areas. In previous elections similar agreements have been in place, and civil society organizations have complained to the ECP and to the courts. The EU EOM was told by women's organisations that those who enter into such agreements have never been prosecuted, although there is signed written evidence of some of these agreements.¹⁵⁴ The Peshawar High Court passed a judgment in 2004 strongly deprecating all agreements aimed at restraining female voters;¹⁵⁵ however, in only a few such cases following the 2005 local elections has the ECP annulled the vote in some polling stations and ordered a re-poll.¹⁵⁶ The ECP informed the EU EOM that it cannot annul a vote in such circumstances on its own initiative, but must await a complaint from an aggrieved person. This is a narrow reading of its powers, which include extensive powers to ensure just and fair conduct of the elections.¹⁵⁷ If women are banned from voting, it is not reasonable to expect that they will lodge a formal complaint with the ECP.

Men and women vote at separate polling booths, and female booths should be staffed by women only. Gender segregation is important in the prevailing social context in order to facilitate women's vote, especially in rural and conservative areas. Nonetheless, the EU EOM observed male staff in 24% of female booths visited.¹⁵⁸ Whilst it can be difficult for the ECP to recruit sufficient female polling staff as the result of security concerns, cultural restrictions on women's movement which prevent them travelling longer distances which would, for example, require an overnight stay away from their home, special efforts need to be taken to achieve this. That could include the provision of transport and additional security for female polling stations. EU observers found that female booths had inferior conditions to male booths in 18% of cases, often being more cramped and crowded, and sometimes in more remote locations. Perhaps linked to these conditions, EU observers found that female booths had more instances of disorder (17% in female booths, 7% in male) and procedural irregularities, such as violations of secrecy and the presence of unauthorized persons. The provision of adequately equipped, female-staffed, secure and well-located female polling booths is a basic step to enabling women to exercise their right to vote.

¹⁵² Agreements were reported by multiple interlocutors in some villages of Mandi Bahauddin, Sargodha and Mianwali in Punjab, some of which have been in place since 1947 and were originally instituted by the major landowning families, but have now attained the status of "tradition". In Sindh, a historic prohibition on women voting had been in place in Ghattar village, but for the first time women voted in these elections.

¹⁵³ Article 15 of the Code of Conduct prohibits party officials, candidates or others from entering into agreements debarring women from being candidates or voting. The electoral offence of Undue influence (s. 81 ROPA) consists of inducing or compelling a person not to vote through the threat or use of force, the giving or threat of a religious sentence, or the threat of social ostracism.

¹⁵⁴ "Gross Violation of Women's Electoral Rights in Swabi, Mardan and Dir, NWFP", an Aurat Foundation document provides copies of the agreements taken to prevent women voting or standing in the local elections. Religious leaders, and candidates from a number of parties (including PPP and ANP), signed the agreements. Aurat and the Citizen's Campaign for Women's Representation in Local Government supported two women voters who took the case to Peshawar High Court.

¹⁵⁵ *Ms Jamala and others versus CEC and others*, Peshawar High Court, 17 March 2004 WP No.417/2001.

¹⁵⁶ In July and August 2005, the ECP annulled voting at a number of polling stations in Nowshera and Swabi districts of NWFP.

¹⁵⁷ ROPA Section 103 gives the ECP power to stop the polls at any stage if it cannot ensure the conduct of the election justly, fairly and in accordance with law, and to issue such instructions as necessary to that end. ROPA Section 103AA gives the ECP power to declare a poll void by reason of grave illegalities or violations of the law. The ECP should not need to wait for a victim's complaint in order to take such steps. Although it may be the case that only a victim has the standing to bring a case in court, it is not clear why the ECP is using that argument to justify its inaction: the ECP is not acting as a court, but as an electoral management body with responsibility for the conduct of the elections.

¹⁵⁸ FAFEN observers found that 5% of female polling stations or booths were closed on election day.

Women as Candidates

Women represented less than three per cent of candidates for general seats.¹⁵⁹ The majority ran as independents, although they fared extremely poorly. The small number of party-backed women candidates fared much better: PPP fielded the largest number of women for general seats, followed by PML-N, although PML-N women candidates had a higher success rate.¹⁶⁰ The majority of female candidates were reported to represent influential feudal land-owning families, or to come from the political elite and to have strong party backing, although the same is often true of male candidates. The extent to which these women could be seen to represent the interests of, for example, poor or rural women who form the majority of the female population, is thus brought into question. Several interlocutors reported that without powerful family backing and financing, it is not feasible to stand for a general seat (often a candidate must be self-financing in order to get a party ticket), therefore many women opt to try and obtain a reserved seat instead. Few women candidates were observed representing their own political platforms: they were often accompanied or represented by male family members and the support, both economic and otherwise, of male family members was crucial for women's campaigns. Women candidates were generally not able to campaign on an equal basis with men, facing cultural restrictions which sometimes prevented them from showing their faces on posters and from undertaking campaigning activities which brought them into contact with men. The requirement for candidates to hold a Bachelor Degree has a disproportionate effect on women because of their lower levels of education and higher levels of illiteracy,¹⁶¹ further limiting their opportunity to stand for election. This constitutes indirect discrimination.

In 2008, according to official but incomplete results 14 women were elected to the 272 general seats in the National Assembly (NA). This is one more than were elected in the 2002 elections. No women were elected to general NA seats from Balochistan or NWFP. Only ten women¹⁶² were elected in 2008 to the 577 general seats in the Provincial Assemblies (PAs), a drop from the 11 elected in 2002. No women were elected to the PAs of NWFP or Sindh. Of the overall total of 24 women elected to general seats in NA and PAs in 2008, nine were from PML-N, seven from PPP, five from PML-Q, one from MQM and two were independent.

Women Returned Candidates									
Party	National Assembly				Provincial Assemblies				Total per party / Independent
	NWFP	Punjab	Sindh	Balochistan	NWFP	Punjab	Sindh	Balochistan	
Independent		1				1			2
PMLQ		3				1		1	5
PMLN		3				6			9
PPPP		4	2			1			7
MQM			1						1
Total:	0	11	3	0	0	9	0	1	24
Total Seats			272		99	297	130	51	849
Percentage of total seats			5.14%		0%	3.03%	0%	1.96%	2.82%
Mar 1, 2008 Figures taken from ECP Website									

¹⁵⁹ The ECP website on 16 February 2008 listed 64 women candidates and just over 2,000 male candidates for general seats in the National Assembly. For general seats in the Provincial Assemblies there were 116 women candidates and 4,341 male candidates.

¹⁶⁰ 103 independent candidates stood, but only two were successful. For the PPP, seven of 20 candidates were successful; for the PML-N, nine of 15 candidates, and for the PML-Q, five of 17 candidates were successful.

¹⁶¹ Women's literacy rate is 35%, men's 64%, Human Development Report 2007/2008, UNDP, with the rate for rural women much lower than that for urban women.

¹⁶² The figures for both the NA and the PAs are according to official results on the ECP website on 1 March 2008, but the figures could change after the by-elections and postponed elections, likely to be held in April/May. The results for two of the women returned candidates in the NA are subject to pending court appeals.

The very small number of women elected on general seats (2.82% of the total) shows how essential it is to have affirmative action measures in place, such as reserved seats. Women's representation goes up to 22% of the NA when the 60 reserved seats are included, and 19% of the PAs when combined with the 128 reserved seats. They were reintroduced into the NA in 2002, and their number increased from ten to 60, although this did not meet the demand of civil society for at least one third of seats to be reserved.¹⁶³ They are a positive factor in increasing the participation of women and establishing women as political actors. However, several issues bring into question the effectiveness of these quotas. Reserved seat-holders are not directly elected, but rather appointed by the parties based on the parties' general seat winnings.¹⁶⁴ Women's organisations expressed concern at the lack of relationship between reserved seat-holders and constituents. Without this, the holders of reserved seats have limited scope to act autonomously or on behalf of the groups that they nominally represent and their political survival depends upon their loyalty to the party that selects them. Reserved seats are not accessible to independent candidates, and so women are entirely reliant upon traditionally discriminatory political parties for their nomination. Representing a constituency would render women more accountable to the voters rather than their parties, and give them the chance to build their own support base separate from the parties. Women's links with constituents are further weakened by the fact that the holders of reserved seats often do not receive from their political parties the budgetary resources (development funds) to which the members of assemblies are entitled, on the grounds that they were not directly elected.

Women in Political Parties

Most political parties have women's wings but these have not integrated women into the upper ranks or mainstream of the party. Despite positive commitments to women's equality in the manifestos of the main political parties, few went beyond rhetoric to set out concrete strategies¹⁶⁵ and women made up less than 10% of decision-making bodies in these political parties.¹⁶⁶ Party affiliations appeared to take precedence over gender affiliation, leaving only limited scope for women to form cross-party alliances to work on women's issues. The PPP provided some detail on policies to empower women, ANP, PML-Q and MQM committed to gender equality and women's empowerment but with little detail, and the PML-N refers to Islam as the framework for women's rights, although without specifying who decides between the many interpretations of Islam in this regard. JUI-F does not promote gender equality, but rather gender segregation, and advocates a ban on a woman being President or Prime Minister. Women's issues were not a discernible feature of the election campaign.

Women in the Election Administration

Women were noticeably absent from the senior levels of the election administration. The ECP reported that there were no women above District level in the election administration. Women represented less than two per cent of District Returning Officers and ROs, reflecting the very low

¹⁶³ Ten reserved seats were established in the 1973 Constitution for a limited time period, which was doubled to 20 in 1984, but the provision lapsed after the 1988 elections. Without any reserved seat provision, only two women were elected in the 1990-3 NA, and four in the 1993-7 NA. There are close to one third reserved seats for women in the local bodies, introduced for the 2000-2001 local elections, but there are no female quotas for the key figures of *nazim* and *naib nazim* (mayor and deputy mayor).

¹⁶⁴ The parties distribute the reserved seats to a list of "candidates" or nominees that they selected before the elections. There is one "constituency" per province.

¹⁶⁵ See "A Gender-based Critique of 2008 Election Manifestos of Key Political Parties", 2008, Naheed Aziz, Aurat Foundation.

¹⁶⁶ Women made up seven per cent or less of executive bodies in the PPP, PML-N, PML-Q and ANP. There were no women in the leadership of the two main religious parties, JUI-F and JI.

levels of women in the judiciary.¹⁶⁷ On election day, women represented 23% of Presiding Officers in polling stations observed by the EU EOM. Regrettably, the ECP reported no gender policy, did not actively seek to recruit women staff and did not maintain a database of gender-disaggregated information; the latter being crucial to assessing women's participation and therefore the universality of the electoral process.¹⁶⁸ Further, it did not appear to take any measures in response to agreements banning women from voting or generally to increase women's participation despite public announcements that banning women from participation would not be tolerated. It is an abdication of the ECP's role for it to provide the excuse of cultural traditions, and not to take special measures to increase women's participation in all aspects of the electoral process.

XII. PARTICIPATION OF MINORITIES

According to the 1998 census, religious minorities comprise 3.7% of the population. Religious minorities categorized by the census include Christians, Hindus, Sikhs, Parsis and Ahmadis.¹⁶⁹ Religious minority organisations claim that they are undercounted in the census. Representative data for Ahmadis in particular are difficult to obtain as in accordance with their belief they would declare themselves to be Muslim although the Constitution¹⁷⁰ considers them to be non-Muslim.

Pakistan is a State Party to the International Convention on the Elimination of Racial Discrimination (ICERD) under which auspices it has reported on the status of religious minorities.¹⁷¹ The Constitution provides for freedom of religion, requires the state to safeguard minorities' rights, and establishes that three per cent of seats in the National and Provincial Assemblies are reserved for non-Muslims. On the other hand, it is of concern to religious minorities that the Constitution provides that Islam is the state religion, that the President shall be Muslim, and that freedom of speech is subject to the Glory of Islam.¹⁷² The blasphemy laws are a subject of particular concern, as they provide the death sentence for derogatory remarks made in respect of the Prophet Mohammad.¹⁷³ According to human rights organisations, these provisions are used as a tool of harassment and persecution against non-Muslims in private disputes, for example over land. Non-Muslims also report that they are subject to discrimination, violence, attacks on their places of worship, forced conversions to Islam, and that the state's response is inadequate.¹⁷⁴

Ahmadis are obliged to register on a separate voter list and, if they do not, may be required to swear an oath before the electoral authorities that Mohammad is the last prophet.¹⁷⁵ Ahmadis are the only

¹⁶⁷ In Balochistan EU EOM observers reported that there was a woman judge holding the position nominated to be appointed as DRO, but she was not appointed because this was not considered to be suitable for a woman.

¹⁶⁸ Some information on female candidates appeared on the ECP's website shortly before the elections, although winning candidates were not broken down by gender as of 3 March 2008. Registered voters are broken down by gender, but not voter turnout. Details of ECP staff broken down by gender were not available at central level.

¹⁶⁹ Ahmadis consider themselves Muslims, but this is not accepted by the government of Pakistan, as long as Ahmadis do not accept the "*finality of the Prophethood of Muhammad*". The Ahmadiyya community is also known as Qadianis or Lahori Group; their community headquarters being based in Lahore.

¹⁷⁰ Article 260(3)(b) of the Constitution includes Ahmadis in the list of non-Muslims, and Ordinance 20 of 1984 makes it a criminal offence for Ahmadis to profess to be Muslims, use Muslim practices in their worship, preach their faith or "*in any manner whatsoever outrage the religious feelings of Muslims*".

¹⁷¹ No reports have been submitted since 1996.

¹⁷² The Constitution, Articles 2, 2A, 19, 20 36, 41.

¹⁷³ Pakistan Penal Code, Section 295 A-C.

¹⁷⁴ See also "Religious Minorities in Pakistan", Dr Iftikhar H. Malik, Minority Rights Group 2002.

¹⁷⁵ The Conduct of General Elections Order 2002 abolished the separate electorate for non-Muslim seats. However, following pressure from some Islamic clerics, an amendment to it was introduced in 2002 which requires Ahmadis either to register as non-Muslims or to swear the oath about the finality of the Prophethood of Mohammad (Article 7C), both of which are unacceptable to their religious beliefs.

religious minority subject to this procedure, for which there is no legitimate reason since the introduction of the joint electorate in 2002. As a result of this, many Ahmadis boycotted the elections. The requirement for separate registration breaches the right to non-discrimination in the citizen's enjoyment of his or her rights contained in the UDHR Article 2.

Religious minorities in some regions claim to be under-represented on the electoral roll and in the holding of C/NICs. They attribute this to incompetence of enumerators in some cases (for example, difficulties in spelling Christian names), and deliberate exclusion in others. Religious minorities also expressed dissatisfaction with the low number of reserved seats in all assemblies (3%),¹⁷⁶ which makes it very difficult for those seat-holders to act without party support. A particular concern of religious minority organisations was the worsening climate of religious intolerance and extremism, which contributes to the reported resistance of political parties to nominate non-Muslims for general seats, or to allow non-Muslims in reserved seats to raise issues of concern to them. The requirement for a bachelor degree affects some minorities disproportionately, especially the poorer and more marginal populations such as scheduled castes.

Very few non-Muslim candidates were reported to have been nominated for general seats by parties, and only a few stood as independent candidates. None were reported to have won a seat. Although reserved seats might appear to be a better option, similar concerns to those raised by women's organisations were shared by minority groups about the party-based system for allocating reserved seats. The lack of constituency links is experienced more keenly by non-Muslims in the NA as their constituency is the whole country. Religious minority representatives complained that the main parties do not address minority issues and so the reserved seat-holders have little scope to represent their interests. The main parties' manifestos all state that they would seek to eradicate discrimination against religious minorities, but few provide much detail on how this would be achieved.¹⁷⁷ There are no reserved seats for religious minorities in FATA and none in the Senate, which limits their political representation. Women were also under-represented in party lists for reserved seats for non-Muslims. Calls by minority and women's civil society groups over the years for reserved seats for non-Muslim women have not been heeded.

XIII. ELECTION DAY

The EU EOM deployed 131 observers on election day, who observed the opening of polling stations, voting, the closing of polling stations, the count, and also the compilation of results by the constituency Returning Officers (ROs). EU EOM observers used standardised reporting forms and qualitative reporting to provide consistent information across the country, which was checked back with observers at the time and at later de-briefings. However due to logistical and security considerations, the mission was not able to access certain parts of the country, in particular more remote and insecure locations, which may be regarded as more vulnerable to electoral malpractice.

¹⁷⁶ There are ten reserved seats for religious minorities in the NA and a total of 23 in the four PAs.

¹⁷⁷ The PPP propose a number of specific policies, such as job quotas, a commission to receive complaints, and handing control over places of worship back to minorities. The PPP formed an alliance with one of the leading groups that represents all minorities, the All Pakistan Minorities Alliance (APMA), putting some APMA representatives in its reserved seat slots. PML-N also proposes a complaints commission and scholarships for higher education; ANP and MQM both propose allowing a minority to hold any elected office (currently they may not be President), whilst the JUI-F proposes banning minorities from becoming prime minister.

Across the four provinces and Islamabad, the mission observed 444 polling stations, covering 746 polling booths,¹⁷⁸ with observers sometimes making repeat visits to a particular station. Overall, voting was assessed favourably in 83% of polling booths observed, with procedures generally being implemented appropriately. However problems were reported including disorder, the presence of unauthorised persons, and failures to apply and check for ink. In 15% of visits, instances of registered voters being turned away for non-possession of an identity card were observed. Despite the use of voting screens, breaches of the secrecy of the vote were observed in 13% of polling booths visited. Conditions were observed to be worse in female polling booths. In a positive contribution to transparency, candidate agents were present at 94% of polling booths visited, although they were not always actively scrutinizing, and domestic observers were present at 21% of polling booths visited. Of all polling booths observed, 4% were assessed as very bad with a potential to impact on the election outcome.¹⁷⁹

One unusual feature of polling in Pakistan is a reliance on parties to provide voters with their individual voter registration information (identified polling station and serial number on the electoral roll). This typically results in various party camps (tables with information) being located immediately outside a polling station. A voter's choice over which party camp is visited to obtain his or her basic polling information may be regarded as a compromise on a voter's right to secrecy, and also could have an intimidating effect.

In over a quarter of polling stations observed, voters who were queuing at 5pm were not allowed to vote, in contravention of ECP regulations. Polling station reconciliation procedures were weak, for example, there is no requirement for the number of names marked in the electoral roll to be reconciled with the number of ballot papers issued. However, counting was assessed favourably in most of the stations observed. Nonetheless in a few stations, observers assessed that the statement of the count contained mistakes. Polling agents were present at 98% of counts observed, but in nearly 10% of stations the statement of the count was not given to all agents present. Furthermore, in nearly two thirds of observations, the statement of the count was not found to be displayed, thus important transparency measures were not fully implemented. This was also apparent when during subsequent days observers returned to polling stations, and only in a minority of cases did they find the statement of count displayed. In approximately a quarter of counts observed there did not appear to be organised and secure arrangements for transportation of materials to the RO's office.

FAFEN, the leading domestic observer network, concluded that problems found by its observers "*were not so extensive or widespread to call into question the results of the election*". Problems included: violence and conflict at polling stations, changes in voter identification rules in 6% of polling stations, "*bogus votes*", late opening, restrictions on observers, absenteeism of polling officials, army and paramilitary forces at polling stations, women's polling stations or booths being closed, and unauthorized persons inside polling stations.

In a very positive development, the media provided close coverage of election day, with reporting from across the country, giving a sense of real-time scrutiny. There was immediate and constant coverage of polling station results (and later the unofficial constituency outcomes being announced by ROs). As the day progressed, there were fewer and fewer media reports relating to manipulation of the electoral process, for example at 2pm there were only 20 different cases of "rigging" being reported by the main television outlets. However the mission did receive some reports from journalists stating

¹⁷⁸ Each polling station is comprised of up to four polling booths, each one with its own electoral roll, ballot papers and ballot box.

¹⁷⁹ 13% of polling booths where voting was observed were assessed negatively but with no potential impact on the outcome.

that they feared reprisals in some parts of the country (especially around Karachi) and hence were cautious in where and what they reported on

There were less incidents of violence than had been anticipated and election locations did not appear to have been targeted by terrorists as had been feared. However a number of very violent events did take place across the country. The night before the election, a PML-N candidate in Lahore was killed with his staff, and an MQM office in Quetta was attacked with a hand-grenade resulting in five people being injured. By 2pm on election day there were already 35 different violent incidents reported in the media. These included bomb blasts at eight different polling stations, weapon firings at 12 polling stations, three kidnappings from polling stations, dozens of people injured and seven people killed. Parties also later reported instances of threats and actual physical violence to agents, including deaths, from rival political factions.¹⁸⁰ Observers reported only isolated cases of state security personnel acting inappropriately.

XIV. RESULTS

A: Compilation and Consolidation of Results

The aggregation and announcement of results takes place at the constituency level. The total results for the constituency are then transferred through to the ECP centrally, who announce these totals, without any checking of the individual composite polling station results. Thus responsibility for the results is with the Returning Officer (RO) of each constituency. This aggregation takes place in two stages; firstly on election night there is the “compilation” of results, which is an aggregation of unofficial results. This unofficial result is announced immediately. Following this, at a date determined by the RO, there is the “consolidation” of the official results. This involves assessment of “doubtful” ballots and the inclusion of postal ballots.

Both of these stages of results aggregation have historically been the subject of controversy, with allegations of rigging and observer exclusion.¹⁸¹ Such exclusion has been critical as there has been, and continues to be, no provision for individual polling station results to be made public at the constituency level or higher. Without such a breakdown of results, the announced total cannot be checked for accuracy. Failing to make available a results total with a breakdown by polling station, clearly increases the risk of stakeholder rejection of the result and the process, and therefore increases the risk of agitation and violence. While it is theoretically possible for candidates to obtain individual statement of counts from agents in all polling stations, in practice this is difficult to organise across an entire constituency. Furthermore, as stated above, agents were not always given copies of results, and in nearly two thirds of polling stations observed, the statement of count was not displayed, rendering any self-organised process of cross-checking practically impossible. Thus, there was a serious failure by the electoral authorities to provide basic information on the election at a local or central level.¹⁸² This is despite attention being repeatedly drawn to the issue by the election stakeholders and the international community prior to the elections, the ECP having all the state’s resources at its disposal, and UNDP/SNEP providing to the ECP electronic scanned copies of all the constituency results with a breakdown by polling station.

¹⁸⁰ For example, see Dawn, 20 March 2008, which reported a PPP activist dying following being “burnt alive by rivals”.

¹⁸¹ There is no explicit legal provision for observer access to the aggregation of constituency results.

¹⁸² The ECP had maintained that polling station results would be available on the internet. However at the time of writing, no such data was made available on the internet.

Compilation of Constituency Results

The results compilation process on election night was assessed favourably in the majority of the 50 NA constituencies observed by the EU EOM (out of a total of 268). However disorder was noted in nearly a quarter of constituencies visited. Polling station materials and statements of the count were not stored in a secure manner in nearly one fifth of compilations observed. Constituencies generally received polling station statements containing errors, but did not always effectively address these. In two constituencies observers reported some inaccuracy in the announced constituency result, with the total not being fully in accordance with the polling station results. No deliberate attempts at manipulation were observed.

Access to scrutiny of the aggregation remained a major problem in this election. Six EU observer teams, one of which included the Chief Observer, were denied access to the compilation process.¹⁸³ This was a clear violation of ECP instructions and the conditions for deployment of an EU EOM. In 10% of cases where EU observers were present, they were not granted sufficiently close access to be able to conduct meaningful scrutiny. Furthermore there were very low levels of scrutiny by agents and observers. Agents were not present in over half the constituencies visited. Domestic observers were present at less than one third of compilations. When agents or observers were present, in over a third of cases they were also not granted sufficiently close access for effective scrutiny. Over-crowding was frequently cited as the reason for lack of permission to enter or for close access, indicating a lack of understanding of the importance of scrutiny. ROs were also not consistently clear about who could be present, with unauthorised persons present in nearly 20% of constituencies observed. In more than half the constituencies observed, copies of the statements were not given to all agents present. In only a couple of cases were the constituency results displayed with a breakdown by polling station (as is recorded on Form 16), otherwise only the total votes were given.

Consolidation of Constituency Results

The consolidation of the official results generally took place within a few days of polling.¹⁸⁴ EU EOM teams observed this process in 35 NA constituencies (out of 268), and found that, as with the compilation, there was a general lack of transparency but no obvious attempts at manipulation. There was improved EU EOM access to this stage of aggregation with only one case of EU observers being denied close access.¹⁸⁵ The findings of observation of consolidation, and the improved access to this stage of the process, indicated that the previous obstruction of EU observers was probably not deliberate, but more due to a lack of space and familiarity with election observation. Unfortunately, critical transparency measures continued to be overlooked. Form 17 (Result of the Count) was not posted outside the RO's office in 65% of observations, and not distributed to all agents present in 23% of observations. Form 16 (showing the polling station breakdown) only displayed in six constituencies observed. With one exception consolidation was assessed to accurately reflect polling station results.

The consolidation stage of aggregation appears to be somewhat burdensome, with little apparent extra value. Its main advantages (another opportunity for scrutiny, decisions on doubtful ballots and the inclusion of postal ballots) could all be accommodated at earlier stages of the process. There was a lack of stakeholder interest in consolidation, with election agents and domestic observers rarely present.¹⁸⁶

¹⁸³ NA constituencies 20, 48, 49, 60, 96, 127 and 259.

¹⁸⁴ Consolidation of the official results takes place at a later date, not specified by law. In some constituencies consolidation was not completed until one week after the elections.

¹⁸⁵ NA 198, Sukkur.

¹⁸⁶ Agents were present in approximately 60% and domestic observers in less than 15% of consolidations observed.

During consolidation, the postal ballots for the constituency are added in to the aggregation. Although the ECP has no record of the total number of postal ballots received, it appears to be comparable with previous years with an estimated figure of between 60,000 and 80,000.¹⁸⁷ This total is less than might be anticipated given the number of those eligible to vote using this mechanism.¹⁸⁸ In particular those eligible include over half a million polling staff and the hundreds of thousands of security personnel who were predominantly working away from their home location for the election.

Parallel Vote Tabulation

FAFEN, the leading domestic observer network, conducted a parallel vote tabulation (PVT), which involved its observers recording the results from a selected sample of polling stations and independently aggregating these results in parallel to, and for comparison with, the official results of the ECP. FAFEN's sample involved projections from approximately 12% of polling stations in a constituency. FAFEN published data for 33 NA constituencies, commenting that: *"vote percentages for candidates announced by the ECP are within the PVT margin of error for those candidates in 29 out of 33 constituencies. The PVT estimates for one constituency (NA-32) are inconsistent with the unofficial ECP result vis-à-vis the winning candidate and first runner-up. In three other constituencies (NA-195, NA-229, and NA-232), the PVT estimates have a significantly different margin of victory, but have the same winner as that announced by the ECP ... The PVT shows that one or more polling station results in five of the 33 constituencies have turnout rates higher than 100 percent – in some cases, nearly all polled votes are for one party."*¹⁸⁹

B: Complaints Relating to Election Results

There was a lack of clarity over procedures for re-counts and re-polling with no information on how and by when such requests should be lodged.¹⁹⁰ There was also a lack of transparency, with the ECP not making available information on how many requests were lodged, how many were conducted, how many were dismissed, and on what grounds. There is no requirement for the ECP to issue a written decision, although the ECP claimed that all candidates were notified in writing about decisions.

The PPP accused the former ruling parties of massive rigging on election day in 27 NA and 22 PA constituencies, mostly in Sindh. PML-N candidates submitted complaints relating to eight constituencies. Parties asked the ECP to resolve these complaints before the announcement of the official results. While the ECP ordered re-polling at 43 polling stations in seven NA and eight PA constituencies following requests by candidates,¹⁹¹ including at least one case where a re-count resulted in a different candidate being returned,¹⁹² the EU EOM was aware of various other cases with credible supporting evidence where it appeared that the ECP failed to adequately address problems (for example, see below). In one application, serious violence was documented, resulting in the RO requesting the ECP not to announce the results and to investigate the allegations. However the ECP's

¹⁸⁷ In a press release on 16 February 2008 ECP Secretary Dilshad reported that about 80,000 postal ballots had been issued. It is unlikely that all 80,000 would have been returned. In 2002, the total number of returned valid postal ballots was 54,062.

¹⁸⁸ Persons in government service, polling staff, election security workers, and people detained in prison ROPA, 1976, Section 29.

¹⁸⁹ http://www.fafen.org/view_data.php?php=pvt_update.php

¹⁹⁰ Orders for re-polls for individual polling stations can only be given by the ECP. Re-counts may be ordered by the RO at the consolidation, or by the ECP. The procedures and timetable for re-count and re-polling requests by candidates (or their agents) are not clearly specified in the law.

¹⁹¹ ECP press releases in Urdu, 20, 21, 25, 26 February and 5 March. The number of polling stations where a re-poll was ordered varied between one and 25 per constituency. Re-polls were held on 23, 25, and 28 February, 12 and 13 March.

¹⁹² In NA 20 (Mansehra) the PML-Q candidate was initially declared the leader, but after the re-count the PML-N candidate became the winner.

response was that the case was “*too intricate and contentious*” to be investigated and the application was dismissed.¹⁹³ Such a response breaches the right to an effective remedy.

In a press release on 25 February¹⁹⁴ the ECP stated that it had disposed of all applications from contesting candidates for re-polls and re-counts, and that if candidates sought any further action they should make an appeal to the election tribunal in their province. Without further information, it was not possible to assess if the ECP’s apparently sweeping rejection of applications was warranted or made for reasons of administrative convenience.

The truncated opportunity for re-counts and re-polling denied opportunity for an important early remedy. These mechanisms could have helped provide certainty in the results and confidence in the process. Re-polling and re-counts can also save the burden and time delay of going through a judicial appeal process.

The EU EOM is aware of suspicious practices and results in various constituencies. For example¹⁹⁵

- In NAs 265 (Old Sibi) and 267 (Old Kachhi) Balochistan, turnout was implausibly high at more than 90%, and even 100% in some polling stations, which is at sharp variance from the overall 33% turnout in the province.¹⁹⁶ In both cases the PML-Q candidate was declared the winner.
- In NA 230 (Tharparkar-II) Sindh, the polling station results show that in 41 of 160 polling stations, all votes polled were in favour of one candidate only (in 34 cases for PML-Q candidate, and in 7 cases for PPPP candidate). The average turnout of these 41 polling stations was 93.92%, while the overall constituency turnout (including these 41) was only 64.21%. In three polling stations the number of rejected votes was higher than the number of valid votes. One polling station had a turnout of 100% and another of 103.93%. There was also a suspiciously high frequency of “round” figures found in results.
- In NA 200 (Ghotki-I) Sindh, in nine polling stations (out of 260) all valid votes polled were for one candidate only: in seven cases for PML-Q candidate and in two cases for independent candidates. The average turnout of these nine polling stations was 91.23%, while the overall constituency turnout (including these nine) was only 50.51%. The margin of victory between the successful (PPPP) candidate and the runner-up (PML-Q) was 8,799 votes.
- In NA 241 (Karachi III) Sindh, in 44 polling stations (out of 170) the winning candidate received more than 1,000 votes while the second candidate received 20 or less. In all 44 polling stations the winner was the MQM candidate. Average turnout of these 44 PSs was 85.12% while the overall constituency turnout (including these 44) was only 54.85%. The margin of victory between the successful (MQM) candidate and the runner-up (ANP) was 57,381 votes.
- In NA 249 (Karachi XI) Sindh, out of 147 polling stations in 59 cases the winning candidate received more than 1,000 votes while the second candidate received 100 votes or less. In 30 cases the winner was the MQM candidate, in 27 cases the PPPP candidate and in two cases the MMA candidate. The margin of victory between the successful (MQM) candidate and the runner-up (PPPP) was 30,522 votes.

¹⁹³ The application for declaring a poll void was submitted by a PML-Q candidate in NA 116 who alleged irregularities by a powerful independent candidate. The case was taken to the Punjab High Court, seeking a review of ECP’s decision not to order a re-poll or to stay the results. Despite a well-evidenced application, the court adjourned the case until after the official results are announced, by which time re-polling was no longer a possible remedy.

¹⁹⁴ The press release stated that the ECP had considered and disposed of about 100 applications filed by contesting candidates for re-polling, re-counting and declaring polls void.

¹⁹⁵ Of these constituencies, the EU EOM observed voting in only two – NA 241 and 249 (Karachi). The turnout and results figures have come from a variety of sources (including the ECP website, parties, and stakeholders).

¹⁹⁶ Official turnout figures from the ECP website are 35.94% (NA 265) and 46.36% (NA 267).

This information is not conclusive evidence of malpractice but is strongly indicative of possible irregular activities which warrants follow-up by the electoral authorities. The ECP's lack of follow-up on such instances, whether or not a complaint has been lodged, resulted in some frustration and mistrust amongst contestants and stakeholders. This lack of follow-up can also contribute to a permissive culture for electoral malpractice and attempts at manipulation. Thus it appeared that while there was acceptance of the results in most areas, there were strong signs that there had been pockets of malpractice which were not adequately addressed by the election administration prior to or since the publication of the official results.

C. Publication of Results

Based on preliminary results from compilation in the constituencies, the ECP published unofficial results on its website from 20 February 2008.¹⁹⁷ On 1 March the official results were published in the gazette,¹⁹⁸ for all constituencies except those withheld due to the “defeated” candidates having taken stay orders or other orders from courts on account of alleged irregularities, or where stay orders were issued by the ECP. Of 272 NA seats where polling was held, 253 were notified and 15 withheld.¹⁹⁹ Of the remaining four constituencies, two had election proceedings terminated due to the death of a candidate, resulting in “fresh elections” reported to be held within 45-60 days of the main election date. The elections in the other two were postponed due to the law and order situation. Five by-elections will also need to be held as a result of candidates having won a seat in more than one NA constituency.²⁰⁰ These are expected to be held on the same day as the fresh elections, i.e., mid-April at the earliest.²⁰¹

The ECP gave repeated assurances that polling station results would be published on its website. International technical assistance from UNDP/SNEP provided the software architecture for this and also scanned the Form 16s (which contain the breakdown of constituency results by polling station). However, the ECP did not publish this data on its website or make it public at constituency level. Polling station results could be checked if they were published at all polling stations, however EU EOM observers found that such statements of count were not displayed at nearly two thirds of polling stations.²⁰² Polling station results may still be accessed by special application (with a charge); however such barriers profoundly limit scrutiny and therefore compromise confidence in the process. The publication of polling station results is also critical for providing a basis for candidates to lodge petitions.²⁰³ Publication of polling station results at constituency level and on the internet would thus significantly improve the quality of the electoral process. Despite this point being repeatedly made to

¹⁹⁷ These were summary results per constituency without a polling station breakdown. The results showed the number of votes polled by each contesting candidate, the total number of ballots polled, valid and rejected votes and the turnout figure.

¹⁹⁸ Despite no specification in the law about notification of returned candidates, this was done in the gazette two days after the deadline for submission of election expenses by returned candidates.

¹⁹⁹ NA 3, 20, 25, 31, 41, 49, 68, 69, 118, 121, 169, 202, 239, 262 and 271.

²⁰⁰ Two PML-N candidates won two seats, one PML-N candidate won three seats and one independent candidate won two seats. Candidates have 30 days from the official announcement of the results in the Gazette to decide which constituency they would like to represent. By-elections will be held in the constituencies where they vacate their seats. The ECP has the discretion to compress the election timetable for by-elections.

²⁰¹ The NA constituencies where elections are pending are 119- Lahore, 207 – Larkana (due to death of a candidate), 37 – Upper Kurram, FATA, 42 – South Waziristan, FATA (due to the law and order situation). The five by-elections will be held in whichever of the following NA constituencies are left vacant by candidates who won more than one seat: 52, 53, 55 – Rawalpindi, 131, 132 – Sheikhpura, 146, 147 – Okara, 123 – Lahore and 149 – Multan.

²⁰² Statements of count were not displayed at nearly two thirds of polling stations observed by the mission on election night. EU EOM observer teams visited multiple polling stations on Tuesday 19 February and reported that polling station results were rarely displayed as was required (see the ECP's polling manual).

²⁰³ Unsuccessful candidates have a maximum of 45 days from results publication to lodge a petition.

the ECP, and publication requiring a simple instruction without need for any additional resources, the ECP has so far chosen not to publish polling station results. This important accountability and transparency step could still be taken, and would set a significant precedent for future elections.

D: Political Overview of the Election Results

From the beginning of results information coming through, it became apparent that a significant change in power was taking place. The former opposition had made substantial advances that dramatically changed the political landscape. In a positive development, the former ruling party PML-Q accepted defeat, congratulating its opponents.

Following the announcement of preliminary results by the ECP, the major former opposition parties, PPP and PML-N, together with ANP, started coalition negotiations for the National and Provincial Assemblies. Unusually, the leaders of the two opposition parties do not themselves hold seats in the parliament.²⁰⁴ All independent returned candidates had three days following the publication of results to decide whether to join a political party or remain independent. A total of 11 independent NA members joined political parties, seven to PPP and four to PML-N. Defections from one party to another are not permitted, with a penalty of disqualification from Parliament. It is not clear how strictly this is enforced.

On a provincial level, the PPP won the largest share of seats in the Sindh PA, where the party has a simple majority. In the remaining provinces PPP was the second largest party, putting the party in a strong position for forming ruling coalitions. The PML-N won the highest number of seats in Punjab. The ANP (a secular Pashtun party) won the most seats in NWFP PA, previously held by the MMA. Balochistan is the only province where the former ruling parties received most of the seats, although not enough to form a government without support of independent and nationalist candidates. There is no fixed schedule for holding the first sessions of the Assemblies.

The MMA, a coalition of religious parties, suffered dramatic losses, going from 45 NA seats in 2002, to just six in these elections. Their losses are in part attributed to the boycott that divided the MMA, and dissatisfaction with their governance of NWFP and their response to the July 2007 Red Mosque incident. The MMA's losses have also been interpreted as a weakening of religious extremism in the country.

The turnout for these elections was 44.57% of registered voters, around 3% higher than in the 2002 general elections.²⁰⁵ Commentators attributed this increase to the tight contest between the main parties, especially in Punjab, and the active role played by the media in the pre-election period. Turnout was significantly higher in Punjab and Sindh than in NWFP and Balochistan, which were more affected by the fear of violence and the active campaigning of the pro-boycott parties.

The success of the former opposition parties, which did not enjoy the benefits of incumbency during the campaign period, and the size of their victory, resulted in reduced attention on shortcomings in the electoral process itself. Although no party has challenged the overall legitimacy of the process or outcome, individual candidates have submitted complaints to the ECP and the courts. The EU EOM was pleased to note that following the elections, all parties that it met with reported a strong commitment to electoral reform.

²⁰⁴ Nawaz Sharif of the PML-N faces a legal ban on standing, but has said that he might contest a by-election (this would first require a change in the law). Asif Zardari of the PPP did not run in the 2008 elections; however it is possible that he could contest a fresh election, postponed election or by-election.

²⁰⁵ The 2002 voter turnout was approximately 30 million (41.80% of the registered voters). In 2008, for the constituencies where polling has been conducted to date, the turnout was over 36 million (44.57% of the 81 million registered).

XV. RECOMMENDATIONS

The following recommendations to improve the electoral process and related areas are offered for consideration and action by the Pakistani authorities, political parties, civil society and the international community:

Improve the Legal Framework

1. The existence of an independent judiciary is a general requirement for a democratic state. Steps should be taken to ensure and protect the independence of the judiciary. This would provide effective uncontested arbitration and oversight of election processes.
2. Election legislation, including the Constitution, should be reviewed in a consultative, participatory manner, for example through an all-party constitutional review committee. A unified election law should be produced and other texts relevant to elections should be amended as required (such as the penal code). Amendments should be made to the unfettered discretion currently enjoyed by state authorities in regards to various parts of the election process. Specific issues to be addressed include the independence and transparency of the election administration, complaints and appeals procedures, candidacy requirements and the legal circumscription of the power of the courts. The mandate and functioning of the caretaker government could also be more precisely defined for clarity on institutional responsibilities.
3. Requirements for candidacy for the National and Provincial Assemblies should be brought into line with international standards by removing the requirement for a bachelor degree or an equivalent educational certificate. Vague qualification and disqualification criteria of a moral nature should be revised.
4. The law should be amended so that candidates can only run in only one constituency in any election.
5. Election offences should be reviewed to have more proportional penalties. It should not be an offence to encourage a boycott of an election, as the right to vote also includes the freedom not to vote and to express this view. Offences should be subject to investigation and prosecution with sanctions imposed in a consistent, proportional and transparent manner. Such cases should be heard in a timely manner in order to promote the deterrent effect of the law.
6. Steps should be taken to ensure that the residents of the Federally Administered Tribal Areas (FATA) and the Federally Administered Northern Areas (FANA) enjoy fundamental political freedoms and civil rights as other citizens of Pakistan under the Constitution. Restrictions on political parties in FATA should be removed and party based elections should be introduced in the area.

Develop the Independence and Capacity of the Election Administration

7. The law should be amended so that appointments to the positions of Chief Election Commissioner and ECP members are based on stakeholder consultation. For example, selections could be made by the National Assembly requiring a broad political consensus. Eligibility could be expanded beyond members of the superior judiciary. The law should stipulate the length of the term of office of ECP members.
8. The ECP should be required to submit regular public reports and could be accountable to the National Assembly for its activities. The ECP should use its extensive powers to ensure that all of its responsibilities are fully implemented. Failures of the ECP to fulfil its legal responsibilities should be subject to Supreme Court rulings.

9. The ECP should be supplied with the necessary professional staff and reorganized to ensure that it has the skills base and management structures to professionally provide required services. Separate departments dealing with legal issues and complaints, logistics/operations, training, and voter education should be established. Activities in ECP sub-federal offices should be fully subject to central management direction and oversight. Systems should be put in place to ensure sound inter-departmental communication and institutional cohesion. Any outsourcing of activities should be fully subject to ECP management and should be well documented in order to provide for sustainability.
10. The ECP should develop a strategic plan to chart its reform, and detailed work management plans for each of its activities.
11. The ECP should undertake continuous formal consultation with stakeholders, in particular with political parties and civil society. Institutionalized consultation mechanisms and stakeholder forums should be established down to constituency level.
12. All District Returning Officers and Returning Officers should be fully under the central management and fully accountable to the ECP. If temporary appointments to these positions are made, there should be consultation with electoral stakeholders, especially political parties, and an effective and timely mechanism for objections against proposed appointments should be established. Any state personnel acting in these positions should not be concurrently undertaking responsibilities from their permanent position.
13. The appointment of polling staff should be based on an open system for nominations with opportunity for objections. In order to increase confidence in the process, consideration should be given to appointments being open to others in addition to state employees, and the ECP budget should be adjusted accordingly.
14. The ECP should ensure that all polling staff are assigned to one duty polling station only, and in sufficient time to allow for postal ballot application. Last minute changes to polling staff should be avoided and should require written public justification.

Improve Scrutiny and Transparency of the Election Administration

15. The ECP should develop transparency in all of its operations (as acknowledged as an essential part of democratic development in UN General Assembly resolution on promoting and consolidating democracy). In particular:
 - (i) The ECP should formalise and publicise a schedule of its meetings and all resulting decisions should be immediately publicly available.
 - (ii) All internal instructions issued should be immediately publicly available.
 - (iii) Information from provinces, districts and constituencies should be centrally gathered and made publicly available on the internet as well as at the local level (for example complaints lodged, numbers of postal ballot applications, polling station locations, polling station results).
 - (iv) The ECP website should be further developed and kept fully up-to-date.
16. The law should be amended to clearly stipulate the rights and responsibilities of observers and should guarantee unfettered and close access of candidates, their agents and observers to all stages of the electoral process including the aggregation of results.
17. The ECP should ensure agent and observer scrutiny is provided for by issuing specific regulations and guidelines, and through training of ECP staff. Accreditation should be easily available to observers. Regular consultation with observer groups should be undertaken by the ECP.

18. The ECP should ensure that all polling station statement of counts are given to agents and observers and are immediately displayed.
19. The law should be amended to require detailed polling station results to be swiftly displayed at the constituency and on the internet. All polling station results should be submitted to the ECP for immediate publication on the official website.
20. All election related documents should be available for public inspection at all levels of the election administration without payment of a fee or undue administrative burden.

Improve the Electoral Roll

21. The ECP should produce an accurate and complete electoral roll, and consider the possibility of this being subject to continuous updating. The ECP should work with National Database and Registration Authority (NADRA) to ensure incorporation of any entries not captured through its own enumeration (either from a new enumeration or the one undertaken for the Electoral Roll 07). The data captured should be subject to a comprehensive nationwide check for duplicates.
22. There should be greater coordination between the ECP and other state agencies, over information necessary for revision of the electoral roll, for example removal of the deceased and persons declared by a competent court to be of unsound mind.
23. The ECP should ensure that the display period is well publicised, that the draft electoral roll is available at multiple sites within a constituency, and that the process of corrections is accessible and efficient.
24. Procedures for changes in the electoral roll made under Section 18 of the Electoral Rolls Act 1974 should be clearly defined with regard to due process, and should be fully subject to justification and scrutiny.
25. The ECP should make strenuous efforts to secure enrolment by 18 year olds.
26. If a Computerised / National Identity Card (CNIC) is required for voting, then acquisition of a CNIC should be facilitated so that there is no *de-facto* barrier to electoral participation. Financial obstacles should be removed, through the issuing of CNICs without a charge. NADRA outreach should be extended, particularly to marginalised and under-represented groups such as women, rural populations in remote areas, people with disabilities, internally displaced persons, and people who are nomadic, homeless or living in temporary accommodation.

Equalise Constituencies

27. During the next delimitation exercise, the ECP should ensure that newly delimited constituencies are approximately equal in size, in order to uphold the principle of equal suffrage.

Extend ECP Voter Education and Information

28. An extensive voter education programme should be conducted by the ECP ahead of the registration display period and election day to ensure that voters are fully aware of their rights and opportunities. This should particularly target groups traditionally marginalised from the process, such as women and young people.
29. The ECP should provide all voters with clear information on their individual registration details, including electoral roll serial number, and allocated polling station and its location. Parties should not be relied upon to provide such basic information.

Develop the Polling and the Results Process

30. The ECP should undertake a review of its regulations and procedures and make amendments accordingly. All forms should be reformatted to ensure that they contain complete information, and are easy to use and to submit electronically for fast and complete data compilation at the central level.
31. All Returning Officers and polling staff, including reserves, should be fully trained by in-house trainers with user-friendly manuals.
32. The list of polling stations, their exact locations, and assigned voters, should be made public well in advance of election day (for example a minimum of one month before election day). Subsequent changes to polling station sites and allocations should only be made in exceptional circumstances, with any change requiring a written public explanation.
33. Postal voting procedures and practices should be reviewed to promote uptake of this provision by those eligible.
34. Amendments to polling procedures should include regulation of the number of excess ballot papers issued to each polling station and recording of individual ballot box seal numbers. The ballot paper should contain a box next to each candidate's symbol where voters should record their preferences. Reconciliation procedures after the close of polling should be strengthened, for example the number of names marked in the electoral roll should be reconciled with the number of ballot papers issued.
35. Compilation and consolidation should be merged into one process. This would require the validity of ballots to be determined by presiding officers during the count at the polling station, and the deadline for receipt of postal ballots to be the scheduled for the close of polling on election day (for immediate inclusion in the constituency aggregation on election night).
36. Standardised checking of the accuracy of polling station statement of counts should be undertaken during the constituency aggregation process.
37. The ECP should take active steps to address participation by people traditionally marginalised in the process, for example, women, the disabled, internally displaced persons and nomadic people. This should include an outreach programme for voter registration, due consideration in polling station identification, and consideration of extended use of postal balloting.
38. The Chiefs of Staff of the military and police should issue and enforce orders to their personnel not to display political support during their official duties, when in uniform, in official vehicles or at their stations. All personnel should be encouraged to take a postal ballot as required.

Enhance Procedures for Complaints and Appeals

39. A clear structure should be established so that complaints are first filed administratively to the ECP, and upon exhaustion or dissatisfaction, complainants may then appeal to the courts.
40. The ECP should establish a complaints system for management of all complaints lodged at all levels of the election administration. Protocols should be developed with other state agencies to clarify roles and responsibilities in the complaints process, particularly in regards to investigations. All complaints should be promptly assessed and investigated where required. The ECP should take full responsibility for actively addressing complaints, and providing redress as required. Investigation of a complaint should not be undertaken by a person originally responsible for implementation.
41. Full records of complaints, responses, decisions and outcomes should be made available by the ECP for immediate scrutiny.

42. For complaints relating to election results, the ECP should clarify undertake re-counts and re-polls wherever necessary in order to speedily address alleged problems in an efficient manner, without recourse to cumbersome and costly legal channels. The ECP should clarify in advance grounds for re-counting and re-polling.
43. Election appeals (“petitions”) to tribunals or superior courts should be dealt with in a timely manner in order to provide the possibility of effective remedy. A review should be made of the current timetable, with consideration given to reducing the timeframes involved for petitions, in order to avoid returned candidates losing their seats after a prolonged period in office. The timetable for election petitions challenging election results should be strictly adhered to. Court rules should be amended accordingly, and tribunals and courts should be resourced appropriately.
44. Tribunals should be composed of judges, or retired judges, who are independently appointed. A consultation process should be undertaken for appointments to ensure stakeholder confidence. The President and the Chief Election Commissioner should not be involved.
45. The category of those permitted to file election petitions should be expanded, to include political parties, civil society organisations and voters.

Improve the Political and Campaign Environment

46. Freedom of movement, association, assembly and expression should be respected with any restrictions being limited, proportional and only for reasons of strict necessity, and such reasons should be transparently conveyed.
47. There should be a review of the necessity and effectiveness of the structure of a caretaker government. The mandate, functioning and neutrality of any future caretaker government should be more clearly defined in law. Appointment of caretaker positions should be by consensus and should be open to objection. In no circumstance should caretaker officials be involved in campaign activities.
48. The ECP should revise the Code of Conduct for Political Parties and Contesting Candidates through consultation with political parties and civil society organisations. Enforcement mechanisms should be established and consistently adhered to. The Code should include legally mandated proportional sanctions in case of non-compliance.
49. Clear instructions should be issued and enforced to ensure that *nazims* and other state officials do not interfere in the election process and that state assets are not used to the advantage of any (one or more) party or candidate. Any impropriety should be immediately responded to and should include a penalty for those responsible. The Code of Conduct for Political Parties and Contesting Candidates should include a requirement for election contenders not to use public resources for campaign purposes.
50. The financial limitation on election expenses of individual candidates should be reviewed. Each candidate and party should be obliged to publicly detail expenditures and sources of funds received. Consideration could be given to any non-compliance resulting in an obligation for the candidate or his/her party to pay back an increased sum to the original amount not disclosed.

Improve the Activities of Political Parties and Candidates

51. Consideration should be given to provision of state funding as well as indirect funding (such as free time on public television and radio) to provide a more equal playing field and to reduce dependency on wealthy contributors. Clear and transparent rules for such funding should be established and consistently applied.

52. Political parties should develop internal party democracy and promote involvement of and accountability to party membership, in order to develop parties as representative institutions (formulating their political positions on local, provincial and national levels).
53. Agents for contesting candidates should be trained to take a stronger oversight role. For example, agents should know how to file complaints, how to report election offences and should ensure that they obtain a copy of the polling station's statement of the count.

Strengthen the Freedom of the Media

54. Freedom of expression should be subject to "necessary" restrictions, rather than "any reasonable restrictions imposed by law", through amendment of Article 19 of the Constitution.
55. There should be review and reform of the legal framework regulating media activities, particularly the Pakistan Electronic Media Regulatory Authority (PEMRA) Ordinance 2007, the so-called Voluntary Code of Conduct and the Press, Newspapers, News Agencies and Books Registration Ordinance 2007. The restrictions on media content should be reduced and clear-cut definitions should be introduced so as to avoid legal uncertainty. Other provisions, which supersede laws already existing, should be repealed.
56. No privileged treatment should be given to state authorities and incumbents by the media during election campaigns.
57. State authorities should promote the autonomy of the media by taking effective measures to prevent intimidation, pressure or attacks against journalists. Such measures should include protection from unwarranted arrest, and prosecution of perpetrators of intimidation and attacks against journalists.
58. The authorities should take steps to further open up the broadcasting market by liberalising the terrestrial sector, currently under state monopoly, through a fair and transparent system of licensing. Private radio stations should be permitted to broadcast national and international news information and analysis.
59. The media should cover elections and political events more generally, with professionalism and compliance with ethical standards. Sources and facts should be verified before publication and inaccuracies should be promptly corrected. Such professionalism could be increased through the development of training programmes and academic curricula.

State Media

60. Jurisdiction and supervision over the state controlled media (PTV and PBC) should be transferred from the Ministry of Information to PEMRA. State broadcasters should be subject to the same legislation in place for other electronic media (currently PEMRA Ordinance 2007) and should not be subject to any exemption.
61. State media should institute clear and transparent procedures to ensure its news and public affairs broadcasts during an election campaign are impartial. There should be a clearer distinction of what is to be considered the activity of officials by virtue of their position and what is election campaigning.

Pakistan Electronic Media Regulatory Authority (PEMRA)

62. PEMRA Ordinance should have more transparent criteria for the selection of its members. Conditions and qualifications required for membership should be clearly stated, publicly available and verifiable. Members should have a proven track of experience in the electronic media sector.

A more diverse group of stakeholders should be in charge of the appointment of PEMRA members.

63. The Code of Conduct for Electronic Media (Election Coverage) should include less stringent provisions and should be re-drafted in consultation with election stakeholders. It should be publicly available to the media, the contestants and the general public.
64. There should be an end of PEMRA's control of editorial lines through repressive measures, such as blocking cable distribution without giving notice. Instead PEMRA should supervise the electronic media for pluralism of content and compliance with relevant regulations.
65. Enforcement of PEMRA regulations should be undertaken in a transparent, non-discriminatory and procedurally compliant manner.
66. PEMRA should raise internal levels of awareness within the organisation of procedures and regulations for the media sector. This should include targeted training for the media monitoring section.

Extend Civil Society's Role in the Electoral Process

67. Civil society should play a more substantial role in civic and voter education, especially in rural areas and in regards to female participation. Civil society could increase awareness of the Code of Conduct with special emphasis on parts of the process that have traditionally been problematic, such as the role of *nazims* and local government officials.
68. Domestic observers should extend their observation coverage to include a greater number of polling stations and stronger coverage of the constituency aggregation process. Domestic observers should also focus on other parts of the process, such as voter registration and campaign finance.

Promote the Participation of Women

Women as Voters

69. NADRA should make special efforts to target women to register for a CNIC, since these are essential in order to vote, as well as for many other matters. Photographs should be included on all CNICs as an anti-fraud measure.
70. The ECP should take special measures to ensure that the proportion of men and women on the electoral roll is representative of their share of the electorate. If enumeration is used as the method of voter registration, the ECP should recruit and train female enumerators to facilitate women's registration, particularly in rural and conservative areas where male household leaders may be resistant to acknowledging the presence of female household members.
71. A civic education campaign should be undertaken targeting both women and men to explain why it is valuable for women to have an ID card, to register to vote and to go and vote. Civil society, the ECP, the Ministry of Women's Development (MoWD) and the political parties all have a role to play in this.
72. The ECP should ensure that there are enough female polling stations, that they are well-sited in accessible locations and that conditions within them are adequate.
73. Strong action should be taken by the ECP and state authorities against agreements that prohibit women from voting. ROPA should be amended to provide for tribunals to disqualify a returned candidate if there is evidence that the candidate or their election agent or any other person with their connivance participated in an agreement banning women from voting or standing as candidates.

Women as Candidates and in Elected Bodies

74. Programmes should be implemented to assist and train women candidates and elected representatives (following on from the Women's Political Schools run by the MoWD for local-level politicians) and to raise awareness among men and women in political parties.
75. Consideration should be given to changing the system for allocating reserved seats so that the women are directly elected (by both men and women) and have a constituency to respond to.²⁰⁶ Increasing the proportion of reserved seats to 33%, as in the local bodies, would increase women's chances of achieving a critical mass of women able to work on women's issues. Consideration could also be given to including a certain number of women in the committees in the Assemblies.
76. Political parties should give a certain proportion of their leadership and decision-making positions to women.

Women in the Election Administration

77. The ECP should adopt a gender policy and a senior person responsible for its implementation, with the aim of increasing women's participation in electoral processes and at all levels within the election administration.
78. The ECP should take special measures to provide more female staff at female polling stations, including through the provision of additional security and transport for female staff.
79. The ECP should maintain a gender-disaggregated database of election-related information. Such a database should include data on:
 - (i) The number and proportion of female registered voters by constituency, and a constituency level comparison with their share of the population.
 - (ii) Women's turnout by constituency.
 - (iii) The number and proportion of women candidates for general seats, by party affiliation/independent.
 - (iv) The gender breakdown of the ECP's own staff.

Promote the Participation of Non-Muslim Minorities

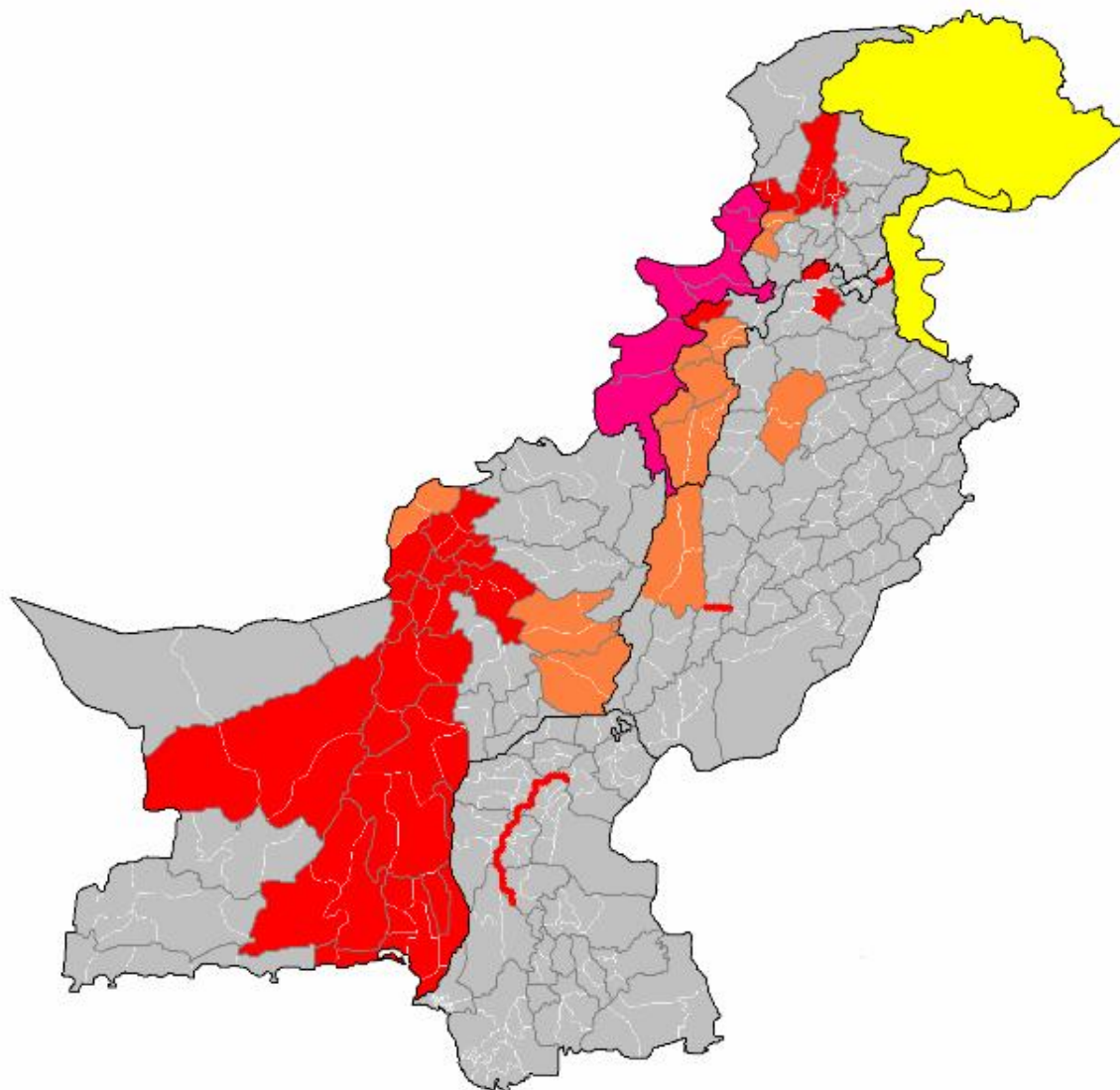
80. The separate list for Ahmadi voters should be abolished together with the requirement for Ahmadis to swear an oath concerning the finality of the Prophethood.
81. Efforts should be made to increase the number of people from religious minorities on the electoral roll and who turns out to vote, through civic education and awareness campaigns.
82. Consideration could be given to changing the system for allocating the reserved seats, so that they are directly elected and have a constituency to respond to. Political parties should include religious minority issues in their manifestos.

²⁰⁶ The various official Commissions on the Status of Women have recommended that between 20-33% of seats are reserved for women, and directly elected, with the 1997 Commission report setting out a number of possible methods of electing the women, pages 13-15.

Strengthening Commitment to Human Rights

83. Pakistan should consider further demonstrating its commitment to human rights by acceding to the United Nations' International Covenant on Civil and Political Rights.

ANNEX 1 – RESTRICTED/PROHIBITED AREAS - EU EOM PAKISTAN 2008



Restricted/Prohibited Areas

By UN / EU EOM

By MoFA

Plus 10 miles belt along
the border with India and
Afghanistan

Areas with no elections

By UN/ EU EOM with
no political parties
allowed (FATA)

XVI. ANNEX 2 – LIST OF ABBREVIATIONS

AJK	Azad Jammu and Kashmir
ANP	Awami National Party
APDM	All Parties Democratic Movement
ARD	Alliance for the Restoration of Democracy
BNP	Balochistan National Party
CEC	Chief Election Commissioner
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CNIC	Computerised National Identity Card
COAS	Chief of Army Staff
CPRW	Convention on the Political Rights of Women
DRO	District Returning Officer
ECP	Election Commission of Pakistan
EOM	Election Observation Mission
EU	European Union
FAFEN	Free and Fair Elections Network
FANA	Federally Administered Northern Areas
FATA	Federally Administered Tribal Areas
FER	Final Electoral Roll
FIR	First Information Report
GDI	Gender Development Index (UN)
GEM	Gender Empowerment Measure (UN)
HRCP	Human Rights Commission of Pakistan
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
JI	Jamaat-i-Islami
LFO	Legal Framework Order
LTO	Long-term observer
MEP	Member of the European Parliament
MMA	Muttahida Majlis-e-Amal
MoWD	Ministry of Women's Development
MQM	Muttahida Qaumi Mahaz
NA	National Assembly
NADRA	National Database and Registration Authority
NIC	National Identity Card

NP	National Party
NSC	National Security Council
NWFP	North West Frontier Province
PA	Provincial Assembly
PACREL	Pakistan Coalition for Free and Fair Democratic Elections
PBC	Pakistan Broadcasting Corporation
PCO	Provisional Constitutional Order
PEMRA	Pakistan Electronic Media Regulatory Authority
PILDAT	Pakistan Institute of Legislative Development and Transparency
PkMAP	Pakhtunkhwa Awami Milli Party
PML-Q	Pakistan Muslim League – Quaid-e-Azam
PPP	Pakistan Peoples Party
PPPP	Pakistan Peoples Party Parliamentarians
PTV	Pakistan Television Corporation
PVT	Parallel Vote Tabulation
RO	Returning Officer
ROPA	Representation of People Act 1976
SNEP	Support to National Elections in Pakistan
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNDP	United Nations Development Programme