

ELECTION COMMISSION OF PAKISTAN

Improving Election Dispute Resolution Mechanisms

PROJECT REPORT AND RECOMMENDATIONS

November 2009

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1. EXECUTIVE SUMMARY

A strong electoral system must be prepared to process complaints and disputes arising during elections through a fair, transparent and efficient process. A failure to rapidly and effectively resolve election complaints can lead to frustration by electoral participants and voters, which can undermine the legitimacy of elections and the elected government.

Our electoral laws permit multiple entry points for disputes and complaints filed during the pre-election campaign period and on polling day. Clear procedures for their resolution in some cases are not in place. It is essential that responsibility for receiving, investigating and resolving pre-election and polling day complaints should plainly be assigned, and the adjudicative process should be clarified and streamlined.

The Election Commission of Pakistan (ECP) recognizes these challenges for Pakistan's electoral structure and legal procedures. As part of an ongoing Electoral Disputes Resolution (EDR) Project, the ECP has most recently focused on the system for resolving complaints and disputes during the pre-election period and on polling day. This system deserved to be carefully examined and new means for election dispute resolution considered. The ECP established Working Groups in August 2009 to deliberate these issues and offer recommendations for improving mechanisms for resolution of pre-election and polling day complaints and disputes. A *National Conference on Election Dispute Resolution* was hosted by the ECP on October 28, 2009, to review the reports of the Working Groups. Conference attendees formed five Discussion Groups to assess the recommendations of the Working Groups and presented their views in plenary session.

This consultative process under the ECP's EDR Project has provided the ECP a strong basis for advancing proposals to reform the election dispute resolution structure in Pakistan. The ECP's EDR Reform Initiatives, as detailed in *Section 5*, recommend the following main steps forward for attaining an effective and fair election dispute resolution system:

1. After further feedback from Provincial Election Commissioners and final review by the ECP, the reorganization and revisions for Chapter VIII of the Representation of the People Act of 1976 (governing electoral offences) proposed by the Working Group on Legal Framework, should be submitted to the National Assembly for legislative consideration.
2. Establishment of District Complaints Committees (comprised of DRO/District and Sessions Judge, district election officials and representatives of police and district administration), as proposed by the Working Groups on Non-Criminal Complaint Adjudication and on

Administrative Process, subject to final review by the ECP, should be submitted to the National Assembly for legislative consideration.

3. Adoption of new regulatory and procedural requirements to improve the process and facilitate the use of District Complaints Committees, as recommended by the Working Groups on Non-Criminal Complaints Adjudication and on Administrative Process, should be submitted to the National Assembly for legislative consideration, if necessary, following further refinement and final review by the ECP.
4. After final review by the ECP, reorganization of the Code of Conduct for Political Parties and Contesting Candidates into criminal offences, non-criminal offences and advisory provisions, and statutory enactment of the Code, as proposed by the Working Group on Non-Criminal Complaint Adjudication, should be submitted to the National Assembly for legislative consideration.
5. Codes of Conduct for the news media, election observers and polling personnel, as proposed by the Working Group on Non-Criminal Complaint Adjudication, should be put before these electoral stakeholders for their feedback and inputs, with the objective of non-criminal provisions of such Codes being accepted and followed voluntarily by the stakeholders.

2. BACKGROUND

Since November 2007, the Election Commission of Pakistan (ECP) and the International Foundation for Electoral Systems (IFES) have been collaborating to improve and strengthen Pakistan's election complaints adjudication and dispute resolution systems. For General Elections in Pakistan in 2008, IFES provided technical assistance to the ECP on handling and processing of election complaints, including the production of a standardized complaints form and the development of a computer management system to track complaints. Following the elections, a comprehensive study of the dispute resolution mechanism for resolving challenges to election results by means of Election Tribunals was conducted.

Furthering this cooperation, the ECP and IFES held a conference on *Evolving Principles and Practices for Resolving Election Complaints: Pre-Poll and Polling Day* on April 5-6, 2009. Attendees included officials from the ECP Secretariat, provincial and district offices and select district and sessions court judges who had previous experience of serving as District Returning Officers and Returning Officers

during the election. This conference identified many shortcomings in the process for the handling of pre-poll and polling day complaints. The conference raised awareness and encouraged discussions among concerned stakeholders about how to streamline and standardize adjudication processes. A consensus emerged among participants that election disputes resolution during the pre-election period and on polling day needed reform.

Under our legal structure, as noted, a temporary Election Tribunal is established for challenges to vote outcomes after election results are announced. At the beginning of the election process, appeals of determinations by Returning Officers in accepting or rejecting candidate nomination papers are handled through Appellate Tribunals. These mechanisms are already established for disputes arising during those two phases at the two ends of the election process.

However, under the existing system, there is a lack of clear procedures for resolution of election complaints filed during the pre-election campaign period and on polling day, particularly for allegations that do not constitute serious criminal violations. The system offers alternative procedures and multiple entry points for filing complaints during those stages. Responsibility for receiving, investigating and resolving pre-election complaints seems unclear and widely dispersed. Few complaints are resolved, including those related to criminal behavior. Many election-related complaints and disputes get lost in the bureaucracy or are decided long after the elections are over. The Election Commission of Pakistan (ECP) and other officials are often unfairly blamed for the outcomes under an inherently flawed system.

Therefore, the ECP commenced another stage of work in Electoral Disputes Resolution (EDR), as described in this report. The goals of this phase of the Project were to make certain the present system would receive thorough scrutiny, and proposals for reforms to relevant laws and new mechanisms for election dispute resolution would be considered.

The Election Commission of Pakistan (ECP) is determined that the election process in Pakistan will be democratic and efficient at every stage. Election-related complaints and disputes resolution is a critical part of the election process. Success in EDR legal policy-making and implementation will insure the election outcomes are respected as legitimate by our citizens and by the entire world.

3. ACTIVITIES

The consultative process for the ECP's Electoral Disputes Resolution (EDR) Project was implemented through two major undertakings:

3.1 WORKING GROUPS

In August, the ECP established three Working Groups, composed of ECP officials, current and retired judges and other legal experts (members of the Working Groups are identified in each Group's Final Report [See: Appendices I, II & III]). They were assigned specific legal and administrative policy issues related to resolving election complaints and disputes:

- Working Group on Legal Framework
- Working Group on Non-Criminal Complaint Adjudication
- Working Group on Administrative Process

Each of the Groups met three times during August and September to discuss the issues within their respective areas of legal policy and to develop recommendations for improvements to Pakistan's election dispute resolution system. With the assistance of IFES, the Working Groups were provided background papers and international comparative information to assist their deliberations. These series of meetings demonstrated a focused effort by each of the Working Groups, involving vigorous discussions and creative thinking, as reflected in their Final Reports.

3.2 NATIONAL CONFERENCE ON ELECTION DISPUTE RESOLUTION

The ECP hosted a national *Conference on Election Dispute Resolution* on October 28, 2009, in Islamabad. The Working Groups' Final Reports were presented to an audience of stakeholders, including members of the National Assembly and representatives of political parties (See: List of Conference Attendees, Appendix IV). Participants formed five Discussion Groups to assess the analysis and recommendations of the Working Groups. The Discussion Groups then submitted their evaluations and suggestions through presentations to Conference attendees in plenary session.

4. REVIEW OF EDR PROJECT'S DELIBERATIONS

4.1. WORKING GROUP ON LEGAL FRAMEWORK

4.1.1. Mandate, Report and Recommendations

Current legal framework regarding electoral offences, penalties for such offences and procedures for adjudication of complaints and disputes about these offences is most directly set forth in *Chapter VIII of the Representation of the People Act of 1976*. The Working Group on Legal Framework (WG1) was tasked with reviewing *Chapter VIII* with respect to:

1. Structure of the Chapter and organization of its sections;
2. Sufficiency and clarity of the substantive language of the provisions;

3. Appropriateness of penalties; and
4. Adequacy of procedures for receiving and adjudicating complaints.

WG1 examined every provision of *Chapter VIII* thoroughly. The main results of WG1's deliberations were: to reorganize sections of *Chapter VIII* regarding electoral offences to group and distinguish 'corrupt practices' from 'illegal practices'; to consolidate procedural provisions into one area; to adjust penalties for the commission of electoral offences; and, to recommend effective and fair methods for addressing election-related complaints, disputes and grievances.

WG1's reorganization of *Chapter VIII* involved restructuring its sequence of sections into a more coherent and logically flowing whole. WG1 amalgamated sections, inserted new sections (one for crimes committed at polling stations) and redrafted sections to provide greater sufficiency and clarity. The new organization yielded a rational progression of sections: Corrupt Practices (Sections 78 to 84); Illegal Practices (Sections 85 to 90); Breach of Official Duties (Sections 91 to 95); and, Miscellaneous/Procedural (Sections 96 to 98).

Thus, WG1's product could stand alone as a legislative proposal for incrementally improving the legal structure of current electoral law regarding criminal violations within the current system of electoral complaint and dispute resolution. More significantly, WG1's revised *Chapter VIII* provides an enhanced legal foundation upon which new legislative reforms in election complaint and dispute resolution mechanisms may be properly placed.

WG1 devoted considerable attention to rationalization of penalties under *Chapter VIII*. Some offences presently labeled 'corrupt practices' were viewed to be not so severe in nature and better termed simply 'illegal practices' or 'procedural irregularities'. In adjusting penalties, WG1 considered some punishments stipulated under *Chapter VIII* to be disproportionately harsh in comparison to the seriousness of the offence or culpability of the violator (mistake, negligence, etc.).

The Working Group on Legal Framework also provided guidance on respecting fundamental values for efficient and fair election complaint and dispute resolution systems, including the need for: specifying clear and adequate legal authority in electoral laws; establishing effective enforcement mechanisms; ensuring prompt dispute resolution; facilitating a peaceful environment conducive to resolving disputes; and, maintaining fairness and transparency throughout the process. These qualities were deemed essential for guaranteeing the legitimacy of election results.

4.1.2. Response from Conference Discussion Groups

The organizational and technical improvements to *Chapter VIII* proposed by WG1 were widely appreciated by the Conference Discussion Groups (CDGs). The CDGs acknowledged the value of the chapter's reorganization. Most CDGs recognized the distinction between 'corrupt practices' and 'illegal practices', although two were unclear as to the difference in terminology. Final legislative drafting may require further clarification of these two categories of electoral offences.

Similarly, the CDGs generally concurred with WG1's adjustments to punishments and penalties, with a few disagreements. The topic of penalties will always be subject to differences of opinion about the precise measure of deserved severity. It can be anticipated that this area will generate further debate during legislative consideration of revisions and reforms.

The subject of 'non-criminal offences' and administrative processes (rather than criminal proceedings) for such offences was briefly addressed by the CDGs with respect to WG1's recommendations. However, the CDGs indicated discomfort with either approach in the context of *Chapter VIII*, preferring instead to simply recognize variation in the seriousness of criminal offences and penalties appropriate thereto. The topic was revisited in assessing reports of the other Working Groups.

Lastly, the CDGs uniformly agreed that the provisions of *Chapter VIII* granting broad authority to the ECP to enforce its provisions, including the power to authorize public officers to act as magistrates in cases of election violations, should be retained and strongly utilized by the ECP.

4.2. WORKING GROUP ON NON-CRIMINAL COMPLAINTS ADJUDICATION

4.2.1. Mandate, Report and Recommendations

The primary responsibilities of the Working Group on Non-Criminal Complaints Adjudication (WG2) were to:

1. Identify types of conduct affecting the fairness or integrity of the electoral process during the pre-election period and on polling day that should be recognized as non-criminal violations of the electoral law (violations not covered under *Chapter VIII of the Representation of the People Act of 1976* and not deserving of severe criminal punishment), and propose appropriate punishments for these non-criminal violations of the electoral law;

2. Review the ECP's Code of Conduct for Political Parties and Contesting Candidates, particularly with regard to the Code's mix of criminal violations, non-criminal violations and advisory provisions, and enforcement thereof;
3. Propose Codes of Conduct for other stakeholders in the electoral process; and
4. Determine a legal basis and implementation strategies for recognizing and processing non-criminal violations of the electoral laws during the pre-election period and on polling day, including to identify the correct institutional 'point of entry' for filing complaints and initiating investigations.

The report of WG2 appropriately noted the difficulty of distinguishing among electoral offences as to whether they should be classified as criminal or non-criminal. WG2 also observed caution in widening the sphere of election-related 'misconduct' that should be viewed as electoral offences. Nevertheless, WG2 was able to identify 12 types of pre-poll conduct and 6 types of polling day conduct for which non-criminal complaints could be filed.

WG2 also divided the Code of Conduct for Political Parties and Contesting Candidates, routinely issued by the ECP, into two parts. Punishments for criminal offences are prescribed in *Chapter VIII of the Representation of the Peoples Act, 1976*. WG2 recommended suitable punishments for misconduct (non-criminal violations) prohibited by the Code but not punishable under *Chapter VIII*.

WG2 devoted extensive effort to developing Codes of Conduct for other stakeholders (in addition to political parties and candidates) in the electoral process: observers, polling personnel and media. (See: Annexure B, C and D to WG2's report.) As discussed later, these proposals were well received by Conference Discussion Groups, and are ready for inputs by the stakeholders involved.

The report of WG2 examined the widely-recognized problems of dispersal of authority and of failures to follow through by various election and non-election officials under current process for resolution of complaints and disputes during the pre-election period and on polling day. WG2 realized the interconnection between improved procedures and the question of 'point of entry' for election-related complaints and disputes. Their solution was to recommend establishing of 'District Complaints Committees' (DCC) for lodging and disposing of complaints and disputes in a more expeditious manner.

WG2 suggested that DCCs be composed of the District Returning Officer, Returning Officer (RO) of the constituency, the District Coordination Officer (DCO), the Assistant Election Commissioner (AEC)

and the District Police Officer (DPO). WG2 also recommended that the DCCs be granted the powers provided in the Civil Procedure Code and Criminal Procedure Code to summon persons and subpoena documents in order to properly investigate and adjudicate these matters. The jurisdiction and powers of DCCs would be determined and authorized by the Election Commission of Pakistan. Based on the premise of District Complaints Committees being established, WG2 then outlined key procedures that should be followed for receiving and resolving complaints and disputes, including a recommendation that a deadline of three days be imposed on DCCs to resolve cases.

The proposal by the Working Group on Non-Criminal Complaints Adjudication for establishing the District Complaints Committees necessarily overlaps the subject area and recommendations of the Working Group on Administrative Process, which was anticipated. As discussed later, the approaches of the two Working Groups to this concept are remarkably similar, and reflect a consensus that improving mechanisms for resolving election-related complaints inevitably requires not only new procedures but a new entity, under the jurisdiction of the ECP, to serve as the 'point of entry' and to implement the procedures.

4.2.2. Response from Conference Discussion Groups

The Conference Discussion Groups (CDGs) mostly agreed in principle that categorizing of electoral misconduct by Working Group 2 into criminal offences and non-criminal offences was a useful method for separating serious offences that threaten the integrity of the election process (or involve violence) from less serious offences. One CDG objected to this approach, and specifically to the reclassification of several of the offences as non-criminal, preferring instead to maintain electoral offences within the framework and penalties of *Chapter VIII of the Representation of the People Act of 1976*.

The response of the CDGs to the proposed concept of 'political sanctions' as a valuable or effective penalty for misconduct by political parties or candidates (e.g., permanent or temporary suspension of the right to campaign, revocation of candidate nomination, withdrawal of certification of political party, etc.) was almost universally negative. The CDGs generally believed these types of sanctions could be sought without justification for political advantage and would be perceived by the public as adversely affecting the impartiality of the election process.

The CDGs agreed with the recommendation of WG2 to form District Complaints Committees (DCC) as the 'point of entry' and starting point for investigating pre-election and polling day complaints and disputes. One group specifically preferred this name for the entity instead of the Complaints Enquiry Committees put forward by the Working Group on Administrative Process, as the 'CEC'

acronym would be too confusing in a system headed by the Chief Election Commissioner. Two CDGs took issue with the proposed membership of the DCCs: one suggested that the committees be presided over by district and sessions judges; another objected to the inclusion of the District Coordination Officer (DCO) and the District Police Officer (DPO) on the DCCs. The question of composition of these types of district level entities will likely generate a variety of views. Also, one CDG recommended the complaints committee concept be extended down to the tehsil level.

The CDGs expressed strong approval for more robust enforcement or assertion of the Code of Conduct for Political Parties and Contesting Candidates, generally supporting WG2's division of the Code into criminal violations, non-criminal violations and advisory provisions. The CDGs were also in agreement with WG2's proposals for Codes of Conduct for observers, polling personnel and media.

4.3. WORKING GROUP ON ADMINISTRATIVE PROCESS

4.3.1. Mandate, Report and Recommendations

The Working Group on Administrative Process (WG3) pursued the following mandate:

1. To propose a system for processing and resolving disputes and complaints during the pre-election period and on polling day;
2. To determine a Point of Entry for election related complaints; and
3. To devise mechanisms and procedures for resolving complaints and disputes alleging non-criminal violations of the electoral laws during the pre-poll period and on Election Day.

WG3 first classified types of complaints that are received by the ECP during the pre-poll period and on polling day into categories. WG3 examined the current practices for receiving and resolving pre-election and polling day complaints, and observed these practices cause confusion about who should receive complaints and disputes and how these matters should be decided. WG3 concluded that an improved system must: 1) specify the 'point of entry' for all electoral complaints received during the pre-poll period and on polling day, and 2) devise procedures for disposing of complaints that are simple, prompt, transparent, credible and implementable within the brief time available. Based on these principles, WG3 recommended several revisions to current administrative structures:

- Two entry points should be determined for lodging pre-election and polling day complaints: a Complaints Enquiry Committee (CEC) at the district level and the Election Commission Secretariat, Islamabad. Complaints received by other authorities or Officers should be forwarded to either specified entry point.
- The Complaints Enquiry Committee should –
 - Work at the district level with the District Returning Officer (DRO) serving as Chairman, a representative of the Assistant Election Commissioner serving as Secretary, and representatives of the District Administration, District Police to serve as members;
 - Have its powers and jurisdiction clearly defined by the ECP, and held responsible to the ECP;
 - Be entrusted by the ECP with legal/administrative powers while dealing with complaints of a non-criminal nature; all the necessary powers regarding summary trial, summoning the accused, making spot enquiries and hearing the parties to be assigned to CECs;
 - Be granted authority to make final decisions on all complaints and disputes brought to it, except for matters of a criminal nature, which shall be referred to Police; CECs should not take more than three days for resolution of a complaint or dispute;

- Be enabled to take *suo moto* notice of any electoral offences occurring within its jurisdiction and adjudicate such matters.

Further, WG3 recommended the following new procedural requirements:

- Proceedings of CECs shall be deemed as judicial proceedings within the meaning of the Pakistan Penal Code and the Code of Civil Procedure with regard to compelling presence of persons or evidence;
- CECs should submit a daily progress report regarding disposition of complaints to the ECP, and also release the report to the media and general public;
- CECs should be empowered to issue written notice for persons to appear before it and give evidence under oath or to produce any document or object under such person's control;
- CECs shall convey their decisions to both complainants and the accused;
- District Police and District Administration shall be responsible for the implementation of an order of a CEC;
- Complaint may be filed on plain paper, but must contain description of all substantial facts and relevant documents; complaint must be accompanied by a copy of the complainant's CNIC and an affidavit attested by an Oath Commissioner saying contents of complaint are true;
- No action shall be taken on anonymous complaints;
- Complainants bringing frivolous complaints may be fined up to thirty thousand rupees by the CEC.

4.3.2. Response from Conference Discussion Groups

The Conference Discussion Groups (CDGs) raised no objections to the recommendation of WG3 that both a district level complaints body and the Secretariat of the ECP serve as 'points of entry' for complaints and disputes during the pre-election period and on polling day. Unsurprisingly, the CDGs drew comparisons between the District Complaints Committees recommended by WG2 and the Complaints Enquiry Committees proposed by WG3. Many groups reiterated their comments about the name (preferring the acronym of DCC over CEC) and raising the same suggestions or objections regarding the composition of these committees (as described previously in this report). A new concern was raised about independence of district complaints committees, whose members are largely drawn from local government and election officials, in circumstances where a complaint was against persons holding those offices; it was suggested such cases be referred directly to the ECP.

The CDGs were in widespread agreement with the proposals of WG3 for revising administrative structures and procedures to facilitate implementation of district complaints committees. Both the degree of authority and the processes for operation of these committees as proposed by WG3 were praised, or at least accepted, by the CDGs. One CDG encouraged utilization of newer technologies for the submission of complaints and development of revised software to track and to publicize the disposition of complaints from district complaints committees.

All CDGs favored expedited procedures for review of complaints filed on and related to polling day (in addition to existing magistrate authority of Presiding Officers within the polling site); some called for district complaints committees to “immediately” or “summarily” decide polling day complaints.

The CDGs favored punishments for those who submit frivolous complaints. But the CDGs were generally unwilling to allow a district complaints committee wide discretion in filtering out frivolous or unsubstantiated complaints or to diminish the opportunity and rights of all complainants to a full hearing of their grievances. However, one CDG advocated not permitting complainants any further chances if they have already filed a complaint but did not sufficiently prove its merit.

5. ECP’S EDR REFORM INITIATIVES

The ECP’s renewed EDR Project yielded practical results. The Working Groups fulfilled their mandates. Their reports and recommendations, as evaluated and augmented by the deliberations of the Discussion Groups of the *Conference on Election Dispute Resolution*, provide a firm foundation for EDR Reform Initiatives to improve election dispute resolution mechanisms in Pakistan. The following are recommended for public scrutiny and legislative consideration:

5.1. Revising Current Legal Structure

The Working Group on Legal Framework carefully examined the provisions of *Chapter VIII of the Representation of the People Act of 1976* (governing electoral offences). WG1 recommended substantial reorganization of *Chapter VIII*: grouping electoral offences into categories of ‘corrupt practices’ and ‘illegal practices’; consolidating procedural provisions into one area; and restructuring the order of the provisions into a more logical sequence. WG1 revised and rewrote many sections of *Chapter VIII* to make them more clear and coherent. WG1 also recommended adjusting penalties and punishments for several offences to be more reasonable and proportionate to the seriousness of the offence and the culpability of the offender. (Conference Discussion Groups voiced almost universal objections to the use of ‘political sanctions’ against political parties and candidates,

however.) After further feedback from Provincial Election Commissioners and final review by the Election Commission, **final recommendations regarding proposed reorganization and revisions for Chapter VIII will be submitted to the National Assembly for legislative consideration.**

5.6 Establishing District Complaints Committees

Both the Working Groups on Non-Criminal Complaints Adjudication and on Administrative Process proposed district-level complaints committees; CDGs favored 'District Complaints Committee (DCC)' rather than 'Complaint Enquiries Committee (CEC)'. Both WG2 and WG3 proposed that district complaint committees be composed of district election officials and a police representative, but disagreed somewhat about specific personnel (as did opinions voiced by CDGs). The composition of these proposed entities will inevitably be sensitive in nature and require further ECP consideration. Nevertheless, the idea of establishing district-level complaints committees as a new mechanism to streamline adjudication of complaints and disputes is an innovative and valuable proposal. Such committees would serve as the 'point of entry' for complaints and disputes during the pre-election period and polling day (along with the ECP itself), and possess the judicial authority to initiate and conduct investigations, including powers to require submission of persons and documents and other evidence, and to render final decisions on non-criminal matters. Election Commission has already recommended amendment in the law enabling it to constitute "Complaints Enquiry Committee" or Committees. Subject to further modification and final review by the Election Commission, **the proposal for establishment of District Complaints Committees will be materialized.**

5.6 Improving Regulatory Procedures

The Working Groups on Non-Criminal Complaints Adjudication and on Administrative Process offered extensive recommendations for implementing regulations that would provide for adoption of procedural requirements to improve the process for resolving complaints and disputes during the pre-election period and on polling day, and to facilitate the use of District Complaints Committees. These proposed regulations involve significant legal issues, including the operations and powers of the District Complaints Committees (which would be ultimately determined and conferred by the ECP), the process for hearings of complaints and the form and sufficiency of complaints submitted. The Working Groups' proposals are an excellent starting point for finalizing complicated regulations in this area. Subject to further inputs by election officials, and to refinements and final review by the

ECP, the ECP will formulate proposals for new procedural requirements to improve the process for resolutions of complaints and disputes, and to facilitate the use of District Complaints Committees and will submit to the National Assembly for legislative consideration, if so required..

5.6 Strengthening Code of Conduct for Political Parties and Contesting Candidates

The Working Group on Non-Criminal Complaints Adjudication proposed reorganizing the Code of Conduct for Political Parties and Contesting Candidates into categories of criminal offences, non-criminal offences (with recommended penalties) and advisory provisions; WG2 also proposed statutory enactment of the Code to make it enforceable. This proposal would provide the ECP a means for making the Code more easily understood by the stakeholders and more compulsory. Subject to final review by the ECP, **the ECP will implement proposed reforms of the Code of Conduct for Political Parties and Contesting Candidates and submit to the National Assembly for legislative consideration, if so warranted.**

5.6 Adopting Codes of Conducts for Electoral Stakeholders

The Working Group on Non-Criminal Complaint Adjudication proposed well-considered Codes of Conduct for the news media, election observers and polling personnel. The expectation for the non-criminal provisions of these Codes was for the enunciated standards to be accepted and followed voluntarily by the stakeholders. The stakeholders involved will likely have strong opinions about the suggested Codes of Conduct. Subject to further review by the ECP, **the proposed Codes of Conduct for the news media, election observers and polling personnel should be put before these electoral stakeholders for their feedback and inputs.**

5.6 Conclusion

The recommendations of the ECP regarding resolution of complaints and disputes during the pre-election period and on polling day are one important component of the ECP's commitment to pursuing reforms in the electoral process of Pakistan. Progress in advancing effective, transparent and fair practices in election administration – whether in advanced or developing democracies – requires ongoing self-reflection, creativity and dedication. The

completion of this most recent element of the ECP's Electoral Disputes Resolution (EDR) Project is an example of such progress.

Appendix I: Report of Working Group on Legal Frame Work



**OF WORKING GROUP
ON LEGAL FRAMEWORK**

Election Commission of Pakistan

October 2009

Report on Working Group on Legal Framework

Introduction

Traditionally elections in the Sub-Continent are noisy and hotly contested affair. Sometimes over enthusiasm of candidates and their supporters results in violence and electoral malpractices. Thus it becomes inevitable that Election Management Bodies are equipped with adequate legal authority and an effective enforcement mechanism to cope with electoral offences and to ensure that elections are held in peaceful and conducive environment in a fair and transparent manner.

In our current legal framework regarding electoral offences, penalties for such offences and procedures for adjudication of complaints and disputes about these offences is most directly set forth in *Chapter VIII of The Representation of the People Act of 1976*. But its effective implementation has always been a major concern for Election Commission and other stake holders. A swift and prompt dispute resolution mechanism is one of the pre-requisites for an efficient and credible election system. Therefore critique and review of existing legal framework and enforcement mechanism has become imperative in order to provide an efficient and credible election dispute resolution system.

Mandate

The Working Group on Legal Framework was tasked with reviewing Chapter VIII of the Representation of the People Act, 1976 with respect to:

5. Structure of the Chapter and organization of its sections;
6. Sufficiency and clarity of the substantive language of the provisions;
7. Appropriateness of penalties; and
8. Adequacy of procedures for receiving and adjudicating complaints.

The Group

The members of the Working Group on Legal Framework:

1. Mr. Attaullah Bangash, Senior Joint Secretary,
Ministry of Law & Justice, Islamabad **(Chairman)**
2. Syed Sher Afgan, Joint Secretary(Elections)
Election Commission Secretariat, Islamabad. **(Deputy Chairman)**
3. Sh. Muhammad Nawaz, Section Officer (Law)
Election Commission Secretariat, Islamabad
4. Mr. Muhammad Saleem Uppal, Retired Addl. District & Sessions Judge,
Gujranwala
5. Mr. Atta-ur-Rehman, Assistant Election Commissioner,
Provincial Election Commissioner's Office, Karachi
6. Rana Muhammad Aslam Khan, Assistant Election Commissioner
Provincial Election Commissioner's Office, Lahore.



Proceedings

The Working Group on Legal Framework met on August 21st, September 1st and September 30th to fulfill its mandate and recommend improvements to *Chapter VIII of the Representation of the People Act of 1976*. The primary result of the Group's deliberations was to reorganize sections regarding offences under the categories of 'corrupt practices' and 'illegal practices', to consolidate procedural provisions into one area, and to adjust penalties for committing electoral offences. The Group deliberated upon each and every section in the Chapter minutely. It was considered that clubbing of offences constituting "corrupt practices", "illegal practices" and procedural irregularities will be of great advantage. The Working Group also considered that some of offences now termed as corrupt practice are not so severe in nature and, therefore, can be treated as illegal practices. Some of the punishments prescribed for electoral offences under Chapter VIII were considered as inappropriate with reference to severity or otherwise of the offence and were accordingly reviewed.

Reconstruction of Chapter VIII

The full version of the reconstruction and revising of Chapter VIII by the Working Group on Legal Framework is as follows –

The Representation of the People Act, 1976

Chapter VIII -Offence, Penalty And Procedure

78. Corrupt Practice. A person is guilty of corrupt practice if he-

1. Is guilty of bribery, personation, undue influence **or capturing of polling station or polling booths;**
2. Contravenes the provisions of section **49.**

3. **Submits false or incorrect declaration or statement under sub- section (2) of section 12.**
4. **Makes or publishes a false statement-**
 - a) **Concerning the personal character of a candidate or any of his relation calculated to adversely affect the election of such candidate or for the purpose of promoting or procuring the election of another candidate, unless he proves that he had reasonable grounds for believing, and did believe, the statement to be true;**
 - b) **Relating to the symbol of a candidate whether or not such symbol has been allocated to such candidate; or**
 - c) **Regarding the withdrawal of a candidate;**
 - d) **In respect of assets and liabilities or any liability with regard to loans under sub- section (2) of section 12.**
5. Calls upon or persuades any person to vote, or to refrain from voting, for any candidate on the ground that he belongs to a particular religion, province, community, race, caste, bradari, sect or tribe;
6. Causes or attempts to cause any person present and waiting to vote at the polling station to depart without voting.

79. Bribery. A person is guilty of bribery, if he, directly or indirectly, by himself or by any other person on his behalf-

1. Receives or agrees to receive or contracts for any gratification for voting or refraining from voting, or for being or refraining from being a candidate at, or for withdrawing from an election;
2. Gives, offers or promises any gratification to any person ---
 - a. for the purpose of inducing---
 - i) a person to be, or to refrain from being, a candidate at an election;
 - ii) an elector to vote, or refrain from voting, at an election; or
 - iii) a candidate to withdraw from an election; or
 - b. for the purpose of rewarding ---
 - i) A person for having been, or for having refrained from being, a candidate at an election;

- ii) An elector for having voted or refrained from voting at an election; or
- iii) A candidate for having withdrawn from an election.

Explanation. In this section, “gratification” includes a gratification in money or estimable in money and all forms of entertainment or employment.

80. Personation. A person is guilty of personation, if he votes, or applies for a ballot paper for voting, as some other person whether that other person is living or dead or fictitious.

81. Undue influence. A person is guilty of undue influence, if he -

1. in order to induce or compel any person to vote or refrain from voting, or to offer himself as a candidate, or to withdraw his candidature, at an election, directly or indirectly, by himself or by any other person on his behalf ---
 - (a) makes or threatens to make use of any force, violence or restraint;
 - (b) inflicts or threatens to inflict any injury, damage, harm or loss;
 - (c) calls down or threatens to call down divine displeasure or the displeasure or disapprobation of any saint or pir;
 - (d) gives or threatens to give any religious sentence;
 - (e) uses any official influence or governmental patronage; or
 - (f) maligns the Armed Forces of Pakistan.
2. on account of any person having voted or refrained from voting, or having offered himself as candidate or having withdrawn his candidature, does any of the specified in clause (1); or
3. directly or indirectly, by himself or by any other person on his behalf, ---
 - (a) uses any place of religious worship, or any place reserved for the performance of religious rites, for the purpose of convincing for votes or

for persuading electors to vote, or not to vote, at an election or for a particular candidate; or

- (b) for any of the purposes specified in sub-clause (a), by words, spoken or written, or by signs or visible representation, publishes any thing or does any act prejudicial to the glory of Islam or integrity, security or defence of Pakistan or any part thereof; or

4. by abduction, duress or any fraudulent device or contrivance, ---

- (a) impedes or prevents the free exercise or the franchise by an elector, or
- (b) compels, induces or prevails upon any elector to vote or refrain from voting.

Explanation: - In this section, "harm" includes social ostracism or ex-communication or expulsion from any cast or community.

82. Capturing of polling station or polling booth etc. – A person is guilty of capturing of polling station or polling booth if he-

- (a) seizes a polling station or a place fixed for the poll or makes polling authorities surrender the ballot papers or ballot box or both and doing of any other act which affects the orderly conduct of elections;
- (b) takes possession of a polling station or a place fixed for the poll and allows his supporters to exercise their right to vote and prevent others from free exercise of their right to vote;
- (c) coerces, intimidates or threatens directly or indirectly any elector and prevents him from going to the polling station or a place fixed for the poll to cast his vote; or

- (d) being in the service of Government or corporations or institutions controlled by the Government commits all or any of the aforesaid activities or aids or connives at, any such activity in the furtherance of the prospects of the election of a candidate,

83. Tampering with papers.-(1) A person is guilty of corrupt practice if he:-

- (a) Intentionally defaces or destroys any nomination paper, ballot paper or official mark on a ballot paper;
- (b) Intentionally takes out of the polling station any ballot paper or puts into any ballot box any ballot paper other than the ballot paper he is authorized by law to put in;
- (c) without due authority,-
 - i. supplies any ballot paper to any person;
 - ii. destroys, takes, opens or otherwise interferes with any ballot box or packet of ballot papers in use for the purpose of election; or
 - iii. Breaks any seal affixed in accordance with the provisions of this Act or the rules;
- (d) Forges any ballot paper or official mark; or
- (e) Causes any delay or interruption in the beginning, conduct or completion of the procedure required to be immediately carried out on the close of the poll.

(2) A Returning Officer, Assistant Returning Officer, Presiding Officer, Assistant Presiding Officer, Polling Officer or any other Officer or clerk on duty in connection with the election who is guilty of an offence under sub-section (1) shall be punishable with imprisonment for a term which may extend to six months and with fine which may extend to one hundred thousand rupees or with both.

84. Penalty for corrupt practice:- (1) Any person guilty of an offence under sections 78, 79, 80, 81, 82 or 83(1) shall be punishable with imprisonment for a term ***which may extend to one year and shall not be less than six months and also with fine which may extend to ten hundred thousand rupees and shall not be less than one hundred thousand rupees.***

(2) ***The Commission or the Commissioner shall direct the Returning Officer or his successor in office or an authorized officer to initiate proceedings in the court of Sessions Judge against person who contravened the provisions of section 49 or failed to comply with the provisions of section 50.***

Provided that, such proceedings shall not be initiated on the expiry of period of one year from the date of publication of the names of returned candidates in the official gazette.

85. Illegal practice A person is guilty of illegal practice if he,-

- (a) fails to comply with the provisions of section 50;
- (b) obtains or procures, or attempts to obtain or procure, the assistance of any person in the service of Pakistan to further or hinder the election of a candidate;
- (c) votes or applies for a ballot paper for voting at an election knowing that he is not qualified for, or is disqualified from, voting;
- (d) votes or applies for a ballot paper for voting more than once in the same polling station;
- (e) Votes or applies for a ballot paper for voting in more than one polling station for the same election;
- (f) removes a ballot paper from a polling station during the poll; or
- (g) ***affixes posters, hoardings or banners larger than the sizes prescribed by the Commission;***

Provided that such posters, hoardings or banners shall not be affixed nor parties flags shall be hoisted on any public property or at any public place,

except with the permission in writing from, and on payment of such fee or charges as may be chargeable by, the concerned local government or authorities.

(h) *makes wall-chalking in any form as part of an election campaign; or*

(i) *uses loudspeakers for election campaign except at the election meetings.*

Provided that the District Administration, the District Returning Officer and the Returning Officer shall be responsible for taking preventive measures and effective implementation of aforesaid sub-clauses (g), (h), and (i).

(j) knowingly induces or procures any person to do any of the aforesaid acts

86. *Adversely affecting the interests of candidate.- A person is guilty of an offence of illegal practice if he, as a proposer or seconder, or in a fictitious name as a proposer or seconder, willfully does any act which he is prohibited by law from doing, or omits to do any act which he is required by law to do, or makes any entry in a nomination form which is not correct, or subscribes to a nomination form a signature which is not genuine, and thereby adversely affects the interests of any person as candidate.*

87. *Prohibition of public meetings during certain period and canvassing in or near polling station.* A person is guilty of illegal practice if he,

(a) convenes, holds or attends any public meeting, and promotes or joins in any procession, within the area of any constituency during a period of forty-eight

hours ending at midnight following the conclusion of the poll for any election in that constituency;

(b) on the polling day, within a radius of four hundred yards of the polling station;

- i. Canvasses for votes;
- ii. Solicits the vote of any elector;
- iii. Persuades any elector not to vote at the election or for a particular candidate; or
- iv. Exhibits, except with the permission of the Returning Officer and at a place reserved for the candidate or his election agent beyond the radius of one hundred yards of the polling station, any notice, sign, banner or flag designed to encourage the elect to vote or discourage the elector from voting, for any contesting candidate.

88. *Disorderly conduct near polling station. A person is guilty of illegal practice, if he, on the polling day-*

(a) uses, in such manner as to be audible within the polling station, any gramophone, megaphone, loudspeaker or other apparatus for reproducing or amplifying sounds;

(b) persistently shouts in such manner as to be audible within the polling station;

(c) ***does any act which---***

- i. ***disturbs or causes annoyance to any elector visiting a polling station for the purpose of voting; or***
- ii. ***interferes with performance of the duty of a Presiding Officer, Assistant Presiding Officer, Polling Officer or any person on duty at a polling station; or***

(d) abets the doing of any of the aforesaid acts.

89. *Interference with the secrecy of voting. A person is guilty of illegal practice if he,-*

(a) interferes or attempts to interfere with an elector when he records his vote;

- (b) in any manner obtains or attempts to obtain in a polling station information as to the candidate for whom an elector is about to vote or has voted; or
- (c) communicates at any time any information obtained in a polling station as to the candidate for whom an elector is about to vote or has voted;
- (d) ***takes or attempts to take a photo of the marked ballot paper by using cell phone camera or any other device for purpose to interfere with the secrecy of vote.***

90. *Penalty for illegal practice. Any person guilty of an offence under sections 85, 86, 87, 88 and 89 shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to one hundred thousands rupees, or with both.*

91. *Breaches of official duty in connection with election.- A Returning Officer, Assistant Returning Officer, Presiding Officer, Assistant Presiding Officer, Polling Officer or any other officer or clerk or any person employed by any such officer in connection with his official duties imposed by or under this Act, is guilty of breach of official duty in connection with election if he-*

- (a) ***tampers with papers;***
- (b) ***fails to maintain secrecy;***
- (c) ***influences voters;***
- (d) ***misuses his official position; or***
- (e) ***does or abets to do any act which is prohibited under this Act.***

92. *Failure to maintain secrecy.* A Returning Officer, Assistant Returning Officer, Presiding Officer, Assistant Presiding Officer, or polling officer, or any candidate, election agent or polling agent attending a polling station or any person attending at the counting of votes is guilty of breach of official duty, if he,-

- (a) fails to maintain or aid in maintaining the secrecy of voting;

- (b) communicates, except for any purpose authorised by any law to any person before the poll is closed any information as to the official marks; or
- (c) communicates any information obtained at the counting of votes as to the candidate for whom any vote is given by any particular ballot paper.

93. Officials not to influence voters.-A Returning Officer, Assistant Returning Officer, Presiding Officer, Assistant Presiding Officer, Polling Officer or any other officer or clerk performing a duty in connection with an election, or any member of a police force, is guilty of breach of official duty in connection with election, if he, in the conduct or management of an election or maintenance of order at a polling station,-

- (a) persuades any person to give his vote;
- (b) dissuades any person from giving his vote;
- (c) influences in any manner the voting of any person; or
- (d) does any other act calculated to influence the result of the election.

94. Assistance by Government servant.-A person in the service of Pakistan is guilty of breach of duty in connection with election, if he misuses his official position in a manner calculated to influence the results of the election.

95. Penalty for Breaches of official duty in connection with election.-

1. **A person guilty an offence under sub-section (2) of section 83, section 91, section 92, section 93 and section 94 shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to one hundred thousands rupees, or with both.**
2. **No court shall take cognizance of the offences mentioned in sub-section (1), except upon a complaint in writing made by order of or under authority from, the Commission or the Commissioner.**
3. **The Commission or the Commissioner shall, if it or he has reason to believe that any offence specified in sub-section (1) has been committed,**

cause such enquiries to be made or prosecution to be instituted as it or he may think fit.

4. *In respect of an offence specified in sub-section (1), section 494 of the Code of Criminal Procedure, 1898 (Act V of 1898), shall have effect as if, after the word and comma "may," therein, the words "if so directed by the Chief Election Commissioner and" were inserted.*

Provided that any punishment imposed on any person for an offence punishable under this Chapter shall be in addition to, and not in derogation of, any liability incurred by such person under any other provision of this Act.

96. Certain offences triable by officers authorized by the Commission, and certain powers of a police officer.

- 1) Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act V of 1898), an officer for the time being exercising the powers of a civil or criminal court, or an officer of the Armed Forces, or an officer performing a duty in connection with an election, who is authorised by the Commission **or the Commissioner** in this behalf may,-

- (a) **exercise the powers of a Magistrate of the first class under the said Code in respect of the offences punishable under Section 80, Section 82, Section 83(1), section 85, section 87, section 88 and section 89; and**
- (b) take cognizance of any such offence under any of the clauses of sub-section (1) of section 190 of the said Code;

and shall try any such offence in a summary way in accordance with the provisions of the said Code relating to summary trials.

- 2) A Police Officer may,-
 - (a) arrest without warrant, notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act V of 1898), any person who.-

- i. commits personation or an offence under section 88 if the Presiding Officer directs him to so arrest such person;
 - ii. while being removed from the polling station by the Presiding Officer under section 32(1), commits any offence at the polling station.
- (b) remove any notice, sign, banner or flag used in contravention of section 87; and
- (c) seize any instrument or apparatus used in contravention of section 88 and take such steps, including use of force, as may be reasonable necessary for preventing such contravention.

97. Certain offences cognizable.—

1. Notwithstanding anything contained in the Code of Criminal Procedure, 1898, an offence punishable under **section 82 or Section 83 or section 86 or section 88 or sub-section (1) of section 83 shall be cognizable offence.**
2. Notwithstanding anything contained in this Act or any other law for the time being in force, the offences **under this chapter** shall be tried by the Sessions Judge and an appeal against his order shall lie before the High Court.

Provided that Where proceedings against a person for being involved in corrupt **or illegal** practice are initiated on a complaint made by a private individual, and such person is convicted by the court and his conviction is maintained in final appeal, the complainant may be entitled to such reward payable out of the amount of fine as may be imposed by the court.

Provided further that where such complaint proves to be false, *malafide* or is made for any ulterior motive to provide benefit to another person, the complainant shall be punishable with imprisonment **for a term which may extend to six months, or with fine which may extend to fifty thousands rupees, or with both.**

Provided further that the Commission shall, in its Secretariat and at Provincial Headquarters, establish complaint resolution cells to liaise with the courts and authorities concerned for rapid and effective resolution of election complaints.

Explanation.- In this section, "Sessions Judge" includes Additional District & Sessions Judge.

98. Offences punishable under Pakistan Penal Code,- (1) Notwithstanding anything contained in this act or any other law for the time being in force, a person shall be proceeded against under the Pakistan Penal Code, if he-

- (a) attacks or captures the polling station or polling booth;**
- (b) causes or attempts to cause any injury or loss of public property at the polling station;**
- (c) exhibits or uses weapons or makes aerial firing;**
- (d) disturbs the polling proceeding or causes to harass the electors to leave the polling station without voting forcibly;**
- (e) Snatches or attempts to snatch the ballot boxes or ballot papers etc;**
- (f) Kidnaps or attempts to kidnap the Presiding Officer; or**
- (g) does any act at the polling station which is punishable under Pakistan Penal Code.**

(2) The Presiding Officer shall submit in writing a detailed report of the occurrence under sub-section (1) to the Returning Officer, who shall direct the District Police Officer to register a case against the culprits under the Pakistan Penal Code in the Police station concerned on behalf of the Provincial Government.

(3) The District Police Officer shall send a copy of an FIR to the Returning Officer as well as to the Commission or the Commissioner and ensure early submission of case to the relevant Court of Law for its trial and submit monthly report in this behalf to the Commission or the Commissioner.

**Appendix II: Report of Working Group on Non-Criminal Complaints
Adjudication**



**REPORT
OF WORKING GROUP
ON
NON CRIMINAL COMPLAINTS ADJUDICATION**

Election Commission of Pakistan

October 2009

REPORT
OF WORKING GROUP ON
NON CRIMINAL COMPLAINTS ADJUDICATION

INTRODUCTION

It is universally acknowledged fact that one of the prerequisites for an efficient and credible electoral system is the way it can manage to resolve election disputes to the satisfaction of all stakeholders. In our system there is provision of election tribunal for resolving post election disputes, but there is no specified procedure for disposing pre poll and polling day complaints swiftly and in a transparent manner.

At present complaints are entertained by Election Commission, Provincial Election Commissioners, District Returning Officers and Returning Officers. The complaints are very often sent to concerned quarters for inquiry and report but generally there is no outcome and most of the complaints are dumped by the authorities concerned. As a result there is a general perception that Election Commission does not pay heed to complaints filed with it. In fact due to non availability of a proper system of receiving, adjudication and monitoring, many complaints are lost in the bureaucratic setup. It is, therefore, essential that some modus operandi is devised for efficient, quick and transparent disposal of complaints received during pre poll period and on polling day.

WORKING GROUP MEMBERS

The Group on Non Criminal Complaints Adjudication which consisted of the following members, met at Islamabad on 20th, 31st August and 28th September, 2009 to discuss the nature of complaints received during pre poll period and on polling day.

1. Mr. Akhtar Hussain Sabir, Chairman
Joint Secretary
Election Commission of Pakistan,
Islamabad
2. Shaikh Muhammad Yaqub, Deputy Chairman
Deputy Election Commissioner,
Rawalpindi
3. Mr. Kazim Hussain Jatoi,
District Coordination Officer, Jacobabad
4. Syed Hasan Imam,
(Retd) District & Sessions Judge, Karachi.
5. Ch. Aleem Shahab,
Assistant Election Commissioner, Islamabad



MANDATE

This Working Group was assigned the following mandate:

1. To determine types of conduct affecting the fairness or integrity of the electoral process during the pre-election period and on polling day that should be recognized as non-criminal violations of the electoral law (violations not covered under Chapter VIII of the Representation of the People Act of 1976).
2. To identify causes of failure to comply with directives of the Election Commission of Pakistan or with Code of Conduct for Political Parties and Contesting Candidates.
 - Non-criminal malfeasance (actions or inactions) by election officials.
 - To identify other potential areas of conduct affecting the fairness or integrity of elections during the pre-election period and on polling day that should be recognized as non-criminal violations of the electoral law.
3. Establishing Codes of Conduct for other stakeholders in the electoral process (beyond only political parties and candidates): who, why and how
4. To determine legal basis and implementation strategies for recognizing and processing non-criminal violations of the electoral laws during the pre-election period and on polling day.
 - Proper and coherent legal framework for codifying non-criminal violations of the electoral law
5. Appropriate punishment for non-criminal violations of the electoral law.
 - Reasonable and proportionate monetary penalties or political sanctions (permanent or temporary suspension of the right to campaign, revocation of candidate nomination, withdrawal of certification of political party, etc.)

6. To identify correct institutional "point of entry" for complaints and for conducting initial investigation.

CLASSIFYING CRIMINAL AND NON-CRIMINAL COMPLAINTS

The Group started discussion on the issue of segregating criminal and non criminal electoral complaints. It was observed that sometimes it becomes difficult to say exactly which electoral offence is to be treated as criminal and which one as non criminal. There was general agreement that offences and misconducts of trivial nature can be treated as non criminal offences. At this stage another issue came to light as to what amounts to electoral misconduct because misconduct as such has not been defined in electoral laws. Thus, it can be stretched to many areas which may, under certain circumstances, be outside the ambit of the standard definition of misconduct. Misconduct can be taken as a general term, applicable to all concerned authorities and Departments of Federal/Provincial/ Local Governments, candidates, supporters of candidates, polling staff, law enforcing agencies, media, stake -holders (International/National NGO's etc.) and even to general public for disobedience or omission/reluctance to obey lawful orders. The authorities and heads of Governments and departments during the interim period just before elections are considered to be the main focus because most of complaints received during this period relate to interference by the Government and agencies in the election process.

TYPES OF NON CRIMINAL COMPLAINTS

The Working Group is of the opinion that the non criminal complaints received during pre polling period and on polling day generally fall in one of the following categories:

1. Pre-Poll Non-Criminal Complaints

1. Electoral rolls contain numerous errors like double entry of names in one constituency or in more than one constituency.

2. The full description of name and parentage or both is either missing or defective.
3. In certain cases gender is put in wrong column or name inserted in wrong part of electoral rolls.
4. The name of voter is in wrong block of rolls or name of spouses exists in different blocks.
5. Location of polling stations at inaccessible places.
6. Exploitation of voters in the name of religion, sect, race, language, by putting its election symbol in any sacred place and give threats of curse on those who do not vote for such symbol.
7. Wall chalking and use of loud speaker for canvassing.
8. Transfer/Posting of DRO/RO/ARO/Administrative machinery i.e DCO, DPO and polling staff after announcement of election schedule etc.
9. Violation of Code of Conduct.
10. Use of State resources for political ends.
11. Determination of sensitive and non-sensitive Polling Stations in a manner to give benefit to a particular candidate.
12. Complaints regarding improper use of postal ballot papers.

2. Polling Day Non-Criminal Complaints

1. Partiality of polling staff on ethnic, tribal, sectarian, political basis.
2. Forcible entry of Police personnel into polling stations and in women polling booths.
3. Complaints against district administration for dislodging/ dismantling polling camps discriminately with giving exception to one political group or a candidate.
4. Disturbance/harassment in or around the polling station.

5. Complaints with regard to non supply of authenticated copy of Statement of Count (Form XIV) by the Presiding Officer.
6. Forceful removal of Polling Agents from polling station at the time of polling /counting.

Generally complaints received in the Election Commission of Pakistan Secretariat as well as Provincial Election Commissioner offices relating to law and order, posting transfer, use of government resources, using official position etc. are passed on to the Chief Secretary, PPO (Provincial Police Officer) of respective province for necessary action/disposal and in some cases reports are called for but it has been observed that no due care is taken by the concerned department in disposal of complaints. The complaints relating to electoral rolls, polling scheme, appointment of polling staff, violation of code of conduct are sent to DRO, RO and AEC concerned for necessary action but in most of cases such complaints remain unattended or lukewarm action is initiated by concerned authorities.

Before procedure for filing complaints and their resolution are discussed it is more appropriate to highlight the offences and their penalties available in the Representation of the Peoples Act, 1976.

ELECTORAL OFFENCES AND PUNISHMENTS

Chapter VIII of the Representation of the Peoples Act, 1976 (Act LXXXV of 1976) covers the offences relating to corrupt practice, bribery, personation, undue influence, and provides penalties therefore. The relevant sections, showing details of offence and penalties, are mentioned hereafter:

<u>Sections</u>	<u>Offences</u>	<u>Penalties</u>
78	Corrupt practice	Imprisonment for a term which may extend to three years or with fine which may extend to Rs.5, 000/- or with both.
79	Bribery	Do

80	Personation	Do
80A	Penalty for adversely affecting the interests of a candidate	Punishable with imprisonment for a term which may extend to 6 months or with fine which may extend to Rs.5,000/- or with both.
81	Undue influence	As in Section 78 above
82A	Capturing of polling station at polling booth	Imprisonment for a term which shall not be less than three years and may extend to 5 years and with fine which shall not be less than Rs.50,000/- and may extend to Rs.1,00,000/- or with both.
83	Illegal practice	Punishable with imprisonment for a term which may extend to 6 months or with fine which may extend to Rs.5,000/-
83A	Prohibition of affixing hoardings	Imprisonment for a term not exceeding one year or with fine or with both.
84	Prohibition of public meetings	Punishment with rigorous imprisonment for a term which may extend to 6 months or with fine which may extend to Rs.1,000/- or with both.
85	Prohibition of canvassing in or near polling station	Punishable with fine which may extend to Rs.1,000/-
86	Disorderly conduct near polling station	Punishable with imprisonment for a term which may extend to 3 months or with fine which may extend to Rs.1000/- or with both.

Apart from above, Section 86A to Section 92 are the powers extended to Presiding officers and others for penalizing offenders at polling stations. Those relating to tampering with papers, interference with secrecy of voting, failure to maintain secrecy, influence on voters, breaches of official duty, and misuses of official position by Government

Servant. Apart from above provisions, Section 93 deals with powers of police officers, Court proceedings related to election process. It is, however, important thing that any punishment imposed on any person for an offence punishable under Chapter VIII is to be in addition to and not in derogation of any liability incurred by the offender under any other provision of the Representation of the Peoples Act, 1976.

In this context, it would not be out of place to state that adequate punishment is provided in Chapter VIII, besides; punishment imposed under this Chapter does not debar the authorities concerned to book under any other prevailing law for the time being. However, the Working Group on Legal Framework is already examining the issue of whether Chapter VIII requires any changes regarding penalties.

PROCEDURE OF FILING COMPLAINTS AND THEIR ADJUDICATION

Here procedure of filing complaints during pre-polling period and their disposal is proposed to make the electoral process more credible. Complaints generally start pouring in immediately after announcement of election schedule which are sent to different quarters for their disposal resulting delay in their adjudication. It is more appropriate that there should be notified complaint centers to lodge complaint. Therefore, the group mutually agreed on the following points to be proposed for filing complaints:

DISTRICT COMPLAINTS COMMITTEE (DCC)

1. The group suggested that there should be a **District Complaints Committee** for lodging and disposal of complaints so that grievances of the applicants could be redressed expeditiously. The Committee should consist of the following:
 - District Returning Officer (DRO)
 - Returning Officer (RO) of the constituency
 - District Coordination Officer (DCO)

- Assistant Election Commissioner (AEC)
 - District Police Officer (DPO)
2. Law/Rules in this context may be amended accordingly.
 3. The Committee on receiving the complaint shall decide and dispose of the same in accordance with law provided in this respect.
 4. The Committee shall have the powers provided in the Civil Procedure Code and Criminal Procedure Code to summon any person or document necessary for proper investigation and adjudication of the matter.
 5. Jurisdiction and powers of District Complaints Committee should be duly notified by the Election Commission of Pakistan.

PROCEDURE OF FILING COMPLAINTS

The Group while discussing procedure for filing, processing and adjudication of pre-election complaints suggested that:-

1. The complaint must be accompanied by a copy of CNIC and contact details of the complainant and should be submitted before the Chairman of District Complaints Committee.
2. The complaints filed in the Election Commission Secretariat /Provincial Election Commissioner may also be forwarded to the District Complaints Committee except those which are of serious nature and are required to be addressed at higher level.
3. Complaints pertaining to offences committed by a political party shall be referred by the Committee to the Election Commission along with preliminary report and its recommendations in this regard.
4. Complaint should be decided expeditiously but not later than 3 days from the date of its filling.

5. With regard to polling day complaints, the Presiding Officer shall dispose of the complaints exercising powers of the First Class_Magistrate duly vested with him.

CODES OF CONDUCT FOR ALL STAKEHOLDERS

IN THE ELECTORAL PROCESS

The Working Group deliberated on the issue of codes of conduct for different stakeholders such as political parties, candidates, polling personnel, observers and media. At the time of each general election a code of conduct for political parties and candidates is issued by the Election Commission of Pakistan. But it is observed that this code is violated without any hindrance and the authorities required to ensure its implementation fail to fulfill their obligations.

There can be many factors and reasons for this indiscriminate violation of code of conduct but the Group was of the view that it is mainly because there is no implementation of punishment as prescribed for violation of the code. It is therefore desirable that while describing a code, a system for its proper implementation should also be in place.

The provisions about penalties for violation of the code of conduct for the political parties and contesting candidates for general elections are available in Chapter-VIII of the Representation of the Peoples Act, 1976. However, specific penalties are not provided in code of conduct, which is framed under Article 18 of the Political Parties Order 2002 but simply refer to Chapter VIII of the Representation of Peoples Act, 1976. It would be useful if code of conduct is reframed providing specific penalties for violation and contravention of the code of conduct. Non-providing of specific penalties made it a non-criminal complaint legislation except where the punishment is provided through Chapter VIII. This being the position it is, therefore, suggested that if the violations, with reference to code of conduct, are not covered in Chapter VIII, the penalties for violation of code of conduct may be provided, so that non-criminal complaints may be properly adjudicated.

CODE OF CONDUCT FOR **POLITICAL PARTIES / CANDIDATES**

The Election Commission of Pakistan issued a Code of Conduct for the Political Parties and Contesting Candidates for General Election, 2007-2008, presented in full [at http://ecp.gov.pk/COCFinal.pdf](http://ecp.gov.pk/COCFinal.pdf). This Code of Conduct contains criminal as well as non criminal offences.

For analysis purposes, the Working Group has divided the Code of Conduct into two parts. Punishments for criminal offences have already been prescribed in Chapter-VIII of the Representation of the Peoples Act, 1976 (see Annexure A). No punishments or means of enforcement have been prescribed for non-criminal offences; however, for non-criminal provisions of the Code of Conduct, the Working Group recommends the following:

A. General

1. Ministers/Nazims shall not join the election campaign of a party or a candidate and shall also not exercise their official authority to support a political party or a candidate.
2. Concerned political parties and contesting candidates may announce their overall development program, but after the announcement of the election schedule till the day of polling, no candidate or any person on his behalf shall openly or in secret give any subscription or donation or make promise for giving such subscription or donation to any institution of their respective constituency or to any other institution nor shall commit to undertake any development project in the respective constituency.
3. Issue of advertisement at the cost of public exchequer in the newspapers and other media and the misuse of official mass media during the election period for partisan coverage of political news and publicity shall be scrupulously avoided.

- ***The Working Group recommends provision for imposing penalty for violation of above which may extend up to One Hundred Thousand Rupees.***

4. No person or a political party or a candidate shall hoist or fix party flags on any public property or at any public place, except with the permission in writing from, and on payment of such fee or charges as may be chargeable by, the concerned local government or authorities. Wall chalking as part of an election campaign shall be prohibited in all forms. {Section 83A of the Representation of the Peoples Act, 1976}.

- ***The Working Group suggested that the violation of above provision may be treated as Non-Criminal offences and the punishment for this violation should not in shape of fine which may not exceed Twenty Thousand Rupees.***

5. Section 83A of the Representation of the People Act, 1976 lays down that no person or a political party shall affix posters, hoardings, banners or leaflets/handbills larger than the sizes prescribed by the Election Commission. The Commission has prescribed the sizes as under:

(a)	Posters	2-feet x 3-feet
(b)	Hoardings	3-feet x 5-feet
(c)	Banners	3-feet x 9-feet
(d)	Leaflets/Handbills	9-inches x 6 inches

- ***The Working Group suggested that the violation of above provision may be considered as Non-Criminal offences and the punishment for this violation should not fine exceeding One Hundred Thousand Rupees.***

6. The political party or candidate shall inform the local administration of the venue and time of any proposed meeting at least 24 hours in

advance so as to enable the police to make necessary arrangements for controlling traffic and maintaining law and order.

- ***The ECP/DCC will issue a warning to the party or a candidate in case of violation of above provision and if a party or a candidate violates above provision even after warning, the ECP/DCC will suspend the Election campaign of that party or the candidate for a period not exceeding 7 days in the subject constituency.***
7. A party or a candidate shall ascertain in advance if there are any restrictive or prohibitory orders in force in the place proposed for the meeting. If such orders exist, they shall be followed strictly. If any exception is required from such orders it shall be applied for and permission obtained well in time.
 8. Organizers of a meeting shall invariably seek the assistance of the police on duty for dealing with persons disturbing a meeting or otherwise attempting to create a disorder.
 9. The political parties and their candidates shall not hold public meetings or rallies on main streets, roads and chowks to avoid traffic jams and public inconvenience.
 - ***The ECP/DCC will issue a warning to the party or a candidate in case of violation of above provision and if a party or a candidate violates above provision even after warning, the ECP/DCC will suspend the election campaign of that party or the candidate for a period not exceeding 7 days in the subject constituency.***
 10. The right of every individual for peaceful and undisturbed domestic life shall be respected; irrespective of any resentment that a Political Party or a candidate may have against such individual for his political opinion or activities. Organizing demonstrations or picketing before the house of such

individual with a view to protest against his political opinion or activities shall be prohibited under any circumstances.

- ***In case of violation of above provision, a stern warning should be issued by the Election Commission or District Complaints Committee to the concerned party or a candidate. If violation continues then Election Commission may impose penalty of suspension of election campaign for a period not exceeding one week on the political party, or as the case may be, on the candidate.***

B. Processions

1. Processions shall not be taken out by one party along the places at which meetings are being held by another party. Posters affixed by one party shall neither be removed nor distribution of handbills and leaflets prevented by workers of another party.
 - ***The ECP/DCC will impose a fine of amount not exceeding Fifty Thousand Rupees, in case of violation thereof.***
2. A party or a candidate organizing a procession shall decide before hand the time and place of the starting of the procession, the route to be followed and the time and place at which the procession will terminate. There shall ordinarily be no deviation from the programme. The organizers shall give advance intimation of at least 2 days to the local police authorities of the programmes so as to enable them to make necessary arrangements.
3. The organizers shall ascertain if any restrictive orders are in force in the localities through which the procession has to pass, and shall comply with the restrictions unless exempted specially by competent authority. Traffic regulations or restrictions shall also be carefully adhered to.
4. The organizers shall take steps in advance to arrange for passage of the procession so that there is no block or hindrance to traffic. If the procession is

very long, it shall be organized in segments of suitable lengths, so that at convenient intervals, especially at points where the procession has to pass road junctions, the passage of held up traffic could be allowed by stages thus avoiding heavy traffic congestion.

5. If two or more political parties or candidates propose to take processions over the same route at the same time, the organizers shall establish contact well in advance and decide upon the measures to be taken to ensure that the processions do not clash or cause hindrance to traffic.

CODE OF CONDUCT

FOR OBSERVERS

Domestic and International Observers play key role in ensuring that an election exercise is conducted in a fair and credible manner. Over the years their number has considerably increased. Most of international observers are properly briefed by their organizations as well as Election Commission of Pakistan. Therefore, they conduct themselves in a proper manner. But the same cannot be said about a large number of domestic observers. Therefore, it is desirable that some dos and don'ts are also prescribed for Observers. Code of Observers is at Annexure –B.

CODE OF CONDUCT

FOR POLLING PERSONNEL

The Election Commission issues Manual of Instructions and Handbooks for various categories of election officials including Presiding Officers and other polling staff. These Handbooks describe their professional activities at the Polling Station which include the polling process and role of each functionary. However, it has been observed that at times the attitude and behavior of the polling staff leaves much to be desired. Therefore, the Working Group feels that a proper code of conduct for polling staff should also be issued by the Election Commission. Sample code of conduct for polling officials is at Annexure C.

CODE OF CONDUCT

FOR MEDIA

Media plays a vital role in disseminating information related to any election activity. It is also the responsibility of media to ensure that the coverage on electronic and print media relating to election related activities is fair, unbiased and balanced in respect of any particular political party, candidate or a leader to enable the Election Commission to ensure that the election is conducted honestly, justly, fairly and in accordance with law and that discrimination against any political party, leader or a candidate is guarded against. In case of violation of code of conduct by media the Election Commission should send the case to PEMRA with clear directions that they should take action and send report to Election Commission within a specified period. Draft code of conduct is at Annexure-D.

Annexure-A: Code of Conduct for Political Parties and Contesting Candidates:

CODE OF CONDUCT FOR POLITICAL PARTIES AND CONTESTING CANDIDATES:

CRIMINAL OF OFENCES

A. Pre-Polling Day

1. The political parties shall not propagate an 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, as provided under Article 63 of the Constitution.
2. Criticism of other political parties when made shall be confined to their policies and programme, past record and work. Parties and candidates shall refrain from criticism of all aspects of private life, not connected with the public activities of the leaders or workers of other parties. Criticism based on unverified allegations or distortion shall be avoided.
3. All contesting candidates shall avoid scrupulously all activities which are "corrupt practices" and offences under the election laws such as the bribing of voters, intimidation and personation of voters, canvassing in 400 yards of a polling station holding public meetings during the period of 48 hours ending at midnight following the conclusion of polls for any election in that constituency.
4. Political parties and candidates shall ensure that their supporters do not create obstructions in or disturb meetings and processions organized by the other parties. Workers or sympathizers of one political party shall not create disturbance at public meetings organized by another political party.
5. The Political Parties, contesting candidates and workers` shall refrain from deliberate dissemination of false and malicious information. The workers of

political parties shall not indulge in forgeries and disinformation to defame other political parties/leaders. The use of abusive language against the leaders and candidates of other political parties shall be avoided at all costs.

6. The political parties shall refrain from speeches calculated to arouse parochial and sectarian feelings and controversy of conflicts between genders, sects, communities and linguistic groups. {Section 78 of the Representation of the People Act, 1976}.
7. Appeals to violence or resort to violence during meetings, processions, or during polling hours shall be strictly avoided. {Section 81 of the Representation of the Peoples Act, 1976}.
8. No person shall in any manner cause injury to any person or damage to any property. {Section 81 of the Representation of the Peoples Act, 1976}.
9. Carriage and display of all kinds of lethal weapons and fire arms shall not be allowed in public meetings and processions and official regulations in respect thereof shall be strictly observed. Aerial firing, use of crackers and other explosives at public meetings shall not be allowed.
10. The political parties, contesting candidates, agents or workers shall not indulge in offering gifts or gratifications or inducement to any person to stand or not to stand as a candidate, or to withdraw or not to withdraw his candidature. {Section 79 of the Representation of the People Act, 1976}.
11. The political parties, contesting candidates and their workers shall not propagate against the participation of any person in the elections on the basis of gender, ethnicity, religion or caste. Political Parties' officials, candidates or others shall not encourage or enter into agreements debarring women from becoming candidates or exercising their right of vote in an election.
12. The political parties and contesting candidates shall not procure the support or assistance of any civil servant to promote or hinder the election of a candidate. {Section 83 of the Representation of the Peoples Act, 1976}.

13. The political parties and their candidates shall dissuade their workers or sympathizers from destroying any ballot paper or any official mark on the ballot paper. {Section 87 of the Representation of the Peoples Act, 1976}.

B. Polling Day

All political parties and candidates shall co-operate with the officers on election duty to ensure peaceful and orderly polling and complete freedom to the voters to exercise their franchise without being subjected to any annoyance or obstructions: (Section 86 of the Representation of the People Act, 1976)

Annexure-B: Code of Conduct for Observers

CODE OF CONDUCT FOR OBSERVERS

1. International observers should submit a formal request through their Embassy/High Commission/Organization to the ECP for observing elections in Pakistan.
2. International observers should respect sovereignty of the country as well as freedom of its people to exercise their right of vote.
3. The laws of the country and the authority of Election Commission of Pakistan and Election Officials conducting elections should be given due respect
4. All observers should be politically impartial. An Election Observer should in no way be associated with or affiliated to any political party or a contesting candidate directly or indirectly and should have no apparent sympathy or any particular political ideology, creed, and manifesto, program, aims or objectives of any political party or a contesting candidate.
5. No election observer shall be allowed to observe the poll unless he display the accreditation card issued by the Election Commission or an officer authorized by it, bearing his name, nationality and photograph.
6. An observer shall under no circumstances obstruct an election process at the polling station or in the constituency.
7. An observer may observe the voting process, election campaign, counting of votes and consolidation of results by the Returning Officer but he will not interfere in any of the activity.
8. An observer shall not advise a Presiding Officer or the Polling staff about any procedural matters at the Polling Station.
9. An observer shall not make any public statement about the result of an election before the result is declared by Election Commission.
10. The observers are not allowed to enter the place reserved for marking ballot papers in order to maintain complete secrecy of voting by voters.
11. The observers will abide by all laws and regulations and will follow all lawful orders of the Returning Officers or a Presiding Officer

12. If an Election Observer is found indulging in any activity not befitting any neutral election observer or interfering with the polling process or with the work of election authorities in any manner, he can be asked by a Returning Officer or a Presiding Officer to leave the constituency or a Polling Station. In that event the observer shall leave the constituency or, as the case may be, the polling station forthwith without any undue delay.

Annexure-C: Code of Conduct for Polling Personnel

CODE OF CONDUCT FOR POLLING PERSONNEL

1. The Presiding Officers and Polling Staff must reach Polling Station at least two hours before start of polling.
2. In far flung areas the Polling Staff should reach the Polling Station one night before the polling day.
3. In case of any emergency or an untoward incident due to which a polling official cannot reach polling station, he must inform the concerned Presiding or Returning Officer well in time.
4. The polling staff must remain politically neutral during whole polling process and should not show any bias in favor of or against any political party or a candidate.
5. The polling staff should show proper courtesy to incoming voters, polling agents and observers.
6. The polling staff should facilitate the illiterate and disabled voters in exercising their right of vote. But while doing so it should be ensured that secrecy of vote is not compromised.
7. The polling staff should obey all lawful orders of the Presiding Officers
8. The Presiding Officer should take care of his/her Polling staff and try to resolve their problems if any.

Annexure-D: Code of Conduct for Media

CODE OF CONDUCT FOR MEDIA

1. The print and electronic media should ensure coverage of election related activities in a fair, unbiased manner.
2. The coverage by media should not be discriminatory against any political party, political leader or a candidate.
3. In any constituency one candidate alone should not be projected. While it is not necessary to cover every single candidate at least the more important should be covered in any report from a constituency.
4. Media should refrain from spreading disinformation about any election related activity, political party or a candidate. Due care should be exercised to ascertain veracity of any information or news relating to a political party or a candidate before it is telecast, broadcast or published.
5. No political party should be given substantially more coverage than others by media. This balance need not be achieved in any single day or in any single story but over a reasonable period of time.
6. While covering an election related or campaign activity remarks about personal life of a leader or a candidate should be avoided.
7. Reporting of any statement or remarks by a political leader or a candidate which may cause hatred and resentment among any religious or ethnic community or sect should be avoided by print and electronic media.
8. Media should avoid announcing the unauthentic result before the ECP announce the unofficial result from the control room.



**REPORT
OF WORKING GROUP
ON ADMINISTRATIVE PROCESS**

Election Commission of Pakistan

October 2009

REPORT OF

WORKING GROUP-III

ON ADMINISTRATIVE PROCESS

Introduction

A strong electoral system, which enjoys confidence of all stakeholders, is the call of time. Fair and transparent elections are *sine qua non* for establishment of genuine democratic culture in the country. One of the litmus tests to ascertain that an election exercise was conducted in a fair and transparent manner and that level playing ground was provided to all electoral players, is the mechanism that it provides for resolution of election complaints and disputes. A failure to rapidly and immediately resolve election disputes and complaints may lead candidates, voters and stake holders to frustration and undermine the legitimacy of elections and its results.

In our electoral system law does provide an adequate remedy for disputes arising out of election results in the form of Election Tribunals. Any candidate aggrieved with the outcome of an election may seek remedy by filing an election petition in accordance with law. But no procedure is available in existing electoral laws for addressing election disputes and complaints arising during pre-polling period and on polling day. We know that number of complaints received during these periods is substantially higher than those made in the post polling period. Therefore, there is an urgent and dire need to ensure that an efficient, effective and transparent dispute resolution system is in place before next elections in the country.

The Working Group Members

The Working Group on Administrative Process consisted of the following members:

1. Mr. Imtiaz Alam, Joint Secretary (Admn), Election Commission of Pakistan/Chairman.
2. Qazi Muhammad Khurshid, Deputy Secretary (Budget), Election Commission of Pakistan/Deputy Chairman.
3. Mr. Shoaib Khurram Jahbaz, Additional SP (Investigation), Sadar, Lahore.
4. Mr. Pervaiz Ahmad Kalhoro, AEC, Larkana.
5. Mr. Sultan Ahmad, Retired Additional District & Sessions Judge, Lahore
6. Ali Asghar Sial, AEC, Shaheed Benazir Abad.



Mandate

1. To propose system and procedures for processing and resolving disputes and complaints on the polling and pre-polling days.
2. To determine Point of Entry for election related complaints.
3. To devise mechanism for resolving complaints and disputes alleging non criminal violation of the electoral laws during pre-poll period and on Election Day

Nature of Complaints

The group first considered as to what types of complaints are received by Election Commission during pre-poll period and on the polling day. It observed that complaints received during periods under discussion can broadly be classified into following categories:

S. No	Sub-Area/Issue	Nature of Complaints
<u>Pre Poll Complaints</u>		
1	Electoral Rolls	<ol style="list-style-type: none"> 1. Double enrollment. 2. Non-enrolment as a voter. 3. Incorrect particulars. 4. Enrollment in irrelevant electoral block. 5. Incorrect Census Block. 6. Double Entries. 7. Non-deletion of deceased voters.
2	Setting up of polling Stations	<ol style="list-style-type: none"> 1. Change of polling stations in favor some candidate. 2. Polling stations away from electoral Block. 3. Building not suitable. 4. Insufficient capacity of the Polling

		Stations
3	Transfer/posting of Administrative and Polling Staff.	<ol style="list-style-type: none"> 1. Influential Administrative and Judicial Officers. 2. Polling Staff transferred to get result of choice.
4	Appointment of polling staff.	<ol style="list-style-type: none"> 1. Biased polling staff appointed. 2. Local staff appointed. 3. Unwilling working attitude of polling Staff.
5	Violation of Code of Conduct.	<ol style="list-style-type: none"> 1. Display of prohibited size of Banners, Hoarding and Posters. 2. Removal of banners/hoarding by the rival Candidates. 3. Use of abusive language during corner meetings on sectarian/ethnic basis. 4. Wall Chalking and use of pamphlets.
6	Development Schemes.	Announcement of development scheme by Federal/Provincial/District Government and also by contesting candidates especially of the ruling party candidates.
7	Allotment of Symbols.	<ol style="list-style-type: none"> 1. Candidates demanding Symbol of their choice or hesitate to accept symbols allotted to them. 2. Symbols causing confusion due to similarity in appearance e.g. book and match box. 3. Wrong allocation of symbols by RO and printing of ballot papers

		accordingly.
8	Postal Ballot papers	<ol style="list-style-type: none"> 1. Complicated system of postal ballot. 2. Illegal Issuance of Postal Ballot Papers. 3. Purchase of Postal Ballot Papers by the candidates.
<u>Polling Day Complaints</u>		
1	Non opening of polling stations and late arrival of polling staff.	<ol style="list-style-type: none"> 1. Staff not present at polling stations. 2. Late arrival of polling staff.
2	Non availability of ER and other election material.	<ol style="list-style-type: none"> 1. Electoral Rolls not found in the polling bag. 2. Electoral Rolls of other Electoral area found in the bag. 3. Election materials not received or are short of quantity. 4. Tampered Polling Bags.
3	Partiality of polling staff on polling day.	<ol style="list-style-type: none"> 1. Polling staff favoring some candidates. 2. Change of polling staff by the Returning Officer at the 11th hour.
4	In-sufficient security arrangements at polling stations.	Polling stations are not properly manned by law enforcing agencies
5	Capturing of Polling Stations & Polling booths/snatching of Ballot Papers & Boxes	<ol style="list-style-type: none"> 1. Illegal possession of Polling station. 2. Removal of Ballot Boxes along with Ballot Papers and Polling Staff from Polling stations and casting of

		ballot papers by force.
6	Establishment of camps of candidates near polling stations	Camps of candidates working within the prohibited limits of Polling station.
7	Removal of Polling Agents from Polling Booths.	<ol style="list-style-type: none"> 1. Polling agents are removed forcefully by the Opponents from polling stations. 2. Presence of unauthorized polling agents at polling stations.
8	Delay in Counting of Votes in Polling Station	<ol style="list-style-type: none"> 1. Due to improper light arrangements/ load-shedding. 2. Un-necessary interference by polling agents during counting. 3. Untrained polling staff not familiar with the counting procedures and terminology.
9	Incorrect counting of valid/rejected votes.	<ol style="list-style-type: none"> 1. Rejected votes counted in favor of some candidate by the Presiding Officer. 2. Valid votes not counted properly. 3. Snatching of ballot boxes at the time of counting.
10	Non-provision of certified copies of results to polling agents.	<ol style="list-style-type: none"> 1. Certified copy of result not given to polling agent. 2. Copies of result given to different polling agents do not tally.
11	Snatching of statement of count, polling bag and abduction of presiding officer.	<ol style="list-style-type: none"> 1. Snatching of statement of count. 2. Snatching of polling bag. 3. Abduction of presiding officers and forcible tampering with statement of count.

Existing system of complaints resolution

The group first examined the existing system of disposal of electoral complaints received during pre-poll period and on polling day. It was observed that there is at present no single point specified for receipt of complaints. Although major bulk of complaints is received in the Election Commission Secretariat at Islamabad, yet these are also addressed by political parties and candidates to Provincial Election Commissioners, District Returning Officers and Returning Officers. Electronic and print media also highlight issues which it thinks can affect fairness and neutrality of election exercise.

No exact statistics showing complaints received at different points of entry and their ultimate fate is generally available. As a result hue and cry is raised by complainants and affected political parties that Election Commission is intentionally not paying heed to their complaints. The Group was of the view that due to flawed system of complaint resolution, the Election Commission has to face the music despite its best efforts to meet this challenge.

Before February 2008 elections, ECP did manage to install a programme in its Central Secretariat for proper entry, receipt and disposal of complaints. This made it easier to have exact data about complaints received in each category for each constituency or district. There was also information available about the destination of complaints received but no proper tracking system being in place; it remained problematic to know whether any complaint was properly resolved at any level or not. It was also observed that lack of clear procedure for resolution of complaints particularly in the pre-election period and the polling day is against transparency required for the process because of its multiple entry points and insufficient attention given to disputes irrespective of their importance. The situation sometimes becomes so embarrassing that the political parties and other stakeholders construe it as inaction on the part of Election Commission.

For the foregoing reasons, the Group felt need for-----

1. Specifying one or more points of entries for all electoral complaints received during pre-poll period and on the polling day, and
2. Devising some appropriate mechanism for prompt and transparent disposal of all complaints in accordance with law---ensuring that such procedure is

simple, credible and implementable within the short span of time available during pre-poll campaign period.

Criteria for Establishment of Complaints Enquiry Committee (CEC).

Each country chooses the system best suited to its circumstances. In doing so there are five criteria while setting up mechanism to increase confidence and trust in the electoral process.

The following criteria while forming the **Complaints Enquiry Committee** must be kept in view:

1. Independence and impartially in the establishment of **Complaints Enquiry Committee**.
2. Accountability and transparency;
3. Integrity and professionalism;
4. Clear and enforceable sanctions;
5. Procedural principles and actions-in regard to swift considerations of Complaints, possibility of appeal, public hearing and decisions based on legal frameworks.

Point of Entry

The working group discussed the matter at length and reached a consensus on the following points for immediate disposal of the complaints received on the polling and during the pre-polling period.

1. There should be at the most two entry points for lodging complaints i.e. office of the Chairman Complaints Enquiry Committee at district level and Election Commission Secretariat, Islamabad.
2. Any complaint received by any other authority or Officers shall immediately be forwarded to the Complaints Enquiry Committee (CEC) of the relevant District or Election Commission Secretariat, Islamabad.
3. A complaint may be on plain paper, containing all substantial facts coupled with documents if any, accompanied by a copy of CNIC of the complainant and an affidavit attested by Oath Commissioner to the effect that contents of the complaint are true.
4. Complaints Enquiry Committee may be constituted to determine the nature

of complaints i.e. criminal and non-criminal and its quick disposal according to law. It would be in the fitness of things if the network of this Complaints Enquiry Committee is set up at District level in order to properly address the grievances of complainants.

5. The **Complaints Enquiry Committee** at District level should work under the administrative control of the Chairman of the committee who shall be DRO (District Returning Officer). The members of the Committee will be a representative, each from District Administration, District Police and Election Commission at District level. The representative of Election Commission will also work as Secretary of the Committee.
6. The powers and jurisdiction of the Committees should be clearly defined through a notification by the Election Commission of Pakistan.
7. The **Complaints Enquiry Committee** would only be responsible to the Election Commission and all its decisions taken would be final except those involving litigation.
8. The **Complaints Enquiry Committee** should be entrusted with certain legal/administrative powers while dealing with the complaints of non-criminal nature. All the necessary powers regarding summary trial, summoning the accused etc, making spot enquiries and hearing the parties etc may be assigned to these **Complaints Enquiry Committees**.
9. The complaints of criminal nature involving violent incidents should be processed separately under the law.
10. The **Complaints Enquiry Committee** should have also the power of taking *suo moto* notice of any electoral offence occurring and adjudicate it under the law.

Recommendations

The Working Group also agreed upon:

1. Electoral misconduct must be clearly defined under the law.
2. The order on complaints by the committee should be final.
3. Daily progress report regarding disposal of the complaints by the Committee should be submitted to Election Commission and also released to Media for the information of general public.

4. The Committee should not take more than three days for disposal of a complaint.
5. The Committee shall decide the nature of complaint whether it is criminal or non criminal after proper enquiry and shall refer it to Police for legal action if it is criminal in nature.
6. The Committee shall be empowered to require in writing any person to appear before it and give evidence under oath.
7. It may require in writing any person to produce any document or object under his control.
8. The Committee shall conduct enquiry and adjudicate upon a complaint filed before it or referred to it by the Election Commission and inform the Commission about the decision taken.
9. The Committee shall convey its decision to both the parties the complainants the accused. The District Police and District Administration shall be responsible for the implementation of order of the Committee.
10. The proceeding of the Committee shall be deemed as judicial proceeding within the meaning of Section 193 and 228 of Pakistan Penal Code (Act XLV of 1860) The Committee shall have the powers of Civil Court while trying a suit under the Code of Civil Procedure 1908 (Act V of 1908) in respect of attendance of any person examining him on oath and compelling the production of documents and material objects.
11. No action shall be taken on anonymous complaints.
12. Complainants with frivolous complaints may be fined up to Thirty Thousand Rupees by the Committee. In default thereof, the Committee shall refer the matter to Election Commission for action.
13. The proposed penalty for frivolous complaints should be given wide publicity through electronic and print media.

Remedial Measures

The Group also suggested a number of remedial measures, which if taken by relevant authorities in time, can help in minimizing the number of electoral complaints and disputes. These are summarized below:

1. CNIC should be mandatory for enrolment as modification a voter and for casting vote.
 2. Preparation process of Electoral Roll and its modification should be undertaken in collaboration with NADRA to authenticate its entries.
 3. The process of preparation, amendments, modifications and authentication of entries should be completed well before Election Schedule.
 4. Lists of polling stations should be drawn by the Election Commission and should be published inviting suggestions/objections from the electors of that constituency. Such suggestions/objections may be heard and decided by the District Returning Officer before publishing the lists in the official gazette. The lists of polling stations should be then be treated as final and no modification or alteration may be made without approval of Election Commission.
 5. Appointment of efficient, impartial, dutiful staff can reduce complaints regarding polling process.
 6. Polling staff should be preferably appointed from the same vicinity which would be helpful in identification of voters during polling process.
 7. Extensive training of polling staff on regular basis can reduce administrative lapses.
 8. Election Commission should direct the interim Government to refrain from postings/transfers of Government servants after the announcement Election schedule.
 9. Strict compliance of the orders of Election Commission should be ensured.
 10. Disciplinary action should be taken against negligent, tardy and delinquent officials by parent department of the Government servant upon recommendation of Election Commission.
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Appendix IV: List of Participants

LIST OF PARTICIPANTS

ECP

1. Mr. Muhammad Ishtiaq Ahmed Khan
The Secretary,
Election Commission of Pakistan, Islamabad.

2. Ch. Qamar-uz-Zaman,
Provincial Election Commissioner,

Punjab, Lahore.

3. Mr. Sono Khan Baloch,
Provincial Election Commissioner,

Sindh, Karachi.

4. Mr. Muhammad Afzal Khan,
Provincial Election Commissioner,

NWFP, Peshawar.

5. Mr. Mehboob Anwar,
Provincial Election Commissioner,

Balochistan, Peshawar.

6. Mr. Saeed Ahmed Khan,
Research Officer, ECP Secretariat, Islamabad.

7. Mr. Tanvir Zaki
DEC, Karachi

8. Mr. Muhammad Najeeb
AEC, Karachi

9. Mr. Muhammad Anwar
DG, ECP

10. Mr. Shafiq Ahmed
DEC, Peshawar

11. Syed Sadiq Hussain
ECP

12. Mr. Noor Ghulab
ECP

13. Mr. Naeem Ahmed
ECP

14. Mr. Khalid Waheed
AEC, Abbottabad

15. Mr. Waseem Ahmed
AEC (HQ) Quetta
16. Mr. Zafar Iqbal Hussain
DEC, D G Khan

17. Mr. Abdul Hameed
AEC (HQ) Lahore

18. Sh. Jalil Ahmad
DS (Election)

19. Mr. Muhammad Khizar Aziz
Director (IT), ECP

20. Syed Sultan Bayzeed
DEC, Quetta

Working Groups.

21. Syed Sher Afgan,
Joint Secretary (Elections), ECP Secretariat,
Islamabad.
22. Sh. Muhammad Nawaz,
Section Officer (Law), ECP Secretariat,
Islamabad.
23. Mr. Muhammad Saleem Uppal,
(Retd.) Additional District & Sessions Judge,
Gujranwala.
24. Rana Muhammad Aslam Khan,
Assistant Election Commissioner, PEC Office,
Lahore.
25. Mr. Akhtar Hussain Sabir,
Joint Secretary (Budget), ECP Secretariat,
Islamabad.
26. Sh. Muhammad Yaqub,
Deputy Election Commissioner, Firdousi Road,
Near Katchery Chowk, Rawalpindi Cantt.
27. Syed Hassan Imam,
(Retd.) District & Sessions Judge,
(through PEC Office), Karachi.
28. Mr. Aleem Shahab,
Assistant Election Commissioner,
F-8 Markaz, District Courts,
Islamabad.

29. Mr. Muhammad Imtiaz Alam,
Joint Secretary (Admn), ECP Secretariat,
Islamabad.
30. Qazi Muhammad Khurshid,
Deputy Secretary (Budget) ECP Secretariat,
Islamabad.
31. Mr. Sultan Ahmad,
(Retd.) Additional District & Sessions Judge,
(through PEC office), Lahore.
32. Mr. Pervez Ahmed Kalhoro,
Assistant Election Commissioner,
Larkana.
33. Mr. Ali Asghar Sial,
Assistant Election Commissioner,
Shaheed Benazirabad.

Other Government Officers.

34. Mr. Tariq Hussain
Deputy DCO, Quetta

Political Parties.

35. Mr. Saif Ullah Khan Niazi
Additional Secretary General
Pakistan Tehreek-e-Insaf,
36. Mr. Tariq Fazal
MNA, Pakistan Muslim League (N),

37. Mr. Mushahid Hussain Syed,
General Secretary, Pakistan Muslim League,
Margallah Road, Islamabad.
38. Mr. Hasham Baber
Awami National Party,
39. Mr. Farid Paracha
Deputy Secretary
Jammat e Islami
40. S. A. Iqbal Qadri
Mutihda Qaumi Movement (MQM)

IFES Staff

41. Mr. Peter Urban
Country Director
42. Ms. Susan Palmer-Wetherald
Deputy Country Director
43. Ian Smith
Consultant
44. Ms. Aysha Shujaat
Operation Manager
45. Qazi Saleem
Senior Electoral and Legal Officer
46. Ejaz Ahmed
Sr. Electoral Reform Officer
47. M Nisar Khan
Project Assistant

48. Uzma Ishaque
Event Assistant

Federal Election Academy Staff

49. Ms. Kulsoom Akhtar
Training Specialist

50. Mr. Aslam Barohi
Sr. Training Associate

51. Mr. Emad Bangash
Training Associate

52. Mr. Zafar Ahmed
Training Associate

USAID

53. Ms. Humera Ashraf