

Building the
Foundation of Democracy

Preliminary Report

IFES Pakistan

*Post-Election Community-Based Mediation and
Adjudication Program:*

*Election Tribunal Monitoring Project—Phase One
February – June 2008*

DRL Award No. S-LMAQM-07-GR-215

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August 2008*

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This Preliminary Report is the result of a first-of-its-kind study conducted by the International Foundation for Electoral Systems (IFES) to study the post-election adjudicatory mechanisms, known as Election Tribunals, for resolving challenges to election results in Pakistan. The project was funded primarily by the United States Department of State, Bureau of Democracy, Human Rights and Labor (DRL) and in part by the United States Agency for International Development (USAID), which enabled greater legal analysis and enhanced data review. The project funding also provided the opportunity for further interaction and capacity building with the Election Commission of Pakistan, as it examines options for the reform of its election dispute resolution mechanisms. The views expressed in this Preliminary Report are those of IFES, and are not necessarily those of U.S. State Department, USAID or the U.S. Government. IFES is grateful for the support of DRL and USAID as well as for the frank and invaluable discussions we had with the key stakeholders.

The project was led by IFES consultant Peter D. Lepsch, Esq. with the assistance of Grant Kippen, Complaint Adjudication Advisor and supported by IFES Pakistan including Country Director, Dr. Staffan Darnolf; Deputy Country Director, Katherine S. Vittum; Logistics Coordinators Aysha Shujaat and Murtaza Noonari; financial staff Ferhan Frederick and Sunil Moses; administrative staff Muhammad Irfan Latif; and Research Assistant, Zafar Ahmad Malik. Six Pakistani attorneys served as Election Tribunal monitors for the project: Sohail Ahmed Ansari, Lala Hassan Pathan, Iqbal Ahmad Khan, Syed Ghufuran Ullah Shah, Asif “Ali” Raza Mir, and Hafiz Mohammad Saleem. Ronan McDermott with IFES Pakistan developed the database that was used to produce the findings and analysis for this project.

Special thanks are extended to all officials at the Election Commission of Pakistan and the four provincial High Courts for their generous and grateful assistance in providing the information that makes this report possible. In addition, many thanks are also extended to all stakeholders, candidates, former candidates, lawyers, retired judges, and members of civil society organizations who agreed to be interviewed in preparation for this study.

The International Foundation for Electoral Systems (IFES) is the world's premiere election assistance organization, providing countries with technical advice and tools to run democratic elections. IFES is an international, nonpartisan democracy development organization that works to give people a voice in the way they are governed. Since its founding in 1987, IFES has worked in more than 100 countries.

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Introduction and Background: Election Tribunal Monitoring Project

Despite Pakistan's relatively peaceful February 18, 2008 General Elections, there remains substantial uncertainty about the future. Prospects for the current coalition government to serve its full five-year term are in doubt, which raises the possibility of early elections. While the general perception of the February 2008 elections was that they were free and fair and reflected the will of the Pakistani public, electoral deficiencies were apparent. As one international election observation mission noted, "the overall process fell short of a number of international standards for genuine democratic elections."¹ With Local Government² elections due in mid-2009 and the prospect of early national assembly elections, it is important that unresolved electoral deficiencies be mitigated as quickly as possible, to ensure they will not be a potential source of contention in future electoral contests.

Tackling these deficiencies not only enhances the credibility and acceptance of the electoral process but also facilitates a more orderly transition for new governments and further strengthens democratic traditions in Pakistan. In May 2008, the Election Commission of Pakistan (ECP) took a positive step towards tackling electoral reform by constituting an Electoral Reforms Committee (ERC), which was tasked with recommending amendments to electoral processes "in line with prevalent practices of the developed and developing countries of the world."³

In this context, one key administrative and procedural mechanism that should be addressed by the ECP's reform committee is the post-election adjudication process, known as Election Tribunals, which is an essential element of democratic elections in Pakistan.

The fair and timely resolution of electoral disputes is a critical part of any electoral process, and there is world-wide consensus that those availing themselves of formal adjudication processes are entitled to a swift resolution of their disputes by an independent and impartial tribunal. Defining what constitutes a reasonable time for formal adjudicatory relief by courts in civil, commercial, administrative and criminal

¹ Final Report, Pakistan's National and Provincial Assembly Elections, European Union Observer Mission, Apr. 16, 2008 at 3.

² It is important to note that these Election Tribunals for resolving National Assembly and Provincial Assembly elections differ from those tribunals resolving election result disputes in Pakistan's Senate elections or local government elections. This project focuses wholly on the February 2008 election and mechanisms related to National Assembly and Provincial Assembly elections.

³ Election Commission of Pakistan, Notification F.12(3)/2008 Research (Apr. 26, 2008).

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cases is a hotly debated issue internationally; however election disputes require special care due to their unique nature.

Of course, circumstances of any given case, its complexity, the conduct of the parties and government authorities are all variables effecting the time needed to resolve a dispute. However, the speed of dispute resolution is all the more important when it comes to challenges related to the results of elections as delays may negatively impact the credibility and legitimacy of the electoral process.⁴ The right to an effective remedy and the right to a fair and public hearing are particularly worth noting because they directly relate to public confidence in election processes and election results.⁵ Therefore, it cannot be overstated that disputes related to election results are extremely time-sensitive and differ from other types of formal dispute resolution mechanisms. The European Union Election Observation Mission to the February 2008 elections identified limitations to Pakistan's dispute resolution mechanisms⁶ and called for changes to the complaints and appeals processes generally.⁷ Within this context, it is unlikely that the resolution of electoral disputes following Pakistan's past elections has met international standards.⁸

The purpose of this report is to access on the final phase of the electoral dispute resolution process in Pakistan, that of the administration, processing and adjudication of Election Petitions by Election Tribunals.⁹ Moreover, the Preliminary Report endeavors to place post-election adjudicatory deficiencies in the context of international standards of due process and providing effective remedy. Finally, this report is part of a two stage project; the preliminary findings will be distributed to key to seek their reaction and recommendations. The report purposefully avoids making recommendations until the completion of Phase Two and believes that doing so would be premature without the engagement of Pakistan's stakeholders to fully inform this comprehensive study.

⁴ See Violaine Authman, "The Resolution of Disputes Related to "Election Results," (IFES) February 2004.

⁵ See, e.g., UNIVERSAL DECLARATION OF HUMAN RIGHTS (UDHR), Art. 8 (providing for the right to effective adjudicatory remedy).

⁶ The Election Tribunal monitoring project and other findings of IFES, as well as the observations, findings, and submissions to the ECP by political parties and members of civil society support the conclusion that the adjudication of electoral disputes is one area that definitely requires significant reform. See also Final Report of European Union Election Observation Mission Islamic Republic of Pakistan (Islamabad 2008), where the report states the "existing framework fails to provide an effective mechanism for the remedy for violations of electoral rights". Final Report at p. 20.

⁷ See EU Report at 40-42.

⁸ International standards applicable to democratic elections, derived from international instruments: (1) Universal Declaration of Human Rights (UDHR), adopted 10 December 1948, UNGA Res 217A III; (2) International Covenant on Civil and Political Rights (ICCPR), signed 17 April 1966; (3) Convention on the Elimination of All Forms of Racial Discrimination (ICERD), ratified 21 September 1966; and (4) Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), ratified 12 March 1996. Also of particular relevance are the General Comments of the United Nations Human Rights Committee, which are interpretive statements of the provisions of the ICCPR, which include: General Comment No. 32, interpreting the right to equality before courts and tribunals and to a fair trial set forth in Article 14 of the ICCPR.

⁹ The term "Election Tribunal" is sometimes used by the Pakistani media to refer to tribunals that hear appeals of election nomination eligibility determinations under RPA§ 14(5) & 14(5A, which potentially causes public confusion and misunderstanding of the legal process for resolving election disputes.

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It is hoped that this report and the final project report will help to inform future programs dealing with electoral reform and rule of law matters, in particular those dealing with the legal profession and court management

I. Context and Methodology

A. Project Design Preparations

IFES' initial project design preparations reinforced several well-known or publicly perceived realities of the Election Tribunal process:

- (1) lack of public confidence;
- (2) rife with delay¹⁰; and
- (3) indicative of Pakistan's overburdened,¹¹ under-funded working,¹² costly,¹³ and delay ridden judiciary.¹⁴

For instance, while ECP released no official statistics IFES was told that roughly 39 of the 220 Election Petition—almost 20 percent—filed in the 2002 general elections remained unresolved as of February 18, 2008—over five years later. Anecdotal stories by stakeholders, including candidates and lawyers, conveyed similar impressions of long delays in proceedings and the resolution of challenges to election disputes well-past the statutorily required four month period. For instance, one Petitioner challenging the 2002 results provided his file to IFES and told of over 50 adjournments in his case—a case that was never resolved and became moot on Election Day, February 18, 2008.

IFES' informal interviews with practitioners, party officials, candidates and former candidates and local civil society organizations in preparing the methodology of

¹⁰ See Livingston Armytage, "Pakistan's Law & Justice Sector Reform Experience—Some Lessons," 13th Commonwealth Law Conference, Apr. 14, 2003 (observing, "[t]he endemic delays of the Pakistani court system are caused in part by chronic under resourcing but in another part by archaic and inefficient work practices.").

¹¹ Interviews with stakeholder indicated that courts held considerable backlogs. Over 80,000 cases backlogged at the Lahore High Court alone. See PAKISTAN OBSERVER, "Heavy backlog of cases in courts needs to be cleared: CJP Lawyers' problems need to be addressed on priority basis", May 26, 2008 available at www.pakobserver.net/200805/26/news/topstories05.asp. This is even a problem at the Supreme Court where pending cases were reported to be 21,797 in as of January 1, 2006. See Press Release, Supreme Court of Pakistan, Jan. 19, 2006, available at <http://www.supremecourt.gov.pk/pr/PR-19.htm> (last visited July 2, 2008). By June 27, 2008 the Supreme Court's backlog stood at 16,310. See Associated Press of Pakistan, "Supreme Court Dispose of 89 cases in a Week, June 28, 2008.

¹² Law and Justice Commission of Pakistan's National Judicial (Policy Making) Committee, established in 2002, identified "delay in the dispensation of justice [is] a chronic problem." Law and Justice Commission of Pakistan, National Judicial Policy Making Committee available at www.ljcp.gov.pk/nj/introduction.

¹³ See THE DAWN (Pakistan), "CJ says litigation is expensive," May 30, 2008 (the Pakistan Chief Justice is quoted, "...it is our [the courts] direct responsibility to provide fair, expeditious, and inexpensive justice to the people of Pakistan.").

¹⁴ See generally Chaudhry Hasan Nawaz, "Delay Reduction with Effective Court Management," Federal Judicial Academy, Islamabad, Pakistan available at <http://www.fja.gov.pk/research.htm#Competency> (last visited July 4, 2008). In 1999 the Asia Development Bank (ADB) reviewed Pakistan's justice sector and identified 27 judicial policy actions necessary to remedy and improve the administration of justice considered a significant cause of delays within the courts.

the project reinforced the widely held perception that Election Tribunals were wrought with delay. Delay in the Election Tribunal process and proceedings came as no surprise given the widely held public perception that the judicial system either falls short on access to justice or substantially delays resolution of all types of disputes.

Some stakeholders explained that chronic problems with delay in Pakistani courts result from the lack of resources, specifically funding for courts and their administrative systems. Others spoke of alleged professional misconduct or corruption by lawyers, judges or bureaucrats within the administrative file channel—sometimes influenced by the political parties—as among the leading contributors for delay. Several stakeholders suggested that the Election Tribunals fail to work properly due in large part to lack of will on the part of the government to make the system work. However, time and again, IFES was informed that a likely reason for delay is related to lawyer’s procedural tactics. Stakeholders also charged that customary payments of bribes to court officials are allegedly required to either slow the other party’s case or ensure the speed of one’s own case, are leading contributor to delay in the process.

The interviews and discussions with stakeholders provided IFES with a rich context in which to better assess and understand the strengths and weaknesses of the post-election dispute resolution processes. In addition, local stakeholder opinion, analysis, and first-hand experience concerning the Election Petition and Election Tribunal processes enabled IFES to craft an appropriate monitoring methodology and to develop a better understanding of the practice of law at these critical post-election dispute proceedings.¹⁵

A basic review of the legal mechanisms of Election Petitions and Tribunals also assisted in the development of the project methodology.¹⁶ Prior election media and news reports proved important sources of information that enabled IFES to identify processes to be studied or reinforced anecdotal stakeholder input. The ECP Secretariat was also a valuable asset to the project’s understandings of Election Tribunal process. Two specific international standards are relevant to the project and critical to the development of the methodology:

1. The right to an effective remedy;¹⁷

¹⁵ This project also continued much of IFES Pakistan’s on-going technical assistance work with the Election Commission of Pakistan and numerous briefings and discussions were held with ECP’s Section Officer-Legal, responsible internally for the processing of Election Petitions and was one of the project’s main contact points at the ECP. IFES garnered substantial information from ECP officials both in preparation for the project as well during Phase One.

¹⁶ One slowing point to the basic legal review is the difficulty of obtaining final orders or decisions on disputes related to election results. These decisions are published, if at all, at the provincial level intermixed with other cases. One of the few comprehensive resources for case law, pakistanlawsite.com, is a subscription and is cumbersome and time-consuming to use.

¹⁷ See UDHR, Art. 8; INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR), Art. 2; and INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION (ICERD), Art. 5. All require that states provide an effective and timely remedy for any violation of a person’s human rights, such as the right to vote. The remedy may be provided by a competent administrative, legislative or judicial authority, but must be available for all violations of human rights. Remedies must be

2. the right to a fair and public hearing¹⁸

These two standards are fundamental to dispute adjudication because each directly relates to public confidence in electoral processes and election results. Under these standards and in order for remedy to be effective it must be timely. A fair and public hearing must be expeditious but also impartial, providing for equal access and equal treatment to similarly situated parties. The right to a fair and public hearing, coupled with the right to an effective remedy, ensures an adequate means of redress for the violation of individuals' rights.

In order to measure the current post-election Election Petition/Election Tribunal process IFES determined that the project would collect both quantitative and qualitative data, related to:

1. Timeliness, including administrative and judicial intervals for processing and disposing of Election Petitions;
2. Distribution of petitions nationally by party;
3. Distribution of Election Tribunals to ECP-appointed Election Tribunal judges;
4. Assessment of administrative processing at ECP and court levels;
5. Assessment of lawyers and judges' professional practice; and
6. Assessment of the legal framework and its practical applications to provide effective remedy.

IFES determined that the best methodology to collect both the quantitative and qualitative data would be to select and train Pakistani attorneys as Election Tribunal monitors (ETMs).¹⁹ Local attorneys would have the knowledge and experience of court administration and specifically trial practice to enable informed opinions about the administration and proceedings of Election Tribunals, as well as the skills necessary to collect empirical data about each Election Petition.

B. Identification of Local Attorneys as Election Tribunal Monitors

IFES conducted a national search and recruitment for part-time Election Tribunal monitor (ETM) positions. Seven attorneys were eventually hired.²⁰ In an effort to avoid conflicts or the appearance of conflicts of interest ETMs were screened for recent and

provided expeditiously. A remedy that is granted too late is of little remedial benefit. In order for a remedy to be effective, it is necessary that it be timely.

¹⁸ See UDHR, Art. 10 and ICCPR, Art. 14 (both provide for the right to have one's case heard publicly and expeditiously by an impartial tribunal, equal access to judicial proceedings, and equality of arms). The right to a fair and public hearing is broader than the right to an effective remedy, as this right applies to the determination of rights and obligations arising under domestic law, regardless of whether a human right is implicated.

¹⁹ Pakistan uses the terms lawyer or advocate but rarely attorney to describe legal practitioners.

²⁰ The number of monitors was increased from four to seven for more populated provinces of Sindh and Punjab where most of the disputes were anticipated—largest populations and most National and Provincial Assembly seats. The two additional monitors will assist in the coverage of tribunal hearings at Provincial High Court's satellite benches in major cities in the country. A seventh member a Research Assistant was added later.

active political party affiliation as well as representation of current political parties before Election Tribunals. All agreed to avoid taking Election Petition cases so long as they served as Election Tribunal monitors. IFES also sought ETMs' disclosure of any family or law firm affiliations with candidates. Based on initial information from ECP IFES anticipated that Election Tribunals would be situated at the provincial High Court benches and their respective satellite benches. IFES therefore selected two ETM candidates from Punjab and Sindh provinces, which would allow the greatest coverage of the provincial High Court benches for monitoring purposes. Baluchistan and NWFP required only one ETM.

ETMs were also screened for their range of experience with the election laws, with civil society organizations, and other experiences that would enhance the group's expertise and understanding of the practice of law and court administration in Pakistan. The group included attorneys previously involved in legislative strengthening, a former magistrate judge, a former federal agency prosecutor, lawyers familiar with journalism, and a public interest attorney. All ETMs possess some level of court room experience and most had familiarity with election law issues prior to their participation in the IFES project. In April the sheer volume of empirical data being collected in Punjab Province necessitated the hiring of non-attorney research assistant.²¹

C. Data Collection Design and Development of Database

Election Tribunal Monitors performed three primary tasks:

1. Gathered information on administration of court management system's processing of Election Petitions;
2. Gathered information and collected empirical data on the descriptive characteristics of each Election Petition; and,
3. Monitored Election Tribunal proceedings to assess effectiveness, timeliness, and use of court procedure.

In order to facilitate the information and data collection related to each of the aforementioned tasks IFES designed five templates that ETMs used to report data collection, findings and observations and analyses. Table 1 describes these forms by number:

²¹ IFES' assessment of the on-the-ground realities determined that the collection of quantitative data in Punjab Province amounted to three times the information compared with that in other provinces and the collection of this information was (1) time consuming and (2) did not require legal training. Therefore, IFES determined that the best use of resources was to hire a Research Assistant to collect quantitative data in Punjab province for a short term period. The Research Assistant's work began in late April 2008 and continued through the end of June.

TABLE 1

Form	Description
1	Provided for the collection of information pertaining to the provincial court management system’s administration of Election Petitions;
2	Collected petition characteristics (empirical characteristics) including relevant dates, party names, appointed judges, political party affiliation, attorney names and substantive allegations challenging the results;
3	Used to update any Election Petition empirical data;
4	Collected updated empirical data related Election Petition characteristics as well as qualitative observations by ETM attending Election Tribunals. This included rulings made by the judges, the physical attributes of the courtroom, the atmosphere in and surrounding the courthouse, the conduct of lawyers, the control exercised by judges, the demeanor of the lawyers and judges and any complaints about the proceedings by participants or observers;
5	A preliminary report that captured ETM observations as well as legal analysis and opinions.

As noted above, all data collection and information gathering was obtained by monitors through visits to the provincial courts as well as occasional telephone calls to court officials.²² All data once collected was forwarded to the IFES Pakistan office in Islamabad for entry into an IFES-designed database that captured empirical data contained on the forms. IFES staff spot-checked the accuracy of this data through review of submissions and periodic confirmation of data with the ECP Secretariat and/or Provincial Election Commission.

D. Training of the Election Tribunal Monitors

Prior to deployment ETMs participated in a two-day workshop. ETMs were trained on the procedures to be employed to consistently and accurately gather empirical data and information during the project including: qualitative and quantitative information about the court management system as well as the collecting the empirical characteristics about each Election Petition; and monitoring the Election Tribunal proceedings.

The orientation workshop included sessions on Pakistani election law and specifically the law relating to Election Petition and Tribunal processes. A legal refresher course on the Code of Civil Procedure (CPC) and modifications made to the CPC by the

²² IFES chose to gather all information at provincial High Courts because initial discussions with ECP Secretariat indicated that Election Petitions were not tracked at the Secretariat or provincial level and a complete record of the file with all empirical data was located for an extended period at the body charged with its disposition. It was later learned that most PECs record and track the status of Election Petitions.

election laws served to provide specific instruction to ETMs to assist in their evaluation of the processes impartially and fairly. In this context, ETMs were trained to track the procedures of Election Tribunals and record the proceedings conducted by judges, Petitioners, respondents and attorneys. Thus, all ETMs became familiar with the subject matter of administrative handling or post-election dispute mechanisms as well as the kinds of activities that occur in a courtroom. ETMs were further trained on the importance of remaining neutral monitors of the court proceedings as well as proper protocols around interactions and discussions with stakeholders including lawyers, parties, judges, administrative staff and the public.

The participation of a former Pakistani provincial High Court justice—who previously presided over Election Tribunals—IFES’ national attorney—a High Court Advocate—as well as a former provincial assembly candidate who provided a detailed account of his experience as a party in a 2002 Election Petition case further enhanced the workshop.

E. Communication with ETMs in the Field including Safety and Security

IFES made communicating with the ETMs in the field a priority but it also recognized that fluency of the local language would be important to the success of the project. For all monitors English is a second or third language. Monitors’ levels of spoken English proficiency varied but all read and wrote English extremely well, which is likely a reflection that legal studies and many court proceedings are conducted in English.²³ Local IFES staff provided substantial and sometimes day-to-day oral communications with ETMs to clarify or discuss the project’s progress.

IFES sent periodic and weekly updates to ETMs as a group and the IFES Pakistan office served as the central monitoring office in case ETMs required information or clearance for travel. Monitors apprised IFES staff regularly of field occurrences including hearing rescheduling, interaction with stakeholders, court or PEC staff or security concerns.

Security conditions in light of the well-publicized lawyers’ movement and other outbursts of public strife in Pakistan presented serious concern and at times impeded monitoring activities and forced rescheduling of staff field visits. IFES closely monitored the security situation and remained in regular contact with ETMs sending advisories when circumstances warranted. Monitors were provided with IFES identification as well as an introductory letter to court officials describing the project to distribute to stakeholders and the public when necessary.

²³ See CPC § 138 (rule providing that High Courts may require evidence to be taken in English).

F. Previous Tribunals & Monitoring of Election Tribunals

During the project’s design phase, ECP informed IFES that no historic data was available concerning the resolution of Election Petitions and no other information about the resolution of Election Petitions was tracked at any governmental level.²⁴ In fact, ECP’s GENERAL ELECTION REPORT for 2002 does not track or indicate the number of Election Petitions filed at ECP following the 2002 polls.²⁵ ECP reported to IFES and international observations missions that 220 petitions were filed in 2002 and of those 39 remained unresolved as of Election Day 2008. ECP’s GENERAL ELECTION REPORT on the 1997 elections reports 114 Election Petitions filed.²⁶ The same report noted that 13 petitions were dismissed by the Chief Election Commissioner²⁷ while 101 Election Petitions were referred to 23 tribunals.²⁸ Table 2 provides totals of Election Petitions filed, dismissed and pending as of the next election by year.

TABLE 2

	1985	1988	1990	1993	1997	2002
Total Election Petitions Filed	219	103	145	106	114	220
Total Dismissed	4	4	15	7	13	NA
Pending as of the Next Election	0	2	2	34	NA ²⁹	39

²⁴ In April 2008, during IFES’ field visit to the Sindh Provincial Election Commission, IFES learned that it has been past practice that PECs track the status of Election Petitions and send monthly reports to ECP. The Lahore PEC also reported to IFES that it tracked Election Petition status as well as recorded EP characteristic information including dates filed and referred to the High Court. The Sindh PEC reported that it filed monthly status reports to the ECP Secretariat informing the Secretariat of all pending Election Petitions.

²⁵ See Election Commission of Pakistan, 2002 GENERAL ELECTION REPORT, VOL. at 203-219 (only reporting on applications for recounting and reports of grave illegalities under RPA §103AA during the post-election period).

²⁶ See Election Commission of Pakistan, 1997 GENERAL ELECTION REPORT, VOL. I at 206-215 (1997) (reporting information on election disputes).

²⁷ Under RPA §56(1) the Chief Election Commissioner has the authority to dismiss Election Petitions. During this project IFES was repeatedly told that in practice the CEC does not dismiss Election Petitions as its task under RPA is to determine whether the petition complied with administration procedures of the statute and if so the Election Petition would be referred to an Election Tribunals. Noncompliant Election Petitions, which are procedurally deficient, are returned to the petitioner for corrective action. Most importantly, ECP at both the Secretariat and provincial levels indicated that it is not the responsibility of the ECP to make substantive determination of the efficacy of the petition as those decisions are committed to the tribunal alone.

²⁸ See 1997 GENERAL ELECTION REPORT, VOL. I at 208

²⁹ *Id.* “NA” indicates that data is unavailable.

It should be noted that ECP repeatedly informed IFES during the preparation stages of the project that it is responsible for referring an Election Petition to an Election Tribunal only and once an administrative examination is completed its role was *functus officio*—having performed its duties in the election process, it retains no legal duties. For this reason, IFES decided that all data related to each Election Petition would be collected at the provincial High Court level.

One particular challenge of deploying ETMs at the courts is the unpredictable and often fluid schedule of the proceedings and scheduling of the Election Tribunals. As will be discussed in greater detail below, because of the legally shared administrative responsibility between ECP and the judiciary and the legal window of opportunity for aggrieved parties filing election challenges, Election Tribunals do not begin immediately upon filing of Election Petitions. See sections II & III, *infra*.

IFES anticipated a short period of delay prior to the Election Tribunal hearings commencing to account for administrative processing by ECP Secretariat. During this period, ETMs visited provincial High Court benches to gather information related to processing and management of Election Petitions and to determine a picture of the file channel at each High Court bench.

Each monitor tracked, collected, and recorded tribunal information on the corresponding the data collection forms concerning at each High Court's registrar's office. A characteristic challenge of collecting the empirical data in the court system is the rolling flow and scheduling Election Petition from the point of filing to the High Court's case management system.³⁰ The collection of data on Election Petitions characteristics continued though the end of June 2008.³¹

Once hearings commenced in earnest for each Election Petition, with the assistance of IFES, each ETM systematically tracked new hearing dates for new Election Petitions entering the court system or new hearing dates assigned as a result of a prior adjournment by an Election Tribunal. It is important to note that it was difficult to project for each tribunal trial how long each would last; anecdotal reports indicated that the resolution of the vast majority of Election Petitions for previous elections far surpassed the statutory resolution four-month period.³²

By mid-May monitors reported to IFES that provincial High Courts would begin traditional summer breaks beginning June to August in Sindh (Karachi High Court) and from July to September in all other provincial High Courts (Peshawar (NWFP), Lahore (Punjab), and Baluchistan). Reports by monitors also indicated that Election Tribunals

³⁰ See section III, *infra*.

³¹ The statutory period for filing Election Petitions is 45-days following official results. For NA and PA seats results were made official on March 1, 2008, last filing at April 14. Seats for women and religious minorities were made official March 13 and 14, 2008, filing dates April 27 and 28. Monitors continued to collect data well into May because as seen in the findings, *infra*, the handling of the Election Petitions is often delayed.

³² See RPA § 67(1A).

would likely be further delayed—upon further inquiry by IFES directly to the courts, IFES was informed that Election Tribunals would continue to be scheduled through the summer hearings despite greatly reduced summer schedules.

G. ETM Phase One Debriefing Workshop

After nearly four months of data collection IFES conducted a debriefing workshop with ETMs in Islamabad. The workshop program reviewed the data collection efforts and discussed the project team's field experiences, seeking reaction to the project's initial findings. The debriefing included collaborative exercises designed to triage data to ensure the data's accuracy in preparation for Preliminary Report. In advance of the ETM debriefing, ETMs were asked to prepare preliminary reports in common format. These were used to engage discussion at the workshop and assisted in the preparation of this Preliminary Report.

Workshop sessions focused on the ETMs professional observations of ETMs with their special focus on impacts of the process and procedures on Election Tribunals. ETMs shared field experiences concerning the quality of contacts with Provincial Election Commissions and court administration staff as well as other stakeholders. In addition, the monitors provided legal analysis to solidify the project's understanding of petition handling, tribunal procedures, court administrative case management system, use of the Code of Civil Procedure and the customary practice of law by the bar in Pakistan.

H. Accuracy of Data Collected

IFES took all reasonable efforts to ensure that data was collected with integrity, care and accuracy. IFES made reasonable efforts to regularly verify data points although doing so proved difficult as ECP and provincial election officials did not collect identical empirical data points, nor does any other known agency. To minimize the reporting of inaccurate data points in the aggregate, the findings of this Preliminary Report are careful to state the number of the data points that given percents are based upon and carefully reveal uncertainties in the findings.

II. Basic Legal Framework: Post-Election Dispute Adjudication Scheme³³

Pakistan's Constitution mandates that no challenges to election results, of a national or provincial assembly election, may be resolved "except by an Election Petition presented to an Election Tribunal."³⁴ The Constitution also requires Parliament to set-out the procedure for the Election Petition and Election Tribunals.³⁵ In choosing a procedure, Pakistan's Parliament crafted a statutory scheme that mandated a shared responsibility to resolve these disputes³⁶—Election Petitions will be filed with the Election Commission of Pakistan³⁷ and formally adjudicated by Election Tribunals presided over by the judiciary.

During the post-election period, Election Tribunals are constituted by the Chief Election Commissioner (CEC) of the Election Commission of Pakistan (ECP).³⁸ In practice, the CEC requests names of currently serving High Court judges' from each provincial High Court Chief Justice for appointment as Election Tribunal judges.³⁹

As noted above, the law contemplates that challenges to election results would be resolved by Election Tribunals, but a quirk of this statutory mandate creates an uncertain time interval from polling day until official results are placed in the GAZETTE OF PAKISTAN⁴⁰ when Election Tribunals do *not* sit to resolve election challenges. IFES observed that this time period causes of public confusion, uncertainty,⁴¹ and the opportunity for legal gamesmanship.⁴²

³³ Once the project was underway, an initial legal review was performed, and ECP appeared to be amendable to reform ideas it became apparent that project needed (1) a more rigorous legal review (2) enhanced data analysis and (3) more capacity building contact with ECP to prepare the Commission for the run-up to the 2009 local elections IFES sought additional funds to assist in ECP electoral reform necessary to ensure that effective remedy of post election disputes would be enhance at the next National Assembly and Provincial Assembly elections. USAID was instrumental in enabling enhanced data analysis and these preliminary findings as well as the final report will inform the ECP Reform Committee's proposals for legislative and administrative changes. This legal analysis is on going and will be provided in full in the final report.

³⁴ CONSTITUTION OF THE ISLAMIC REPUBLIC OF PAKISTAN 1973, Art. 225 (2007) (amended). Challenges to results for local government or Pakistan's Senate elections fall under other Pakistani law and are beyond the scope of this study.

³⁵ *Id.*

³⁶ See Representation of the People Act 1976 (RPA), §§52-72.

³⁷ See PAKISTAN CONSTITUTION, Art. 218 (establishing the Election Commission of Pakistan).

³⁸ See RPA §57(1).

³⁹ Under RPA §57(2) Election Tribunal judges may come from several groups: (a) sitting High Court judges; (b) retired High Court judges; or (c) retired district and session court judges that would have been eligible to sit on a provincial High Court bench.

⁴⁰ IFES is told that this period of time is upwards of two weeks. IFES observed that this period of up to two weeks creates considerable confusion related to what entity and where those who wish to challenge election results may go to resolve disputes.

⁴¹ There are three primary avenues that those seeking redress for challenging election results: (a) RPA§39; (b) RPA§103AA and (c) constitutional writ petition for violation of rights.

RPA §§39 & 103AA direct requests for review to the Election Commission for review without the use of Pakistan's judiciary. Both may be utilized during the period immediately following polling until official

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Aggrieved parties⁴³ seeking to avail themselves of an Election Tribunal have the opportunity to file an Election Petition⁴⁴ along with a security deposit.⁴⁵ As noted above, Election Petitions may be filed only when the official results are published in the official GAZETTE OF PAKISTAN and aggrieved parties have 45-days to file a petition from the date of publication.⁴⁶ Election Petitions are then reviewed by CEC⁴⁷ for compliance⁴⁸ with the statutory requirements⁴⁹ sufficient to be referred to an Election Tribunal.⁵⁰ The statute

results are published. *See* Tirmizi v. Election Commission of Pakistan, Civ. Pet. 331 (Sup. Ct PK 2008) (for most recent discussion of Section 103-AA). For instance, aggrieved candidates may request the Election Commission or to local polling officials for recount under section 39(6) (b) and is typically reviewed without a formal agency hearing. Section 103AA, on the other hand, contemplates a more formalized hearing before the Commission to void poll results in a constituency but its scope may be limited. *See, e.g.*, Muhammad Akram Zaki v. Hamayun Akhtar, ECP (Oct. 2002). In 2002 ECP considered matters under both provisions but did not provide total numbers for each. In 2008 ECP reports to IFES that roughly 30 cases were considered under these provisions.

Aggrieved parties have sought challenge to election results under Sections 199 and 184 of Pakistan's Constitution which allow for "writ petitions" for alleged violation of fundamental rights by governmental authorities. Many believe that this method potentially provides immediate resolution. Use writ or constitutional petitions was a frequent phenomenon during the 2008 general election.

For a full description of these post-poll/pre-gazette challenge-to-result-remedies, see generally ECP, ELECTION DISPUTE RESOLUTION PAMPHLET (March 2008) *available at* www.ecp.gov.pk.

⁴² Stakeholders report to IFES that because the tribunal process is renowned for its delay, lawyers use constitutional writ petitions as a possible avenue to challenge election results due to the procedure's expediency. It is unknown how many times candidates sought election challenge relief using a constitutional petition but IFES estimates that a minimum of two dozen cases used these procedures prior to filing an Election Petition under RPA §52 *et seq.*

⁴³ Challenges to election results may be challenged under RPA §52 *et seq.* and these challenges may only come by aggrieved candidates. However, RPA§76A creates standing, by way of an application/petition to either a sitting Election Tribunal or directly to the Commission, for a third party not a candidate in the election to challenges the results of an election if such a person knowledge that the returned candidate is fiscally irresponsible as detailed in the sub-section.

⁴⁴ *See* RPA §52 *et seq.*

⁴⁵ *See* RPA §52 and Representation of the People Act (Code of Conduct) Rules §34 (1977) (providing implementing rule on RPA §52 security deposit).

⁴⁶ *See* RPA §52.

⁴⁷ *See* sections *infra.* (discussing the file channel of an Election Petition).

⁴⁸ Under RPA §56 CEC reviews Election Petitions for compliance with subsection 52 (filed within 45-days and 1,000 rupees was deposited as security), subsection 53, (presented to the ECP by hand delivery or registered mail), and subsection 54 (all contesting candidates in the constituency challenged joined as respondents and serve the petition on each respondent). Notification F.1(7) 85-Cord. (1985) also requires that petitioners submit elections petitions in triplicate.

⁴⁹ *See* RPA §56. ECP maintains that its role is purely ministerial. It reviews petitions for the statures procedural requirements and does not making a determination of the strength, veracity, nor frivolousness of the claims made by any given Petitioner. This subsection does not require a review of subsection 55, which provides that each Election Petition must contain statements of the allegations and relief sought. RPA §63(a) enables a tribunal to dismiss a petition for failure to comply with the provisions of subsection 55.

⁵⁰ Under the Notification F.1(7) 85-Cord. (1985) if the CEC determines that an Election Petition is deficient it is then returned back to the petitioner with a notification of the deficiency(ies). This administrative procedure modifies the practice of processing the Election Petition. Under RPA§56 the

also requires specific contents to the petition which parallel pleading requirements under the Code of Civil Procedure for conducting civil trials.⁵¹ The statute also requires that the Election Petition be “verified” or signed by the Petitioner that the contents of the petition are made in good faith and true.⁵² Although the statute does not require substantive review of the contents of the petition, ECP regularly returns a petition to the Petitioner due to deficiencies including insufficient number of copies, missing documents, or lack of verification.⁵³

At the tribunal level the law requires that Election Tribunals upon “receipt” from the CEC must proceed with a trial of the petition “day-to-day” and dispose of the matter within “four months.”⁵⁴ Those candidates remaining aggrieved following the final decision of an Election Tribunal have 30-days to appeal to the Pakistan Supreme Court, whose decision is final.⁵⁵

A. Legal Scheme for the Conduct of an Election Tribunal

Election Tribunals are formal trials conducted under the Code of Civil Procedure of 1908 (CPC),⁵⁶ Code of Evidence of 1878 except where the Representation of the People Act of 1976 (RPA) and the ECP’s Notification of 1985⁵⁷ modifies and attempts to streamline the court’s traditional rules for conducting a trial.

The greater portion of pre-trial and trial procedures under the CPC is in effect and practiced at Election Tribunals including, procedure of issuing notice of summons⁵⁸ and calling and recording witnesses at trial. As noted above, the Representation of the People Act of 1976 modifies some pretrial and trial practice including filing requirements.⁵⁹ The statute’s modifications endeavor to increase the speed of traditional trial practice⁶⁰ by modifying the CPC’s procedures including matters related to the taking of evidence and witness testimony⁶¹ as well as allowing dismissal for failure of a Petitioner’s appearance.⁶² Parties often seek adjournments in the Pakistani justice system to legitimately seek more time to prepare arguments or use as a dilatory tactic.⁶³

CEC may dismiss a petition. Administrative modification at the very least minimizes an entry point for litigation challenging the CEC’s action.

⁵¹ See RPA §55.

⁵² See RPA§55(3).

⁵³ See RPA§§ 53-56. Doing so likely avoids dismissal under RPA§56(1) which does not have an appeal apparatus in place.

⁵⁴ See RPA §67(1A).

⁵⁵ See RPA §67(3).

⁵⁶ See RPA § 62.

⁵⁷ Notification F.1(7) 85-Cord. (1985).

⁵⁸ See CPC Order V §1 et seq. (2007).

⁵⁹ See RPA §55.

⁶⁰ Parties sometimes attempt to speed-up traditional trial practice by invoking CPC § 151. Section 151 functions as a motion seeking the inherent powers of the court to expedite the proceedings. In theory this is strong argument the move the push process forward it leads to potentially further delay as court’s have rejected this use of section 151.

⁶¹ See RPA §65.

⁶² See RPA §76.

⁶³ See generally CPC Order XVII et seq. (providing broad discretion to adjourn cases).

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ECP Notification F.1(7) 85-Cord. (1985) further instructs modifications to traditional trial practice under CPC, including the acceptability of public notice as sufficient to provide notice to respondents,⁶⁴ accelerates the procedure for respondent's reply to the petition within seven days once notified,⁶⁵ makes modifications to rules pertaining to witness availability and evidence.⁶⁶

One important feature of Election Tribunal procedures occurs before the first hearing. Under the CPC, notices must be issued to all respondents—who include all candidates in a given constituency including the winning candidate.⁶⁷ For instance, if there are ten candidates running in a given constituency an Election Petition requires notices to be served to the challenged candidate and the eight other candidates. Notices are issued through the Bailiff in the local area. Under the CPC, typically,⁶⁸ on the first hearing date another notice is issued to the respondents if one or more parties remain absent. On second hearing date notice is issued through special registered post or courier service by charging the expenses from the Petitioner. On the day of third hearing, notice is issued to the alternative responsible persons.⁶⁹ On the same or next hearing date the notice is also served to the police department of the constituency of respondents. If all the previous attempts fail to produce the respondents then an order of notification is placed in the newspaper at the expense of the Petitioner.⁷⁰ While the Notification of 1985 makes the use of newspaper publication legally sufficient for notice it does not make it exclusive and therefore the CPC is strictly adhered to. IFES has observed that this process may take many weeks.

⁶⁴ See Notification F.1(7) 85-Cord. §2 (modifying in part CPC Order V, §20).

⁶⁵ See Notification F.1(7) 85-Cord. §3 (modifying CPC Order VIII, et seq.).

⁶⁶ See Notification F.1(7) 85-Cord. §§4, 5, 6, 8 & 9.

⁶⁷ See CPC Order V et seq. (2007). In addition a fee must be paid. For example, at the Karachi High Court, notices are issued by execution branch after submission of process fee, PKR 200.

⁶⁸ This practice might differ slightly due to provincial practice or a given judge's prerogative.

⁶⁹ In the case of Election Petition this responsible person under the law might be a secretary of a provincial or national assembly who would have direct contact with a returned candidate respondent who is occupying the seat being challenged.

⁷⁰ See CPC Order V et seq. (2007).

III. Administrative Processing of the Election Petition to Election Tribunal

The Election Commission of Pakistan (ECP) and the provincial High Courts share responsibility for processing, administration and resolution of Election Petitions. All Election Petitions are filed at the ECP Secretariat and then are referred⁷¹ to an Election Tribunal at a provincial High Court by way of the relevant Provincial Election Commissions.⁷² While it was expected that the provinces' High Court's handling of petitions was the same, as described below, the file channel⁷³ of an Election Petition differs substantively from one province to another. Within each province there are often multiple election and court officials who are responsible for reviewing, approving, and forwarding petitions to the tribunals. As will be discussed below the often ritualistic and rigid protocol of a petition's file channel is at least partially responsible for the endemic delays common to the Election Tribunal process.⁷⁴

The file channel⁷⁵ of Election Petitions begins with the receipt⁷⁶ of an Election Petition by the Superintendent at the ECP Secretariat. The petitions sent by post are received by the Receipt and Issue (R&I) Branch where petitions are date-stamped upon delivery.⁷⁷ The petition then begins its course through the file channel where it is forwarded to Section Officer-Legal (SO-Legal), whose primary task, in conjunction with his staff, is to review the petition for compliance with the law's filing mandates⁷⁸ and make a recommendation to the Chief Election Commissioner (CEC) for referral to an Election Tribunal. Petitions that are determined to be administratively deficient are returned to the Petitioner to remedy the deficiency. In the past, ECP has dismissed Election Petitions⁷⁹ under RPA §56(1), however, ECP informed IFES that no petitions were dismissed; only returned to Petitioners to remedy a petition's deficiencies.

⁷¹ See RPA §56(2).

⁷² No known law, regulation, or rule requires that PEC be involved in the RPA§56(2) referral formalities.

⁷³ The file channel is a term as used in this study to connote a pathway that the Election Petition travels within the ECP and the court system and specifically indicates that the path makes various stops with agency officials and staff responsible to acting upon the petition and moving the petition on within the pathway.

⁷⁴ IFES has taken all reasonable efforts to ensure the accuracy of the file channels of all described processes in this section through discussions with lawyers, court and election officials.

⁷⁵ IFES worked to confirm file channel descriptions in at all levels to ensure that the process was accurately described and represented.

⁷⁶ See RPA §53 (specifically referring to this receipt of the Election Petition a "presentation by a petitioner" to ECP).

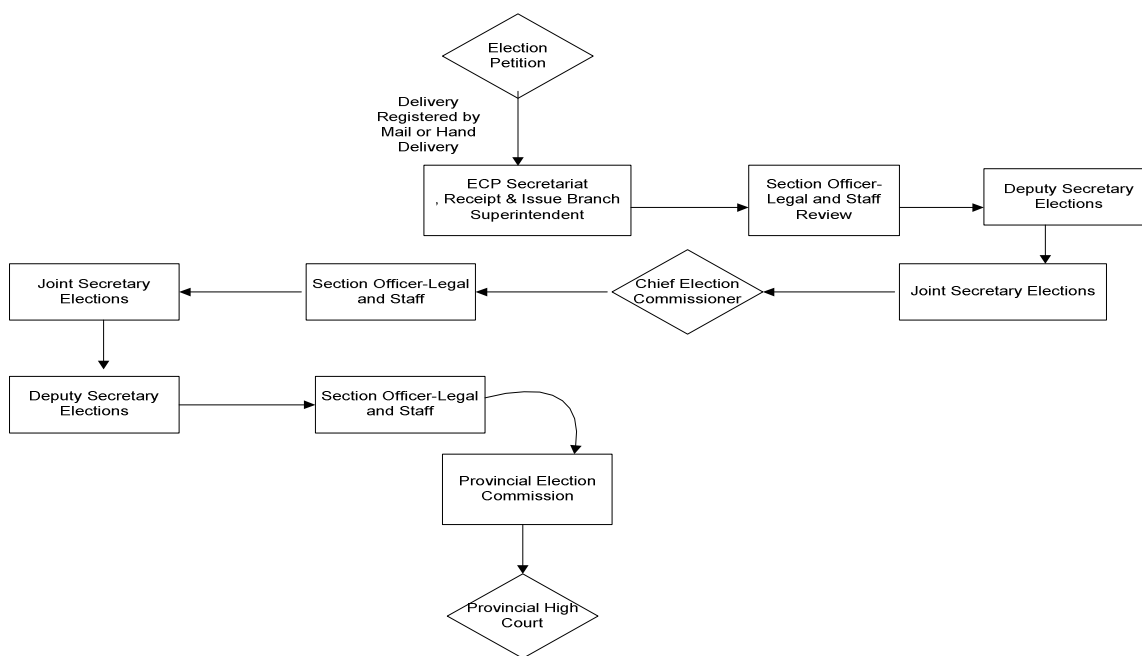
⁷⁷ Election Petitions hand delivered are treated differently than those sent by registered mail. Hand delivered are received and signed by the CEC or Secretary but not until the petition file makes it through the file channel and thus not stamped. The treatment of petitions that are hand-delivered versus those delivered by registered mail likely violates international standards of due process that all seeking adjudicatory remedy receives equal treatment under the law.

⁷⁸ See generally RPA §§52-56.

⁷⁹ See generally 1997 GENERAL ELECTION REPORT, VOL. I at 208.

Once SO-Legal examines a petition and makes a written recommendation, the petition is forwarded to the Deputy Secretary (Elections) for review and signature.⁸⁰ The petition then is received, reviewed, and signed by the Joint Secretary (Elections). The petition finally moves to the Federal Secretary or the Chief Election Commissioner (CEC) or both for their respective review and signature providing final approval and written notification referring the petition to an Election Tribunal. The referral notification contains both a location for holding the tribunal and a judge’s appointment. Once the CEC approves the file for referral to an Election Tribunal the process repeats itself in reverse order; first returning a petition to the Joint Secretary (Elections) and ending at Section Officer-Legal who is responsible forwarding the verified petition and its referral notification to the Provincial Election Commission (PEC) corresponding to the High Court bench where the tribunal is located. ECP maintained that the life of a petition at ECP was roughly one week to ten days.⁸¹ Diagram A details the file channel at the ECP.

DIAGRAM A: Election Commission of Pakistan File Channel



The PEC is required to immediately forward the Election Petition to the responsible court administrator for the province. In practice however, and depending on the province, a PEC may often create its own file channel for an Election Petition. In all provinces however, the provincial legal officer and the Provincial Election Commissioner

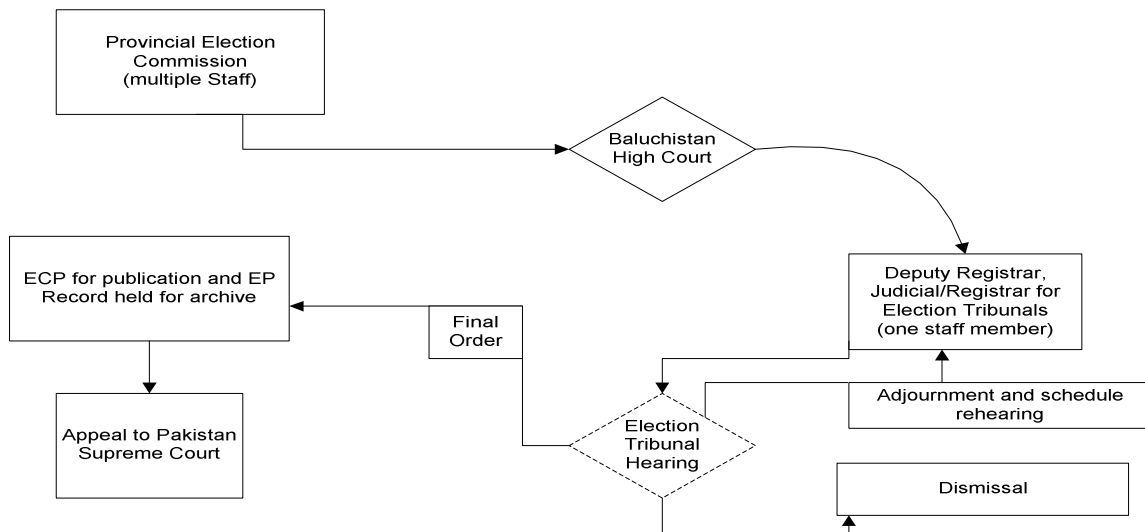
⁸⁰ Each stage of the file channel is characterized by responsibilities of various official and staff to review and forward the Election Petition to another election officials or staff but to forward the Election Petition with paperwork corresponding to an given officials duties in the file channel.

⁸¹ It worth noting that ECP has promulgated no regulations and no rules exist providing for this file channel process.

review the petition prior to its delivery to the provincial High Court, which may take a number of days.⁸²

Once Election Petitions reach the High Courts an Election Petition's file channel may follow substantially different routings, as each High Court's case management system and treatment of Election Petitions vary. For instance, at the Baluchistan High Court upon receipt from the PEC, an Election Petition's file channel begins at the High Court's Deputy Registrar, Judicial Branch. The Deputy Registrar is responsibility for processing and handling of the petition during the entire Election Tribunal. Upon receipt from PEC the Deputy Registrar transmits an Election Petition file to the appointed judge with a suggested preliminary date for first hearing. The judge returns the petition file to the Deputy Registrar with an order fixing a date for hearing. Simultaneously, notices⁸³ are sent to all parties. On the date of the hearing the Deputy Registrar transmits the case file to the judge's office and after hearing the judge returns⁸⁴ the file to the Deputy Registrar. Diagram B provides the file channel at the Baluchistan High Court.

DIAGRAM B: Baluchistan High Court File Channel



⁸² IFES was unaware of PEC's role in Election Petition's reference to the High Courts when the project began and thus did not set-out to study its role. PEC's involvement doubtless increases the time interval in the file channel and, in turn, the time required to resolve these post-election challenges to results. See discussion *infra*.

⁸³ The term notice is commonly used in Pakistan to refer to a summons to parties to appear in court on a set date.

⁸⁴ At this stage judges may recuse themselves from a tribunal where there might be a conflict of interest. In so doing the Election Petition is returned to ECP in order to comply with RPA §56 for CEC to issue another notification for an Election Tribunal. In 2008 this has occurred on a number of occasions. For example, Karachi High Court justice Syed Mahmood Alam Rizvi recused himself from two Election Tribunals—returning the Election Petition to CEC for reappointment to a new judge. Justice Rizvi's note returning the Election Petition to CEC stated, "As I am a voter of the same constituencies so I could not hear the petitions."

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Like all other High Courts, notices by the Karachi High Court are issued in accordance with the Code of Civil Procedure of 1908 (CPC) to be carried-out by a bailiff or by post in the first attempt. The issuance of these notices requires a processing fee to be paid by the Petitioner typically before notices are issued. At the Karachi High Court, the practice is for the court to wait for the Petitioner to pay the fee before issuing notices to parties.

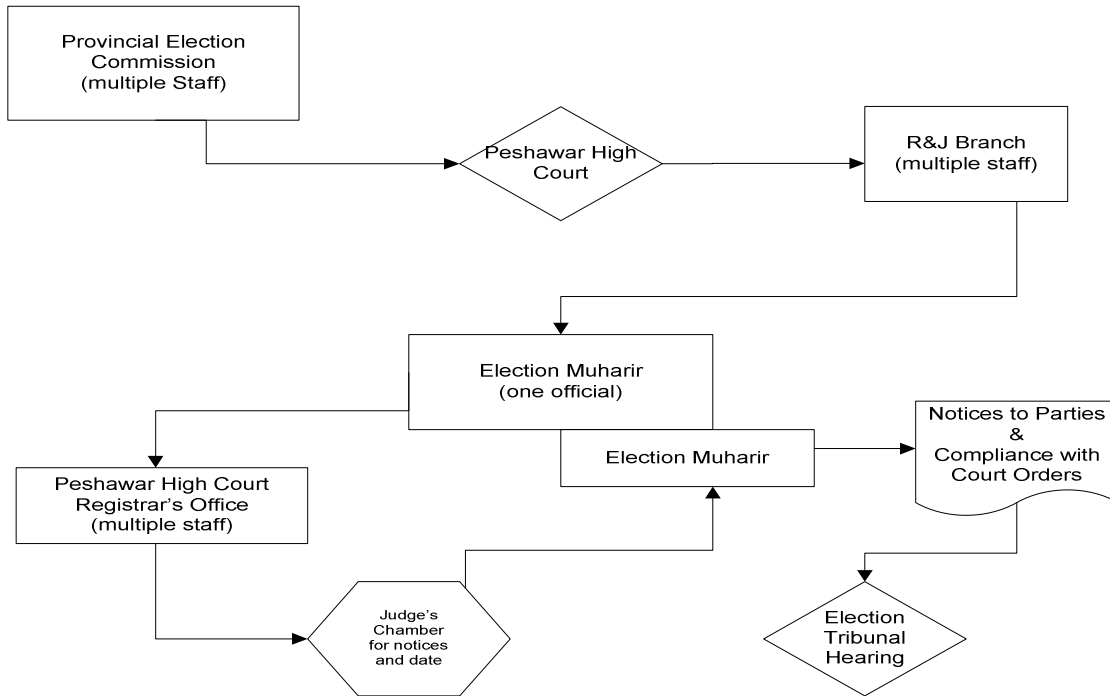
Once a petition reaches its first hearing, all provincial High Courts follow the trial procedures of the CPC. In Baluchistan, if a hearing is adjourned a judge will then return the petition and issue an order for a new hearing date—although in practice in Baluchistan, IFES has observed that hearing dates are often left open or given a particular date range, which requires court officials in the file channel to schedule the tribunals next hearing date. The other three provinces’ High Courts have substantially more administration to their respective file channels. While Baluchistan High Court’s file channel is comprised of two people who are responsible for the intake, processing, scheduling and custody, the other three High Courts have upwards of a dozen court officials who are responsible for a petition’s intake, processing, scheduling and custody as well as additional administrative protocol.

For example, at the Peshawar High Court, the CEC’s notification along with the complete file of petition is received by the Received and Issued (R&I) Branch. Upon receipt, the muharir —the court official responsible for processing and coordination of Election Petitions at Peshawar—registers the details of the received petition file. The muharir re-checks the statutory requirements of the petition file and notes deficiencies in the register book. The muharir then provides a written application to the Registrar of the Peshawar High Court that addresses the assigned judge and is then sent to the Court Registrar for processing and forwarding to the assigned judge.⁸⁵ The Peshawar Court Registrar marks the application, proposes a date and forwards the Election Petition to the chambers of the tribunal judge. The judge approves the application, fixes a hearing date and makes an order of notice to the parties. Once a date is fixed the file is returned to the muharir and proceedings start. The muharir is responsive for rescheduling and notices to the parties throughout the proceedings.

Diagram C follows the Peshawar High Court file channel.

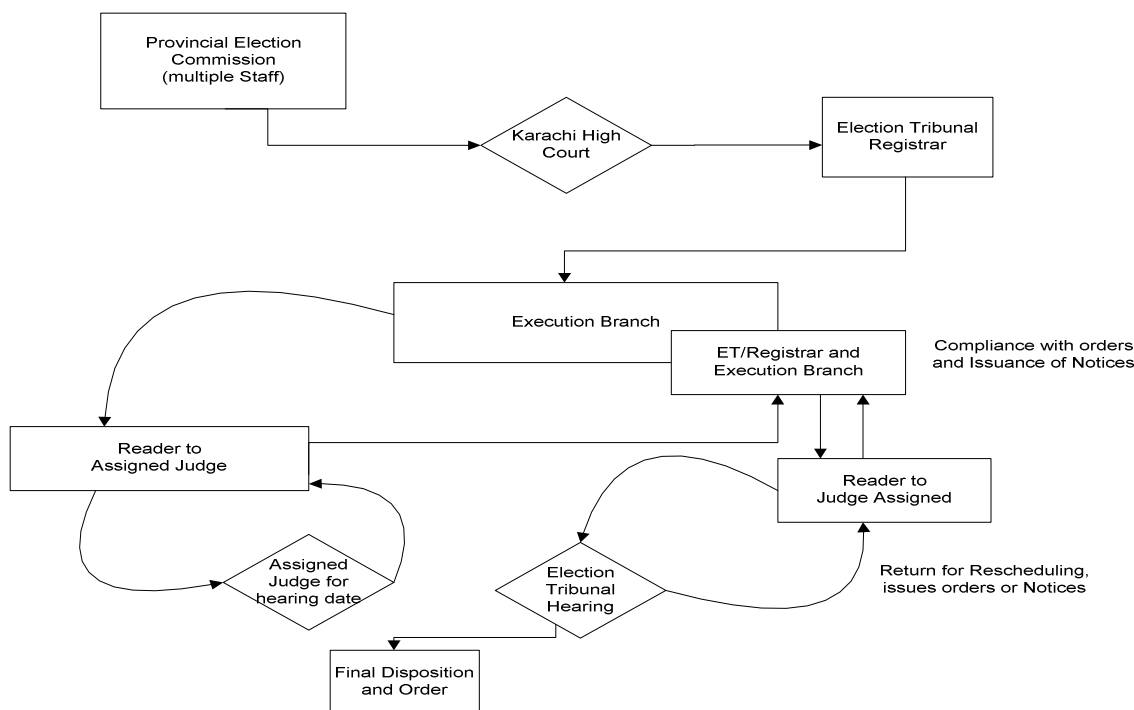
⁸⁵ Custody, of an Election Petition at the Peshawar High Court falls to a “record keeper” staffer.

DIAGRAM C: Peshawar High Court



The file channel mechanisms at the Karachi High Court and Lahore High Courts for Election Petitions, from intake to first hearing, require a similar number of staff and court officials. For instance, upon delivery from the Sindh PEC to the Karachi High Court, the court's execution branch intakes and processes petitions. The execution branch forwards the petition to the notified Election Tribunal judge by way of the judge's reader. The reader who is a judge's assistant, processes a petition for an Election Tribunal judge and schedules a hearing date by issuing an order from the judge. The reader then returns the petition and the judge's order, which sets the hearing date to the execution branch. The Karachi High Court's execution branch then issues notices to parties to appear at a hearing on the scheduled date. A tribunal hearing is held and if proceedings are adjourned the judge's reader coordinates the rescheduling for a new hearing date and issuance of new notices again with the coordination of the executive branch. See Diagram D showing the Karachi High Court's file channel.

DIAGRAM D: Karachi High Court File Channel



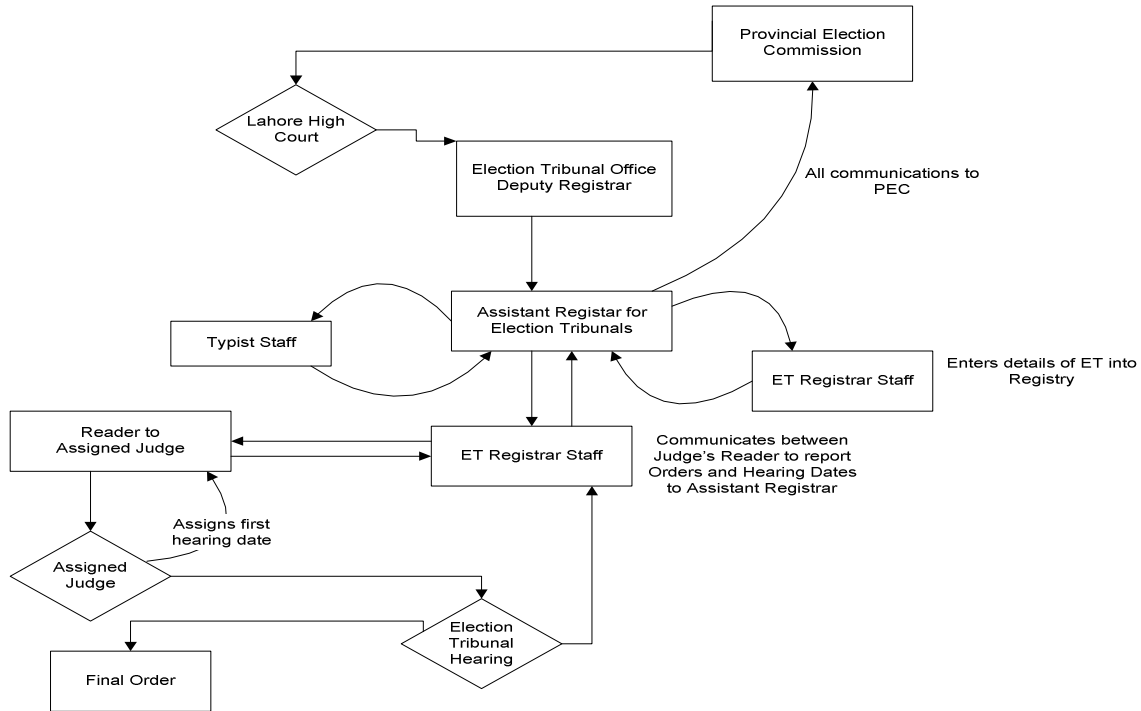
The Lahore High Court’s file channel also requires substantial internal processing, coordination, and movement of an Election Petition between staff and court officials. Upon receipt of the petition by the Election Tribunal–Office petitions are sorted by High Court bench as notified by CEC. The Lahore High Court and its satellite benches in Balawapur, Multan and Rawalpindi are active trial benches for Election Tribunals.⁸⁶ With the exception of the Dera Ismail Khan (D.I. Khan) Bench of the Peshawar High Court, in practice no other provincial High Court satellite benches are used to hearing Election Tribunals. If petitions are notified in Balawapur, Multan or Rawalpindi the petition file is forwarded to these benches and the process follows a similar file channel separately at each bench.

The file channel for petitions pertaining to Lahore Bench are retained and entered into the court management system maintained initially by the Election Tribunal–Office. The petition is forwarded to the Assistant Registrar for Election Tribunals. In order to manage petitions a court official, called the dealing clerk/assistant, at Election Tribunal–Office prepares and maintains a handwritten-register-book recording basic information and recording day-to-day court proceedings on these petitions. Before moving from the Election Tribunal-Office, a typist drafts correspondence to transmit the petition to the judge’s reader. The Deputy Registrar sends the petition to the assigned judge seeking a first date of hearing by way of the assigned judge’s reader. At the first hearing, like at all

⁸⁶ Petitions pertaining to the bench(es) other than Lahore High Court are forwarded to the concerned bench(s) in Punjab. Hence, petitions notified to be heard at Multan Bench are received from the ET – Office, Lahore, at the Writ Branch, Multan Bench in Multan.

courts the case is called and the Petitioner's attorney expected to appear before the court for argument. If the case is adjourned the reader reschedules the tribunal with the Deputy Register. See Diagram E following the file channel at the Lahore High Court.

DIAGRAM E: Lahore High Court File Channel



A. Project Access to Information at Provincial High Courts

As a result of initial stakeholder discussions, IFES anticipated that access to court proceedings might be limited by administrative hurdles or court officials' reluctance to share information about the Election Tribunals. In an effort to avoid possible confusion and fully inform the High Court of the project, IFES directly requested the ECP Federal Secretary to provide a letter to the provincial High Courts and the provincial election officials to inform them of the joint ECP-IFES project to monitor Elections Tribunals, which the Federal Secretary agreed to do.

Election Tribunal monitors were initially refused access at the Baluchistan and Karachi High Courts to gather information on the Election Petitions.⁸⁷ In Peshawar and Lahore monitors were initially allowed access as members of the bar and not as monitors performing programmatic work. As one monitor noted, the court staff are "very cooperative with advocates ... but not for others." While the Peshawar High Court was most cooperative throughout the entire project, such was not the case with other

⁸⁷ At this time the ECP letter announcing the program remained outstanding. IFES issued an announcement project's activities and requested each High Court's full cooperation

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jurisdictions. As there was some confusion by the ECP about the issuance of the introductory letter, ECP never issued the project's introductory letter, but IFES issued an introductory letter describing the joint ECP-IFES project and upon the court's receipt of this letter, ETMs encountered little difficulty in gaining access to the information necessary to make this preliminary report possible.

IV. Presentation of Findings

The Election Commission of Pakistan reports that 265⁸⁸ petitions were filed at the Commission challenging the election results of the February 18, 2008 General Election. Candidates challenging the election results by law are allowed 45-days from the date that the returned candidates are announced in the government's GAZETTE OF PAKISTAN to file a petition.⁸⁹ Table 3 shows the total number of petitions filed challenging National Assembly seats versus Provincial Assembly seats as well as the total of data collected and available as of June 16, 2008 at the provincial courts of those 265 petitions by IFES monitors.

TABLE 3

Assembly	Number of Petitions	Petitions where Data Available ⁹⁰
NA	94	93
PA	171	166

Over 1000 National Assembly and Provincial Assembly seats were contested directly or indirectly in February 2008. With 265 election challenges to results, roughly 25 percent of all seats including seats reserved for women and religious minorities were challenged. IFES collected data on 259 of the 265 Election Petitions. Graphic I, below, shows the total number of all Election Petitions as distributed amongst each of Pakistan's four provinces. Graphic II, below, indicates the total number of Election Petitions filed per province and by assembly.

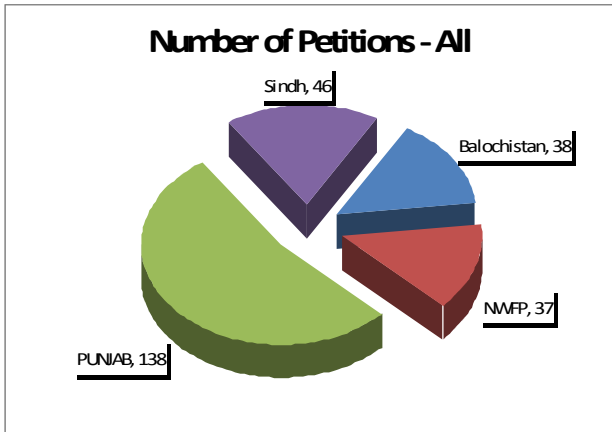
⁸⁸ As of July 8, 2008, ECP considers one additional petition to be included in total challenges to the February 18, 2008 election results. ECP ordered re-polling in a number of polling stations for one constituency at the June bye-elections to be added to the February vote totals for the same constituency to yield a winner. An Election Petition challenging those results was filed July 2, 2008.

⁸⁹ RPA § 52(2).

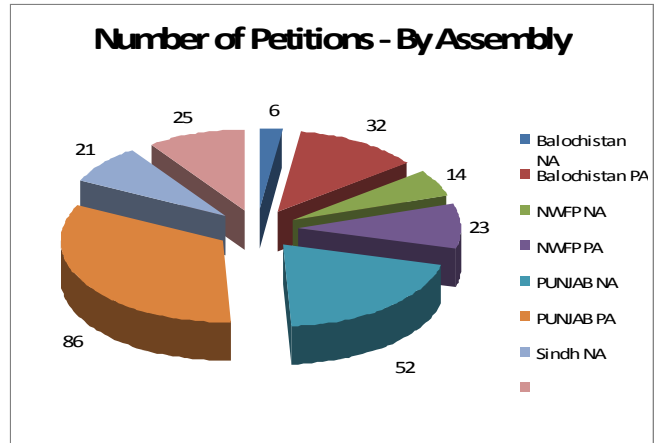
⁹⁰ ECP reports that 265 Election Petitions were filed and complete as of the last lawful date for filing; however due to ECP's internal treatment of ministerially deficient Election Petitions some Election Petitions have not made their way to the provincial High Court system by June 14, 2008 and IFES has not yet collected information on these particular election challenges. It is important to note that Once election results are reported in Pakistan's official Gazette Petitioners have 45 days to file their challenge. It is important to note, and IFES' discuss this issue in its forthcoming preliminary report, ECP treats administrative deficiencies on Election Petitions as filed timely but requests that Petitioners remedy the deficiency.

Number of Petitions Filed by Provinces and Assemblies

GRAPHIC I

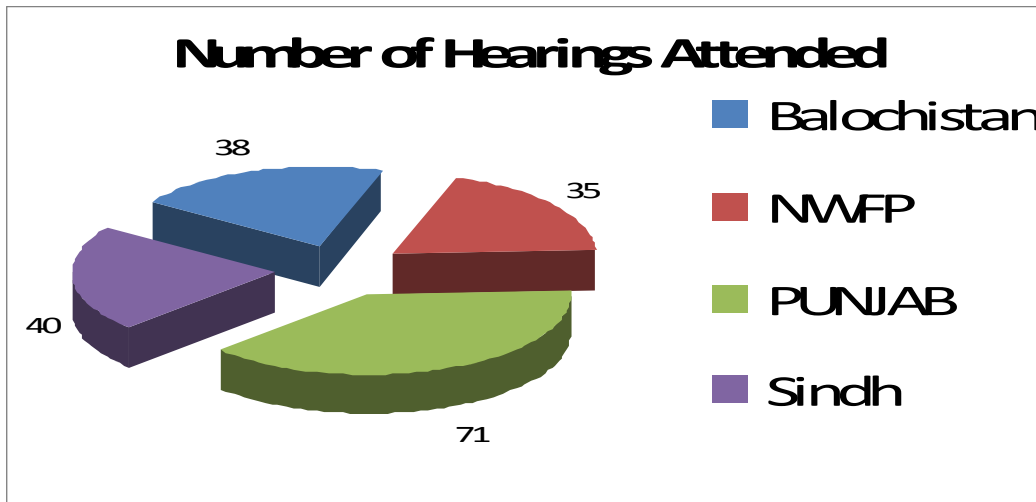


GRAPHIC II



Election Tribunal monitors attended 184 tribunal hearings and collected data on 259 Election Petitions as of June 30, 2008. Table 4 represents hearings attended by monitors per province.

**TABLE 4
Number of Hearings Attended by IFES**



A. File Channel: Time Intervals in the Administrative Processing of Election Petitions

The study data collected provided a clear picture of different intervals in the Election Petition process, including average time from the date petition was filed to the date it reached its first hearing.⁹¹ Data was collected at the provincial High Courts⁹² for

⁹¹ Hearing interval reports are currently incomplete and will be reported in the final report.

four key dates corresponding to the four legal markers in the administrative processing of Election Petitions. These dates are as follows:

1. The date candidates submitted Election Petitions to ECP;⁹³
2. The date the Chief Election Commissioner transfers the EP to the Election Tribunal;⁹⁴
3. The date that the Court Management System enters the EP into the system,⁹⁵ and
4. The date that the Election Tribunal holds its first proceeding or hearing⁹⁶

The aforementioned dates correspond to the four statutory milestones: petitions are filed under RPA §52; petitions are transferred under RPA §56; petitions are received by the tribunal under RPA §§ 59 and 67 and consistent with the practice that the tribunals will take place in High Courts.

These four key dates are instrumental in tracking the file channel and providing a measurement of the average time intervals that an Election Petition spends at each stage of the process. Nationally, an Election Petition filed at ECP took an average of 31.8 days to reach its first adjudicatory proceeding. However, a closer look reveals that the timing from filing to first adjudicatory proceeding in each province varies. For instance, the interval averages as little as 23.5 days in Baluchistan Province while a petition following the same path takes an average of 42.5 days in Sindh Province. Table 5 provides averages for each province for national assembly and provincial assembly seats at each of the four key interval dates. The raw averages for this data are based on 222 petition records having date information in all four key dates.

⁹² Data was collected at the four principle High Court benches: Lahore High Court, Peshawar High Court, Karachi High Court, and Baluchistan High Court in Quetta. Each principle bench also has satellite benches. Election Tribunals were conducted at Multan Bench of the Lahore High Court, Balawapur Bench, Rawalpindi Bench, and D.I. Khan Bench of the Peshawar High Court. No data was collected from the DI Khan Bench on two Election Petitions as security was a concern. No satellite benches of the Karachi High Court were used for Election Tribunals.

⁹³ IFES is told that an apparent quirk of Election Commission of Pakistan internal practice treats the receipt of an EP differently. Election Petitions are considered “presented to” or filed either (1) the day that ECP receives the EP delivered through the mail or (2) if delivered by hand considered received when CEC sends the transfer letter to the Tribunal. It is beyond the scope of this Preliminary Report but the reported inconsistent handling of Election Petition at this early stage in the process opens entry points for corruption in the process immediately.

⁹⁴ RPA §56(2) contemplates that Election Petitions meeting the criteria under sub-sections 52, 54 and 55 as well as the requirements under Notification 1985 the Chief Election Commissioner will refer those Election Petitions to an Election Tribunal.

⁹⁵ RPA §56(2) indicates that ECP will transfer an EP to the Tribunal. Election Tribunals have been made up of judges appointed under RPA §57, and in practice, since judges of the High Court have presided over the election challenges, Election Tribunals have been held at the courts. Therefore, in practice, ECP has forwarded Election Petitions to court administrators.

⁹⁶ The time interval from an Election Tribunal’s receipt from ECP under Section 56(2) to its first adjudicatory proceedings is contemplated by the statute. RPA §67 states that the “Election Tribunal shall proceed with the trial of the Election Petition on day to day basis and the decision thereof shall be taken within four months from its receipt.”

TABLE 5
File Channel Intervals in Average Number of Days

Province	Assembly	T1	T2	T2A	T3	T4
Baluchistan	NA	10.5	3.0	13.5	10.2	23.7
Baluchistan	PA	11.1	3.2	14.3	9.0	23.2
NWFP	NA	8.6	4.5	13.1	12.3	25.4
NWFP	PA	12.7	10.3	23.8	11.3	34.5
PUNJAB	NA	8.4	4.0	12.5	22.5	34.5
PUNJAB	PA	7.3	3.2	10.5	23.8	34.2
Sindh	NA	13.8	3.0	16.8	28.0	45.5
Sindh	PA	11.3	10.2	23.3	18.8	38.3

Where n=222 and where:

T1: Date Filed to CEC Letter to Court

T2: CEC Letter to Court to Entered Court System

T2A: Date Filed to Entered Court System

T3: Entered Court System to Date First Hearing

T4: Date Filed – Date First Hearing

And based on records having date information in ALL four key fields.

The Election Commission of Pakistan’s handling of the Election Petitions from the date that they were presented by the Petitioner until the CEC refers the Election Petition to an Election Tribunal averaged 10.5 days—which is roughly consistent with the timeframe ECP reported to IFES. IFES observed a small anomaly in ECP’s handling of Petitions. ECP’s internal practice treated hand-delivered versus registered mail delivered Election Petitions differently. For instance, Election Petitions are considered “presented to” or filed either (1) the day that ECP receives the EP delivered through the mail or (2) if delivered by hand considered received when CEC sends the transfer letter to the Tribunal. Therefore, due to the irregular and inequitable handling of Election Petitions submitted by aggrieved candidates the date identified as the “petition filing date” may be inconsistent. The uncertainty of some petition filing dates thus may have a small impact on the accuracy of the reporting.

From the date that ECP received a petition to its entry into a provincial High Court’s case management system averaged nationally 15.1 days with transmission of cases in Punjab Province at the Lahore High Court averaging 11.5 days on the low-end while petitions emanating from NWFP took an average of 18.9 days to reach the Peshawar High Court.

As noted above the file channel of an Election Petition from the ECP to the court’s management system in each province requires substantial protocol and handling by numerous officials at each PEC. Although no statutory or other legal requirements stipulate PEC involvement in the transfer of the Election Petition, RPA §56(2) does direct

the CEC to refer a properly submitted Election Petition to an Election Tribunal. It is important to point out that in some instances PEC's involvement in the referral of the petition increases the interval that election officials process the petition. As noted above, once received, the CEC issues a notification letter in a little over 10 days on average. However, with PEC involvement, Election Petitions are usually delayed in being entered into provincial court management systems by an average of an additional 4.6 days nationally.

The handling of the court system from the point of receipt by the ECP to the first hearing shows an average turn around time of 16.5 days. In Sindh Province, the Karachi High Court averaged 24 days before its first adjudicatory proceeding was scheduled once the court system was in possession of a petition. The Baluchistan High Court turned around petitions to first adjudicatory proceedings in an average of 9.6 days. As of June 30, 2008 only one Election Petition was disposed of after three hearing by the Peshawar High Court.

IFES EMTs report that the vast majority of the 184 hearings attended were non-substantive.⁹⁷ For instance, in Sindh, EMTs report that all hearings attended through June 14, 2008 remained at preliminary stages as notices had not been completely served and, as a result, most respondents had not submitted their replies to the Election Petitions as required under the CPC. In other instances attorneys sought adjournments rather than proceeding to arguments on the merits.

Under the law, Election Tribunals should hear and decide on all cases within the four month statutory period, beginning when the tribunal receives a petition from CEC.⁹⁸ This four-month period is different for each petition. For instance, the statutory 45-day period for filing a petition from the publication of the official results is *fixed* but the four month statutory period for resolution is *rolling* and dependent upon the date of receipt of the CEC notification of referral to an Election Tribunal. For example, Election Petitions #25/2008 and #29/2008 are challenges to results in Punjab. These petitions were entered into the court management system at the Lahore High Court March 23, 2008 and their respective first hearings occurred April 21 and May 12, 2008, respectively. The four month completion date is fast approaching for the majority of Election Petitions as many were received by Election Tribunals in April 2008. Tribunals for petitions received in late March and April 2008 should be completed beginning in mid-July to mid-August. While later filed petitions—those filed at the 45-day deadline but did not reach the tribunal for several weeks after filing—must be completed at the latest by late September 2008.

⁹⁷ For purposes of this report, the term “non-substantive” in relationship to tribunal hearings indicates that hearings had only progressed on procedural grounds and no arguments related to the merits of the case were advanced.

⁹⁸ There is no case law on when the statutory period of RPA §67(1A) runs; however, a conservative reading of the statutory scheme suggests that the four month period runs when an Election Tribunal takes cognizance of its reference from the CEC under RPA §56(2). For purposes of this study, IFES identified that that time period runs when an Election Petition's reference is recorded at a High Court's case management system.

B. Political Party Challenges to Election Results

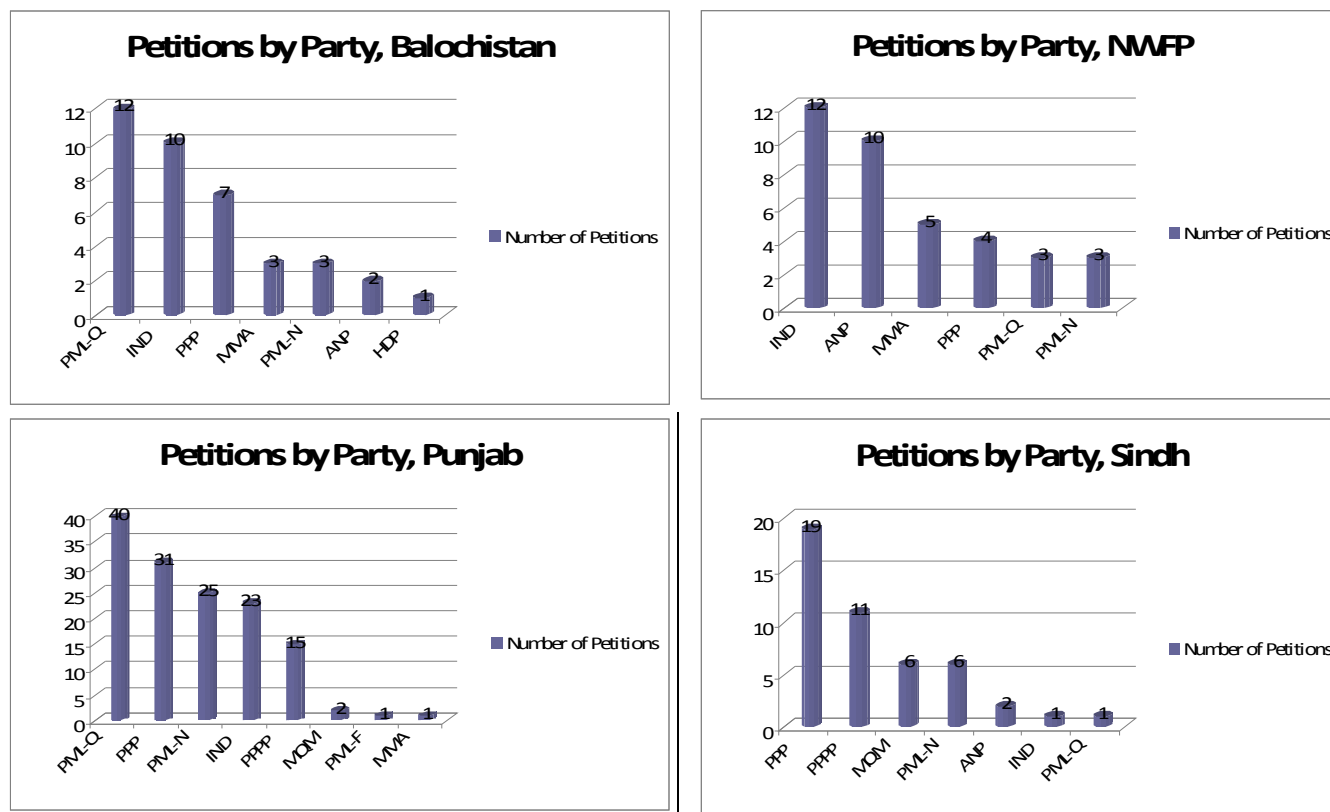
Table 6 provides the number of petitions filed by aggrieved candidates by that candidates' political party affiliation nationally.

TABLE 6

Party	Number of Petitions Filed (n=259)
Pakistan Peoples Party (PPP) ⁹⁹	86
PML- Quaid-e-Azam (PML-Q)	56
Pakistan Muslim League-Nawaz (PML-N)	37
Awami National Party (ANP)	14
Muttahida Majlis-e-Amal (MMA)	9
Muttahida Qaumi Movement (MQM)	8
Independents and others (w/ <5)	48

Tables under the heading Table 6A report the petitions filed by party in each province.

Table 6A Petitions filed by Party per Province



⁹⁹ Pakistan Peoples Party ran in the 2008 general elections as Pakistan Peoples Party Parliamentarians; PPP is used here as the party is more commonly referred.

C. Judges and the Judiciary

Under the law, the ECP's Chief Election Commissioner (CEC) appoints Election Tribunal judges for the trial of Election Petitions.¹⁰⁰ Official ECP Notifications were originally made public on the ECP website February 27 and 28, 2008—and reported in the media widely—included the names of 30 High Court judges in the four provinces.¹⁰¹

IFES' monitoring activities in early May identified that three judges were being assigned Election Tribunals by CEC which did not match those names announced in February: Justices Munib Ahmad Khan, Dr. Rana Muhammad Shamin, and Farrukh Zia G. Sheikh. Monitors reported simultaneously that Justices Ali Saen Dino Metlo, Agha Rafiq Ahmad Khan and Yasmeen Abbasi—who originally were announced¹⁰² as Election Tribunal judges—had yet to be assigned a case by the CEC.

Karachi High Court officials informed IFES that it was unaware of the changes, although the judges not yet assigned had merely not been assigned a case by CEC yet and the judges being assigned by CEC were being assigned per the instruction of any Election Tribunal notification. Follow-up inquiry with the ECP yielded a GAZETTE OF PAKISTAN, Notification No.F.10(1)/2008-Law (March 7, 2008) announcing a March 4, 2008 notification superseding the February 27, 2008 Notification of the original names. The March 7, 2008 Notification was apparently not publicized widely. No additional information was publicly available on the ECP website nor was IFES able to find a press account of the notification of March 7, 2008 correcting the judges' names.

There were 30 judges assigned to the 265 petitions amounting to a workload for the resolution of roughly 8 Election Tribunals per judge. Graphic III provides the number of cases assigned to each judge per each provincial High Court. Numbers indicates correspond to judges names in the database.¹⁰³

¹⁰⁰ RPA §57(1).

¹⁰¹ Punjab Province: Justice Abdul Shakoor Paracha; Justice Muhammad Khalid Alvi; Justice M Bilal Khan; Justice Fazal-e-Miran Chauhan; Justice Syed Shabbar Raza Rizvi; Justice Syed Hamid Ali Shah; Justice Syed Sajjad Hussain Shah; Justice Tariq Shamim; Justice Syed Asghar Haider; Justice Hasnat Ahmad Khan; Justice Muhammad Asharaf Bhatti; Justice Ali Akbar Qureshi.

Balochistan Province: Justice Akhtar Zaman Malghani; Justice Mehta Kailash Nath Kohli.

NWFP Province and FATA: Justice Said Maroof Khan; Justice Hamid Farooq Durrani; Justice Shaji Rahman Khan; Justice Ghulam Mohy-ud-Din Malik; Justice Syed Yahya Zahid Gilani; Justice Ziauddin Khattak; Justice Syed Musadiq Hussain Gilani; Justice Muhammad Alam Khan.

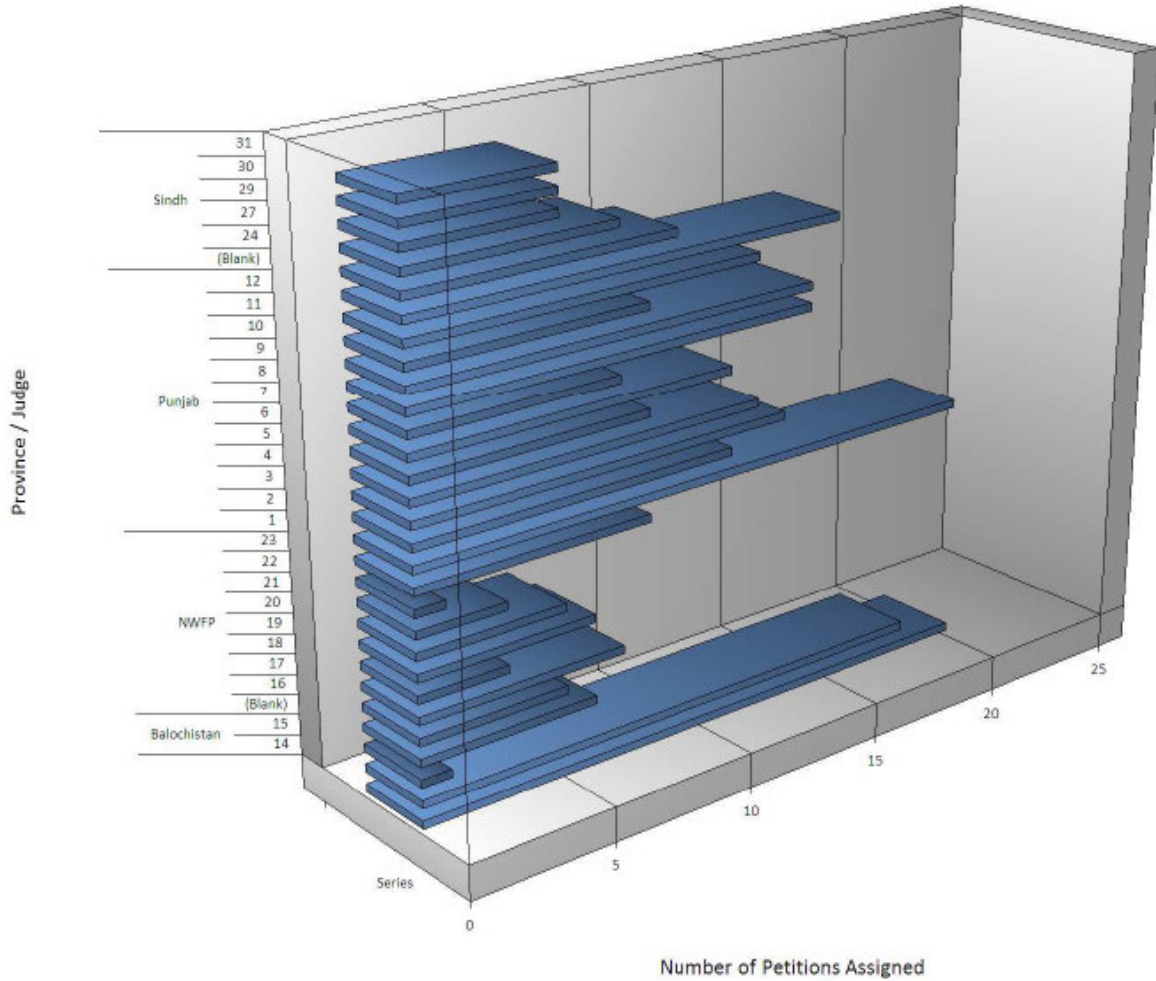
Sindh Province: Justice Azizullah M Memon; Justice Yasmin Abbasi; Justice Ali Sain Dino Metlo; Justice Syed Mahmood Alam Rizvi; Justice Agha Rafiq Ahmed Khan; Justice Syed Pir Ali Shah; Justice Arshad Noor Khan; Justice Dr. Qamruddin Bohra.

Please also note that reported spellings of judges names often differ even in official sources.

¹⁰² See www.ecp.gov.pk (February 27, 2008 Press Release announcing the names of Baluchistan and Sindh Election Tribunal judges announced that day in an ECP notification).

¹⁰³ This confusion affected the design of the databases and the numbers for the distribution of cases to judges' assignment percentage per judge. The following charts provide judges per provincial High Court and the number of cases assigned to them. For instance, in Graphic III one date point n Sindh Province, show as "(blank)" indicates the workload of these new judges.

**GRAPHIC III
Number of Assigned Election Tribunals by Appointed Judges**



As described above, Election Tribunal cases are typically integrated with other proceedings within a court’s case management system. The law expects Election Tribunal judges to give professional treatment to all petitions. Consistent with stakeholder and other reports on Pakistan’s justice system, monitors confirmed that judges are overburdened with huge caseloads. Election Tribunal Monitors reported that judges may hear anywhere from 15 to 25 (sometimes 30) cases, on a parity basis, that appeared with tribunals. Judges have no access to trained staff including a legal research assistant or personal law clerk. It is also worth noting that judges appointed are provided with no special training concerning election law. Moreover, it is troubling that given the time-sensitive nature of election challenges that Election Tribunals are not prioritized by the courts nor ordered a priority by the Commission.

Phase One of this study has collected little data concerning the trial proceedings of Election Tribunal cases due in large part to file channel and procedural delays. The

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vast majority of cases, as of the end of June 2008—four months after Election Day—remain at the notification or preliminary stages of proceedings. Phase Two of the monitoring project intends to provide greater detail concerning the role of courts and legal practitioners in the Election Tribunal process.

V. Discussion and Analysis

The objective of Phase One of the project was to study and measure Pakistan's post election dispute resolution mechanism, known as Election Tribunals. The project's design was grounded on two critical international standards: The right to an effective remedy, and the right to a fair and public hearing. As discussed previously, remedies must be effective and they must be public and fair in order to meet these standards. Without these basic elements public confidence in election processes and election results will be diminished.

In this context, there are a number of key findings that should be highlighted and discussed:

1. **The project's preliminary findings indicate that the Election Tribunal mechanisms are marked by substantial delays at all levels.** The administration and processing of Election Petitions, while relatively quick given the systemic constraints of customary administrative protocols in Pakistan, fall short of providing effective and timely remedy for the Petitioners. Based on the project's findings IFES estimates that at the current pace of scheduled Election Tribunal hearings the vast majority of the pending Election Petitions will not be resolved within the statutorily prescribed four-month timeframe.
2. **Preliminary findings also suggest that administrative and court processing protocols used as petitions wend their way through the file channel, serve as a substantial impediment to effective and timely redress for Petitioners.** Such delay also compromises the fairness of tribunal proceedings and undermines the equal treatment of similarly situated Petitioners.
3. **Substantial numbers of officials at ECP, PEC, and the courts are involved in the handling of Election Petitions in the file channel.** Nationally, a file channel of an individual Election Petition averages over one month to reach its first hearing. Furthermore, IFES observed that even a court is slow to begin the business of substantively resolving the Election Petition as initial tribunal hearings meet to discover parties have not been properly served notice of appearance.
4. **Chronic delays are troubling as they open the process to potential corruption.** As Pakistan's National Judicial Conference recently noted, "delay not only denies timely justice to those entitled to it but it also creates perverse incentives for the unscrupulous element to abuse the process of

law.”¹⁰⁴ Such unscrupulous elements can use the delays, and the expectation of delay, as an entry point for corruption, professional misconduct by officials and professionals involved in the process, and use Election Tribunals as a way to harass opponents for political purposes. As one monitor stated, that as the Election Petition journeys through the file channel it is at all times at great “political risk” for “mischief.”

ETM’s report anecdotally that the exchange of money in the form of bribes or payments at all levels of court administration, either to seek delay or avoid delay is allegedly a common feature of litigating in Pakistan. IFES did not set-out to investigate corruption related issues but considers the repeated anecdotal reports of such activities as very troubling developments.

5. **The professional conduct of an election requires prompt decision making; it follows that procedures concerning electoral disputes should differ from general civil disputes.**¹⁰⁵ To be sure, challenges to election disputes are conducted under traditional trial practice rules which are historically developed, at the very least, to ensure careful, deliberate adjudication of civil disputes. In fact, legal practitioners report to IFES they estimate that conducting a civil trial from filing to final order at minimum takes six to eight months—although most practitioners told IFES that in practice three years is the general rule. However, the current four-month statutory requirement to resolve election challenges is inconsistent with a formal civil litigation practice that customarily requires more time. Such a condition is discordant with tenets of providing, timely and fair hearing to Petitioners.

Interestingly, Pakistani attorneys interviewed for this study expressed great pride in the Code of Civil Procedure of 1908. Numerous attorneys told IFES that there is universal agreement amongst Pakistani lawyers that the CPC is “very effective” and “provides for every aspect of a just and equitable decision.” However, one lawyer indicated that it is “understood that adjudication under [the] Code of Civil Procedure takes lengthy time to be concluded. It is our common saying that adjudication under the [CPC] is like treating the patient with Homeopathy.” Despite the apparent consensus enthusiasm for the CPC, IFES has observed two preliminarily identified problems areas under the CPC: (1) issuing of notices, and (2) the use of and granting of adjournments. In fact, these two procedures provide enormous flexibility to respondents to slow or delay the proceedings and are substantial contributors to delay in the proceedings.

As one monitor noted, “the mystery of delay and [failure to] adjudicat[ate] ... Election Petitions resides in non-serving [of] the notices.” IFES is told that notices in a typical civil case might take up to 100 days to serve a single party.

¹⁰⁴ National Judicial Conference (Pakistan), National Judicial Policy Making Committee *available at* www.ljcp.gov.pk/nj/introduction (last visited July 8, 2008).

¹⁰⁵ See OSCE ODIHR, *Resolving Election Disputes at 11* (2000).

In Election Tribunals all parties that were candidates are *required* to be joined as parties.¹⁰⁶ Given that in most constituencies multiple candidates contest the elections the requirement that all parties be formally noticed is time-consuming, burdensome, and does not balance the interests of providing effective remedy for disputes that are time sensitive.

Tribunals do not proceed to substantive argument—that is arguments on the merits—until all parties are served or judges issue public notices in newspapers—as allowed under CPC. Stakeholders and monitors’ observations are consistent, that tribunal judges proceed with often traditional forms of service prior to issuing a public notice.¹⁰⁷ Moreover, stakeholders and monitors recounted numerous allegations about the corruptibility of bailiffs who often serve notices, allegedly reporting that it is common practice that bribes are paid to bailiffs and other officials to slow delivery of the notices to parties—These were reports were hearsay and not witnessed by IFES. While IFES cannot substantiate these allegations, given the numerous sources and frequency with which such allegations of wrong-doing were repeated would suggest that the possibility of such illegal acts likely take place within Pakistan’s courts.

Closely related to notices IFES observes that the request for adjournments is prevalent during Election Tribunals. For instance, when notices remain unserved in Baluchistan, judges routinely order the next hearing date as, “to be called after four weeks” rather than a specific date.

One monitor reported a potential linkage between misconduct and a further use of the CPC to delay a petition’s proceedings by seeking disingenuous adjournments from the court. The monitor reported this exchange:

“judges are working very hard but advocates of the Petitioners move very slowly in their arguments they don’t force to the short adjournment. There is another problem: I asked an advocate who appeared on behalf of Senior Counsel when he took adjournment without any argument, they reply, [sic] the Petitioner did not pay the professional fee until now that’s why they took adjournment.”

Of the 184 hearings attended by Election Tribunal monitors less than 50 took substantive argument¹⁰⁸ on a petition. A large portion of the hearings, when

¹⁰⁶ Respondent parties required to be joined under RPA §54 may chose not to contest an Election Tribunal by filing Form XX. *See* RPA (Code of Conduct) Rules §34 (1977).

¹⁰⁷ The Peshawar High Court was one exception to this rule as most judges issued public notices if circumstances indicated that parties would be difficult to serve.

¹⁰⁸ The term “substantive argument” for purposes of this report indicates that the tribunal heard argument by parties concerning the merits of the allegations rather than merely procedural issues to be resolved.

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convened then adjourned immediately because all respondents had yet to be served notice. Monitors reported the following grounds for adjournment:

1. Attorney not hired by first respondent or even by other respondents;
2. Non-submission of documents required under CPC;
3. Parallel writ petition in same or other court;
4. Unavailability of tribunal judge including special duty in a circular bench, engagement as a member of a panel case;
5. Lawyers request for additional time as a result of busy schedule or illness, or family issues;
6. Case is the last case on the cause list and the court day ended and is automatically adjourned; and
7. Outside court room real-world events affect courtroom atmosphere.

VI. Conclusion

There are a number of key themes that stand-out in the study's initial findings:

1. Structural impediments cause delays to the Election Tribunal process
2. The divided legal framework dissociates the accountability for the resolution of Election Tribunals and leads to considerable confusion on behalf of the public
3. Election Tribunal process lacks vigorous prioritization necessary to fully meeting international standards of effective remedy and fair hearings for challenging election results
4. The Election Tribunal process is vulnerable to corruption and delaying tactics

It is in this context that IFES' initial project findings point to substantial administrative and procedural delays at all points in the Election Petition/tribunal process—ranging from the large number of individuals within the ECP responsible for reviewing, approving, and forwarding petitions to the tribunals to the excessive and competing caseloads of judges and substantial administrative protocols in place at the court management level. Furthermore, the legal framework requires two governmental entities—the High Courts and Election Commission of Pakistan—to administer the Election Tribunal process, adding to public confusion and delay.

IFES projects that, based on the data and observations and despite the generous four month statutory period to reach a resolution of the challenge that the vast majority of the 265 Election Petitions filed will not be completed within the statutorily prescribed timeframe. Effective remedy is optimistic in this context especially when Election Petitions are neither a government nor adjudicatory priority.

While initial findings can not speak substantively or at length about the trial proceedings, they do point to considerable delays resulting from the use of the current legal procedure of traditional trial practice under CPC. For instance, notice requirements and customary adjournment practices currently function as built-in delay mechanisms which further exacerbate entry points for potential corruption and the use of these procedures as dilatory tactics. Furthermore, the lack of robust day-to-day scheduling of tribunal hearings that is cognizant of the essence of timeliness as critical to the nature of election results challenges is disturbing and contributes to delay. Finally, the combination and weight of these delays seriously inhibits the credibility of ECP and raises questions regarding the legitimacy of the election results.

The project finds that current administrative processing does not provide effective remedy for resolution of election disputes, and it would appear that the administrative processing of the Election Tribunal creates an atmosphere of soft expectations, potential

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corruption and apathy that makes it unlikely that the tribunal proceedings are providing equal treatment to the Petitioners thus denying the Pakistani constitutional right to a fair dispute resolution mechanism as well as undermining fair and effective remedy under international standards.

VII. Phase Two of the Monitoring Project

IFES' proposed Phase Two activities will expand the work of the current project. Phase Two will run from August to December 2008. Planned activities focus on the hearing process and prospects for reform with substantial input by provincial and national stakeholders from all levels of government and civil society. The project will specifically (1) continue monitoring Election Tribunals through the end of the statutory period for resolution; (2) expand outreach to key stakeholder groups seeking engagement to the preliminary findings and recommendations for reform

IFES will continue monitoring the Election Tribunal process throughout the four-month timeframe, as defined under the law. Doing so is critical to ensure that IFES' observations and recommendations will be informed by an unprecedented review of the entire Election Tribunal process. While these preliminary findings present substantial information on the administrative processing including the file channel as well as court administration of the Election Tribunals, the final report will be able to collect data on the intervals and number of petition hearings within the statutory period and report the number of Election Petitions that reached resolution within the prescribe statutory period for resolution. In addition, the final report will be able to report, with considerable analysis, on the substance of the allegations that Petitioners are making as well be better positioned to comment further on the practice of law in the context of Election Petitions.

IFES anticipates conducting a national media briefing on the project's Preliminary Report's findings, conduct stakeholder workshops in the provinces to produce a final report for the project as well as a report consolidating and providing recommendation from stakeholders. Phase Two's outreach to key stakeholder groups including political parties, judiciary, lawyers, parliamentarians and other stakeholder groups will allow for the broad discussion of these findings amongst the key groups, with a view to identifying areas in which further research could be undertaken to supplement the current program activities and to discuss recommendations that could improve the ET process. IFES will also conduct interviews as well as seek written comment from key stakeholders regarding the project's preliminary findings to engage reaction and inform analysis.