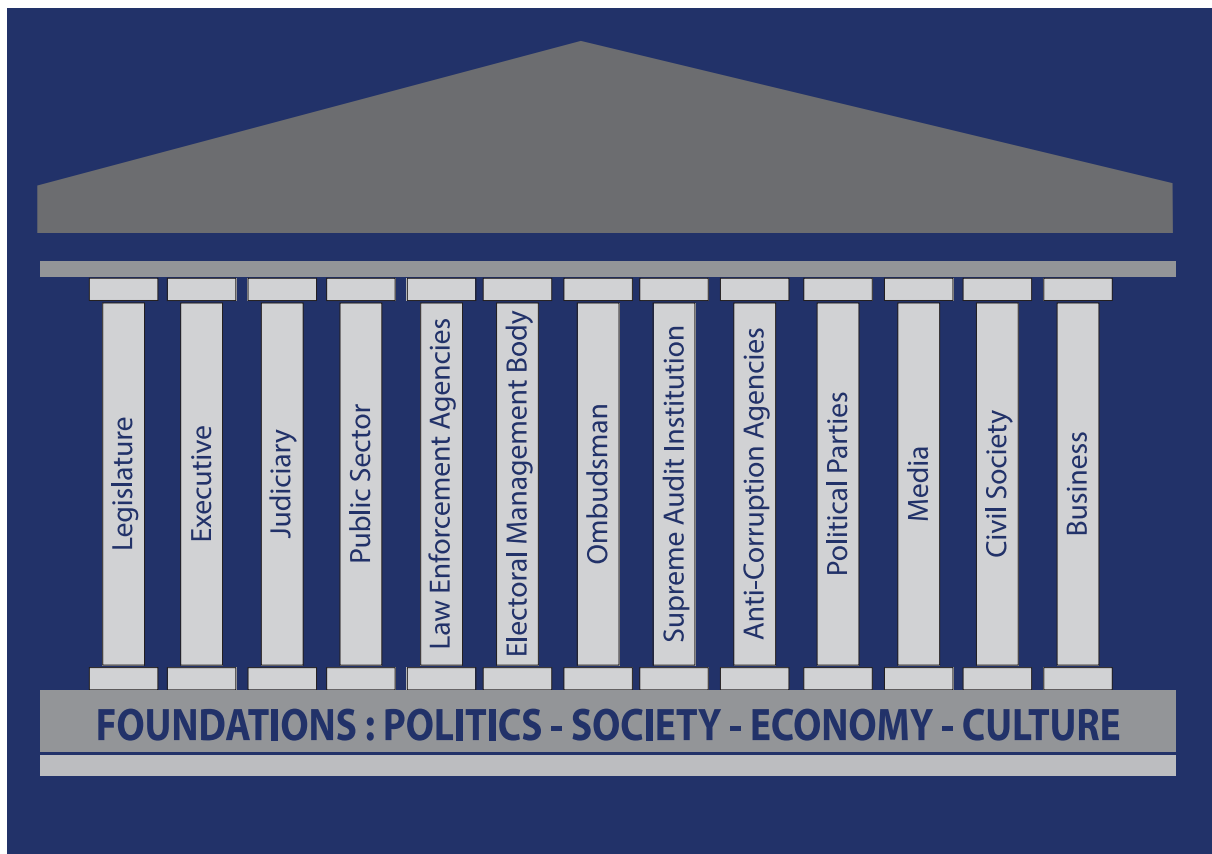




**TRANSPARENCY
INTERNATIONAL - PAKISTAN**

NATIONAL INTEGRITY SYSTEM



COUNTRY REPORT 2014

Foreword

I have great satisfaction in introducing Pakistan's National Integrity System Country Report.

The objective of the NIS report is to assess and evaluate the various key institutions of governance in the country. These institutions are responsible for integrity and the elimination of corruption. A study of the NIS was earlier conducted by TI Pakistan in 2002, in which research was undertaken in 8 pillars of the state. This research looks into the laws and practice in 13 pillars of the state. The strengths and weaknesses of different pillars have been identified. Recommendations to improve governance in the key institutions have been specified. It is hoped that the Government will utilize this report to improve the practices so that corruption in the country can be minimized.

This work was made possible due to a grant from the Transparency International Secretariat. Furthermore, the research had been undertaken by Islamic Countries Society of Statistical Sciences (ISOSS)

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About Transparency International

Transparency International (TI) is the civil society organization leading the global fight against corruption. Through close to 100 chapters worldwide and an international secretariat in Berlin, Germany, TI raises awareness of the damaging effects of corruption. And works with partners in government, business, and civil society to develop and implement effective measures to tackle it.

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About Transparency International Pakistan

Transparency International Pakistan (TI Pakistan) is the Pakistani chapter of Transparency International, established in 2002 whose main aim is to strengthen the global value system by making Transparency and accountability more relevant public norms.

Working in collaboration with other stakeholders, departments, TI Pakistan regularly publishes research papers, reforms, and reform manuals with aim to disseminate information for all stakeholders, and also conducts capacity building workshops

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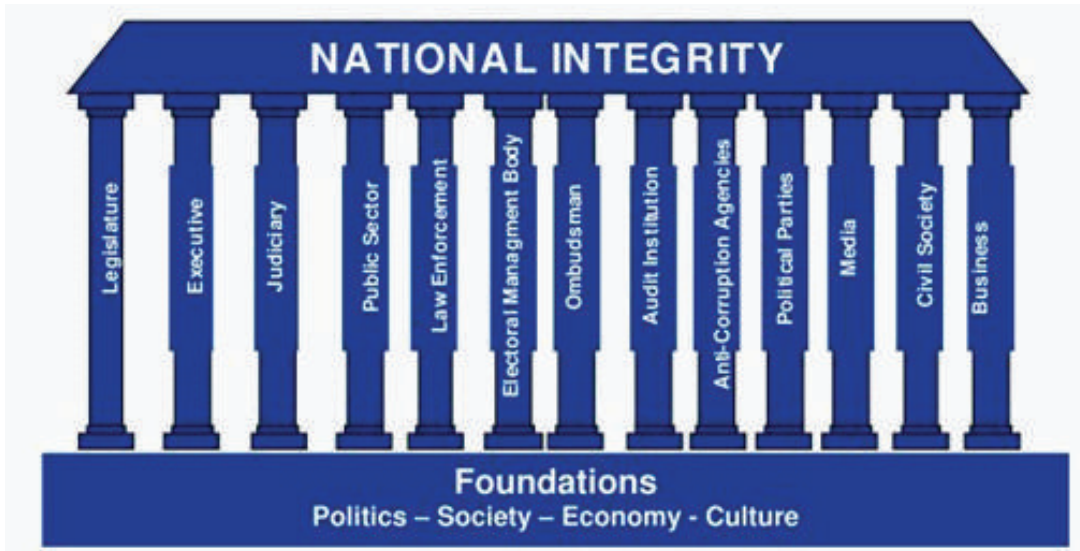
Every effort has been made to verify the accuracy of the information contained in this report. All information was believed to be correct as of the Dec 2013. Nevertheless, Transparency International Pakistan cannot guarantee the accuracy and completeness of the contents. Nor can Transparency International Pakistan accept responsibility for the consequences of its uses for other purposes or in other contents. Contributions to this Report by authors external to Transparency International Pakistan do not necessarily reflect the view of Transparency International Pakistan.

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I. NATIONAL INTEGRITY SYSTEM

I. NATIONAL INTEGRITY SYSTEM



The National Integrity System (NIS) assessment proposes an evaluation of the key institutions of governance which are responsible for progressing integrity and eliminating corruption in the country.

In 1990, the concept of a National Integrity System was developed by Transparency International (TI) as a tool to assess and prevent corruption. It drew together actors and institutions, which are crucial in fighting corruption in the National Integrity System.¹

The NIS methodology provides a framework for analysing the robustness and effectiveness of a country's institutions in preventing and fighting corruption. A well-functioning National Integrity System is an effective safeguard against corruption, abuse of power, and misappropriation. The assessment of the country's National Integrity System analyses the existing anti-corruption mechanisms and their effectiveness, by studying 13 'pillars' or institutions for fight against corruption. The NIS study is based on the assumption that the strength of each pillar relies on its foundations embedded in the overall political, socio-economic, and socio-cultural context.

**Table 1:
Classification of Pillars**

Government Institutions	Public Sector Institutions	Non-Government Institutions
1. Legislature	4. Law Enforcement Agencies	10. Media
2. Executive	5. Election Commission	11. Civil Society
3. Judiciary	6. Ombudsman	12. Political Parties
	7. Supreme Audit Institutions	13. Business
	8. Anti-Corruption Agencies	
	9. Public Sector	

¹ www.transparency.org, 2008.

The purpose of conducting this assessment is to examine public and private sectors of Pakistan in terms of accountability and governance. According to the NCPS (National Corruption Perception Survey) 2010 by Transparency International Pakistan, the most important cause of corruption in the opinion of common citizens is the lack of accountability, lack of merit and low salaries². Corruption is an undercurrent of almost all public and private institutions, although Pakistanis continued to believe that private sector is less corrupt than the government sector. According to the survey, the average bribery per household has increased from USD 89.85 in 2009 to USD 100.42 in 2010.

Our research indicates that although laws against corruption are comprehensive and strict, implementation is very weak. There are many law enforcement institutions, Acts, Orders, Ordinances and a plethora of other legal instruments, yet they so far seem to be insufficient for eliminating corruption. The above stated reasons were the main driver for conducting the National Integrity System Assessment.

The understanding of “integrity” stipulates that corruption can be curbed if integrity prevails in public life. In the early 2000s, TI proposed a research methodology to study various parameters of corruption for creating the integrity system in countries. TI’s research methodology includes a desk study based on literature review, interviews with people in the public and private sectors and a subsequent scoring system for quantitative assessment of the pillars.³

The NIS country report assesses the performance of the legal provisions that safeguard individual and institutional corrupt practices by analysing their strong and weaker points. Not only does the study highlight the precise areas in need of reforms, it can also be used to compare performance across institutions or sectors. By identifying key recommendations, the pillar-specific assessment can be a basis for future advocacy activities and pave way for political reforms, that might ultimately help in fight against corruption.

The Research Methodology

Each of the 13 pillars is assessed, both in law and in practice, along three dimensions viz. Capacity, Governance and Role. In the first place, the pillar’s capacity is studied in terms of its resources and independence. Secondly, each pillar is assessed in terms of its transparency, accountability and integrity. Thirdly, the pillar is examined to check whether it fulfils its assigned roles with a particular focus on strengthening the National Integrity System through its involvement in the anti-corruption drive in the country.

Dimension	Indicators (Law, Practice)
Capacity	Resources

² National Corruption Perception Survey, TI Pakistan 2010, <http://www.transparency.org.pk/report/ncps%202010/ncps2010A5.pdf>.

³ www.transparency.org, 2008.

	Independence
Governance	Transparency Accountability Integrity
Role within governance system	Between 1 and 3 indicators, specific to each pillar

Each dimension is assessed by a set of indicators. An assessment is also made of the social, economic, and cultural foundations on which these pillars operate.

A minimum of two key informants are interviewed for each pillar – at least one representing the institution and one expert, external to it.

The assessment is guided by a set of “indicator score sheets” developed by the TI Secretariat. These sheets consists of a “scoring question” for each indicator supported by further guiding questions and scoring guidelines.

Sample indicator score sheet: Legislature Governance-Accountability (law)

Pillar	LEGISLATURE
Indicator number	1.2.3
Indicator name	Accountability (law)
Scoring question	To what extent are there provisions in place to ensure that the legislature has to report on and be answerable for its actions?
Guiding questions	Is there a constitutional review system of legislative activities? Are there provisions for public consultation on relevant issues? Are there mechanisms to handle complaints against decisions/actions by the legislature or its individual members?
Minimum score (1)	No provisions are in place to ensure that the legislature has to report and be answerable for its actions.
Mid-point score (3)	While a number of laws/provisions exist, they do not cover all aspects of legislative accountability and/or some provisions contain loopholes.
Maximum score (5)	Extensive provisions are in place to ensure that the legislature has to report and be answerable for its actions.
Additional data sources	

Score	
Text	
Comment	
Evidence	
Causes	
Recommendations	

As NIS is a qualitative assessment numerical scores are assigned on a 100-point scale in 25 points increments (0, 25, 50, 75, 100). This scoring mechanism has been followed throughout the research to understand what is being assessed under each indicator of every pillar.

Advocacy/Participatory Approach to Research

The approach followed for the research was a mix of consultation and participation. Initially, TIP conducted primary and secondary research, which later on, with an objective of directly or indirectly resulting in some kind of reform, was forwarded to the group of experts related to each pillar for their recommendations and feedback. The draft NIS report was also discussed and validated by key stakeholders during the “National Integrity Workshop” prior to publication.

Background and History of the NIS Approach

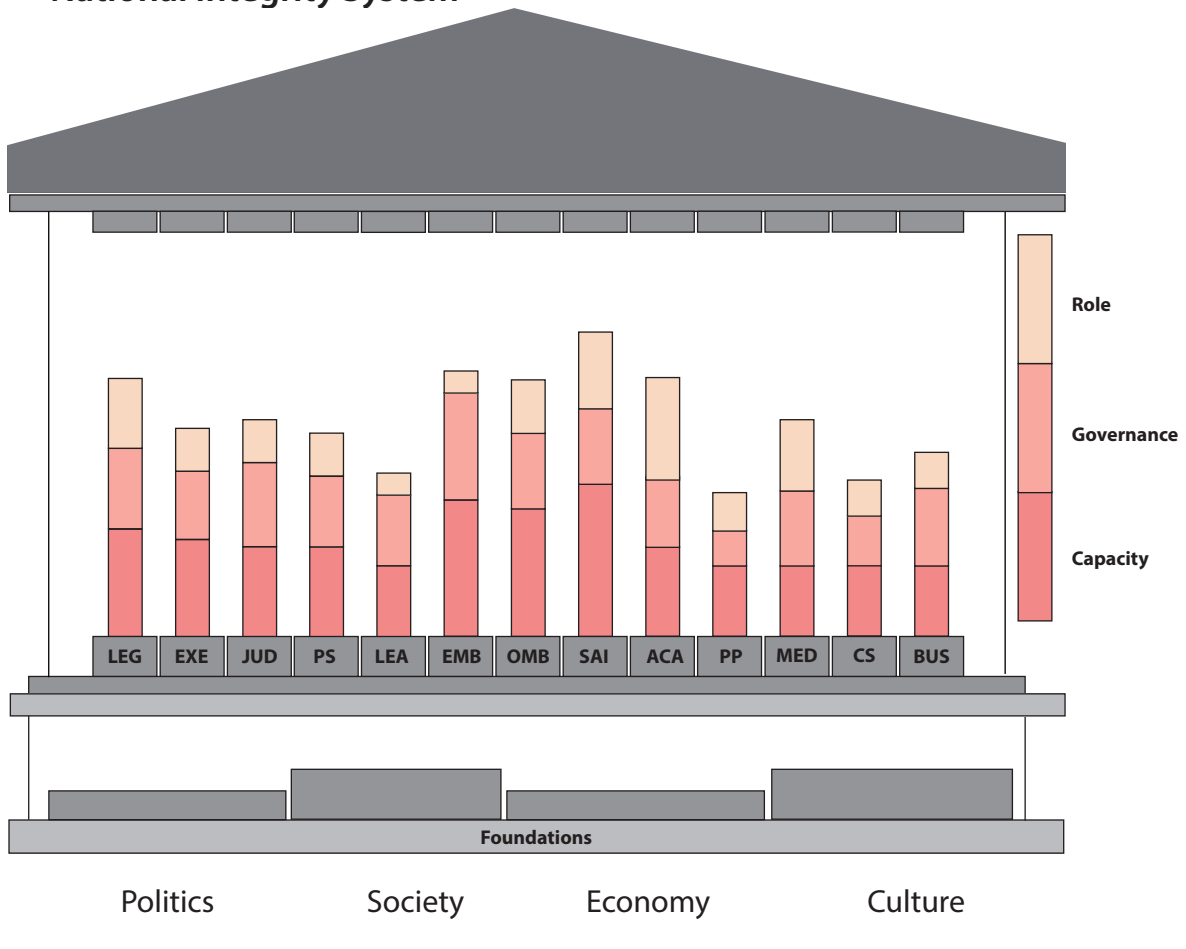
The NIS research approach is an integral part of TI’s overall set of research tools which measure corruption and assess anti-corruption activities. Its main objective is to provide solid data for advocacy actions in the country to improve the anti-corruption mechanisms and their performance. It will be supported by other research findings by TIP like NCPS (National Corruption Perception Surveys) which are focused more towards raising public awareness of corruption and its consequences on the basis of Corruption Perception Index and Bribe Payers Index. Following a highly consultative and participative multi-stakeholder approach and being incorporated into a global project makes the NIS approach unique.

II. EXECUTIVE SUMMARY

II. EXECUTIVE SUMMARY

Strong SAI and EMB are the highlights of Pakistan’s National Integrity System. The rest of the pillars, though strong in resources are weak in their roles. Almost all of the pillars are weak in their accountability and integrity mechanisms.

National Integrity System



- | | | | |
|-----|---------------------------|-----|---------------------------|
| LEG | Legislature | SAI | Supreme Audit Institution |
| EXE | Executive | ACA | Anti Corruption Agencies |
| JUD | Judiciary | PP | Political Parties |
| PS | Public Sector | MED | Media |
| LEA | Law Enforcement Agencies | CS | Civil Society |
| EMB | Electoral Management Body | BUS | Business |
| OMB | Ombudsman | | |

The specialized watchdog agencies such as the Supreme Audit Institution, the Electoral Management Body and the Ombudsman have emerged as relatively stronger pillars as compared to other pillars, specifically in terms of capacity, however, they are not performing their anti-corruption role effectively, as would be expected of them. On the other hand, the situation is all the more critical for the non-state pillars, in particular for Political Parties and the Civil Society which have significant deficiencies in their systems of checks and balances.

Most of the pillars are significantly stronger in terms of capacity than role but it seems that, even those institutions which have sufficient resources and independence do not have anti-corruption efforts on their agenda. This suggests that the fight against corruption is not being prioritized in Pakistan and is not receiving enough attention from those with the power to do something about it.

There is a glaring discrepancy between law and practice across the board. Thus, while the legal framework could be described as relatively strong, the law is not being effectively implemented. The Legislature's inability to oversee the Executive, Judiciary's lack of resources, weak Law Enforcement Agencies and an eroded Public Sector in Pakistan, indicate a need for a monitoring mechanism on priority basis. The Media and the Civil Society could have played a pivotal role as external watch-dogs in bringing corruption to light, but both are among the weaker institutions in the integrity system, resulting in an un-checked abuse of entrusted power.

NIS Pillars

The **legislature** is a strong pillar in the National Integrity System, particularly in terms of its laws and capacity. Sufficiently independent under the Constitution, the Legislature in Pakistan is empowered to make Acts/laws but is not free in practice as its independence has over the decades been compromised mostly by military intrusions, lack of consistency in democratic process and the coalition of diverse political parties required to form a government. Consequently, the laws passed by the Parliament are not implemented by the Executive in letter and spirit. Moreover, lack of research culture and appropriate training has resulted in a divide between the public and the legislators, who have failed to better understand their role and their legislative or constituency issues.

The **Executive** branch on the other hand, has scored very low on governance and there are neither laws nor practice as far as accountability and integrity are concerned. It does not seem to be putting efforts into public sector management and as such its role is quite weak. Its independence too has historically been curtailed by undue interference from within, as well as externally, through four periods of military rule, three constitutions and 20 amendments to the latest Constitution, mostly with respect to the power and role of the Executive.

The **Judiciary's** shortcomings can be ascribed to low resource provisions and lack of funding. Accountability and integrity too are low in practice, particularly that of the subordinate judiciary. There has been improvement in the judicial process since the Judicial Law Reforms 2009, and there are a wide variety of cases where relief has been granted to the litigants against arbitrary orders of the executive. But the huge backlog of cases, lack of financial and human resources and corruption, particularly in the lower judiciary have made access to justice neither easy nor speedy for the citizens.

Poor governance, rampant corruption and weak implementation of laws are the main stumbling blocks in the growth of Pakistan's **Public Sector**. Public procurement laws are very effective but the problem lies with their implementation. Independence granted to a public servant by law is largely curtailed on account of interference from ministers and advisors to government. There is lack of integrity among civil servants and numerous cases of corruption and conflict of interest go unchecked due to lack of a well-placed

monitoring mechanism. To top it all, absence of whistle blower protection laws/ mechanisms, and fear of harassment, retaliation or recrimination, discourage honest officers from reporting corruption. There seems to be no government effort for public sector management and hence no public administration reform in sight. This naturally leads to an inefficient and a corrupt public sector, incapable of public service. Moreover, its' role, in educating the public and creating awareness regarding anti-corruption activities is almost non-existent.

The weak status of **Law Enforcement Agencies** in the National Integrity System is quite alarming. A number of existing gaps in financial, human and infrastructural resources in addition to insufficiency of latest intelligence technology have led to a certain degree of ineffectiveness in carrying out their duties. Most of the law enforcement agencies have low credibility and do not enjoy public respect. The right to information laws are not strong and in absence of witness protection system in place, the public does not dare question the public functionaries. The major causes of law enforcement failures can be assigned to ineffective accountability mechanisms and above all lack of integrity and political will to improve conditions. Present Integrity and disciplinary mechanisms are quite sound if implemented in their true spirit, but it seems that the issue of integrity has never been taken up seriously, signifying severe lack of political will. Hence, for its true implementation a proper accountability and prosecution mechanism has to be developed.

Another top scoring institution is the **Electoral Management Body** which has shown significant improvement in its processes. This includes issuance of voting lists and polling stations and access to relevant information for voters via mobile phone services. Accountability of its members and transparency with respect to procedures adopted by EMB for conducting elections are also well structured. But serious issues have come to light with respect to ECP's role in monitoring and regulating campaign finances.

Ombudsman has come up as a relatively strong pillar in the National Integrity System. The resources available to Ombudsman are sufficient and there is significant independence in their decision making and transparency in their procedures. However, the Ombudsman on its own cannot take action against the public functionaries, but rather can only refer the matter to the appropriate authority after investigation. Moreover, the Ombudsman deals with individual complaints rather than rooting out causes of systemic corruption and has mostly failed in promoting good practices.

Supreme Audit Institution is another comparatively strong pillar and appears to have substantial independence, though its funding is sanctioned by the Ministry of Finance. Its role in financial management has improved over the time. Overall laws on transparency and independence are very clear, but it is still weak in accountability and integrity. Being adequately equipped with resources, the SAI has still failed to make any significant contribution towards reduction of corruption in the Public Sector. Public departments usually ignore SAI's findings as it is poor in enforcing its decisions.

The National Accountability Bureau (NAB) and provincial ACAs technically are quite strong **Anti-Corruption Agencies** (ACAs). Both have been in existence for long and their respective laws are very well framed. Despite a strong legal framework, ACAs are weak in governance, mainly due to lack of external control, as well as absence of citizen oversight committees. Deficiency in

professional training of the employees for investigations has also emerged as an area that needs to be worked upon.

Political Parties are quite weak, mainly due to governance and integrity issues. The major political parties of Pakistan are dynastical in nature, and lack of modern governance structures has robbed party workers of their right to develop themselves into leaders. Although ECP has issued guidelines and placed limits with sanctions for non-compliance on political parties regarding campaign finances, without an oversight body in the system, non-compliance goes unchecked. Legitimacy of political parties among the population is very weak as none of the parties has ever come up with an effective strategy for issues such as growing poverty, inflation, unemployment and corruption have been appeased and exploited by political parties through 'hollow pledges'. Moreover, Political Parties have never been observed to be involved, in any anti corruption effort whatsoever, solo or in collaboration with any other state or non-state institutions.

Media in Pakistan is vibrant and diverse, as well as largely independent and immune to external interferences. It has a good level of resources and the integrity in reporting is strong but financial integrity is questionable. Media's laws are effective but there is no national Right to Information law (on the lines of law that is being developed in Khyber Pakhtunkhwa). Despite its strong presence, it has not been able to devise a specific anti-corruption agenda. It is mainly involved in day to day reporting and is inclined towards sensationalism. It is often active and successful in exposing corruption, but does not necessarily run specific programs educating the public against corruption.

Civil Society is the weakest and most underperforming pillar in the National Integrity System. There is a lack of proper laws and codes of conduct for monitoring of their activities and resources. The role of CSOs is very minor in holding government accountable for its actions. They still do not possess the status nor are seen as a watchdog entity. Some CSOs perform as watchdogs but officially have no role in advising governments and can only put forth recommendations and proposals for improvement in governance, transparency and accountability. A few CSOs take up monitoring through research route to highlight need for reforms, but most of these researches go un-noticed and fail to make an impact in public domain and their utility remains confined to the academic realm.

Business scores relatively low in the National Integrity System. There are sufficient laws for conducting transparent business in the country, but still corruption is the most problematic factor for business sector in Pakistan. Instead of fighting corruption, Business Sector has given in to the executive's undue discretionary powers, and anti-corruption does not seem to be on its priority list. Rarely does the Business sector.

To sum up, considerable gaps between law and practice have prominence in Pakistan's NIS. The role of all the pillars, vis-à-vis the anti-corruption system needs to be redefined. Significant improvement in lowering corruption levels can only be achieved through collaborative efforts of all the state and non-state pillars. There is also a need for improving the integrity and accountability mechanisms of all the sectors. The already existing integrity laws would suffice for now, if implemented in their true spirit. As far as accountability of various institutions is concerned, the RTIs and the eagerly awaited Freedom of Information Act, inclusive of provisions relating to 'Whistle blowers' and witness protection program, need to be implemented on priority basis.

**III. COUNTRY
PROFILE-THE
FOUNDATIONS
FOR THE
NATIONAL
INTEGRITY
SYSTEM**

III. COUNTRY PROFILE-THE FOUNDATIONS FOR THE NATIONAL INTEGRITY SYSTEM

The modern state of Pakistan was established on 14th August, 1947, spread over the area once known as the Indus Valley civilization, dating back at least 5000 years. In terms of land and water, it covers a total area of 796, 096 km, Southern Asia, bordering the Arabian Sea, between India on the east and Iran and Afghanistan on the west and China in the north. It is at risk from natural hazards, like severe earthquakes, especially in the north and the west and flooding after heavy rains along the Indus⁴.

The federation of Pakistan is comprised of four provinces (Punjab, Sindh, Baluchistan and KPK), the Federal Capital of Islamabad, FATA⁵, the Gilgit-Baltistan and the Pakistan-controlled part of Kashmir (Azad Jammu and Kashmir).

Each of the four provinces⁶ has an elected Provincial Assembly and an elected Chief Minister and a Provincial Governor appointed by the President⁷. The Parliament (Majlis-e-Shoora) of Pakistan is a bicameral federal legislature, consisting of a President who is the Head of the State and chosen by the National Assembly, a 342-member National Assembly headed by a Prime Minister, who commands the confidence of the majority of members and a 104-member Senate, elected indirectly⁸.

With a population of 193.24 million estimated in July 2013, Pakistan has become the seventh most populated country in the world. It is a 'young' nation, with a median age of about 21.7. It has an agro-industrialized economy, the 27th largest in the world in terms of purchasing power⁹ and ranks 47th in terms of nominal GDP¹⁰.

Pakistan faces grave economic, governance and security issues to achieve sturdy development outcomes and, it is currently a Lower Middle Income Level country.

Pakistan is the 121st freest in the 2013 Index with an economic freedom score of 55.1, which is below the world and regional averages. However, a slight increase of 0.4 point in 2013 depicts modest gain in business freedom¹¹.

⁴ CIA, The World Factbook, <https://www.cia.gov/library/publications/the-world-factbook/geos/pk.html>

⁵ FATA is comprised of seven semi-autonomous Agencies and six Frontier Regions. FATA has a different legal structure, and as it is federally administered, its elected representatives are in the NA but have a limited role in governance of the territory. Gilgit-Baltistan, and Azad Jammu and Kashmir are not represented in the federal parliament. These areas have their own constitution and elected assemblies, however they still remain under de facto Pakistani rule.

⁶ CIA, The World Factbook, <https://www.cia.gov/library/publications/the-world-factbook/geos/pk.html>

⁷ European Union Election Observation Mission (EU EOM), Pakistan 2013 Final Report General Elections – 11 May 2013, Published on July, 2013

⁸ constitution of Pakistan, 1973

⁹ CIA, The World Factbook, <https://www.cia.gov/library/publications/the-world-factbook/geos/pk.html>

¹⁰ <http://economicpakistan.wordpress.com/about/>

¹¹ Pakistan Economic Freedom Score, 2013 Index of Economic Freedom

The world's second-largest Muslim majority, Pakistan is plagued by political instability and more than half of its history has been written under military dictatorships or marshal law administrations¹². Moreover, terrorism, sectarian violence, a well-organized insurgency along the border with Afghanistan, and devastating floods in three consecutive years between 2010 and 2012, have caused billions of dollars in damages. The overall regulatory environment, complicated bureaucracy, burdensome and non-transparent investment regulations and endemic corruption have hampered its development¹³. There is discontent and dissatisfaction within the masses regarding the prevalent economic and law and order situation in the country. However, there are high hopes for a democratic and developed future after the historic transition of democracy in 2013.

Political-Institutional Foundation

Score 25%

Scoring Question To what extent are the political institutions in the country supportive to an effective national integrity system?

Pakistan has a multiple political party system, as there are 253, political parties that are currently registered¹⁴, consisting of left wing, right wing, secular, nationalist and liberal parties.

During the democratic spells in between the repeated military takeovers/coups or semi-democratic rules, removal of seven prime ministers from office in the first spell and mid-tenure dismissals of five prime ministers in yet another round¹⁵, has left no room for political parties in Pakistan to evolve¹⁶. Working under repressive conditions, political parties, have been exploited and divided into factions by the dictatorships to weaken them, giving rise to family or personality oriented leaderships, caste based groups, local, parochial, sectarian, and constituency based patterns of politics. Political Parties neither have been able to modernize their structures nor promote internal good governance systems¹⁷ resulting in dynastical, dictatorial and undemocratic structures¹⁸.

The Constitution states that the electoral process must be fair and transparent, the rule of law for socio-political and accountability of all players must be implemented for good governance and to make political and other institutions strong¹⁹. But, the situation has entirely been different, and parties, promoting their 'dynastical interest' have failed to deliver when in power, and have always exploited the public with their 'hollow pledges' and policies devoid of any implementing strategies²⁰,

12 Meghna Sabharwal & Evan M. Berman, CRC Press, 13-Jun-2013 Public Administration in South Asia: India, Bangladesh, and Pakistan, 13 Pakistan Economic Freedom Score, 2013 Index of Economic Freedom

14 according to ECP's official website, as of August 1st, 2013, <http://ecp.gov.pk/Misc/ListPolPartiesWithaddresses.pdf>

15 From 1951 to 1958, seven Prime Ministers were removed, while Pakistan had only two Governor-Generals and one Commander-in-Chief. From 1985 to 1999, all five prime ministerial tenures were aborted through premature dismissal of their governments

16 Nazeer Ahmad, 2004, Political Parties in Pakistan: A Long Way Ahead, Published by Centre for Democratic Governance, The Network for Consumer Protection;

17 Zain, Farooq, O. "Paradox of our Political Parties", South Asian Studies, A Research Journal of South Asian Studies, Vol. 25, No. 1, January-June 2010

18 RasulBakhshRais, Heinrich Boll Stiftung, Pakistan. Writing on 'Democracy within parties' www.boell.org/web/111-309.html.

19 Preamble & Chapter 2 [Articles 29-40] : Fundamental Rights [Articles 8-28], Chapter Constitution of Pakistan, 1973

20 Zubeida Mustafa, Manifestos and population, May 1st, 2013, DAWN.com, <http://www.dawn.com/news/794930/manifestos-and-population>

which is evident from low scoring on various global indices. Although electoral reforms are in place, impartiality of Election Commission was generally acknowledged and 2013 elections have been praised by analysts and observers for being peaceful and relatively fair. Results have been accepted by all in general²¹, nevertheless, the state has yet to establish its credibility.

Pakistan is in the red alert zone, ranking at number 13 in the Failed States Index, 2013, and most of its indicators relating to economic or human development or state legitimacy, either have worsened or have remained constant²². The reasons abound, such as, the critical issues of “Talibanization” particularly in the Afghanistan–Pakistan border region, unrest due to the controversial ‘drone-attacks’, insurgency in Baluchistan, Islamic militancy in the Khyber-Pakhtunkhwa province (KPK), suicide terrorism in major cities, and sectarianism have constantly been challenging the writ of the state and lack of its control on these problems has reduced its credibility in the eyes of the public²³. Amidst all this chaos, the faith and gender based human rights’ violations are going un-noticed, demanding strict state action²⁴.

Although the civil rights such as freedom of speech, of association, of press and protection of life, property and liberty are completely guaranteed by Islamic laws, as well as the Constitution of Pakistan²⁵, unfortunately these are not implemented in their true spirit. Human rights are being violated throughout the country mostly by the pseudo religious and extremist groups under the pretext of saving Islam and by misusing blasphemy laws²⁶.

The state has failed to provide protection to its citizens, including religious and ethnic minorities as they were threatened and attacked repeatedly in various parts of the country and in 2012 alone, 356 political activists on account of their political affiliation and 14 journalists were killed. Also reported are 350 extra-judicial killings in police encounters, ‘honour killings’ of 913 girls and women, 1577 terrorist attacks killing 2050 people and injuring 3,822. There were 213 incidents of sectarian-related terrorist attacks and sectarian clashes killing 583 people and injuring 853, as also attacks on six churches. 531 Shia Muslims across Pakistan and 20 Ahmadis (a religious minority) were also killed²⁷. The State also failed to stop foreign encroachment and 240 to 400 civilians were killed in 48 drone strikes that took place in North Waziristan in north western Pakistan between January 2012 and August 2013, amounting to war crimes as reported by Amnesty International²⁸.

21 EU Election Observation Mission, Final Report, July 2013, Pakistan 2013 Final Report, General Elections – 11 May 2013, http://www.eueom.eu/files/pressreleases/english/eu-eom-pakistan-2013-final-report_en.pdf

22 Pakistan in 2013, <http://ffp.statesindex.org/pakistan>

23 Bertelsmann Stiftung, BTI 2014 — Pakistan Country Report. Gütersloh: Bertelsmann Stiftung, 2014

24 Human Rights Commission of Pakistan, 2014, FIDH-HRCP workshop seeks urgent steps to end faith-based violence, HRCP | January 29th, 2014, <http://hrcp-web.org/hrcpweb/fidh-hrcp-workshop-seeks-urgent-steps-to-end-faith-based-violence/>

25 Chapter 1: Fundamental Rights [Articles 8-28], Chapter Constitution of Pakistan, 1973

26 Human Rights Watch, World Report 2014, Pakistan, Pakistan, <http://www.hrw.org/world-report/2014/country-chapters/pakistan>

27 Human Rights Commission of Pakistan, March 2013, State of Human Rights in 2012, <http://hrcp-web.org/hrcpweb/wp-content/pdf/AR2012.pdf>

28 Amnesty International, 22 October 2013, USA must be held to account for drone killings in Pakistan, <http://hrcp-web.org/publication/book-genre/annual-reports/>

Socio-Political Foundation

Score	25%
Scoring Question	To what extent are the relationships among social groups and between social groups and the political system in the country supportive to an effective national integrity system?

The concept of democracy with a strong political system aligned with the society is not strong in Pakistan. This is partly due to a weak civil society and the absence of democracy within political parties.

The civil society of Pakistan has fallen prey to ethnic, sectarian, religious and linguistic splits, leading to serious conflicts among and within these groups. Pakistan is ranked at 152/162, for being one of the most violent and unstable countries²⁹. Apparently, almost all the political parties in Pakistan show concern for these aggrieved ethnic and regional groups, religious minorities and varied interests, but Pakistan's tradition of political parties has largely been affected by bureaucratic and military elites' control and manipulation, resulting in personality oriented political bodies, rather than competing for collective interest³⁰. The ruling political parties have failed to have a grip on such atrocities. Their stance on public interest issues has been ineffective and mere lip service and between 1989-2013, 4699 were killed and 9165 injured in 2865 incidents of sectarian violence³¹. Education, particularly that of females and health amongst other basic facilities, remain grave issues so far. By 2012, at least 5.1 million Pakistani children were out of school 63% of whom were girls, according to UNESCO³². The rising level of poverty is responsible for increase in child labour as more children are being forced into work. In a report released by the Human Resource Commission, Pakistan has the world's 2nd highest number of out-of school children aged five to nine years, almost 10 million children are engaged in labour and expenditure on education was the 2nd lowest in South Asia³³.

Vote selling, party switching, the feudalistic mentality of the party leadership, lack of democratic traditions have reduced parties' credibility and declined voter turnouts in the over the period of time³⁴. However, parliamentary elections in 2008, witnessed 44.5% of voter turnout indicating increase of public's interest in democracy³⁵. On 11th of May, 2013, a total of 46,217,482 voters cast their ballots which makes a turnout of 55% showing an increase of 10.6 million voters³⁶.

29 Global Peace Index, 2013, <http://www.visionofhumanity.org/#page/indexes/global-peace-index/2013/PAK/OVER>

30 Crisis Group Asia Reports N°102, Authoritarianism and Political Party Reform in Pakistan, 28 September 2005

31 The South Asia Terrorism Portal, <http://www.satp.org/satporgtp/countries/pakistan/database/sect-killing.htm>; European Organization of Pakistani Minorities (EOPM), http://www.eopm.org/eopm_news.html

32 Zahid Gishkori, In Pakistan: Human rights? or wrongs?, Published on April 5, 2013, The Express Tribune, <http://tribune.com.pk/story/531314/in-pakistan-human-rights-or-wrongs/>

33 Human Rights Commission of Pakistan, March 2013, State of Human Rights in 2012, <http://hrcp-web.org/hrcpweb/wp-content/pdf/AR2012.pdf>

34 Nazeer Ahmad, Political Parties in Pakistan: A Long Way Ahead, 2004, Published by Centre for Democratic Governance, The Network for Consumer Protection, <http://www.thenetwork.org.pk/Resources/Magazines/PDF/12-8-2011-3-0-19-222-Political%20Parties.pdf>

35 Bertelsmann Stiftung, BTI 2012 — Pakistan Country Report. Gütersloh: Bertelsmann Stiftung, 2012.

36 http://ecp.gov.pk/Misc/GE-2013-Graphs/02_votes_polled_comparison.png

The change is partly due to the increased participation of women and the youth, and the media boom³⁷. It all began with the political protests against the last military regime and campaigns for amendment of the constitution to curtail Presidents power, point to public's option for a political change, restoration of democracy and responsible governance³⁸.

The disconnect between the political elitist parties and the civil society has given rise to mushrooming self-help organizations since the 1990s, such as the Edhi Foundation, which have turned into effective service providers and the other active interest groups like the Lawyers for Civil Rights, the Women's Action Forum or the Citizen Police Liaison Committee and other human rights associations have become very vocal with the aid of electronic media and social networks³⁹. Had it not been for these organizations, there would have been no way of knowing about the massacres or violence and corruption might have gone un-noticed. But these interest groups are still in the phase of development, too unevenly distributed for a fast-growing population and working at individual levels. Many of them also lack reliable funding⁴⁰. In addition to this, their outreach is confined to urban areas mostly, as in the rural areas, as well as for sensitive issues like health and gender, these groups have to meet head-on with the very conservative clergy⁴¹.

Socio-Economic Foundation

Score 25%

Scoring Question To what extent is the socio-economic situation of the country supportive to an effective national integrity system?

Pakistan, as a struggling developing country, is still facing a tottering economic growth. The economy is agro-industrial based and it has become one of the global players in world markets, exporting or importing from 80 economies⁴². It recorded a trade deficit of USD 1880.71 million in November of 2013 and balance of Trade averaged USD -188.91 million from 1957 to 2013, primarily due to high imports of fuel which makes 40% imports⁴³. Pakistan's GDP for FY 2013 is USD 216.49 billion and per capita income is USD 1245.81⁴⁴. Growth rate for Pakistan's economy, has been estimated to be 3%, by the Asian Development Outlook (ADO) Update 2014, which is certainly higher than the IMF's forecast of 2.5%, but it is lower than the government's ambitious growth target of 4.5%⁴⁵. Inflation is anticipated to continue in double digits as the average rate of inflation has been 13% between 2008-2013⁴⁶.

37 Ahsan Butt, The most important socio-political trend in Pakistan in the last decade, December 28, 2009 - The Foreign Policy, South Asia Channel, http://southasia.foreignpolicy.com/posts/2009/12/28/the_most_important_sociopolitical_trend_in_pakistan_in_the_last_decade#sthash.1xUfLmqU.dpuf

38 EU Election Observation Mission, Final Report, July 2013, Pakistan 2013 Final Report, General Elections – 11 May 2013, http://www.eueom.eu/files/pressreleases/english/eu-eom-pakistan-2013-final-report_en.pdf

39 IRIN Humanitarian News and Analysis, 2013, Growing risks for aid workers in Pakistan, <http://www.irinnews.org/report/97186/growing-risks-for-aid-workers-in-pakistan>

40 Bertelsmann Stiftung, BTI 2012 — Pakistan Country Report. Gütersloh: Bertelsmann Stiftung, 2012.

41 IRIN Humanitarian News and Analysis, 2013, Growing risks for aid workers in Pakistan, <http://www.irinnews.org/report/97186/growing-risks-for-aid-workers-in-pakistan>

42 Human Development Report 2013, The Rise of the South: Human Progress in a Diverse World, by the United Nations Development Programme

43 TRADINGECONOMICS, <http://www.tradingeconomics.com/pakistan/balance-of-trade>

44 State Bank of Pakistan, National Data Summary Page, <http://www.sbp.org.pk/departments/stats/NDSP.htm>

45 Shahbaz Rana, Critical assessment: ADB slashes economic growth forecast to 3% Published in The Express Tribune, October 3rd, 2013. <http://tribune.com.pk/story/612656/critical-assessment-adb-slashes-economic-growth-forecast-to-3/>

46 Budget 2013-14, geo.tv, http://www.geo.tv/important_events/2013/budget2013/pages/points_eng.asp

Pakistan's external debt has surmounted to USD 60,431 million (30th September 2013)⁴⁷, which makes it the 60th most indebted nation requiring \$0.08 trillion of GDP to pay off its debts⁴⁸. By the end of June 2013 USD 434.8 billion worth foreign debt was paid to the IMF, which with depletion of foreign exchange reserves for the payments of oil imports and a weak capital account, have depreciated the local currency to around 5% during the fiscal year 2012⁴⁹. However, remittances from overseas workers, averaging about \$1 billion a month since March 2011, remain a bright spot for Pakistan⁵⁰.

Pakistan has the 10th largest labour force of 59.21 million⁵¹, annual growth rate of population for 2010-2015 is 1.8% per annum, median age 21.7, but the employment prospects for the young in Pakistan are bleak. A report by the British Council, based on interviews with 1,500 young respondents between 18 to 29 years of age, from across

Pakistan, identified lack of basic services and depressing socio-economic prospects for the young population and warned Pakistan to create millions of jobs and ensure access to education, to avoid probable political and social commotions⁵². Pakistan's current official unemployment rate is about 6%⁵³, which does not portray the true picture, as almost 80% of the workforce is engaged in the informal sector.⁵⁴ Also, all persons aged above 10 who work at least one hour per week are included in the employed persons' definition, regardless of whether they are paid employees or self-employed. Moreover, 27.1% of the employed force has been shown as "contributing family workers", who are neither paid in cash nor in kind, which brings the unemployment rate close to 15%⁵⁵.

The Gini coefficient⁵⁶ for Pakistan is 30 and 60.3% population is living on less than \$2 a day.⁵⁷ Based on figures given by the State Bank of Pakistan, 0.02% of Pakistan's total population hold almost 40% of Pakistan's total wealth in bank accounts.⁵⁸

47 State Bank of Pakistan, National Data Summary Page, <http://www.sbp.org.pk/departments/stats/NDSP.htm>

48 Mehtab Haider, Pakistan needs Rs8trn of GDP to pay off debts: IMF, The NEWS, Saturday, October 12, 2013, <http://www.thenews.com.pk/Todays-News-3-207602-Pakistan-needs-Rs8trn-of-GDP-to-pay-off-debts-IMF>

49 Erum Zaidi, Pakistan pays off \$393 million IMF debt, the NEWS, Tuesday, August 27, 2013, [http://www.thenews.com.pk/Todays-News-3-198156-Pakistan-pays-off-\\$393-million-IMF-debt](http://www.thenews.com.pk/Todays-News-3-198156-Pakistan-pays-off-$393-million-IMF-debt)

50 CIA, The World Factbook, <https://www.cia.gov/library/publications/the-world-factbook/geos/pk.html>

51 Ibid.

52 Ali Ismail, Report documents widespread frustration, alienation of Pakistan's youth, 9 December 2009, World Socialist Web Site wsws.org, Published by the International Committee of the Fourth International (ICFI)

53 Labour Force Survey 2012-13 Quarterly Reports, <http://www.pbs.gov.pk/content/labour-force-survey-2012-13-quarterly-reports>

54 Economic and Social Survey of Asia and the Pacific 2013, Forward-looking Macroeconomic Policies for Inclusive and Sustainable Development, <http://www.unescap.org/pdd/publications/survey2013/download/Economic-and-Social-Survey-of-Asia-and-the-Pacific-2013.pdf>

55 Shahbaz Rana, Every one out of 10 is jobless: Survey, The Express Tribune, Published: April 9, 2013, <http://tribune.com.pk/story/533033/every-one-out-of-10-is-jobless-survey/>

56 Income Gini coefficient: Measure of the deviation of the distribution of income (or consumption) among individuals or households within a country from a perfectly equal distribution. A value of 0 represents absolute equality, a value of 100 absolute inequality.

57 Human Development Report 2013, The Rise of the South: Human Progress in a Diverse World, by the United Nations Development Programme

58 Shahid Shah, Record increase in number of wealthy people in Pakistan, the NEWS, Saturday, November 30,, 2013, <http://www.thenews.com.pk/Todays-News-3-217083-Record-increase-in-number-of-wealthy-people-in-Pakistan>

With regards to human development, Pakistan ranks at 146th of 172 countries, with an HDI of 0.515 which signifies low human development. In South Asia, Pakistan has the 2nd highest Multi Poverty Index (MPI)⁵⁹ value i.e. 0.264 based on data for 2007, and 49% of the population lives in poverty, which means that they experience deprivation in all three dimensions of human development i.e. health, education and standard of living, where deprivation of health facilities contributes more, while the intensity of deprivation is 53%.⁶⁰ According to another study done by the Center for Policy Research and Institutional Development (CPRID), Pakistan, 63% of the poor, in Pakistan are in the category of 'transitory poor' and the remaining 32% and 5% of the population, living below the poverty line, are 'chronic' and 'extremely poor',⁶¹ And due to irrational economic policies, more and more people are moving from the transitory category to the chronic category.

Pakistan's economy is troubled, concluded the IMF's executive board in late November 2012: "Deep-seated structural problems and weak macroeconomic policies have continued to sap the economy's vigour", which hinders significant improvement in living standards and to absorb the rising labour force.⁶² The main reasons for such low living standards and a slow rate of growth are the tension between civil society and government, social and infrastructural damage to exports and also critical shortage of electricity and gas.

Socio-Cultural Profile

Score	50%
Scoring Question	To what extent are the prevailing ethics, norms and values in society supportive to an effective national integrity system?

According to the Trust Index of the World Values Surveys, Pakistan's score stands at 65 where index figure <100 implies that the majority of the people think one can never be too careful when dealing with other people.

According to the 2001 data from the World Values Survey, (which although rather old, is the only survey of its kind), 28.2% people believed that other people can be trusted, 63.1% said they can't be too careful and the remaining 8.7% did not know. 57% of the respondents state that they believe most people try to take advantage of them, while only 29.8% would try to be fair and the remaining 12.8% do not know.⁶³

⁵⁹ Poverty can be measured more comprehensively using the Multidimensional Poverty Index (MPI), which looks at overlapping deprivations in health, education and standard of living. The MPI is the product of the multidimensional poverty headcount (the share of people who are multidimensionally poor) and the average number of deprivations that each multidimensionally poor household experiences (the intensity of their poverty). Focusing on the intensity of poverty enables the MPI to provide a more complete picture of poverty within a country or a community than is available from headcount measures alone.

⁶⁰ Human Development Report 2013, The Rise of the South: Human Progress in a Diverse World, by the United Nations Development Programme

⁶¹ The Nation, The Octopus of Corruption, November 03, 2013, <http://www.nation.com.pk/national/03-Nov-2013/the-octopus-of-corruption>

⁶² Bruce Stokes, Seeds of Unrest in Pakistan's Economy, February 7, 2013, A growing economic crisis is likely to ratchet up the country's political, security and social tensions and complicate relations with India, Pew Research Center, http://www.business-standard.com/article/opinion/bruce-stokes-seeds-of-unrest-in-pakistan-s-economy-113020601010_1.html

⁶³ World Values Survey 2000 Official Data File v.20090914 World Values Survey Association (www.worldvaluessurvey.org) Aggregate File Producer: ASEP/JDS, Madrid

People of Pakistan, have also become prone to believing in conspiracy theories. For instance in case of killing of al-Qaeda chief, two-thirds of the people believed that America trampled on Pakistan's sovereignty, 49% thought that it was a staged incident, only 26% thought the al-Qaeda chief was really killed on the night in question, 44% concluded he was a "martyr", while 26% think that he was a "criminal". The major cause for 'conspiracy theories' is the lack of information and feeling of powerlessness amongst the masses,⁶⁴ as they are never taken into confidence by the state, and as per a Gallup survey, the trust in civilian government fell to 23% in 2012 from 58%, the highest in 2006.⁶⁵ As far as environment for implementing an integrity system is concerned, most of the people do not trust anyone in fight against corruption. They do not have the confidence, either in the government nor in themselves.⁶⁶

In a country where 60 percent of the population lives on less than \$2 per day, severe lack of energy and water supplies is crippling not only the industry but devastating the lives of ordinary people. 72% of people think that their personal economic situation has worsened and only 10% expect improvement in future. They are more worried about day-to-day survival, poverty, inflation and unemployment, rather than terrorism and security situations.⁶⁷ Another recent survey published by JWT titled "Anxiety Index study – Global Report 2013", gave somewhat similar results and Pakistan turned out to be the most anxious nation of those assessed. Almost 92% of Pakistan's population, is anxious and "very nervous" about some issue or another. As per the survey, economic worries such as gasoline and petrol prices take the lead whereas terrorism and the increasing crime rate came out to be the next worrisome issues.⁶⁸ General societal behaviours in Pakistan show mixed trends. At times, there are traces of violence, anger, frustration, apathy, stress, cynicism, mental problems,⁶⁹ mistrust and indifference or silent bystanders' attitude towards serious issues⁷⁰ like bloodshed, terrorist attacks, corruption, load shedding, inflation, unemployment etc. However, there were two occasions when the people of Pakistan mobilized as a nation, despite security threats. First in 2007, in the lawyer's movement against the ousting of the Chief Justice of Pakistan by the military dictator⁷¹ and secondly for restoration of democracy in the 2013 elections with highest 55% voter turnout.⁷²

64 Banyan Asia, What Pakistanis think :Conspiracy of the masses, the Economist, May 13th 2011, http://www.economist.com/blogs/banyan/2011/05/what_pakistanis_think

65 Anwar Iqbal, Pakistanis' trust in civilian govt has nosedived: US survey, DAWN.com 2013-02-14, <http://www.dawn.com/news/786132/pakistanis-trust-in-civilian-govt-has-nosedived-us-survey>

66 Transparency International, Daily Lives and Corruption: Public Opinion in South Asia, 2011

67 Ali Ismail, Report documents widespread frustration, alienation of Pakistan's youth, 9 December 2009, World Socialist Web Site wsws.org, Published by the International Committee of the Fourth International (ICFI)

68 The Express Tribune, Nine in every 10 Pakistanis are anxious: Survey, Published: August 24, 2013, <http://tribune.com.pk/story/94483/nine-in-every-10-pakistanis-are-anxious-survey/>

69 International Colloquium 2012, Public Action in Pakistan: Between Apathy and Anger, March 19-20, 2012, <http://i-saps.org/empiricalstudies.html>

70 The Express Tribune, Sialkot mob murder inquiry launched Published: August 21, 2010, <http://tribune.com.pk/story/41310/police-held-responsible-for-mob-murders/>

71 The Pakistani Lawyers' Movement And The Popular Currency Of Judicial Power, Harvard Law Review Vol. 123:1705, http://www.harvardlawreview.org/media/pdf/vol123_pakistani_lawyers_movement.pdf

72 The Express Tribune, Pakistan elections 2013 total voter turnout: 55%, May 21, 2013, <http://tribune.com.pk/story/552368/pakistan-elections-2013-total-voter-turnout-55/>

Another alarming consequential that has emerged is the increase in financially motivated crimes in Pakistan over the years,⁷³ and studies do show strong nexus between crime rate and poverty, income inequality and inflation, with increase in unemployment.⁷⁴

Nevertheless, despite a number of factors such as sectarian violence, its location in the least-tolerant region of the world, low economic and human development indices, that coincide with racial intolerance, Pakistan has turned out to be racially tolerant in a study and only 6.5 percent of Pakistanis objected to a neighbor of a different race.⁷⁵

73 Syed Yasir Mahmood Gillani, Hafeez ur Rehman and Abid Rasheed Gill, Unemployment, poverty, inflation and crime nexus: cointegration and causality analysis of Pakistan, *Pakistan Economic and Social Review*, Volume 47, No. 1 (Summer 2009), pp. 79-98; Mohsin Gulzar Raja and Kafait Ullah, Relationship between Crimes and Economic Conditions in Pakistan: A Time Series Approach, *J. Asian Dev. Stud.*, Vol. 2, Issue 1, (March 2013). ISSN 2304-375X

74 Ali Ismail, Report documents widespread frustration, alienation of Pakistan's youth, 9 December 2009, World Socialist Web Site wsws.org, Published by the International Committee of the Fourth International (ICFI)

75 Max Fisher, World Views,, the Washington Post, May 15, 2013, <http://www.washingtonpost.com/blogs/worldviews/wp/2013/05/15/a-fascinating-map-of-the-worlds-most-and-least-racially-tolerant-countries/>

IV. CORRUPTION PROFILE

IV. CORRUPTION PROFILE

In 1947, at the time of its inception, Pakistan inherited a weak economy, inexperienced politicians but a professional civil service.⁷⁶ The founder of Pakistan, Mr. Muhammad Ali Jinnah, in his opening address to the first Constituent Assembly of Pakistan in August 1947, said: "One of the biggest curses from which India is suffering, I do not say that other countries are free from it, but, I think our condition is much worse_____ is bribery and corruption. That really is a poison. We must put it down with an iron hand".⁷⁷ 66 years later, the situation is worse, and systemic, invasive and deep-rooted corruption, remains a substantial obstacle for Pakistan, The early corruption perception indices by Transparency International, from 1995 onwards, present a gloomy picture of corruption trends in Pakistan, and its score has always been within the danger zone, revealing consistent poor performance on the CPI rankings. In 2013, Pakistan was ranked at 127 out of 177 countries with a score of 28/100.⁷⁸

In a study done between 2010 -2011, 77 % of people in Pakistan felt the level of corruption has increased over the past three years and the majority perceived it to be greatest in institutions that deal with public processes and that have more frequent interactions with the public.⁷⁹ 54% of the people said that they had been compelled to pay a bribe to police officials and 62% to revenue/property registration officials,⁸⁰ and 73% of bribes, were reportedly paid to speed things up.⁸¹ Police and public officials were considered the most corrupt institutions scoring highest on perceived level of corruption among a set of 12 major institutions, 34% of people admitted to paying bribes to one of the eight service providers listed in the foregoing year, and 75% were willing to pay a bribe, rather than protesting or saying no to corruption.⁸² Surveys by Transparency International Pakistan have identified lack of accountability, lack of merit, low salaries of government employees, and unchecked discretionary powers, as the major causes of corruption.⁸³

The highest proportion of people reported that they trust 'nobody' in the fight against corruption and 73 per cent of people considered the government to be ineffective in fight against corruption.⁸⁴ The general attitude of people towards eliminating corruption is that of a lost cause. They seem to have lost hope and the degree of belief in citizens' power to address corruption has dropped substantially, as 61-80% of people think that ordinary people cannot make a difference in reducing corruption.⁸⁵

The average size of the shadow economy from 1999 to 2007 was 35.7 % of official GDP and Pakistan ranked at 94th out of 162 countries, which means, 29.4 million people or 60% of the people work in the shadow economy, broadly defined as 'income derived by economic activities that circumvent government regulation and taxation'.⁸⁶

76 National Anti-Corruption Strategy (NACS), Islamabad – Pakistan 2002, p.23, <http://www.nab.gov.pk/Downloads/Doc/NACS.pdf>

77 Rudrangshu Mukherjee, *The Great Speeches of Modern India*, published by Random House India, 2011.

78 Transparency International, *Corruption Perception Index*, 2013

79 Transparency International, *Daily Lives and Corruption: Public Opinion in South Asia*, 2011

80 Transparency International Pakistan, *National Corruption Perception Survey*, 2011

81 Transparency International, *Daily Lives and Corruption: Public Opinion in South Asia*, 2011

82 *Global Corruption Barometer*, 2013, Transparency International

83 Transparency International Pakistan, *National Corruption Perception Surveys*, 2009 & 2010

84 Transparency International, *Daily Lives and Corruption: Public Opinion in South Asia*, 2011

85 *Global Corruption Barometer*, 2013, Transparency International

86 Friedrich Schneider, 2012, *The Shadow Economy and Work in the Shadow: What Do We (Not) Know?*, IZA Discussion Paper No. 6423

This is substantiated by the fact that Pakistan has one of the lowest tax-to-GDP ratios in the world (less than 10% in 2012),⁸⁷ because, many of the country's wealthiest citizens as well as members of Parliament, avoid paying taxes using legal loopholes. In 2012, around 70% of current lawmakers did not file tax returns and most paid less than USD 1,000, though an average legislator has assets of USD 800,000.⁸⁸ The most probable cause is the lax regulatory environment which has meant that, in 25 years, no one has been convicted of income tax evasion and few Pakistanis see tax evasion as shameful.⁸⁹

More than 64% of respondents from Pakistan are willing to pay more to buy from a corruption free company.⁹⁰ But, the private sector and the business environment are also plagued with corruption and more than 60 per cent of the business executives reported having been solicited for bribe payments from key government institutions in 2009⁹¹ and corruption still remains the most problematic factor for doing business.⁹²

Corruption is pervasive at all levels of politics too, and 55% of the people in Pakistan perceive civilian governments to be more corrupt than military governments.⁹³ In the 1990s, four successive democratically elected governments headed by two major political parties of Pakistan, were overthrown mainly on the basis of corruption charges, mismanagement of the economy, and allegations of receiving kickbacks from government contracts and siphoning off public money to foreign bank accounts.⁹⁴ Both the governments came back to power twice and performed worse in their subsequent governance periods with 30 to 40% increase in perceived corruption levels.⁹⁵ In August, 2007, Pakistan ratified the UN Convention against Corruption, and right after 56 days, in October 2007, the National Reconciliation Ordinance (NRO) was promulgated, which provided blanket protection to all the corrupt elites and proved to be a setback for anticorruption measures.⁹⁶

Though, the NRO was revoked by the Supreme Court in 2009, prosecution of reopened cases never gained momentum.⁹⁷ Moreover, one of the aforementioned political parties came to rule once again in the 2008 elections, with the president being one of the beneficiaries of the controversial NRO. The other party, has come to rule in 2013, and on completion of first 100 days, 'the weakest aspect of representative and accountable government' was evaluated to be people's lack of confidence on the statement that public officials are corruption-free'.⁹⁸

86 Friedrich Schneider, 2012, The Shadow Economy and Work in the Shadow: What Do We (Not) Know?, IZA Discussion Paper No. 6423

87 US Department of State, Report on Investment Climate Statement – Pakistan, 2013 Investment Climate Statement, Bureau of Economic and Business Affairs, February 2013.

88 Katharine Houreld, Promoting investigative journalism in Pakistan, one tax return at a time, DECEMBER 12, Reuters 2012 <http://blogs.reuters.com/pakistan/2012/12/12/promoting-investigative-journalism-in-pakistan-one-tax-return-at-a-time/>

89 Katharine Houreld, Nearly 70 percent of Pakistani lawmakers don't file taxes –Wednesday, December 12, 2012, the Star Online, http://www.thestar.com.my/story.aspx?file=%2f2012%2f12%2f12%2fworldupdates%2f2012-12-12T130501Z_1_BRE8BB054_RTROPTT_0_UK-PAKISTAN-TAX&sec=Worldupdates

90 Transparency International, Global Corruption Barometer, 2009

91 Transparency International, Global Corruption Report 2009-Corruption and the Private Sector.

92 World Economic Forum, 2013. The Global Competitiveness Report 2013–2014,

93 Transparency International Pakistan, National Corruption Perception Survey, 2009

94 Masood Khan, Niaz A. Shah Kakakhel, and Melvin J. Dubnick (2004). Prosecuting Corruption: The Case of Pakistan. 2004 Ethics Forum, American Society for Public Administration, Portland OR.

95 Transparency International Pakistan, National Corruption Perception Survey, 2006

96 Marie Chêne (2008). Donor Responses to Corruption in Deteriorating Governance Environments. Transparency International U4, Washington D.C., USA.; Transparency International, Global Corruption Report 2009-Corruption and the Private Sector.

97 Pakistan, Freedom in the World,, 2013

98 Pakistan Institute of Legislative Development And Transparency PILDAT, Citizens Report 5 Years of the 13th National Assembly of Pakistan, March 17, 2008 - March 16, 2013

V. ANTI- CORRUPTION ACTIVITIES

V. ANTI-CORRUPTION ACTIVITIES

Pakistan has been struggling with corruption since its independence. Initially, corruption falling within the general definitions of taking gratification, dishonest misappropriation, forgery, breach of trust, cheating etc., was dealt under the Pakistan Penal Code, 1860 and the Prevention of Corruption Act, 1947 along with its enforcement agency called the Special Police Establishment (the first anti-corruption agency in the sub-continent). In 1975, Pakistan Special Police Establishment (PSPE) was replaced with the Federal Investigation Agency (FIA) having jurisdiction over corruption along with other crimes.⁹⁹ Ehtesab (Accountability) Bureau was created under the Ehtesab Act 1997, specifically aimed at elimination of corruption, but could not yield the desired result of a corruption-free Pakistan, and, Pakistan's rank kept on falling on various international charts. With Military coup, in 1999, came the National Accountability Ordinance 1999 (NAO), replacing the defunct Ehtesab (Accountability) Bureau with its National Accountability Bureau (NAB), the supreme anticorruption authority. It has exclusive jurisdiction to criminalize both public and private sector corruption including misuse/abuse of power and authority, defrauding/cheating public at large, wilful bank loan default, money laundering, unexplained assets etc. Anyone found guilty can be punished for up to 14 years. Even with performance relatively better than the previous agencies, NAB has still been unable to put a real dent on the face of prevalent and pervasive corruption.¹⁰⁰

On the global front, the worldwide anti-corruption drive led by international organizations such as the World Bank, the International Monetary Fund (IMF), Transparency International (TI), and OECD/ADB, compelled Pakistan to be a customer of global anti-corruption industry worth \$300 billion.¹⁰¹ Endorsing the ADB-OECD Action Plan for Asia-Pacific, on 30th November 2001 and becoming a signatory to the United Nations Convention against Transnational Organized Crime and United Nations Convention against Corruption (UNCAC) in 2003, ratified in 2007, Pakistan became an active member of the international anti-corruption drive. Eventually, NAB conceived the idea of framing National Anti-Corruption Strategy (NACS) in 2002, after elaborate research on best-practices in anti-corruption and extensive consultation process. All the stakeholders, including academia, business community, public sector and civil society were involved and participated in formulation of the strategy¹⁰². Politicians were not involved as they seemed disinterested.¹⁰³ NACS, based on the pillars of the National Integrity System (NIS), was a concept taken from Transparency International and adapted to local conditions.¹⁰⁴ The main feature of this

99 FIA Official website, http://www.fia.gov.pk/abt_background.htm

100 Measuring Corruption Perception: Using Split-Questionnaire Survey, LAP Lambert Acad. Publ., 2010, by Alia Ahmed, S.A. Lodhi and Munir Ahmad,

101 Daniyal Aziz, 'Anticorruption and its Discontents Anti-corruption in Post-Independence Colonial Bureaucracies', Prepared for presentation at IPMN conference: Innovations in Public Management for Controlling Corruption, 27-29 June 2012, Honolulu, Hawaii,

102 National Anti-Corruption Strategy (NACS), Islamabad – Pakistan 2002, p.2

103 'Anti-corruption policy making in practice: What can be learned for the implementation of Article 5 of UNCAC?' Report of six country case studies: Georgia, Indonesia, Nicaragua, Pakistan, Tanzania and Zambia (Includes full text of all the country case studies) Edited by Karen Hussmann, U4 REPORT 1:2007 December, U4 Anti-Corruption Resource Centre, www.U4.no, p.159

104 Transparency International (2008). Global Corruption Report 2008, Corruption in the Water Sector. Published in the United States of America by Cambridge University Press, New York,

strategy was to combine enforcement with prevention and awareness. However, promulgation of the National Reconciliation Ordinance (NRO) which terminated all investigations of corruption offenses by public officials prior to October 12, 1999 proved to be a setback for anti-corruption efforts in Pakistan that also reduced NAB's credibility and distorted its image in the eyes of public.

Simultaneously, to deal with corruption at provincial level, Anti-Corruption Establishments (ACEs) were created.¹⁰⁵ Now, there are four provincial ACEs viz. ACE Punjab, ACE Sindh, ACE Baluchistan and ACE Khyber Pakhtunkhwa.¹⁰⁶

Other than that, the e-governance systems to enhance transparency, the Judicial Reforms 2009, standardization and streamlining of procurement procedures, development of new RTI laws, the Security Exchange Commission of Pakistan (SECP)'s initiative of reporting reforms are a few positive steps towards corruption free Pakistan.

105 Under the Anti-Corruption Ordinance (XX) of 1961 on 8th September 1961, later on supplemented by West Pakistan Anti-Corruption Establishment Rules, 1965.

106 Second Interim Technical Report on Public Accountability Institutions in Pakistan and their macroeconomic Impacts, Governance Institutions Network International (GINI, 2007), p.172-192

VI. THE NATIONAL INTEGRITY SYSTEM

PILLAR 1

Legislature

VI. THE NATIONAL INTEGRITY SYSTEM

Pillar 1: Legislature

Summary

Being one of the main three branches of the Government, the Legislature in Pakistan has a key role in presenting, deliberating and passing laws for the country and also to oversee the performance of the Executive.

Pakistan's Constitution comprehensively covers composition, duration, meetings and provisions of legal framework of the parliament.¹⁰⁷ It sets out general, legislative and financial procedures of the parliament.¹⁰⁸ It also provides specific distribution of the legislative powers to the parliament and the provincial assemblies.¹⁰⁹ A bill may be originated in either house, but it needs to be passed by both the houses and also requires presidential assent to become a law. The President may promulgate an ordinance in certain circumstances to be later on ratified or repealed by the two houses.¹¹⁰

There are adequate legal provisions in place that provide the legislature of Pakistan with financial, human and infrastructural resources to ensure that the legislature effectively carries out its duties, but still some significant resource gaps regarding office, staff, equipment, travel, salary, budget exist that lead to a certain degree of ineffectiveness in carrying out its duties. To fill out this gap, the Pakistan Legislative Strengthening Project (PLSP) funded by the US Agency for International Development (USAID) was initiated in 2005, to work with the National Assembly and Senate and the provincial assemblies in KPK, Baluchistan, Sindh and Punjab.

Program activities in each of the legislatures were focused around four general technical areas of 'representation' i.e. how to keep in touch with the public, 'law making' i.e. to assist the legislature to pass analyzed and debated laws, 'oversight/accountability' i.e. Assisting Pakistani legislatures oversee government operations and 'management/infrastructure', i.e. to assisting Pakistani legislatures improve the day-to-day management and operation of the legislative processes.¹¹¹

Under the Constitution of Pakistan 1973, the Legislature in Pakistan is empowered to make acts/laws but is not free in practice as its independence is marred by the coalition of political parties that is required to form government. Occasionally, the activities of the Parliament are vulnerable to interference by the leaders of the political party in power as also the Executive. The majority of bills have been passed by the Parliament with the interference of the Executive and the leaders of the parties in power.

107 Article 52-66, The Constitution of Pakistan, 1973

108 Article 67-88, The Constitution of Pakistan, 1973

109 Article 141-144 & Part I of the 4th Schedule, The Constitution of Pakistan, 1973.

110 Article 89, The Constitution of Pakistan, 1973

111 Pakistan Institute For Parliamentary Services (PIPS), <http://www.pips.org.pk/PLSP.htm>

Authority of the legislature is sometimes undermined when the resolution passed is not implemented in true spirit. For example, despite the fact that Parliament recently unanimously passed a resolution banning drone attacks in North Waziristan, the resolution has not been implemented by the executive.

Regarding the transparency in the workings of the legislature in practice, the public can access the legislature’s secretariat and obtain relevant information on the organization, function and the decision making procedures.

There are no specific rules on the integrity of legislators except as provided in the Constitution of Pakistan, 1973, the People’s Representation Act and in the oath they take before occupying their places in the National Assembly and the Senate.¹¹² In some cases, inquiries into corrupt practices have been conducted by the media and independent oversight bodies in the country, but no effective measures have been taken by the Parliament in controlling corrupt practices in the country.

The Parliament has ratified many international instruments including the United Nations Convention on Corruption (UNCAC) and adopted international codes of ethics and conduct for various activities and functions of the public sector institutions. Legal reforms that counter corruption and promote integrity are piecemeal efforts, which however, have largely been proven ineffective in achieving their goals.

The scores on each indicator are given in the Table 2.

**Table 2:
Percentage Scores of Indicators
52.8/100**

Dimension	Indicators	Law	Practice
Capacity 62.5/100	Resources	75	50
	Independence	75	50
Governance 45.8/100	Transparency	75	50
	Accountability	25	25
	Integrity Mechanisms	75	25
Role 50.0/100	Executive Oversight	50	
	Legal Reforms	50	

Structure and Organization

The Parliament of Pakistan is a bicameral federal legislature that consists of the Senate (upper house) and the National Assembly (lower house). The President of Pakistan is also a component of the Parliament.¹¹³ The Senate has 104 members out of which 17 are reserved for women and 4 for minorities. Members of the Senate are elected by the Assemblies where they serve for a period of six years. The National Assembly has 342 seats, 272 of which are directly elected, 60 are reserved for women and the rest of 10 seats are reserved for minorities. The allocation of the seats to the provinces and other areas of Pakistan in the National Assembly are as follows:

¹¹² Articles 62 and 63, The Constitution of Pakistan, 1973 and Section 218 of People’s Representation Act, 1976

¹¹³ Article 50, The Constitution of Pakistan, 1973

**Table 3:
Parliament Seats by Provinces/ Areas**

Province / Areas	General Seats	Women	Total
Baluchistan	14	3	17
Khyber Pakhtunkhwa	35	8	43
Punjab	148	35	183
Sindh	61	14	75
Federally Administered Tribal Areas	12	-	12
Federal Capital	2	-	2
Total	272	60	332

Note: In addition to 332 seats in the National Assembly, 10 seats are reserved for non-Muslims. The total seats of the National Assembly come to 342.

Parliament has 45 standing committees (e.g. business advisory, law & justice, parliamentary affairs, privatization, and public accounts), 11 special committees, 1 select committee and 8 parliamentary committees (e.g. appointment of Election Commissioner (EC) and members of the Election Commission of Pakistan (ECP) and on judges' appointment in the superior courts). These committees have powers to delve into all matters of the ministry. The committees also have powers to invite or summon before them any member or any other person having a special interest in relation to any matter under its consideration and may hear expert evidence and hold public hearings.¹¹⁴

1.1 Capacity

1.1.1 Resource (Law)

Score	75%
Scoring Question	To what extent are there provisions in place that provide the legislature with adequate financial, human and infrastructure resources to effectively carry out its duties?

The provisions are well in place to provide the legislature with adequate financial and infrastructural resources. There are no specific provisions that ensure the provision of human resources to the legislature's secretariat and all the official working in secretariats of two houses are recruited and selected by the executive.¹¹⁵

¹¹⁴ National Assembly of Pakistan, Official Website of <http://www.na.gov.pk/en/index.php/>

¹¹⁵ Articles 78, 79 and 81 Federal consolidated fund and Article 118, 119 and 121 for Provisional Consolidated Fund, Constitution of Pakistan, 1973.

The Secretariats of the National Assembly and the Senate prepare their budgets according to their requirements and submit them to the Ministry of Finance for approval. After the approval, the Ministry submits the national budget to the National Assembly and the Senate for their approval. Once it is passed by both the houses, the Parliament secretariat expends its budget according to its requirements. The resources to the legislature are thus very defined and there seem to be no financial hindrances in effectively carrying out its duties.¹¹⁶ However, the financial allocation of the legislature rests with the Economic Council of Pakistan and not with the Assembly. Monitoring of revenue and expenditure is the duty of its secretariat.¹¹⁷

The Constitution provides that the remunerations to the Chairman and the Deputy Chairman of the Senate, the Speaker and the Deputy Speaker of the National Assembly and their members shall be charged to the Federal Consolidated Fund. Similarly, administrative expenses, including the remuneration payable to officers and officials of the secretariats of the Senate and the National Assembly can be charged to the Federal Consolidated Fund.¹¹⁸

According to the National Assembly Rules of Procedure, there shall be a Standing Committee of the Assembly for each Ministry of the Government.¹¹⁹ The relevant Standing Committees examine and submit reports on Bills, other than a finance Bill, referred to them by the House.¹²⁰ The Rules empower the Standing Committees to examine the expenditures, administration, delegated legislations, public petitions and policies of the Ministry concerned and its associated public bodies and may forward its report of findings and recommendations to the Ministry and Ministry has to submit its reply to the Committee. All the National Assembly standing committees have to be constituted within 30 days after election of the Leader of the House.¹²¹ The fourteenth National Assembly, on 21 August 2013, established 34 standing Committees. Apart from these standing committees, there also is a Public Accounts Committee (PAC) and other permanent committees including government assurances, rules of procedure and privileges, house and library and business advisory and non-permanent special committees.¹²²

116 Articles 73(1), 80-82 and 120,121, Constitution of Pakistan.

117 Section (B) 8(a), Article 171, Constitution of Pakistan 1973 and Chapter XX, Section 203-205, Public Accounts Committee, National Assembly of Pakistan, Rules and conduct of Business in National Assembly, 2007.

118 Article 81, The Constitution of Pakistan 1973,

119 Rules of Procedure and the Conduct of Business in the National Assembly, 2007, Rule 198.

120 *ibid*, Rule 122.

121 *ibid*, Rule 200.

122 Parliament's Role in Pakistan's Democratic Transition, Crisis Group Asia Report N°249, 18 September 2013

1.1.2 Resource (Practice)

Score 50%

Scoring Question To what extent does the legislature have adequate resources to carry out its duties in practice?

Despite having a strong infrastructure and sufficient financial resources, the Parliament/ National Assembly comprising 342 members, only has four research associates and poorly trained committee and secretariat staffs. Neither the members nor the committees have any research experience, nor access to up-to-date technological tools, computers or the internet.¹²³ Consequently, the research wing hardly provides any background information on legislative or constituency issues to the Assembly members.¹²⁴

The National Assembly does not publish any magazine but issues a newsletter irregularly and publishes reports on the Assembly's business, although the National Assembly does have a full-fledged Media Centre that is responsible for the release of news on the Assembly's activities. The Senate occasionally publishes a magazine on the federal legislature.¹²⁵ The timely publication of journals on a regular basis is rare for the provincial legislatures too.¹²⁶

To support the Parliamentary processes in Pakistan, various international organizations such as the Asia Foundation funded by the United States Agency for International Development (USAID), the Han Siedel Foundation and the UNDP have extended their cooperation to modernize and expand the parliamentary library, and provide technical equipment for building an effective research service for MNAs.¹²⁷ In December 2008, the Pakistan Institute for Parliamentary Services (PIPS) was created, under the Pakistan Institute for Parliamentary Services Act, 2008 to provide quality research and capacity building services for parliamentarians and parliamentary functionaries.¹²⁸ Now, the National Assembly, the Senate and PIPS maintain separate and relatively well-stocked libraries, each with big overhead costs, but there is still a significant lack of 'research culture'. The parliamentarians are not well trained in parliamentary procedures, drafting of motions and amendments, constituency management and in defining the scope of MNA activities.¹²⁹ In collaboration with various reputable organizations such as USAID and Inter Parliamentary Union IPU of UNDP's parliamentary project SDPD, PIPS has been working on provision of fully equipped campus, training of staff members, increasing quality, timeliness and publication of legislative proceedings and enhancing functioning of committee system among other initiatives.¹³⁰

123 Parliament's Role in Pakistan's Democratic Transition, Crisis Group Asia Report N°249, 18 September 2013

124 Pakistan Institute of Legislative Development and Transparency (PILDAT). Section 12, "5 Years of the 13th National Assembly of Pakistan: Positive Trends and areas of concern." 13th NA Performance. March 29, 2013. Available at www.pildat.org/eventsdel.asp?=&id=614;

125 Senate of Pakistan, Role and Procedures, A publication of the Senate Secretariat, 2012, p 94; Interview of Ahmad Billal Mehmood, Executive Director, PILDAT with the Researcher at Islamabad on 4/11/2012

126 Interview of Sirdar Zulifqar Ali Khan Khosa, Senior Advisor to Chief Minister, Punjab with the Researcher at Lahore on 10/12/2012

127 PAK/97/010-Support to Parliamentary and Democratic Processes in Pakistan, http://www.asp.org.pk/indepth/capacity_building_approaches_practices/1.pdf

128 <http://www.pips.org.pk/>

129 PAK/97/010-Support to Parliamentary and Democratic Processes in Pakistan, http://www.asp.org.pk/indepth/capacity_building_approaches_practices/1.pdf

130 United States Agency for International Development (USAID), Pakistan Legislative Strengthening Project, Quarterly Report (January 1 – March 31, 2010), Contract No. DFD-I-00-04-00129-00, (19th Quarterly Report for Task Order 01)

1.1.3 Independence (law)

Score 75%

Scoring Question To what extent is the legislature independent and free from subordination to external actors by law?

There are adequate constitutional provisions to ensure the independence of the Legislature.

The Constitution of Pakistan ensures the trichotomy of power amongst the three organs of the state i.e. Legislature, Executive and Judiciary. This separation of power ensures that the legislature is competent to make laws. Each house is fully independent to make rules for regulating its procedures and conduct of its business.¹³¹ The Senate and the National Assembly have independence to elect their Chairman/Deputy Chairman and Speakers/Deputy Speaker respectively, subject to the legislative limits prescribed by the Constitution.¹³² The Parliament Secretariat controls the appointments of the technical staff with the permissions and approval of the Chairman or the Speaker.

The Presidential Authority to dissolve the legislature has been removed from the Constitution, which has substantially improved its independence. This amendment was passed on April 18, 2010 by the National Assembly of Pakistan and signed by the President.¹³³ At present, by virtue of the Eighteenth Amendment to the Constitution, the National Assembly, and not the President is empowered to dissolve the National Assembly and/or sack the Prime Minister.¹³⁴

The Legislature itself can convene the normal sessions when required. However, extraordinary sessions need a requisition signed by no less than one-fourth of the total membership of the national assembly.¹³⁵

The National Assembly House and Library Committee are in charge of the security of the parliament houses. Police may enter the Legislature and take care of any security risk, but only with the permission of the Chairman or the Speaker. However, in the last five years, there have not been any security lapses and police has never been summoned for any unusual event within the Parliament except for routine security duties.¹³⁶

Freedom of speech in the Parliament is subject to the Constitution and to the rules of procedure of the Parliament, which grant immunity to all members from any proceedings in any court in respect of anything said, speeches made during Assembly sessions or any vote given by them, or in respect of the publication of any report, and articles, votes or proceedings during the exercise of their duties in the Parliament.¹³⁷

¹³¹ Article 54, Article 67, The Constitution of Pakistan, 1973

¹³² Article 52 & 60)c, The Constitution of Pakistan, 1973

¹³³ Article 58, The Constitution of Pakistan, 1973; The Eighteenth Amendment (No. XVIII) to the Constitution of Pakistan

¹³⁴ Eighteenth Amendment to the Constitution of Pakistan, 1973 on April 8, 2010

¹³⁵ Article 54, The Constitution of Pakistan, 1973

¹³⁶ National Assembly House and Library Committee in-charge of security of parliament houses and lodges. www.na.gov.pk/en/pressrelease.php?content=10

¹³⁷ Article 66, The Constitution of Pakistan, 1973

1.1.4 Independence (Practice)

Score 50%

Scoring Question To what extent is the legislature free from subordination to external actors in practice?

Though the legislature of Pakistan is currently perceived to be independent in practicing its rights fully and carrying out its responsibilities,¹³⁸ the Parliaments in Pakistan, for most of Pakistan's history, have been short lived and dysfunctional due to the military regimes.¹³⁹ Twenty amendments in the Constitution have been passed by the Parliament.¹⁴⁰ The earlier amendments made by the military regimes were accepted by the Supreme Court of Pakistan¹⁴¹ and later endorsed by the parliament, though the emergency rules proclaimed by the Ex- President in 2007 were not endorsed.

Judicial Interpretations too have curbed Parliamentary Sovereignty through, for instance, application of 'doctrine of necessity' in justifying extra-constitutional dismissals of the Parliaments. There have also been instances whereby the Parliament had to make amendments in the Constitution on the directives of the Supreme Court.¹⁴²

Moreover, due to lack of professional staff, the committee members and other legislators have to rely on the briefs given by the executive branch while passing majority of bills.¹⁴³ It has been suggested that this is the reason that the new anti-corruption law or review of existing law dealing with accountability of executive remain a low priority.¹⁴⁴

138 Interview of Ahmad Billal Mehmood, Executive Director, PILDAT with the researcher at Islamabad;

139 Crisis Group Asia Reports N°102, Authoritarianism and Political Party Reform in Pakistan, 28 September 2005

140 pakistanconstitutionlaw.com/20th=amendment 2012

141 Sial, A.Q. (2010).Constitutional Reforms: Search for an Alternative Paradigm, Pakistan Journal of Social Sciences, 30(1), 57-70.

142 Parliament's Role in Pakistan's Democratic Transition, Crisis Group Asia Report N°249, 18 September 2013

143 Parliament's Role in Pakistan's Democratic Transition, Crisis Group Asia Report N°249, 18 September 2013

144 Interview of Ahmad Billal Mehmood, Executive Director, PILDAT with the researcher at Islamabad

1.2 Governance

1.2.1 Transparency (law)

Score 75%

Scoring Question To what extent are there provisions in place to ensure that the public can obtain relevant and timely information on the activities and decision-making processes of the legislature?

While a number of laws/provisions exist, they do not cover all aspects related to the transparency of the legislature and there are certain gaps that do prevent full transparency.

According to the Rules of Business of the National Assembly the Secretary shall cause to be prepared a full report of the proceedings of the Assembly at each of its sittings, and shall, as soon as practicable, publish in such form and manner as the Speaker may, from time to time, direct. The Secretary may also cause to be prepared a Bulletin of the Assembly.¹⁴⁵

The Constitution has no explicit legal provision that the Parliament should be open to the public and the media.¹⁴⁶

Laws passed by the Houses have to be published and discussions in the Houses are required to be open to the public after they are laid on the table.

The agendas of legislative sessions and committee hearings are required to be published ahead of time. Journalists are legally free from restrictions in reporting on the legislature and the activities of its members. The verbatim records of floor sessions have to be maintained by the Parliament secretariats.¹⁴⁷ There are provisions that require legislator's to declare their assets with the Election Commission of Pakistan.¹⁴⁸

¹⁴⁵ Rules of Procedures and conduct of Business of the National Assembly of Pakistan

¹⁴⁶ Interview of Ahmad Bilal Mehmood. Executive Director, PILDAT with the Researcher at Islamabad 4/11/2012; Interview of Sirdar Zulifqar Ali Khan Khosa, Senior Advisor to Chief Minister, Punjab with the Researcher at Lahore on 10/12/2012

¹⁴⁷ Section 3(2) (ii), Freedom of Information Ordinance No. XCVI, 2002

¹⁴⁸ Section 42A of the Representation of the People Act, 1976; Section 25A of the Senate (Election) Act, 1975

1.2.2 Transparency (Practice)

Score 50%

Scoring Question To what extent can the public obtain relevant and timely information on the activities and decision-making processes of the legislature in practice?

It has become easier for the media and the public to obtain information on time on the activities of the Legislature, as the National Assembly and the Senate Media Centres, release information through press releases for information.¹⁴⁹ The situation is not the same for the parliamentary committees, as only the final findings are made public.¹⁵⁰ The Citizens Report released by a civil society organization on the performance of standing committees is based on the “publicly available data”.¹⁵¹

The media attending the meetings of the Houses make information public. The proceedings of the Parliament are relayed by PTV which covers the sessions live. The legislators also communicate with the public during their press conferences and TV talk shows. In this process there is a lot of information outflow about the works of the legislature. The other traditional channels like print media, research organization and radio are also being utilized for this purpose.

As noted above, the Constitution has no explicit legal provision for the parliament to be open to the public and the media, but media and the public are allowed to attend the proceedings of the parliament with the permission of the Speakers of the Assemblies.¹⁵²

The agendas of legislative sessions and committee hearings are published ahead of time. The time frame is given by the committee on Rules of Procedure and Privileges.¹⁵³ Complete publication of the important records of the parliament, particularly the budget and keeping verbatim records of the floor sessions have become a regular practice.¹⁵⁴ But timely publication of the reports on government performance and debates on these reports, is still an issue.¹⁵⁵

149 Media Center, National Assembly of Pakistan. www.na.gov.pk/

150 Interview of Ahmad Billal Mehmood, Executive Director, PILDAT with the researcher at Islamabad on 4/11/2012

151 PILDAT. Preface: The Citizens Report on the Performance of the National Assembly Standing Committee on Defense, March 15, 2013, p-5.

152 Interview of Ahmad Bilal Mehmood, Executive Director, PILDAT with the Researcher at Islamabad 4/11/2012; Interview of Sirdar Zulifqar Ali Khan Khosa, Senior Advisor to Chief Minister, Punjab with the Researcher at Lahore on 10/12/2012

153 Committee on Rules of Procedures and Privileges. National Assembly of Pakistan. Rules of Procedures and Conduct of Business in the National Assembly, 2007.

154 Administration of Pakistan Economics Highlights of Federal Budget 2012-13. Copies of budget were released on June 1, 2012 for public use. June 04, 2012.

155 Interview of Ahmad Billal Mehmood, Executive Director, PILDAT with the researcher at Islamabad

The newsletter and the Journal for the Senate, orders of the day, press releases and other events and the final findings of the Standing Committees are published and are available through its media centre.¹⁵⁶ Voting records for bills placed before the house are made available to the public, as they are for the use of National Assembly Secretariat, while the election of Speaker and Deputy are not.¹⁵⁷

The publication of reports on expenditures is not made public except at the time of new fiscal budget approval by the National Assembly.¹⁵⁸ The assets of the legislators are made public every year by the ECP although its verification is still an open issue.¹⁵⁹

There is no bar on the attendance of concerned citizens and civil society groups in parliamentarian's work during the Assembly's sessions. However, in most committees, civil society organizations or activists are not invited to attend meetings to give their views on any subject.¹⁶⁰ The queries related to constituencies are generally responded by the legislators. Such queries / questions are frequently asked especially during the election days at the constituency-levels, whereby the legislators listen to the questions and try to solve their problems.¹⁶¹

1.2.3 Accountability (Law)

Score	25%
Scoring Question	To what extent are there provisions in place to ensure that the legislature has to report on and be answerable for its actions?

Parliament in Pakistan is not the supreme authority and its powers are restricted by the Constitution. The legislators in Pakistan cannot make any law which is in conflict with any of the fundamental rights,¹⁶² or is repugnant to the injunctions of Islam¹⁶³ or is inconsistent with the basic character of the constitution. In any of the aforesaid cases, the Superior Courts can interpret and invalidate an act of parliament that is beyond its legislative competence.¹⁶⁴

The provisions in the National Accountability Ordinance, 1999 designed to hold public officials accountable for their actions are considered ineffective by the legislators. The last government proposed the Holders of Public Office (Accountability) Ordinance, 2012 which is yet to be promulgated as law. Under the said proposed law, Government will have to appoint an Accountability Commission empowered to conduct inquiries, investigations and prosecute any holder of public office.¹⁶⁵

156 Media Centre, National Assembly of Pakistan, www.na.gov.pk

157 Interview of Ahmad Billal Mehmoood, Executive Director, PILDAT with the researcher at Islamabad

158 Interview of Sirdar Zulifqar Ali Khan Khosa, Senior Advisor to Chief Minister, Punjab with the researcher at Lahore

159 ibid

160 Bari, F. (2010). Women parliamentarians: Challenging the frontiers of politics in Pakistan. *Gender, Technology and Development*, 14(3). 363-84.

161 Interview of Sirdar Zulifqar Ali Khan Khosa, Senior Advisor to Chief Minister, Punjab with the researcher at Lahore

162 Article 8, Constitution of Pakistan, 1973.

163 Article 227, ibid,

164 Article 199 & 184(3), ibid

165 The National Accountability Ordinance 1999. It is being replaced by "The Holders of Public Offices (Accountability) Act 2012. The Act is still in the form of a bill with the Parliament Committee and is to be passed by the two Houses

Constitutional privileges have been granted to the legislators, who as per the Constitution, are not answerable to any authority, nor are liable to any proceedings in any court in respect of anything said in the parliament, or in respect of any report, paper, votes, proceeding or publication by or under the authority of the Parliament. The validity of any proceedings in the Parliament can not be called in question on the ground of any irregularity of procedure and no officer or member of the Parliament duly authorized by the Constitution for regulating procedure or the conduct of business, or for maintaining order is subject to the jurisdiction of any court in respect of the exercise by him of those powers. However, legislators are prohibited from discussing the conduct of any Judge of the Supreme Court or of a High Court in the discharge of his duties.¹⁶⁶

There are no laws that make it mandatory for the parliament to hold public consultations on issues of public interest. However, under Article 67 of the 1973 Constitution, the Parliament (comprising National Assembly and the Senate) has the power, to set up Standing Committees for each Ministry of the Government.¹⁶⁷ The tasks of a committee include examining the functions, legislation, administration, expenditure and other policies of the ministry concerned and its associated public bodies, and then submitting its report to the concerned ministry with recommendations.¹⁶⁸ Recommendations can also include suggestions amending an existing law or enacting new legislation.¹⁶⁹ In case of a Bill, the Committee can also examine whether the Bill violates, disregards or is not in accordance with the Constitution. Public petitions may also be presented on a Bill which has been introduced, or on any matter connected with the business pending before the House, or any matter of general public interest which is primarily the concern of the Government, provided that it is not one which falls within the cognizance of a court, nor shall it relate to a matter pending before any court or other authority performing judicial or quasi-judicial functions.¹⁷⁰

These committees, can hold public meetings,¹⁷¹ and possessing powers of a civil court,¹⁷² can entertain and hear public petitions, and can also invite or summon any person to give evidence or an expert opinion regarding any matter under consideration.¹⁷³ But the proceedings are closed-door, unless the committees decide to make them open in public interest.¹⁷⁴

1.2.4 Accountability (Practice)

Score 25%

Scoring Question To what extent do the legislature and its members report on and answer for their actions in practice?

¹⁶⁶ Articles 66-69, Constitution of Pakistan, 1973; Section 5 (punishment) of the Contempt of Court Ordinance (ordinance V of 2003) along with Article 63(1g), Constitution of Pakistan, 1973

¹⁶⁷ Rule 200, Rules of Procedure and Conduct of Business in the National Assembly 2007

¹⁶⁸ Rule 201 (4), *ibid*

¹⁶⁹ Rule 201

¹⁷⁰ Rule 201(5), *ibid*

¹⁷¹ *ibid*

¹⁷² As per Clause (3) of Article 66, Constitution of Pakistan, a committee under Code of Civil Procedure, 1908 (Act V of 1908) for enforcing the attendance of any person and compelling the production of documents.

¹⁷³ 187 (3), Rules of procedure and conduct of business in the senate, 2012, Senate of Pakistan

¹⁷⁴ Rule 230, National Assembly Rules of Procedure And Conduct of Business,

Military intrusion and lack of consistency in democratic process, has resulted in a divide between the public and the legislators. The National Assembly and the Senate, are positioned in the Capital's high security "red zone" and public's access to both is quite restricted.¹⁷⁵ To bridge the gap, Legislators generally engage with the public through media on TV channels and radio discussions. They also discuss major issues within their constituencies and provide information on issues of public interest to the members of their constituencies and get their feedback and take care of their suggestions, recommendations and solutions of the problems.¹⁷⁶ Also Assembly Media Centre releases information on almost all activities of the Parliament,¹⁷⁷ but only a few key Parliamentary sessions are usually covered by TV channels.¹⁷⁸

The fourteenth National Assembly, on 21 August 2013, has established 34 standing committees, consisting of 17 members each.¹⁷⁹ These Parliamentary Standing Committees can hold consultations on various issues of public interest, reports of which are published by both the Houses and are released to the public through the media. There also are provisions for public hearings and petitions before Parliamentary/standing committees, but the effectiveness of committee system is compromised due to a number of factors, such as, delay in forming these committees, lack of periodicity, absence of specific methodology regarding public petitions, lack of openness, lack of research and technical support, lack of staff and weak organization.¹⁸⁰ So far, only seven committee reports, from 2009, to 2013 are available on the official website of the National Assembly of Pakistan, including three of standing committees.¹⁸¹

The public can also move the Superior Court in constitutional petitions,¹⁸² if they feel that public interest is being violated by the legislator.¹⁸³ For instance, the Supreme Court, on people's objection, annulled the impugned Contempt of Court Act (COCA) 2013, after having found various provisions of COCA 2012 as ultra vires the Constitution.¹⁸⁴

175 Parliament's Role in Pakistan's Democratic Transition, Crisis Group Asia Report N°249, 18 September 2013

176 Interview of Sirdar Zulifqar Ali Khan Khosa, Senior Advisor to Chief Minister, Punjab with the researcher at Lahore on 10/12/2012

177 Media Center, National Assembly of Pakistan.

178 Parliament's Role in Pakistan's Democratic Transition, Crisis Group Asia Report N°249, 18 September 2013

179 Supreme Court of Pakistan judgment on the 27 civil society petitioners on the contempt of court Bill/Law 2012 is that the Bill/Law 2012 is against Article 8 of the constitution and may be declared against constitution. August 3, 2012. Full judgment available at www.Jang.com.pk/pdf/detailedverdict.pdf

180 Parliamentarian's Pocket Guide National Assembly of Pakistan, Pakistan Institute For Parliamentary Services - PIPS

181 http://www.na.gov.pk/en/committee_reports.php

182 Article 184(3), Constitution of Pakistan, 1973

183 Interview of Ahmad Billal Mehmood, Executive Director, PILDAT with the researcher at Islamabad on 4/11/2012

184 Supreme Court of Pakistan judgment on the 27 civil society petitioners on the contempt of court Bill/Law 2012 is that the Bill/Law 2012 is against Article 8 of the constitution and may be declared against constitution. August 3, 2012. Full judgment available at www.Jang.com.pk/pdf/detailedverdict.pdf

1.2.5 Integrity Mechanism (Law)

Score 75%

Scoring Question To what extent are there mechanisms in place to ensure the integrity of members of the legislature?

There are very comprehensive provisions in the Constitution of Pakistan, 1973 and other legal provisions for being a member of the Parliament. According to the constitutional provisions, a person shall be disqualified from being a member of Parliament if, he is an un-discharged insolvent, or holds an office of profit in the service of Pakistan, or has been convicted by a court of competent jurisdiction on a charge of corrupt practice, moral turpitude or misuse of power or authority under any law for the time being in force, or has been dismissed or compulsorily retired from the service of Pakistan on the grounds of misconduct. In case of any of the aforementioned circumstances arising, the Speaker refers the matter to the Election Commission within thirty days, whereby, the ECP decides the question within ninety days and if it is of the opinion that the member has become disqualified, he shall cease to be a member and his seat shall become vacant.¹⁸⁵

The members also need to submit a statement of assets and liabilities of his own, his spouse and dependents annually to the Election Commission of Pakistan by the 30th of September each year, which shall be published in the official Gazette and copies thereof may be obtained on payment of prescribed fee. By 15th of October each year, the commission has to notify the names of the members who fail to file statements of assets and liabilities and by an order, direct that such member shall cease to function till such statement is submitted. A member who submits false statement of assets and liabilities may be proceeded against for committing the offence of corrupt practice.¹⁸⁶

The Supreme Court's judgment on the Petition No. 87, 2011 instituted by different segments of the society in respect of the electioneering practices and the integrity of legislators has also provided a mechanism in its judgment spelled out on 87 pages that ensures the integrity of the legislators.¹⁸⁷

In the pre-18th amendment of Constitution, convicts were disqualified from becoming members of the National and Provincial Assemblies or Senate for life. The 18th constitutional bill has now removed the life time bar and replaced it with a period of five years since his release.¹⁸⁸

There is no rule for legislators to record or disclose their contacts with lobbyists.¹⁸⁹

¹⁸⁵ Articles 62 and 63, Constitution of Pakistan, 1973; Articles 78 and 79 of Representation of People Act, 1976.(Act No. LXXXV OF 1976)

¹⁸⁶ Section 42 A, The Representation of the People Act, 1976 (ACT No. LXXXV OF 1976)

¹⁸⁷ Constitution Petition NO.87 of 2011, http://www.supremecourt.gov.pk/web/user_files/File/Const.P.87of2011.pdf

¹⁸⁸ Article 63(g,h) Constitution of Pakistan, 1973

¹⁸⁹ Interview of Ahmad BillalMehmood, Executive Director, PILDAT with the Researcher at Islamabad on 4/11/2012

¹⁹⁰ Pakistan Today Report dated 29 Jan. 2013 is available at www.pakistantoday.com.pk/.../ephedrine-case-musa-gilanis-assets-seized/

According to Transparency International's Global Corruption Barometer 2010/2011, 71% of the citizens surveyed perceived the Parliamentarians/Legislature as corrupt.¹⁹¹

No one has been punished recently for any corrupt practices, although it has been alleged that some politicians have received money as kickbacks.¹⁹² Five graft cases against an ex-President have been reopened in Accountability Courts.¹⁹³

Even in cases where a legislator is found in violation of any article of the Constitution, by the Election Commission, National Assembly or by the courts, he/she hardly receives a compatible punishment. For example, in corruption cases against an ex-prime minister, despite the orders of arrest on Jan 15th 2013, by the Supreme Court, the prime minister was not arrested.¹⁹⁴ In yet another case, Supreme Court convicted another ex-prime minister, for contempt on refusal to accept Court's orders, and instead of being arrested or jailed, he was given a symbolic sentence that lasted for 30 seconds, i.e. he was convicted till the rising of the court.¹⁹⁵

The Supreme Court has disqualified some members of the National Assembly for violation of dual Nationality.¹⁹⁶ Some members who forged their degrees for election purposes have been disqualified by the Supreme Court.¹⁹⁷

The Legislators do declare their assets and deposit their declarations with the Election Commission of Pakistan (ECP), which publishes them on its web page and releases them to the public. But there is no verification mechanism in place, although, media often scrutinizes the assets published by the ECP.¹⁹⁸

In some cases, inquiries of corrupt practices had been reported by media but no effective measures had been taken by NAB, LEA or ACA in the country.¹⁹⁹

191 GCB 2010/2011

192 Azam Khan, Blackout: Court strikes down rental power deals, The Express Tribune, Published on March 31, 2012, <http://tribune.com.pk/story/357736/blackout-court-strikes-down-rental-power-deals/>

193 Azam Khan, Immunity runs out: Accountability court reopens graft cases against Zardari, The Express Tribune Published: October 12, 2013, <http://tribune.com.pk/story/617013/immunity-runs-out-accountability-court-reopens-graft-cases-against-zardari/>

194 Mr. Nasir Habib and J. Mullen; CNN, Jan 16, 2013. "Pakistani Supreme Court orders arrest of Prime Minister in corruption case. Available at www.cnn.com/2013/01/15/world/asia/pakistan-politics/

195 NDTV Correspondent: April 26, 2012. "Pakistan PM Yousaf Raza Gillani gave 30-second symbolic punishment for contempt of Court. Available at <http://www.ndtv.com/article/world/pakistan-pm-yousuf-raza-gilani-given-30-second-symbolic-punishment-for-contempt-of-court-202516>

196 Dawn Reporter. Report is available at www.dawn.com/2012/09/20/sc-announcing-verdict-in-dual-nationality-case/

197 www.fakedegrees.zzl.org/offenders.php

198 Mr. Tom Hussain, Staff Reporter of National UAE stated that there was no legal mechanism of verifying the claims of assets by legislators and quoted Mr. Ishtiaq Ahmed, the Secretary of the Election Commissioner of Pakistan that "We simply collect and publish the information, as the law does not authorize the Commission to examine the data on assets and liabilities....", March 12, 2010. thussain@thenational.ae; Maverick Report: "Revealed: Assets of Pakistan's Former MPS. Available at www.maverickpakistan.com/

199 Mr. Tom Hussain, Staff Reporter of National UAE stated that there was no legal mechanism of verifying the claims of assets by legislators and quoted Mr. Ishtiaq Ahmed, the Secretary of the Election Commissioner of Pakistan that "We simply collect and publish the information, as the law does not authorize the Commission to examine the data on assets and liabilities....", March 12, 2010. thussain@thenational.ae, Mr. Shakeel Haider Sayyed. "Lawmakers or lawbreakers. Available at www.pakistantoday.com.pk/2013/03/26/.../lawmakers-or-lawbreakers/ Mar 26, 2013

1.3 Role

1.3.1 Executive Oversight

Score 50%

Scoring Question To what extent does the legislature provide effective oversight of the executive?

The Parliament has the power to impeach the President, move no confidence motions against the Prime Minister, Speaker or any member of the Standing Committees or censor an official²⁰⁰ but in the last 5 years there has been no example of impeachment.

There is one example of a no confidence motion that was moved against the Speaker of the Baluchistan Provincial Assembly and resultantly he was replaced by another member of the House.²⁰¹

The Prime Minister in consultation with the Leader of the Opposition forwards three names for appointment of the Election Commissioner to the specially constituted Parliamentary Committee of the House for hearing and confirming one name.²⁰² Similarly the Auditor General of Pakistan and Ombudsman are also appointed by the President on the recommendations of the Prime Minister and the parliamentary Committee. The Committees are quite effective as their recommendations are accepted by the Parliament and the President. Judges and the Election Commissioner are appointed by the President on the Committee's recommendations.²⁰³

Under Article 198, Constitution of Pakistan, the National Assembly has the power to set up standing committees and other special committees not mentioned in the National Assembly's Rules of Procedures. One of the tasks of the Committees is to monitor and oversight the legislators and the executive. There are Standing Committees on (i) Public Accounts (ii) Rules of Procedures and Privileges (iii) House and Libraries (iv) Government Assurance and Business Advisory. Besides these Committees, there is a Standing Committee for each Ministry.²⁰⁴ The Speaker may set up a special Committee and nominate its chairman.²⁰⁵ For all Standing Committees, members of the Committee elect its own chairman.²⁰⁶ The Budget is presented by the Minister of Finance after it is scrutinized by the Standing Committee of Finance. When the budget is presented, the Parliament scrutinizes the budget²⁰⁷ and presents its cut motions on the items of the budget.

200 Article 47, Constitution of Pakistan, 1973

201 Dawn News Report." BA passes no confidence motion against Mr. Aslam Bhootani." 26/12/2012.

202 Article 213, Constitution of Pakistan, 1973

203 Interview of Sirdar Zulifqar Ali Khan Khosa, Senior Advisor to Chief Minister, Punjab with the researcher at Lahore on 10/12/2012

204 Article 198-202, Part I, Chapter III, Constitution of Pakistan, 1973

205 Article 215, Constitution of Pakistan, 1973

206 Article 216, Constitution of Pakistan, 1973

207 Article 73, Constitution of Pakistan, 1973

A legislator also has the right through a privilege motion to question the appointments made by the executive.²⁰⁸

The Parliament is effective in passing laws by majority but sometimes the laws passed by the Parliament are not implemented by the Executive in letter and spirit. In a former prime minister's assassination case, the government formed a UN Commission, but the commission was asked not to make its report public. In another case, on May 3, 2012, National Assembly passed a confidence motion for the then Prime Minister but the resolution proved to be of no use as the National Assembly was de notified on June 18 by the Supreme Court.²⁰⁹

1.3.2 Legal Reforms

Score 50%

Scoring Question To what extent does the legislature prioritize anti-corruption and governance as a concern in the country?

Pakistan's Parliament is a signatory to and has ratified many international instruments like the United Nations Convention against Transnational Organized Crime and United Nations Convention against Corruption (UNCAC), alongwith other international codes of ethics and conduct for various activities and functions of the public sector institutions.²¹⁰

Furthermore, the Parliament of Pakistan has passed more than 100 Acts and Ordinances since 2007, of which about 9 Acts and Ordinances deal, directly and indirectly with corruption, such as the National Accountability Ordinance (NAO), Anti-money Laundering Act (AMA), Public Procurement Regulatory Authority Ordinance and Rules (PPRA), Government Servants (Efficiency and Discipline) Rules and Acts, alongwith the specialized anti corruption authority i.e. the National Accountability Bureau, five Federal and provincial Ombudsmen, and four provincial Anti-Corruption Agencies (ACE).²¹¹ While there are a number of legal reforms to counter corruption and promote integrity, they are in fact, piecemeal and mostly enforcement-based efforts, which have proven ineffective in achieving their goals.²¹² Moreover, with weak implementation of these laws and a weaker prosecution system, corruption prosecutions are rare.²¹³

208 Interview of Ahmad BillalMehmood, Executive Director, PILDAT with the researcher at Islamabad on 4/11/2012

209 Khawar Ghuman, When in Doubt, Pass a Resolution. Daily Dawn, 4.1.2013. Available at <http://dawn.com/2013/01/04/when-in-doubt-pass-a-resolution/>

210 Transparency International Pakistan. Annual Report, 2011. http://www.transparency.org.pk/documents/annual_report_2011.pdf

211 Acts of Parliament are available at www.na.gov.pk/en/acts.php/

212 Interview of Ahmad BillalMehmood, Executive Director, PILDAT with the researcher at Islamabad 04/11/2012

213 Interview of Sirdar Zulifqar Ali Khan Khosa, Senior Advisor to Chief Minister, Punjab with the researcher at Lahore on 10/12/2012

PILLAR 2

Executive

Pillar 2: Executive

Summary

The Executive is one of the three major components that constitute the state of Pakistan. The other two are the Legislature and the Judiciary. In the parliamentary system, prevalent in Pakistan, the Executive is part of the Legislature, as the Executive are elected from within the Legislators. It has been a controversial organ of the state in the history of Pakistan both with respect to law and practice. Four periods of military rule, three constitutions and 20 amendments to the latest Constitution, mostly with respect to the power and role of the Executive are an indication of this fact. The last period of Military rule ended in August 2008 when the President had to resign, fearing his impeachment.

The offices of The President, Prime Minister and the cabinet have adequate human and technical resources. The budgetary allocation for the Presidency amounts to PKR 616.7 (USD 6.492) million. The budgetary allocation has had approx. 22% increase over the previous year. The budget contains a list of all employees both executive and technical, and the funds allocated to the Executive are sufficient to carry out its duties.²¹⁴

The Constitution of Pakistan and Rules of Business (Cabinet Division) provide independence to the Executive for effective operation, where “no order shall be issued without the approval of Prime Minister,” in cases (a) “involving important policy or departure from important policy” (b) “where it is proposed that the Federal Government undertake the implementation of an international agreement” and (c) relating to petitions addressed to the Prime Minister. The President takes action on the advice of the Prime Minister²¹⁵. Nevertheless, internal interference within the Executive, notably between ministries, has been identified as a problem.

Integrity rules for the public officials, including cabinet division and other Executive departments are laid down, but there is not much information about the implementation of integrity rules in practice. Also, despite large amounts of budget and funding, the public sector is not properly governed by the Executive because of political interference, lack of transparency and unjust employment opportunities.²¹⁶ Appropriate mechanisms are not in place to effectively supervise public sector staff.

The Table below presents the indicator scores summarizing the capacity of the Executive branch, governance and role within Pakistan’s legal system. Moreover, this chapter presents a qualitative analysis of each indicator.

214 Yasin, Asim International News June 02, 2012. “Presidency, PM House budget increased. Available at www.thenews.com.pk/Todays-News-13-15062-Presidency-PM-House-b...8

215 Articles 15 and 15(A), The Rules of Business (Federal Government), 1973

216 Interview of Malik Nadeem Kamran, Minister for Zakat & Ushr, Punjab, with Researcher on 17/01/2013

**Table 4:
Percentage Scores of Indicators
40.3/100**

Dimension	Indicators	Law	Practice
Capacity 58.3/100	Resources	-	75
	Independence	75	25
Governance 37.5/100	Transparency	75	25
	Accountability	50	25
	Integrity	25	25
Role 25.0/100	Public Sector Management	25	
	Legal system	25	

Structure and Organization

The Executive branch of the government is explicitly defined in the Constitution of Pakistan.²¹⁷ The executive authority of the Federation is exercised in the name of the President. The other members of the Executive are the Prime Minister, the Federal Ministers, Provincial Governors and Ministers and Advisors. The Prime Minister is the Chief Executive of the Federation.²¹⁸ The President is the Head of the State. To be the President of Pakistan, a person must be a Muslim by religion and of at least 45 years of age.²¹⁹ The President is elected for a five-year term by the members of Senate, National Assembly and members of the Provincial Assemblies. The President is eligible for re-election but may not hold the office for more than two consecutive terms.²²⁰

The Prime Minister is aided and advised by the Federal Cabinet²²¹ and a council of ministers whose members are appointed by the President at the advice of the Prime Minister. The Federal Cabinet comprises of the ministers, ministers of state and advisers.²²² As of early 1994, there were thirty-three ministers in the Cabinet. However, in October 2012 the President appointed a new 22-member Federal Cabinet in order to cut down its size as part of an austerity drive. The new cabinet included 18 old and four new Ministers. It included one Minister of state.²²³ The Cabinet Division is managed through the Cabinet Secretariat.

217 Article 90(1), Constitution of Pakistan, 1973

218 Article 91.4, Constitution of Pakistan, 1973.

219 Article 41.2, Constitution of Pakistan, 1973.

220 Article 41.3, 41.4, Constitution of Pakistan, 1973.

221 Division for Public Administration and Development Management (DPADM), Department of Economic and Social Affairs (DESA).

222 Cabinet Division - Government of Pakistan, www.cabinet.gov.pk/

223 Pakistan Times' Special Correspondent Tuesday, October 23, 2012

2.1 Capacity

2.1.1 Resource (Practice)

Score 75%

Scoring Question To what extent does the Executive have adequate resources to effectively carry out the duties?

The President, Prime Minister and the cabinet have sufficient human, financial and technical resources to carry out their duties. The budget covers the human resource costs of all employees both executive and technical.²²⁴ They have complete authority to decide their own budget as the budget is prepared by its Cabinet Division on the basis of annual requirements.

For the fiscal year 2012-13, the Cabinet Division demanded a budget of PKR 10,91,77,800 (USD 11,49,240).²²⁵ Cabinet Division has also received funds amounting to PKR 70,000,000/- (USD 7,36,842) in the form of development grants from Public Sector Development Programmes (PSDP) for different projects.²²⁶ In case of overspending from the allocated budget, the Division gets the excess budget regularized for the current or for the coming year's budget.²²⁷

The Finance division enjoys the complete authority in approving these budgets keeping in view resources and priorities of other Ministries. Lesser allocation for planned activity often results into demand for additional funds but savings not fully justified are often questioned and next year budget is then approved based on actual expenditure of last year.²²⁸

2.1.2 Independence (law)

Score 75%

Scoring Question To what extent is the Executive independent by law?

Pakistan's legal framework provides independence to the Executive for its effective working. The President is elected by members of Senate and members of all federal and provincial assemblies. Similarly, the Prime Minister is elected by the members of National Assembly. The members of cabinet are appointed by the President on the advice of the Prime Minister. Ministries are interdependent and work under the direct supervision of the Prime Minister who is answerable to the Parliament and the President.

²²⁴ Pakistan Times' Special Correspondent Tuesday, October 23, 2012.

²²⁵ Draft Audit Report on the Accounts of Cabinet Division for the Year 2006-07.p 3.

²²⁶ Budget Estimates 2012-13 Cabinet Division, Government of Pakistan

²²⁷ Report Of The Public Accounts Committee On The Appropriation Accounts 2007-08 and Audit Report For The Year 2008-09 p 7,8

²²⁸ Year Book 2010 – 2011, Government of Pakistan, Finance Division, Islamabad, www.finance.gov.pk

The President works on the advice of the Prime Minister and his cabinet. The Prime Minister and his cabinet work independently.²²⁹ There is no explicit rule whereby ministries are allowed to interfere in the affairs of other ministries but in view of the Articles 97 and 98 of the Constitution, a ministry may ask the personnel of another ministry to take certain action.²³⁰

The Rules of Business clearly define the area of jurisdiction of each Ministry/Division and any activity involving more than one Ministry provide for defined mechanism to follow. Hence the procedure is followed invariably through circulation of cabinet summaries or obtaining views during meetings.

2.1.3 Independence (Practice)

Score 25%

Scoring Question To what extent is the Executive independent in practice?

In practice, the independence of the Executive in Pakistan has always been under controversy. Four periods of Military Rule in 1958, 1969, 1977 and 1999 were characterized by military interference. In the past, the Presidents dissolved the National Assembly and sacked the Prime Ministers. From 1951 to 1958, seven Prime Ministers were removed, while Pakistan had only two Governor-Generals and one Commander-in-Chief. From 1985 to 1999, all five prime ministerial tenures were aborted through premature dismissal of their governments.²³¹ Such interference has made it hard for political governments to flourish or work independently.²³²

Another particular problem in Pakistan is internal interference within the Executive. An Information Minister, of a former government, submitted resignation for interference in her ministry by another Minister.²³³ The Ministry of Foreign Affairs has also been found to exert influence on the Establishment Division in matters of the appointments of diplomats and ambassadors. Recently, for example, the President had to yield to Ministry of Foreign Affairs on the appointment of a seasoned Foreign Service Officer, who was supposed to serve as ambassador to China until 2009. He was replaced by the President in 2008. The appointment became controversial because the new appointee had no prior experience in the Pakistan Foreign Service. The President of Pakistan had to reverse his decision due to objections and pressures.²³⁴

229 Article 58(1), *ibid*

230 Articles 97 and 98, *ibid*

231 Nazeer Ahmad, 2004, *Political Parties in Pakistan: A Long Way Ahead*, Published by Centre for Democratic Governance, The Network for Consumer Protection.

232 Haider, Ejaz, Daily Times Reporter "Axing Ambassador Munir Akram" July 27, 2008 Daily Times. www.dailytimes.com.pk/default.asp?page=2008%5C07%5C27%5Cstory_27/

233 Mar. Khawar Ghuman, Dawn Newspaper 26/12/2011. "...when a teary-eyed Information Minister Dr. Firdaus Ashiq Awan tendered her resignation at a cabinet meeting because she faced criticism with the party for her failures to effectively defend the government ..."

234 Ejaz Haider, Daily Times July 27, 2008 "Axing Amb Munir Akram" Available at www.dailytimes.com.pk/default.asp?page=2008_pg3_4/

2.2 Governance

2.2.1 Transparency (law)

Score 75%

Scoring Question To what extent are there regulations in place to ensure transparency in relevant activities of the Executive?

There are laws clearly defined in the constitution and other documents which require the President, Prime Minister and Cabinet to function transparently and without ambiguity.²³⁵

Minutes of meetings, press conferences and major decisions made by the cabinet are required to be recorded and some selected information on areas of state activities that are not secret can be made public and disseminated through press and, on Cabinet Division website. The website has to provide news flashes on daily activities, events and highlights of the Executive.²³⁶

The Budget, once approved by National Assembly and the Senate, are required to be made public. Complete sets of budget documents need to be released to media for public consumption.²³⁷

Under the Constitution of Pakistan, Representative of the People Act and Senate (Election) Act, the Election Commission of Pakistan, and the Federal Bureau of Revenue (FBR) are bound to ask all members of the Executive to declare their assets and liabilities and deposit these declarations with their offices.²³⁸ The Cabinet in one of its meetings held on January 4, 2012 also directed all public servants to declare their assets and make them public.²³⁹

Election Commission has to make the assets of the executive public.²⁴⁰

2.2.2 Transparency (Practice)

Score 25%

Scoring Question To what extent is there transparency in relevant activities of the Executive in practice?

²³⁵ Articles 47, 97, 99.2, 100.2, Constitution of Pakistan, 1973.; Rules of Business, 1973, pp 36-40.

²³⁶ www.cabinet.gov.pk/

²³⁷ Articles 80-83, Constitution of Pakistan, 1973

²³⁸ Section 42A of the Representative of the People Act, 1976; Section 25A of the Senate (Election) Act, 1975.

²³⁹ Mr. Zeeshan Javaid reports on January 05, 2012, that Minister of Information and Broadcasting informed the media that "Everyone who gets salary from the government exchequer, whether from judiciary, armed forces or any other department, will be bound to declare assets and make them public. www.dailytimes.com.pk/default.asp?page

²⁴⁰ National Workshop on Political Finance; Nov. 3-4, 2010 Election Commission of Pakistan, pp 11-12; Section 42A of the Representative of the People Act, 1976 and Section 25A of the Senate (Election) Act, 1975.

Though there are multiple sets of rules to ensure transparency in the activities of the Executive of Pakistan, the practice is very different. Although all the activities of the executive are recorded, full minutes of the Cabinet meetings are not disseminated to media for public consumption. Office notes are not disclosed by any civil official. However, the Minister of Information releases information on various aspects of national issues like national energy crises, law and order situation etc. to the public on the approval of the Cabinet.²⁴¹

On the other hand, as soon as the budget bill is signed by the President, the budget is released to the Media. The Ministry also mails copies of the budget to all concerned including academicians and researchers.²⁴²

All members of the Executive declare their assets and liabilities to the Election Commission of Pakistan (ECP) on an annual basis. The ECP publishes the assets. However, these declarations are a mere formality, without any auditing and usually there is no significant variation in the assets statements.²⁴³ There have been multiple instances where parliamentarians did not submit their asset declaration in time and they were suspended by ECP temporarily.²⁴⁴

The Government does not translate all procedures, and rules and regulations in local languages. However, in some cases, the Urdu version of some Ordinances and Acts are available. Many application forms, population census forms are also in local languages.²⁴⁵

2.2.3 Accountability (Law)

Score 50%

Scoring Question To what extent are there provisions in place to ensure that members of the Executive have to report and be answerable for their actions ?

The Public Accounts Committee (PAC) is a committee that oversees the finances of parliamentarians and executives and has the responsibility to oversee the executive branch.²⁴⁶

²⁴¹ Interview of Malik Nadeem Kamran, Minister for Zakat & Ushr, Punjab, with Researcher on 17/01/2013

²⁴² ibid

²⁴³ Global Integrity Report, 2006, Pakistan: Integrity Scorecard Report, <http://back.globalintegrity.org/reports/2006/pakistan/scorecard.cfm>

²⁴⁴ Interview of Mr. Bilal Mahboob, PILDAT, Islamabad, dated 21.10.2012

²⁴⁵ ibid

²⁴⁶ Public Accounts Committee of National Assembly of Pakistan. www.na.gov.pk/pac/

The article of Constitution that regulates the accountability of the President is Article 48, which states that President of Pakistan should act in accordance with the advice of the Cabinet or the Prime Minister.²⁴⁷ In case of gross misconduct or violation of the Constitution, the President of Pakistan will be held accountable for his actions. The President may resign or be impeached and may be removed from the office due to incapacity or gross misconduct by a vote of two-third members of all the Houses.²⁴⁸ The President has to give reason(s) in writing for not acting on the advice of the Prime Minister. The National Assembly can remove the President on many grounds. Under the Constitution, "The President may be removed from the office on the grounds of (i) physical or mental incapacity or (ii) impeached on the charge of violating the Constitution or (iii) gross misconduct. At least two-thirds majority of the total membership of the National Assembly and the Senate are required to impeach the President."²⁴⁹ However, the President, under the Constitution of Pakistan, cannot be brought before a court of law while in office. No statement on the immunity of the President is clearly mentioned in the Constitution.²⁵⁰

Similarly, the Prime Minister is answerable to the President.²⁵¹ "The Cabinet, together with the Ministers of State, shall be collectively responsible to the Senate and the National Assembly and shall also be accountable to the Prime Minister."²⁵² Questions are raised in the Senate and the National Assembly regarding any issue of public interest and the Ministers concerned are required to answer the questions with facts and figures.²⁵³

There is, however, no law which requires the Executive to consult the public on policies and decisions it makes. Thus, elections are the only forum where the Executive is directly answerable to the public.²⁵⁴

On 5th October 2007, the President promulgated the National Reconciliation Ordinance (NRO) which granted amnesty to politicians, political workers and bureaucrats who were accused of corruption, embezzlement, money laundering, murder, and terrorism between 1st January 1986, and 12th October 1999. Fortunately, it was declared unconstitutional by the Supreme Court of Pakistan on 16th December 2009.²⁵⁵

247 Article 248, Constitution of Pakistan, 1973.

248 Article 47, Constitution of Pakistan, 1973.

249 Article 47(1).Constitution of Pakistan, 1973.

250 Article 248 (1,2), *ibid*

251 Article 91.7 Constitution of Pakistan, 1973.

252 Article 91.6, *ibid*

253 Interview of Malik Nadeem Kamran, Minister for Zakat & Ushr, Punjab, with Researcher on 17/01/201; Public Accounts Committee of National Assembly of Pakistan.www.na.gov.pk/pac/

254 *ibid*

255 Marvi Sirmed, March 5, 2010 Constitution petition No's 76 TO 80 OF 2007 & 59/2009, and Civil Appeal No 1094 of 2009 <http://marvisirmed.com/2010/03/05/supreme-court-of-pakistan-judgment-on-nro-dec-16-2009/>

2.2.4 Accountability (Practice)

Score 25%

Scoring Question To what extent is there effective oversight of the Executive activities in practice?

PAC has effectively implemented its decisions based on its investigation of specific cases against members of the Executive. It monitored all federal government departments directly and through NAB. Similarly, provincial PACs monitored all the provincial departments.²⁵⁶ Under the Auditor General of Pakistan (AGP), the accounts of all Federal Ministries and Provincial Departments are audited annually and reports of audit are presented to the Parliament for discussion. In an enquiry by the Senate on Executive's audit, AGP reported that of 9000 Federal, Provincial and District cases it had examined 58 cases of grants and 928 audit paras (Any irregularity, inefficiency, omission found or question arising during the Internal or External Audit are normally noted and are informed to the concerned DDOs which is known as an 'Audit Para'). PAC constituted a Monitoring and Implementation Committee to review the Compliance of nine years of PAC reports, whereby, the Ministries were caught off guard on appearing before the Monitoring Committee, as no proper record had been maintained by them, for this period.²⁵⁷

Pakistan presents a gloomy picture in terms of accountability of the Executive. Often Ministers do not attend Parliamentary Committee meetings despite member's insistence.²⁵⁸ Policy formulation is generally based on consultative process and is practiced, while day to day decision are also made after hearing the viewpoint of the aggrieved party.²⁵⁹ Furthermore, Many Ministers in the Cabinet and Prime Minister have faced corruption charges at one time or the other.⁵⁶⁰ For example, recently the Supreme Court of Pakistan ordered the implementation of its decision including the Prime Minister and a number of other officials over allegations of illegal payments for power rental projects.⁵⁶¹ However, no substantive action was taken by NAB. Likewise, some members of the Executive were involved in major projects like the Green Tractor Scheme, the Yellow Cab Scheme, the Hydro Power Project and many others which were sources of corruption.⁵⁶² However, in the recent past, NAB and FIA have prosecuted several top Executives through the Superior Courts.²⁶³ For example, the Ex-Prime Minister was jailed on accusation and charges of corruption and released on 7/10/2006 and later was also removed from his post of Prime Minister in 2012 when he refused to obey the orders of the Supreme Court of Pakistan.²⁶⁴ Due to lack of implementation by the government, the Supreme Court had to take such drastic measures.

²⁵⁶ PILDAT (2012) Effectiveness of Parliamentary Oversight Defence and National Security in Pakistan (www.pildat.org), pp. 12,15

²⁵⁷ Annual Report 2010 of Monitoring & Implementation Committee Of PAC For The Calendar Year 2010, National Assembly Secretariat Islamabad Pakistan; Report of the Public Accounts Committee on Review of Implementation Status of Pac Directives on Audit Reports for the Years 1996-97, 1999-2000, 2000-01, 2005-06 & 2008-09, http://www.na.gov.pk/uploads/1363631085_609.pdf

²⁵⁸ Report of the Public Accounts Committee on Review of Implementation Status of Pac Directives on Audit Reports for the Years 1996-97, 1999-2000, 2000-01, 2005-06 & 2008-09, http://www.na.gov.pk/uploads/1363631085_609.pdf

²⁵⁹ Interview of Malik Nadeem Kamran, Minister for Zakat & Ushr, Punjab, with Researcher on 17/01/201; Public Accounts Committee of National Assembly of Pakistan. www.na.gov.pk/pac/

²⁶⁰ Three KP ministers sacked over corruption, poor performance, November 13, 2013 by Shamim Shahid, pt, <http://www.pakistan-today.com.pk/2013/11/13/national/three-kp-ministers-sacked-over-corruption-poor-performance/>

²⁶¹ Messers Nasir Habib and Jethro Mullen, CNN TV on "Pakistani Supreme Court orders arrest of Prime Minister in Corruption case." January 16, 2013. www.cnn.com/2013/01/15/world/asia/pakistan-politics

²⁶² Khan, M. Tariq; Khan, Naseer Ahmed; Ahmed, Sheraz and Mahmood, Khalid. Corruption: Causes and Effects in Pakistan's case (A Review Research). International J. of Business and Behavioural Sciences, Vol.2(6), 2012.

²⁶³ Section 16, 22, 24 NAB Ordinances, 1999.

²⁶⁴ Shah, Sabir (26 April 2012). "Gilani spent more time in jail than on throne so far". The News International, Thursday, 26 April 2012.

2.2.5 Integrity (Law)

Score 25%

Scoring Question To what extent are there mechanisms in place to ensure the integrity of the members of the Executive?

Integrity rules for the public officials, including cabinet division and other Executive departments are laid down in the law.²⁶⁵ Under Article 63(1) (g) of the Constitution of Pakistan, a member can be disqualified on the basis of Propagation against integrity of Pakistan, and morality.

Moreover, according to “Toshakhana”²⁶⁶ rules in Pakistan, a Minister should not receive any gift from the subordinates. A Minister can retain a gift if its value does not exceed PKR 1000 (USD 10.1). The gift worth more than PKR 1000 (USD 10.1) should be reported to the Cabinet Division. If the recipient Minister wants to keep it for himself he may do so provided he pays the difference between the actual price and PKR 1000(USD 10.1) otherwise he may deposit it to the “Toshakhana”. A Minister is not allowed to retain a gift except small mementoes like cuff-links and photographs etc. received from foreign dignitary/ dignitaries in exchange for gifts presented to a foreign dignitary at the government expense.²⁶⁷ However beyond “Toshakhana” rules, there is no specific code of conduct for the members of the Executive.

There are no regulations whereby a Minister may or may not seek employment after leaving office.²⁶⁸ There are also no regulations on the ‘revolving door’. A businessman can become a Minister and a Minister can go back to his/her business without any restrictions.²⁶⁹ However, a member is not allowed to vote on any question in the Assembly in which he has a pecuniary interest (Rule 277.7).

The anti-corruption laws are part of the NAB Ordinance with limited provisions on important issues such as witness protection, whistle blower protection etc. and require strengthening of Rules and their practice.

²⁶⁵ The Rules of Business 1973 (Amended up to 18th November, 2005 Cabinet Secretariat (Cabinet Division), Pakistan pp 10, 11, 48, 49, and 50.

²⁶⁶ Toshakhana is a gift repository with the Ministry of Foreign Affairs later transferred to the Cabinet Division where the gifts given to Pakistan dignitary by a foreign dignitary is deposited in the Toshakhana.

The Pakistani dignitary is authorised to purchase the gift at a much reduced price, sometimes at 15% of the market value.

²⁶⁷ Revised Rules of ‘Toshakhana’ Receipt and Disposal of Gifts communicated vide Cabinet Division U.O.No.9/16/99-TK, dated 11-9-1999 (Sl.No.6) & Procedure for Acceptance and Disposal of Gifts vide Cabinet Div.’s O.M. No. 9/8/2004-TK, dated 25-06-2007 (Sl. No. 5-A).

²⁶⁸ Interview of Mr. Bilal Mahboob, PILDAT, Islamabad, dated 21.10.2012

²⁶⁹ Interview of Malik Nadeem Kamran, Minister for Zakat & Ushr, Punjab, with Researcher on 17/01/2013

2.2.6 Integrity (Practice)

Score 25%

Scoring Question To what extent is the integrity of the members of the Executive ensured in practice?

There is lack of information about the implementation of integrity rules in practice. However, in audit reports of Cabinet division, some violations of these rules have been recorded showing deviations in practice to laws of integrity. The Audit Report of 2006-07 has reported that in terms of clause 2 of Cabinet Division O.M. No.9/8/2004-TK dated 25th June 2007, no record of corrupt practices was provided to the Cabinet Division except for a list of gifts and names of the recipients. The names of the President and other ministers were also mentioned in the list.²⁷⁰

A recent Minister of Finance was an owner of a private bank and he went back after resigning from minister ship to his bank. Most Ministers have their own private businesses. They can revolve around the two positions.²⁷¹ There are also many allegations of favouritism in the employment of key state organizations like NICL, OGRA, and SSGC etc. Interviewees have said that there are numerous cases of conflict of interests among members of the Executive.²⁷²

One of the major examples of conflict of interest relates to an Ex-Information Minister, who was directed by the President to represent the Prime Minister in the Superior Court but refused to show up as a witness to the Ex-Prime Minister's contempt of court case in the Superior Court for some personal reasons. The Minister was eventually removed from his position.²⁷³

Violations with regards to the allocation of Executive funds have also been made. One such example is when Cabinet Division violated its own rules and regulations in the purchase of 22 bulletproof vehicles.²⁷⁴ The Auditor General reported that the Punjab government departments had inadequate internal controls that resulted in irregularities and financial mismanagement of PKR 7.14 (USD 0.08) Billion. The irregularities reported by the auditor-general audit report in 2009-10 are in the accounts of Communications and Works Department, Housing, Urban Development and Public Health Engineering Department, Irrigation and Power Department, Local Government and Community Development Department, Planning and Development Department (Cholistan Development Authority) besides Environment Protection Department (Kasur Tannery Pollution Control Project).²⁷⁵

270 Siasat Forum Reporter. "Zardari breaks all records of keeping foreign gifts" siasat oct. 15, 2011. Available at www.siasat.pk › forum › siasat › siasi discussioncached; draft audit report on the accounts of cabinet division for the year 2006-07. Para 2 p. 5, 6.

271 Interview of Mr. Bilal Mahboob with Researcher on 21.10.2012

272 ibid

273 Staff Reporter, The News International. 17 January 2012 regrettable "An article on the

274 PAC told that Imported 22 bulletproof vehicles whereby Cabinet Division violates its own rules and regulations : May 16, 2012
RECORDER REPORT

275 Zaheer Mahmood Siddiqui Dawn| Reporter, 6th December, 2011. The report is available at dawn.com/.../punjab-audit-report-2008-09-456-irregularities-cost-rs714...

2.3 Role

2.3.1 Public Sector Management (law &Practice)

Score 25%

Scoring Question To what extent is the Executive committed to and engaged in developing a well-governed public sector?

Under the Constitution, "All executive actions of the Federal Government may by law confer functions upon officers and to the federal Government. The executive authority shall also extend to the provincial public sector."²⁷⁶

Top executives have control over their Secretaries and Director Generals and their staff. Secretaries have full control over their staff because they write Annual Confidential Reports that play important roles in their promotions and increment in salaries,²⁷⁷ and have also authority of transferring them.²⁷⁸

However, despite large amounts of budget and funding, the public sector is not properly governed by the Executive because of political interference, lack of transparency and unjust employment opportunities.²⁷⁹ Appropriate mechanisms are not in place to effectively supervise public sector staff.

²⁷⁶ Articles 97, 98 and 148, Constitution of Pakistan, 1973.

²⁷⁷ *ibid*

²⁷⁸ Estacode, 3,6(b) pp 276,277, 292 and 295

²⁷⁹ Interview of Malik Nadeem Kamran, Minister for Zakat &Ushr, Punjab, with Researcher on 17/01/2013

2.3.2 Legal System (Law & Practice)

Score 25%

Scoring Question To what extent do the executive priorities public accountability and the fight against corruption as a concern in the country?

An ordinance was passed in 1999 to establish oversight agencies in Pakistan in order to curb corruption and recover the looted money from Government, Banks, agencies and institutions.²⁸⁰ Under this ordinance, National Accountability Bureau (NAB) at the federal level and Anti-corruption Establishments at the provincial levels were established.²⁸¹ In 2008, when the civilian government came into power, they announced the disbandment of NAB to be replaced by another accountability body. They cut NAB's budget and staff by almost 70%, seriously restricting its function.²⁸² However, the government was unable to provide an alternate mechanism.

Furthermore, the Government is not able to protect witnesses. In a case of assassination of a TV Reporter, all the six witnesses to the murder of the TV Reporter were assassinated. Recently, Citizens for Free and Responsible Media (CFRM) had circulated a petition for the protection of TV anchors and reporters who were exposed to mafia in the society. In the petition, the Executive was requested to pass a law for the protection of the whistle blowers.²⁸³ It is noted that the whistle blower protection law is in the making.²⁸⁴

The Punjab Information Technology Board started in 2008 a programme to receive feedback from citizens about their experiences of corruption incidents in order to crack down the culture of corruption. This represents the first large-scale attempt by any government to proactively solicit feedback from citizens who are forced to pay bribes for basic public services and use that information to discipline officials.²⁸⁵

280 National Accountability Bureau Ordinance No. XVIII of 1999 www.pakistan.org/pakistan/legislation/1999/NABOrdinance.html

281 www.nab.gov.pk/Recoveries/Recoveries.asp

282 Wasim, Amir, Dawn Reporter "PML-N wants NAB replaced with more powerful body. dawn.com/2011/.../pml-n-wants-nab-replaced-with-more-powerful-body

283 CFR, the Citizens Free and Responsible Media on "To All TV Channels of Pakistan: Protect whistle-blower's act against corruption" June 21, 2012. www.change.org/.../to-all-tv-channels-of-pakistan-protect-whistleblowers

284 Mst. Sabalmtiaz "Wali Baner Case: Slain eyewitness had to testify today". Express Tribune. November 13, 2012.

285 Abbot, Sebastian SALON Feb. 4, 2013. "Pakistan tries new way of tackling corruption" The report is also contributed by the Associated Press writers Zaheer Baber and Munir Ahmed in Islamabad The report is available at www.centredaily.com/.../3489280_pakistan-tries-new-way-of-tackling.html

PILLAR 3

Judiciary

Pillar 3: Judiciary

Summary

Judiciary is the third pillar of the state. It is the state's prime responsibility to provide its citizens with timely justice.

The Judicial system of any country guarantees the provision of basic human rights to its citizen and the rule of law. The Supreme and Higher Courts of Pakistan are the highest appellate courts of the country. The Supreme Court possesses exclusive jurisdiction for the settlement of constitutional, inter-governmental, civil and criminal disputes and orders of the Supreme Court are binding on all the executive and judicial Authorities.²⁸⁶ The Constitution contains detailed provisions on the composition, jurisdiction, powers and functions of both the superior the Courts.²⁸⁷

On September 10, 2012, the Chief Justice of the Supreme Court of Pakistan stated that over 1.6 million cases were pending in District and the Superior Courts till August 15th, 2012, citing shortage of judges in Pakistan as one of the major causes. The Chief Justice of the Supreme Court of Pakistan requested the government for adequate human resource deployment as well as budget allocation.²⁸⁸ While the President has the authority to fix and revise the salaries and other fringe benefits of the superior judiciary, the current mechanism does not allow adjustment of their salaries against inflation.²⁸⁹

Until the recent past, Pakistan's judicial system has been facing problems like inefficiency, lack of training, huge judicial backlog and corruption particularly in the subordinate courts, and access to justice was neither easy nor speedy for the citizens. Above all, justifications, such as 'state necessity' or 'revolutionary legality' provided by the superior courts for abrogation of democracy by extra-constitutional interventions of several military rules, has considerably marred the judiciary's reputation.²⁹⁰ Numerous judges were removed by extra constitutional measures²⁹¹ and during March to July 2007, the Chief Justice of Pakistan was also pressurized by the President to resign and was suspended on refusal and placed under house arrest, though later he was released by the new government.²⁹²

286 Article 190, Constitution of Pakistan, 1973

287 Part VII, Chapters 1-4, Constitution of Pakistan, 1973, updated 2012

288 Mr. Tereence J. Sigamony, Reporter The Nation. "1.6 million cases pending in courts." www.nation.com.pk>National, September 11, 2012

289 Interview of Mr. Yasin Azad, President Supreme Bar Association, Islamabad.

290 International Bar Association, "A Long March to Justice: A Report on Judicial Independence and Integrity in Pakistan," Human Rights Institute Report, September 2009.

291 A High Court judge has lamented that "by and large the judiciary in Pakistan tried, in times of crises, to avoid confrontation with the executive and went out of its way to take the path of least resistance." Paula R. Newberg, *Judging the State: Courts and Constitutional Politics in Pakistan* 7 (1995)

292 Ali Khan, Washburn University School of Law, *A Lawyers' Mutiny In Pakistan*, Jurist Legal News and Research, May 30, 2007, available at <http://jurist.law.pitt.edu/forumy/2007/05/lawyers-mutiny-in-pakistan.php> (external link)

Despite all the troubles over the years the Supreme and High Courts take suo moto notices and appropriate actions against any unconstitutional act of the government or the public. For instance, the Supreme Court of Pakistan annulled the National Reconciliation Ordinance (NRO) 2007 promulgated by an ex-President granting protection to politicians and government officials from corruption and criminal charges. The law was declared a nullity on grounds of being unconstitutional and against national interest, thereby reviving cases that had been withdrawn or suspended.²⁹³

There is a National Judicial (Policy Making) Committee NJPMC constituted under an Ordinance (LXXI) of 2002. It comprises the Chief Justice of Pakistan (Chairman) and the Chief Justice Federal Shari‘at Court and Chief Justices of 4 Provincial High Courts are its members. The NJPMC performs many functions like improving the capacity and performance of the administration of justice, setting performance standards for judicial officers, improvement in terms and conditions of service of judicial officers/staff, and publication of the annual or periodic reports of the Supreme Court, Federal Shari‘at Court, High Courts and courts subordinate to High Courts and Administrative Courts and Tribunals.

The Supreme Judicial Council has developed a code of conduct for judges to be strictly followed by the Judges of Supreme and Higher Courts. The Chief Justice has also announced the National Judicial Policy in 2009, to streamline the judicial system for a more efficient, cleaner and an accessible judiciary.²⁹⁴

**Table 5:
Percentage Scores of Indicators
45.8/100**

Dimension	Indicators	Law	Practice
Capacity 50.0/100	Resources	50	25
	Independence	75	50
Governance 50.0/100	Transparency	50	50
	Accountability	50	25
	Integrity Mechanisms	75	50
Role 37.5/100	Executive Oversight	50	
	Corruption prosecution	25	

Structure and Organization

Judiciary in Pakistan consists of hierarchy of courts. The Superior Judiciary consists of the Supreme Court, Federal Shari‘at Court and High Courts while the subordinate Judiciary is at the district level with Civil and Criminal Courts created by Acts of Federal/Provincial Parliaments working under the supervision and control of the respective High Courts.²⁹⁵

293 CNN; "Pakistan's Supreme Court invalidates politicians' amnesty"; December 17, 2009; CNN; <http://edition.cnn.com/2009/WORLD/asiapcf/12/16/pakistan.supreme.court.amnesty/index.html>

294 Hassan Abbas, May 2011, "Pakistan 2020: A Vision For Building a Better Future, Asia Society Pakistan 2020 Study Group Report, AsiaSociety.org/Pakistan2020

295 Article 175 of the Constitution of Pakistan, 1973.

The Constitution also has established administrative courts and tribunals to cover matters related to public servants protection, claims from tortuous acts of government and acquisition, administrative and disposal of any property.²⁹⁶

The Supreme Court, with its original, appellate and advisory jurisdiction, lies at the apex of the judicial hierarchy and is considered the Court of ultimate appeal.²⁹⁷ It has exclusive jurisdictions to issue declaratory judgments in disputes between and among Federal/ Provincial governments and its decisions are binding on all other courts and authorities. Being the Highest Court of the land, it is also the guardian and defender of the Constitution. The High Courts established at provincial level²⁹⁸ have appellate admiralty and original jurisdiction²⁹⁹, for Sind high court the limit prescribed for admissibility is PKR 5 million and above. The High Courts are also empowered to issue writ jurisdiction if there is a violation of fundamental rights.

There also exists the Federal Shari 'at³⁰⁰ Court of Pakistan (FSC), established in 1980,³⁰¹ with the jurisdiction to scrutinize laws that are against Islamic values. It has an original and a sue motto jurisdiction to declare repugnant any provision of law if found against the injunctions of Islam and in case of its repugnancy the Government is required to amend the law and bring it in conformity with the injunctions of Islam. The FSC also has jurisdiction to examine any decisions of any criminal court relating to the application of Islamic (Hoodooed) penalties.³⁰² The Hoodoo laws were promulgated in 1978 as part of the Islamization process undertaken by then military President allegedly "to legitimize his dictatorial rule."³⁰³ The ordinary criminal laws viz., the Pakistan Penal Code (PPC) and the Criminal Procedure Code (Cr.PC) were amended consequently and punishments for offences like murder, theft, and adultery were substituted with penalties as provided by the Islamic laws.³⁰⁴

296 Article 212, the Constitution of Pakistan, 1973 .

297 Created under Art. 175 of the Constitution of Pakistan,1973 on March 23, 1956;

298 Articles 175 and 176, Chapter 1, Part VIII, the Constitution of Pakistan, 1973.

299 Articles 199, Chapter 3, Part VII, the Constitution of Pakistan, 1973.

300 Sharia means the Islamic law

301 by virtue of the President's Order No.1 of 1980 as incorporated in the Constitution of Pakistan, 1973 under Chapter 3-A..

302 Hud (plural is hudud) is an Islamic legal term which means: 'specified punishment imposed by Sharia (Islamic Law).Following laws were enacted in accordance with Sharia :

- i) The Offences Against Property (Enforcement of Hoodoo) Ordinance, 1979.
- ii) The Offence of Zina (Enforcement of Hoodoo) Ordinance 1979.
- iii) The Offence of Qazaf (Enforcement of Hadd) Ordinance, 1979.
- iv) The Prohibition (Enforcement of Hadd) Order, 1979.

303 Shah, J. (Nov., 2012). Zia-ul-Haque and the proliferation of religion in Pakistan. *International Journal of Business and Social Science*, 3(21), 310-323.

304 Kamran, T., 2008. *Democracy and Governance in Pakistan*. Lahore: South Asian Partnership.

3.1 Capacity

3.1.1 Resources (Law)

Score 50%

Scoring Question To what extent are there laws seeking to ensure appropriate salaries and working conditions of the judiciary?

Under the Government's financial management system, the judiciary is required to prepare its own annual budget and forward it to the Federal Ministry of Finance. Once allocated, the Chief Justice of the Supreme and High courts are authorized to re-appropriate the budgetary funds from one head to another and abolish/downgrade or upgrade posts without the approval of Finance Ministry.³⁰⁵

The High Courts have to prepare their budgets and present them to the provincial departments of Finance.³⁰⁶ The details of the remunerations and other terms and conditions of services of a Judge of the Supreme Court or of a Judge of High Court are provided for in the fifth schedule of the Constitution of Pakistan.³⁰⁷

Although there is no devised method to approve salary and benefits that are appropriate and proportionate to the status and importance of courts, the President revises the salaries and other fringe benefits by a presidential order, as and when required.³⁰⁸

The salaries of the subordinate judiciary are fixed by the Provincial Governments in accordance with their basic pay scale/Grade system, which does not distinguish judicial from other government jobs and hence no special salaries/allowances for the judiciary at district level are provided for.³⁰⁹

305 Dr Faqir Hussain, Registrar Supreme Court of Pakistan, Revised 15th February 2011, "The Judicial System of Pakistan" http://www.supremecourt.gov.pk/web/user_files/File/thejudicialsystemofPakistan.pdf

306 Article 80-84, and 120-122 of the Constitution of Pakistan, 1973 .

307 Article 205 read with 5th Schedule

308 Article 205, of the Constitution of Pakistan, 1973 .

309 Interview of Justice (R) Munir Ahmad Mughal with researcher on 29/12/2012

3.1.2 Resource (Practice)

Score 25%

Scoring Question To what extent does the judiciary have adequate levels of financial resources, staffing, and infrastructure to operate effectively in practice?

Pakistan's judicial system has been criticized for its inefficiency, lack of training, huge judicial backlog and corruption particularly in the subordinate courts.³¹⁰ Problems like lack of proper funding, under staffing and inadequate infrastructure has made access to justice an agonizing and a cumbersome process for the citizens. Criminal cases can take up to five years³¹¹ and civil cases can prolong up to 20 years and in most cases parties may not even survive the decision.³¹²

According to Pakistan 2012 Human Rights Country Report, there is a backlog of 1.4 million cases pending adjudication before the entire judiciary of the country.³¹³ 1,903 cases before the Federal Shari'at Court (FSC) and backlog of 176,594 cases are pending before the various High Courts. At district level throughout Pakistan, 1,104,294 cases are pending adjudication before the subordinate courts.³¹⁴ The pendency before the special courts & administrative tribunals is equally high.³¹⁵

Lack of government funding and inadequate infrastructure for courts are among the major causes for backlogs and inordinate delays. Although the courts prepare their annual budget but the final budget approved by the respective Assembly is subject to various cuts. Budgetary allocation to judiciary is negligible and the third pillar of the State is getting less than 1% of the federal/provincial budgets,³¹⁶ which is not sufficient to carry out courts' duties effectively.³¹⁷

310 International Bar Association, "A Long March to Justice: A Report on Judicial Independence and Integrity in Pakistan," Human Rights Institute Report, September 2009.

311 Hassan Abbas, May 2011, "PAKISTAN 2020: A Vision For Building a Better Future, Asia Society Pakistan 2020 Study Group Report, AsiaSociety.org/Pakistan2020

312 International Crisis Group, "Reforming the Judiciary in Pakistan," Asia Report no. 160, October 16, 2008; Secretariat of the Law and Justice Commission of Pakistan, "National Judicial Policy: 2009," <http://www.sindhhighcourt.gov.pk/njp2009/njp2009.pdf>; Siraj Memon and seep chinnar, Standing Committee for Law. Parliamentary affairs. Report. on Judicial Reforms, <http://www.youthparliament.pk/YP2012/Verbatim%20Reports/Session%205%20-%20Sept%2019%20to%20Sep%2023%202012/Portable%20Document%20Format%20-%20PDF/Committee%20Reports/Judicial%20Reforms.pdf>

313 PAKISTAN 2012 HUMAN RIGHTS REPORT; Country Reports on Human Rights Practices for 2012; United States Department of State • Bureau of Democracy, Human Rights and Labor <http://www.state.gov/documents/organization/204621.pdf>

314 Pakistan Today, Friday, 8 Feb 2013, "Over 3m cases pending before country's judiciary"; <http://www.pakistantoday.com.pk/2013/02/08/news/national/over-3m-cases-pending-before-countrys-judiciary/>

315 International Bar Association, "A Long March to Justice: A Report on Judicial Independence and Integrity in Pakistan," Human Rights Institute Report, September 2009

316 National Judicial Policy, 2009. A year for focus on Justice at the Grassroot Level, National Judicial (Policy Making) Committee, Published by Secretariat, Law & Justice Commission of Pakistan, <http://www.transparency.org.pk/documents/Judicial%20Policy.pdf>

317 Interview of Justice (R) Munir Ahmad Mughal with researcher on 29/12/2012.

As regards pecuniary incentives, Judge's remuneration is adequate as compared to other government officials and there have been periodical increases in salaries and other judicial allowances, it is pertinent to mention that only the Superior Judiciary is generally considered for such raises.³¹⁸ Recently the President has approved an increase of 20% in the salaries and judicial allowances of the judges of the Supreme Court and high courts.³¹⁹

Conversely, the salaries of judges in the subordinate courts are low and there is no standardization with respect to cost of living or increase in scale. According to the International Bar Association's Human Rights Institute (IBAHRI), increase in salaries is not granted proportionately to all judges, and to ensure their independence and integrity recommends review of current remuneration schemes and salary structures of all judges and to align them in accordance with the status and importance of courts.³²⁰ There also is disparity between salary structures of judicial officers and judicial staff of the subordinate judiciary within provinces. For instance, judicial officers of subordinate judiciary in Punjab are drawing judicial allowances equal to three times of their salaries³²¹. Last year thousands of judicial Staff in Sindh went on a two-day PEN DOWN strike for pay rise and demanded for implementation of the National Judicial Policy, 2009 which provided for enhanced packages and privileges to the employees in other provinces.³²²

The Supreme Court, High Courts and Federal Shari'at Courts appoint their own staff and determine their terms and conditions of service.³²³ The Supreme Court (Appointment of Officers and Servants and Terms of Service) Rules 1982, prescribe the qualification for and mode of appointment and promotion of staff together with penalties and procedure for disciplinary proceedings against them.³²⁴ But judiciary's budget for infrastructure, human resources and technological advancement must be raised four times the present budget to cope with the population increase and workload. It will help in case management by the judges for timely disposal of the cases.³²⁵

318 Abu Abdul Mueez, Saturday, February 02, 2013; Judges' salaries, The NEWS <http://www.thenews.com.pk/Todays-News-11-157683-Judges-salaries>

319 "Approval: Superior judiciary wins 20% pay raise", Published in The Express Tribune, February 1st, 2013. <http://tribune.com.pk/story/501307/approval-superior-judiciary-wins-20-pay-raise/>

320 International Bar Association, "A Long March to Justice: A Report on Judicial Independence and Integrity in Pakistan," Human Rights Institute Report, September 2009.

321 National Judicial Policy, 2009. A year for focus on Justice at the Grassroot Level, National Judicial (Policy Making) Committee, Published by Secretariat, Law & Justice Commission of Pakistan, <http://www.transparency.org.pk/documents/Judicial%20Policy.pdf>

322 RightsNow Pakistan Human Right For All, January 13, 2012; "Subordinate Judiciary Staff On Strike – Injustice With Subordinate Judiciary In Sindh- Who Will Do The Justice?"; <http://rightsnowpak.wordpress.com/2012/01/13/subordinate-judiciary-staff-on-strike-injustice-with-subordinate-judiciary-in-sindh-who-will-do-the-justice/>

323 Article 203-208, of the Constitution of Pakistan, 1973.

324 Dr Faqir Hussain, Registrar Supreme Court of Pakistan, Revised 15th February 2011, "The Judicial System of Pakistan" http://www.supremecourt.gov.pk/web/user_files/File/thejudicialsystemofPakistan.pdf

325 Interview of Justice (R) Munir Ahmad Mughal with researcher on 29/12/2012

The subordinate judiciary too, operates under some constraints like shortage of judicial officers, their supporting staff and equipment. However, the subordinate judges get practical training for a few weeks in the courts. They attend courses at National Institute of Management (NIM)³²⁶, Administrative Staff College and also receive pre-service and in-service practical and theoretical training at the Federal Judicial Academy³²⁷ and in the respective provincial academies. The extensive training aims at providing knowledge of substantive laws, judicial procedure, case processing, court management, and code of conduct.³²⁸ Also, the emphasis is on civil practice and procedure, maintenance of court registers and record, case management, style of judicial reasoning and the process of decision making.³²⁹ Federal Judicial Academy has provided training to judicial officers in collaboration with the USAID, Department of Commerce USA, National Judicial Institute Canada (NJI), and Commonwealth Judicial Education Institute, Canada (CJIE). Judges of superior courts too have attended the Intensive Study Program of the Commonwealth Judicial Education Institute, Halifax, Canada.³³⁰

Judicial Reforms have been undertaken on multiple occasions but it is observed that they have not been implemented in letter and spirit. A three year 'Access to Justice Program' was launched in 2001 with US\$ 350 million worth of financial support of the Asian Development Bank (ADB) to strengthen the system of administration of justice, mainly focusing on the 'delays' and 'backlogs'.³³¹ In 2009, the Chief Justice of Pakistan announced the National Judicial Policy (NJP) to streamline the judicial system for a more efficient, cleaner and an accessible judiciary.³³² The NJP set targets for disposal of cases and during 01-06-2009 to 31-05-2010, the superior/subordinate courts decided 3.1 million cases as against 2.5 million freshly instituted cases and reduced the backlog by half a million.³³³ Although, the NJP has moved things and there is decrease in number of cases but access to speedy and quality justice is still a long way to go, mainly due to underfunding, poor infrastructure, shortage of judicial officers, abuse of process by delaying tactics of lawyers and litigators, complexity of court processes, quality of performance of the lower courts and non-compliance of court orders by government functionaries, particularly the police.³³⁴

326 <http://www.nim-khi.edu.pk/>

327 Federal Judicial Academy was established under a Government Resolution in September, 1988. A legal cover to the organization and functioning of the Academy was provided with the enforcement of Federal Judicial Academy Act, 1997. <http://www.fja.gov.pk/index.htm>

328 Dr Faqir Hussain, Registrar Supreme Court of Pakistan, Revised 15th February 2011, "The Judicial System of Pakistan" http://www.supremecourt.gov.pk/web/user_files/File/thejudicialsystemofPakistan.pdf

329 <http://www.fja.gov.pk/index.htm>

330 Challenges Faced By Judicial Academies In Strengthening Judicial Education, Parvaiz Ali Chawla Director-General Federal Judicial Academy, Islamabad [Paper read at the Sindh Judicial Academy, Karachi on 25.6.2011 in first Pakistan Judicial Academies Summit]; <http://www.sja.gos.pk/JAS/summit/speeches/DG%20Federal%20Judicial%20Academy,Islamabad.pdf>

331 Anna Hakobyan, Transparency International, 'Corruption in Pakistan', Reviewed by: U4 Anti-Corruption Resource Centre, Date: 9 June 2004 Number: 43, www.u4.no/publications/corruption-in-pakistan-2/downloadasset/2672

332 Hassan Abbas, May 2011, "PAKISTAN 2020: A Vision For Building a Better Future, ASIA SOCIETY Pakistan 2020 Study Group Report, AsiaSociety.org/Pakistan2020

333 Dr Faqir Hussain, Registrar Supreme Court of Pakistan, Revised 15th February 2011, "The Judicial System of Pakistan" http://www.supremecourt.gov.pk/web/user_files/File/thejudicialsystemofPakistan.pdf

334 Osama Siddique. January 2011, Approaches to Legal and Judicial Reform in Pakistan: Post Colonial Inertia and the Paucity of Imagination in Times of Turmoil and Change, DPRC Working Paper 4, <http://lums.edu.pk/docs/dprc/DPRC-WP4-Siddique.pdf>; Justice Delivery System of Pakistan, A critical overview, by Shahid Pervez Qazi, under the supervision of Justice © Dr. Ghaus Muhammad, 2008.

3.1.3 Independence (Law)

Score 75%

Scoring Question To what extent is the judiciary independent by law?

The Constitution and other laws contain legal provisions designed to protect and safeguard the independence of Judiciary to a great extent. The Objectives Resolution, the preamble and Article 2A of the 1973 Constitution provide for the independence of the Judiciary.³³⁵

Under the rules of the Senate, National Assembly and the Constitution of Pakistan, a two thirds majority of all members of the Parliament is required to change any clause in the Constitution not only in regards to the provisions relating to the Judicature but also other aspects of national affairs.³³⁶

Financial control, creation and abolition of judicial posts,³³⁷ composition, qualification, conditions of service and removal of judges of superior courts too are specifically provided for³³⁸. The regulations for the appointments of judges of various courts have been laid down in the Articles 175(A) of the Constitution of Pakistan.³³⁹ Appointments of Judges of the Supreme Court, High Courts and the Federal Shari'at Court are made through the Judicial Commission of Pakistan.³⁴⁰ The Chief Justice of Supreme Court is appointed by the President on the recommendation of the said Judicial Commission.³⁴¹ The Commission comprises of the Chief Justice of Pakistan, four most senior judges of the Superior Court, a former Chief Justice of Pakistan or Judge of the Supreme Court, the Federal Minister of Law and Justice, the Attorney General of Pakistan, and a senior Advocate (15 years standing) as nominee of the Pakistan Bar Council. The Judicial commission nominates candidates for appointment as judges of the Superior Courts, which is finalized after being scrutinized by the Parliamentary Committee consisting of eight members, four from the National Assembly and four from the Senate.³⁴² The appointees should have been judges of a High Court for at least five years or an Advocate of a High Court of not less than 15 years standing.

335 Dr.Parvez Hassan, Environmental Protection, Rule of Law and the Judicial Crisis in Pakistan, Remarks made at the International Congress on Environmental Law held in Rio de Janeiro, Brazil, on 22-24 May 2007 in tribute to Professor Charles O. Okidi

336 Article 239(1) of the Constitution of Pakistan, 1973.

337 Government of Sind v Sharaf Farid.PLD 1994 SC pages 105 and 115

338 Articles 205 & 209, of the Constitution of Pakistan,1973;

339 www.supremecourt.gov.pk. Judicial Commission of Pakistan. S.R.O. 122(KE)/2010.

340 Article 175-A, Chapter 1, Part VII, the Constitution of Pakistan,1973

341 Article 194, Chapter 1, Part VIII, the Constitution of Pakistan,1973

342 www.supremecourt.gov.pk > Home > Introduction

The procedure for removal of Judges of Superior courts is also outlined in the Constitution. The Constitution guarantees the security of the tenure of judges³⁴³ and no Judge of superior judiciary can be removed except for, through the Supreme Judicial Council comprising Chief Justice of Pakistan, two next most senior judges of the Supreme Court and two most senior chief justices of the High Courts.³⁴⁴

The Constitution has also established Administrative Courts and Tribunals to cover matters related to terms and conditions of people in service of Pakistan.³⁴⁵

For appointment as a Judge of High Court a person has to have 10 years' experience as an advocate of a High Court or 10 years' service as a civil servant including 3 years' experience as a District Judge or 10 years' experience in a judicial office.³⁴⁶ A judge of a High Court cannot be transferred without his consent and consultation by the President with the Chief Justice of Pakistan and Chief Justices of both High Courts.³⁴⁷

Another constitutional safeguard against undue influence, provided to the judges of Superior Courts is in the form of Contempt of Court proceedings, wherein the court has the power to punish any person who disobeys courts' orders, scandalizes it, abuses, interferes with or obstructs the process of the court.³⁴⁸

For subordinate courts, the terms and conditions of service of judicial officers, their recruitment, promotions and disciplinary proceedings are dealt with under the provincial laws.³⁴⁹ Initial recruitment is made through the various Provincial Public Service Commissions with the active involvement of the respective High Courts. Matters pertaining to promotions and removal on account of misconduct or corruption, of judges of district judiciary are also decided by the committee of High Court Judges. Service personnel and members of the Bar are appointment as Additional District & Sessions Judge, and promotion is based on seniority-cum-fitness from among the serving judicial officers.³⁵⁰

Orders of removal etc. can be challenged before a Judicial Services Tribunal, to ensure the fairness of the executive order made by the administrative committee of the High Court.³⁵¹

343 Article 179, the Constitution of Pakistan, 1973.

344 Article 209, the Constitution of Pakistan, 1973.

345 Article 212 of the Constitution of Pakistan, 1973.

346 Article 193 of the Constitution of Pakistan, 1973.

347 Article 200 of the Constitution of Pakistan, 1973.

348 Article 204 of the Constitution of Pakistan, 1973.

349 The Civil Servants Act, 1973

350 Article 209 & 212 of Constitution of Pakistan.

351 Interview of Justice (Rtd) Munir Ahmad Mughal with Researcher on 2/9/2012

3.1.4 Independence (Practice)

Score 50%

Scoring Question To what extent does the judiciary operate without interference from the government or other actors?

The present constitutional conventions and safeguards for Pakistan's superior judiciary have survived a number of coups d'état, upheavals and politically motivated movements. There have been a number of attempts to control the judiciary both, under the martial law and the civil rule. It is alleged that the superior courts and judges, through amendments in the Constitution³⁵² have been subject to forced removal, unconstitutional and merit-less appointments based on nepotism, political patronage, and favouritism³⁵³ and out of turn elevations.³⁵⁴

During one of the martial law regimes (1977-1985), amendments to the Constitution were made to oust the then chief justice of Pakistan through immediate retirement and the superior Judiciary provided full protection on the basis of the doctrine of state of necessity and in doing so also validated the usurper.³⁵⁵

During the period (1985-1999) of three civilian governments extensive interference in the judicial appointments took place. An out of turn elevation of a judge (fourth in line) to the post of Chief Justice defied arbitrarily a forty years old practice and precedent of appointing the senior most judge of the Supreme Court as the Chief Justice of Pakistan.³⁵⁶ Moreover, twenty other unconstitutional appointments to High Courts flouting merit and rules took place, subsequently overruled by the Supreme Court³⁵⁷. The year 1997 also saw an attack on the Supreme Court unknown people while a sitting Prime Minister was facing contempt of court charges³⁵⁸.

352 E.g. Fifth Amendment of the Constitution in 1976, introduced many changes to the appointment and tenure of judges, and the passing of a new law for contempt of court.

353 International Bar Association, "A Long March to Justice: A Report on Judicial Independence and Integrity in Pakistan," Human Rights Institute Report, September 2009.

354 *President v Justice Shaukhat Ali* PLD 1971 SC 585, Khan, p 292; The first attempt was when judges, under General Yahya's rule, were forced to submit detailed statements of their assets to the Supreme Judicial Council. As a result one of the judges of the Lahore High Court resigned and another was removed.

355 *Nusrat Bhutto v Chief of Army Staff* PLD 1977 SC 657.

356 International Bar Association, "A Long March to Justice: A Report on Judicial Independence and Integrity in Pakistan," Human Rights Institute Report, September 2009.

357 *Al-Jehad Trust v Federation of Pakistan*; PLD 1996 SC 324.

358 Anil Kalhan, 2013] gray zone constitutionalism and the judiciary, vanderbilt journal of transnational law [vol. 46:1

In 1998-2008 another military rule came along, with abrogation of the constitution, wherein the newly constituted judiciary validated the coup³⁵⁹. In 2006, the Supreme Court declared privatization of Pakistan Steel Mills, a multi-billion state-owned mega corporation, as unconstitutional³⁶⁰. Consequently, there was an unsuccessful attempt to terminate the services of more than a hundred judges of the superior courts and in 2007, the Chief Justice of Pakistan was accused of judicial misconduct and his case, referred to the Supreme Judicial Council³⁶¹. The proceedings against the Chief Justice of Pakistan were declared unconstitutional by the Supreme Court in 2007³⁶², but again he was dismissed on account of declaration of emergency along with 12 Supreme Court and 24 High Court judges. This initiated the 'lawyer's movement' for the restoration of judiciary, throughout Pakistan which continued for two years with massive street protests by the lawyers, media and the civil society³⁶³. The judiciary was restored on 16th March, 2009.

The independence of the judiciary has many a times been interpreted by the superior courts themselves.³⁶⁴ According to the rulings, Judiciary is independent of the Executive and the Legislature and has jurisdiction over all issues of a judicial nature. Judicial independence has been construed by Supreme Court as freedom to decide matters in accordance with law without improper direct/indirect influences, inducements or pressures, from any quarter.³⁶⁵ However, public support for the 'revival of judiciary'/'Lawyer's Movement' was first of its kind in the history of Pakistan, and came after half a century of the imposition of the first Martial Law in 1958 but it marked a significant turning point for the independence of the judiciary.³⁶⁶ The restored judiciary formulated the National Judicial Policy (NJP), 2009 for serious reforms for the judiciary, to clear back log and for early dispensation of justice.³⁶⁷

359 Zafar Ali Shah v General Pervez Musharraf PLD 2000 SC 869.

360 Constitution Petition no. 9 of 2006 & Civil Petition Nos. 345 & 394 of 2006, http://www.supremecourt.gov.pk/web/user_files/File/CJD_Pakistan_Steel_Mills_Case.pdf

361 Gazette of Pakistan Extraordinary, Part III, Islamabad, p675, March, 2007, http://www.pakistani.org/pakistan/constitution/events/cjp_ref_2007/2007_part3_isb_p675.PDF

362 Chief Justice of Pakistan Iftikhar Muhammad Chaudhry Vs. President of Pakistan, PLD 2010SC 61.

363 Reinstatement of Pakistan's Chief Justice Ends a Crisis, but It Might Lead to Another; By CARLOTTA GALL, Published: March 17, 2009, the New York times, Asia Pacific, http://www.nytimes.com/2009/03/17/world/asia/17judge.html?ref=iftikharmohammadchaudhry&_r=0

364 Al-Jehad Trust v Federation, PLD 1996 SC 32422; Asad Ali v Federation, PLD 1998 SC 33.

365 Government of Sindh v Sharaf Faridi, PLD 1994 SC 105. http://www.supremecourt.gov.pk/web/user_files/File/C.A.212and213OF2011.pdf

366 Interview of Justice (Retd.) Munir Ahmad Mughal with researcher on 2/9/2012 and reproduced his statement.

367 Justice (Retd.) Tanvir Ahmad Khan, speech to delegates of Center for Law and Policy at their visit to Punjab Judicial Academy, Lahore, On 13 December 2012, Director General Punjab Judicial Academy Lahore, Judicial System of Pakistan; http://www.pja.gov.pk/system/files/Judicial_System_of_Pakistan.pdf

3.2 Governance

3.2.1 Transparency (law)

Score 50%

Scoring Question To what extent are there provisions in place to ensure that the public can obtain relevant information on the activities and decision-making processes of the judiciary?

Access to information in all matters of public importance is a constitutional right of every citizen, subject to regulation and reasonable restrictions imposed by law.³⁶⁸

The “Freedom of Information Ordinance, 2002” defines Courts and Tribunals as ‘public bodies’ for the purposes of implementation of provisions of the Ordinance. Accordingly, public can have access to orders and decisions made by any court, unless specifically prohibited under any law or if against public interest.³⁶⁹

Under various laws, the parties to the proceedings of trials in the courts can get copies of the entire proceedings of judgment, court diaries and evidences recorded during trial and after final decision, on payment of prescribed fees and charges.³⁷⁰

As far as information on appointment, removal and transfer of judges is concerned, the public can have access to information as prescribed by relevant laws. The nominating authority for the Judges of superior courts is the Judicial Commission and for disciplinary proceedings, it is the Supreme Judicial Council. Under the rules made by Judicial Commission of Pakistan and the Supreme Judicial Council, information regarding minutes of meetings of both are not required to be made public as their proceedings are held in camera and only the findings are allowed to be made public.³⁷¹

The Judges of the subordinate courts are appointed through the Provincial High courts only after advertising of posts and examinations conducted by the High Court. Civil Judge / Judicial Magistrates are also appointed by the Provincial High Courts, through provincial Public Service Commissions, created by the Constitution for performing such functions in relation to the affairs of the government. The posts are advertised in national newspapers, followed by competitive exams conducted by Public Service Commissions and qualified candidates recommended.³⁷²

³⁶⁸ Article 19A of the Constitution of Pakistan, 1973 amended by 18th amendment.

³⁶⁹ Freedom of information ordinance, 2002; Interview of Justice (Retd.) Munir Ahmad Mughal with researcher on 2/9/2012 and reproduced his statement.

³⁷⁰ Section 13, Business in Chambers, orders V, Section 1 of order IX, Section 3(VI) of order of XIII Pakistan Supreme court Rules, 1980; Order VII, Rules 9, Civil Procedure Code, 1908; Section 548 of the Code of Criminal Procedure, 1898; Art. 87, Qanun-e-Shahadat Order, 1984.

³⁷¹ Section 5(4), Judicial Commission of Pakistan Rules, 2010; Section 13 of Supreme Court of Pakistan (Supreme Judicial Council), 2005 (Part III .No.P.Reg 113/2005.SJC

³⁷² http://www.ppsc.gop.pk/ppsc_info.aspx

3.2.2 Transparency (practice)

Score 50%

Scoring Question To what extent does the public have access to judicial information and activities in practice?

The Supreme Court of Pakistan publishes comprehensive Annual Reports, which are sent to the President and are made public as well.³⁷³ The Annual Report 2012-13 is available on Supreme Court's website.³⁷⁴ All parties have access to the court proceedings, judgments, statistics and records and can obtain copies on payment of reasonable amount.³⁷⁵

The National Judicial (Policy Making) Committee NJPMC publishes annual or periodic reports of the Supreme Court, Federal Shari'at Court, High Courts and courts subordinate to High Courts and Administrative Courts and Tribunals, which are submitted to the President of Pakistan.

The information on superior court judge's appointments promotions, removals is available in newspapers and also on the Supreme Court's website and provincial High Court websites.³⁷⁶ The Public Service Commission also publishes all results on its official website.³⁷⁷

Judges appointments have not been free from controversies and references have been filed against the same. In 2011 the appointment of judges was challenged through Presidential reference but the Supreme Court confirmed the appointments.³⁷⁸ Though the reforms have brought a new mechanism for appointment of superior courts' judges, involving two forums viz. Judicial Commission and the Parliamentary Committee, there are demands for proceedings to be open and not in-camera.³⁷⁹ The representatives of superior Bar have proposed amendments in the Judicial Commission of Pakistan (JCP) Rules 2010, and have asked for consultation by bar council representatives before initiating and sending proposed names of the judges to the commission, and this consultation should be meaningful.³⁸⁰

373 Interview of Mr. Yasin Azad, President of Supreme Bar Association with researcher on 23/10/2012; Interview of Raja Muqit Nawaz Khan, Advocate Supreme Court with researcher on 16/10/12

374 supremecourt.gov.pk/Links/Annual_Rpt_2012-13/index.html

375 Section 13, Business in Chambers, orders V, Section 1 of order IX, Section 3(VI) of order of XIII Pakistan Supreme Court Rules, 1980.

376 www.supremecourt.gov.pk/web/page.asp?id=38; <http://www.lhc.gov.pk/>; <http://www.sindhhighcourt.gov.pk/>

377 http://www.ppsc.gov.pk/ppsc_info.aspx

378 Judges appointments: Reference filed in Supreme Court -Pakistan Today, Friday, 7 Dec 2012, <http://www.pakistantoday.com.pk/2012/12/07/news/national/judges-appointments-reference-filed-in-supreme-court/>; Judges appointment: SC issues verdict December 21, 2012 - From Web Edition, <http://www.thenews.com.pk/article-80549-Judges-appointment-SC-issues-verdict>

379 Judges' appointment: Bar leaders object to 'judges' monopoly' in Judicial Commission, Published in The Express Tribune, January 30th, 2013. <http://tribune.com.pk/story/500264/judges-appointment-bar-leaders-object-to-judges-monopoly-in-judicial-commission-lahore-city/>

380 Lawyers bodies propose amendments in JCP rules, March 23, 2013, Terence J Sigamony, <http://www.nation.com.pk/pakistan-news-newspaper-daily-english-online/islamabad/23-Mar-2013/lawyers-bodies-propose-amendments-in-jcp-rules>

Recently, Judicial Commission's meeting for appointment of judges and extension to services of judges was not attended, either by the Attorney General, the Federal Minister of Law and Parliamentary Affairs or representatives of the legal fraternity.³⁸¹

According to one interviewee, the courts publish reports of the number of decided cases annually. The National Judicial Policy 2009 and the National Judicial Policy Making Committee (NJPMC) effectively deal with the issue of delays and backlogs by the courts. By making the information public, it is not only sensitizing the judges and judicial officers over the concern of backlog and delayed justice but also making them accountable for all actions through this process.³⁸²

3.2.3 Accountability (Law)

Score 50%

Scoring Question To what extent are there provisions in place to ensure that the judiciary has to report and be answerable for its actions?

The Courts, after hearing the case are required to pronounce order/ judgment in open Court either at once or on some future day not exceeding thirty days and in the language easily understood by the parties. The judgment should be written by the judge himself, either in the language of the Court, or in English. The order has to be dated, signed by the Judge and must contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decision. In case the presiding officer has to dictate the judgment, then every page has to be signed and once pronounced shall not afterwards be altered or added to except arithmetical errors and or other correction.³⁸³

Judges are required to act under the law and in accordance with law. The discretionary powers too are to be exercised judiciously. A person aggrieved by any illegality or irregularity in any proceeding before the court can always resort to revision/ review or appeal. The High Court or any Sessions Judge, may call for the record of any proceeding before any inferior Criminal Court and examine the correctness, legality or propriety of any finding, sentence or order recorded or passed.³⁸⁴

381 Deadlock over judges' appointment keeps courts burdened; March 04, 2013 Terence J Sigamony; the Nation, <http://www.nation.com.pk/pakistan-news-newspaper-daily-english-online/national/04-Mar-2013/deadlock-over-judges-appointment-keeps-courts-burdened>

382 Interview of Justice (Retd.) Munir Ahmad Mughal with researcher on 2/9/2012 and reproduced his statement.

383 Order XX, Rules 1 to 6, Civil Procedure Code, 1908; Sections 366 and 367 of the Code of Criminal Procedure, 1898; Order X, The Pakistan Supreme Court Rules, 1980; High Court Rules & Orders (Vol. 1 Chapter II-A)

384 Order XLVII, rule I of the Civil Procedure Code 1908; s.435, Code of Criminal Procedure, 1898; The Pakistan Supreme Court Rules, 1980

Judges in Pakistan enjoy judicial immunity under various statutes.³⁸⁵ But, judges do not have immunity against corruption or misconduct. However, the accountability of the judges of the Supreme Court and the High Courts can only be held through constitutional means and the forum is the Supreme Judicial Council. The Council takes action suo moto or on information received from any source or on a reference received from President against involvement of misconduct by a judge of a superior court and presents its finding to the President. The President may order the removal of such judge if the Council opines that the Judge is guilty of misconduct or incapable of performing the duties of office.³⁸⁶

The power to monitor the sub-ordinate judiciary lies with the High Court.³⁸⁷ It supervises and controls both administrative as well as judicial actions. For administrative control, the High Court may initiate disciplinary proceedings under the (provincial) Government Servants (Efficiency and Discipline) Rules, 1973 against a judicial officer. For judicial control, revision and appeals can be filed in the High Court against the orders/decisions of the subordinate courts.³⁸⁸ Matters pertaining to misconduct or corruption, of judges of subordinate judiciary are decided by the Chief justice and High Court Judges.³⁸⁹

3.2.4 Accountability (practice)

Score 25%

Scoring Question To what extent do members of the judiciary have to report and be answerable for their actions in practice?

All judges provide speaking orders, and the practice is to give a detailed judgment with findings on each issue with reasons. Judgments/orders can be found on the Supreme Court and High Court websites.³⁹⁰ The judgments are pronounced in the language easily understood by the parties and/or their pleaders. Legal provisions regarding judgments are directory in nature and not mandatory and do not provide for consequences if not strictly adhered to, and are considered irregularities, provided they do not affect the merit of the case.³⁹¹ But judgments suffering from lack of judicious reasoning, failure to give issue wise findings or undue delays, are construed as no judgments in the eye of law and are set aside by the higher forums.³⁹²

385 The Judicial Officers Protection Act, 1850; Section 77 of Pakistan Penal Code;

386 Article 209, the Constitution of Pakistan, 1973;

387 Article 203, the Constitution of Pakistan, 1973

388 Dr Faqir Hussain, Registrar Supreme Court of Pakistan, Revised 15th February 2011, "The Judicial System of Pakistan" http://www.supremecourt.gov.pk/web/user_files/File/thejudicialsystemofPakistan.pdf

389 Article 212 of Constitution of Pakistan.

390 <http://www.supremecourt.gov.pk/web/page.asp?id=103>; http://lhc.gov.pk/?page_id=2128

391 Jumma Khan & others vs. MST Bibi Zenaba & others, PLD 2002 SC 823.

392 Mujib-ur- Rehman vs Zafar ali Khan, 2004 CLC 189 (B); Mollah Ejahar AM vs Govt Of East Pakistan and others, PLD 1970 SC 173; Muhammad Awais and others vs Fedration, 2007 SCMR 158; MST Feroza vs Anjumman-e- Ittehad-e- Baluchan & others, 2004 YLR 1535 Kar; Meaple Leaf Cement Factory Ltd vs Waryam etc, PLD 2006 LAH 506

The Supreme Judicial Council is designed and empowered to act independently in investigating complaints against the judiciary.³⁹³ Despite several allegations of misconduct by eminent lawyers and by the Supreme Court during appeals, the number of references against the judges is very low. Only six cases of misconduct were inquired into from 1947-2007 and most of the references were filed by the Military dictators. Out of these, two ended in removal, one in resignation and one resulted in exoneration of the Judge. One of the judges fled from the country to save his life as reference against him was filed during the third Martial Law in 1979. In 2007, a reference against the current Chief Justice was filed, which was declared void by the Supreme Court.³⁹⁴ In 2009, another reference was forwarded to the President against a High Court judge, "as he failed to clarify corruption and misconduct charges levelled against him."³⁹⁵

As far as sub ordinate judiciary is concerned, The High Court in its supervisory jurisdiction carries out annual and surprise inspections and calls for record of the subordinate courts.³⁹⁶ A Cell for Eradication of Corruption from Judiciary has been established supervised by Chief Justices of respective High Courts. After the enforcement of the National Judicial Policy (NJP) in 2009 and up to 2012, disciplinary actions were taken against 246 officials of the subordinate judiciary of three provinces,³⁹⁷ on charges of moral or financial corruption and breach of "code of conduct". However, no such case surfaced in the Baluchistan district judiciary. The major penalties imposed were dismissal, termination, removal and compulsory retirement from service and minor penalties of withholding annual increments, withholding promotions and censure, depending upon the gravity of misconduct.³⁹⁸

3.2.5 Integrity Mechanisms (law)

Score 75%

Scoring Question To what extent are there mechanisms in place to ensure the integrity of members of the judiciary?

Judges of the Superior courts are neither required to disclose their assets nor have to report them to the Supreme Judicial Council or Judicial Commission.³⁹⁹ The Judiciary is excluded from the purview of all the anticorruption laws and has its own mechanism.

393 Interview of Mr. Yasin Azad, President of Supreme Bar Association with researcher on 23/10/2012; Interview of Raja Muqit Nawaz Khan, Advocate Supreme Court with researcher on 16/10/12

394 Critical Study of the Factors Undermining independence of the Superior Judiciary in Pakistan, by Amanullah Shah, July 2008., A dissertation submitted to Gomal University Dera Ismail Khan in partial fulfillment of the requirements for degree of Doctor of Philosophy, <http://pr.hec.gov.pk/Thesis/565.pdf>

395 SJC forwards its report about Justice Soomro to President, By: AAJ News Archive, Uploaded: 3rd October 2009, Copyright Business Recorder, 2009, <http://www.aaj.tv/2009/10/sjc-forwards-its-report-about-justice-soomro-to-president/>

396 Dr Faqir Hussain, Registrar Supreme Court of Pakistan, Revised 15th February 2011, "The Judicial System of Pakistan" http://www.supremecourt.gov.pk/web/user_files/File/thejudicialsystemofPakistan.pdf

397 Punjab, Sindh and Khyber Pakhtunkhwa

398 246 officials of subordinate judiciary apprehended since enforcement of NJP, Masood Rehman, January 8, 2012 on 9:13 PM, Pakistan Today, <http://www.pakistantoday.com.pk/2012/01/08/news/national/246-officials-of-subordinate-judiciary-apprehended-since-enforcement-of-njp/>

399 Interview of Mr. Yasin Azad, President of Supreme Bar Association with researcher on 23/10/2012; Interview of Raja Muqit Nawaz Khan, Advocate Supreme Court with researcher on 16/10/12

The Supreme Judicial Council has laid down a code of conduct for Superior Judges, which though not exhaustive, contains guidelines for the conduct of Judges.⁴⁰⁰ Under Article IV of the Code, a Judge must refrain from hearing a case involving his own interest, or entering into or continuing any business dealing with any party to a case before him, where he has any connection with the parties or their lawyers or which might directly or indirectly benefit him or his near relatives or close friends. According to Article VI and VIII of the Code, a judge must avoid involvement in any financial or other obligations to private institutions or persons and should not receive any gifts, favours or entertainment offers that may embarrass him in the performance of his functions. Violation of code of conduct entails action by the Supreme Judicial Council.

Under Article 207 of the Constitution, 1973, a Judge of the Supreme Court or of a High Court after leaving his post, cannot hold any office of profit in the service of Pakistan before the expiration of two years after he has ceased to hold that office. The judge of a Supreme Court cannot plead or act in any Court or before any authority in Pakistan and that of a High Court, cannot plead or act in any Court or before any authority within its jurisdiction. According to the National Judicial Policy 2009, the chief justice or a judge of the superior court should refrain from accepting appointment as acting Governor of a Province and no retired judge of the superior court should accept appointment which is lower to his status or dignity including appointment as presiding officer of Banking Court, Customs Court, Administrative Tribunal, etc. As per the Policy, the retired judges of the superior judiciary are required to maintain the highest standards of decorum and voluntarily relinquish charge of such posts which are lower to their status so as to earn respect in public and uphold the principle of the independence of judiciary.⁴⁰¹

Judges cannot accept any funded work during the tenure of their services; however, there is no bar on a judge to accept any job in the private sector, after retirement or resigning from the judiciary.⁴⁰²

If during a trial/case a party feels that a fair and impartial inquiry or trial cannot be had in any Court, it can get the same transferred to another court, by applying to the higher forum and such application has to be decided within seven days.⁴⁰³

As per the Government Servants (Conduct) Rules 1966, the judges of the subordinate judiciary, are required to declare their assets at the time of their entry into service and then annually showing any increase or decrease of property.

400 Code of conduct to be observed by judges of the supreme court of Pakistan and of the high courts of Pakistan (supreme judicial council), notification, Islamabad, the 2nd September, 2009, (Framed by the Supreme Judicial Council under Article 128 (4) of the 1962, Constitution as amended up to date under Article 209 (8) of the Constitution of Islamic Republic of Pakistan 1973)..

401 National Judicial Policy, Revised Edition 2012, National Judicial (Policy Making) Committee, Published by: Secretariat, Law & Justice Commission of Pakistan,

402 Article 207(2) of the Constitution of Pakistan, 1973 .

403 Sections 326 and 328 of the Code of Criminal Procedure, 1898; section 24 of the Civil Procedure Code, 1908; National Judicial Policy, Revised Edition 2012, National Judicial (Policy Making) Committee, Published by: Secretariat, Law & Justice Commission of Pakistan

There are no uniform judicial codes of conduct prevalent for the subordinate judicial officers. Inquiry can be initiated against judicial officers under the Government Servants (Efficiency and Discipline), 1973 under Rules 3 for financial irregularities, corruption and living beyond means. Provisions relating to gifts and personal interests are the same as are applicable to all government/civil servants.

However, these rules primarily, were designed for the executive officers, and the same are silent about conduct of judicial officers in and outside the court.⁴⁰⁴ The Peshawar High Court has framed a code of conduct for subordinate judiciary,⁴⁰⁵ which has been adopted by the Lahore High Court as well.⁴⁰⁶

3.2.6 Integrity Mechanisms (practice)

Score 50%

Scoring Question To what extent is the integrity of members of the judiciary ensured in practice?

Regarding disclosure of assets, there are no particular laws dealing with asset declaration of the judiciary. All judges disclose their assets at the time of filing annual tax returns to the income tax department. However assets are neither scrutinized nor are published by any authority, and the declarations by subordinate judicial officers too are only looked into when an inquiry is ordered. For citizens the assets owned by the Judges and Judicial Officers remain undisclosed.⁴⁰⁷

There have been off and on demands for audit of Superior Judiciary's expenditure and public declaration of their assets, liabilities and taxes.⁴⁰⁸ It was also agreed in a Federal Cabinet meeting that the judges along with armed forces should declare their assets.⁴⁰⁹ According to a Public Accounts Committee report, 21 judges of the Supreme Court have received two plots each in expensive areas under government rules. But, the Supreme Court claims immunity under Article 68 of the Constitution, which says that the Parliament cannot discuss the conduct of judges.

In 2001, two judges of the High Court were found guilty of bias and misconduct by the Supreme Court, for being 'instrumental' and seeking advice from the head of an anticorruption agency, on the sentence of a political leader. On appeal, the sentence in the said case was set aside and sent for retrial. But the judges were not referred to the Supreme Judicial Council. They had to resign under public/media pressure.

404 Dr Faqir Hussain, Registrar Supreme Court of Pakistan, Revised 15th February 2011, "The Judicial System of Pakistan" http://www.supremecourt.gov.pk/web/user_files/File/thejudicialsystemofPakistan.pdf

405 Judicial ESTACODE, Second Edition, Revised & Enlarged, 2011; THE GOVERNMENT SERVANTS (CONDUCT) RULES, 1964

406 National Judicial Policy, Revised Edition 2012, National Judicial (Policy Making) Committee, Published by: Secretariat, Law & Justice Commission of Pakistan,

407 Interview of Raja Muqit Nawaz Khan, Advocate Supreme Court with researcher on 16/10/12; Global Integrity Report, 2008, Pakistan: Integrity Scorecard Report > Sub-Category:JudicialAccountability; <http://report.globalintegrity.org/Pakistan/2008/scorecard/44>

408 Judges in Pakistan Should Declare Their Assets

Posted on February 24, 2011, Who will judge the judges? by Huzaima Bukhari & Dr Ikramul Haq, By Alaiwah; <http://alaiwah.wordpress.com/2011/02/24/judges-in-pakistan-should-declare-their-assets/>

409 Generals, judges should declare assets, the Nation, August 16, 2012. <http://www.nation.com.pk/pakistan-news-newspaper-daily-english-online/national/16-Aug-2012/generals-judges-should-declare-assets>

Later, in 2007 one of them was appointed as the Attorney General of Pakistan, but resigned in 2008 when found involved in another alleged political/corruption controversy⁴¹⁰.

Since the implementation of the National Judicial Reforms 2009, things have been improving. A recent example of integrity has been set by the sitting Chief Justice of Supreme Court, who stepped down from the bench refusing hearing a case involving his son⁴¹¹. In 2009, the National Judicial Policy Making Committee (NJPMC) barred the Superior courts' judges from holding executive offices⁴¹². The Higher Courts too, have been quite active in monitoring the subordinate judiciary. For instance, the Lahore High Court directed all judicial officers of the subordinate judiciary in the province to declare their income and assets from 2011 to 2012 by 31st of July 2012.⁴¹³ A number of judges have been removed/reprimanded and proceeded against on grounds of misconduct and corruption charges. In some cases, orders were passed by the High Court to stop judges from conducting judicial work after finding them guilty of misusing judicial authority, dishonesty and corruption, in an inquiry conducted on complaints against them.⁴¹⁴

Role

3.3.1 Executive oversight

Score 50%

Scoring Question To what extent does the judiciary provide effective oversight of the executive?

There are two very important constitutional provisions that empower the superior judiciary to judicially review any executive, administrative or legislative action. Under Article 184(3) of the Constitution,⁴¹⁵ the Supreme Court has an original as well as suo moto jurisdiction to take action for the enforcement of Fundamental Rights in matters of public importance.

Similarly, under Article 199 of the Constitution⁴¹⁶ of Pakistan, a High Court can scrutinize any administrative order and issue a writ against a public functionary if it is contrary to law or is violative of Fundamental Rights guaranteed by the Constitution. Both the superior courts can quash any executive or government decision, or order an injunction or issue an order to act, or even annul an action already taken by any state authority which is contrary

410 Daily Times, Qayyum caught on tape confirming election rigging By Khalid Hasan, Saturday, February 16, 2008, http://www.dailytimes.com.pk/default.asp?page=2008%5C02%5C16%5Cstory_16-2-2008_pg7_57; Qayyum resigns as attorney-general, Nasir Iqbal, August 21st, 2008, <http://archives.dawn.com/archives/142389>

411 AG hurls allegations of misconduct at top judges, By Azam Khan Published: September 14, 2012, the Express Tribune, <http://tribune.com.pk/story/436417/ag-hurls-allegations-of-misconduct-at-top-judges/>

412 Tuesday, May 05, 2009, Superior courts' judges barred from holding executive office, By Masood Rehman, Daily Times, http://www.dailytimes.com.pk/default.asp?page=2009%5C05%5C05%5Cstory_5-5-2009_pg7_13

413 The Express Tribune, June 27th, 2012. Assessment: Lower court judges to declare assets, <http://tribune.com.pk/story/399580/assessment-lower-court-judges-to-declare-assets/>

414 See Section on : Accountability (practice); & LHC orders removal of two corrupt judges, Staff Report Sunday, 6 Nov 2011, Pakistan Today, <http://www.pakistantoday.com.pk/2011/11/06/news/national/lhc-orders-removal-of-two-corrupt-judges/>

415 Article 184, Part VII: The Judicature, Chapter 2: The Supreme Court of Pakistan Constitution of Pakistan, 1973. <http://www.pakistani.org/pakistan/constitution/part7.ch2.html>

416 Art. 199, Part VII: The Judicature, Chapter 3: The High Courts. Constitution of Pakistan, 1973, <http://www.pakistani.org/pakistan/constitution/part7.ch3.html>

to any law or if it violates any fundamental right.⁴¹⁷

Historically, the Superior Courts by conceding to, and validating unconstitutional military rules and extra constitutional executive actions, have been compromising their integrity and independence. Four elected National Assemblies were dissolved from 1988 to 1996 under Article 58(2)(b),⁴¹⁸ and in only one of the four dissolution cases, the court annulled the dissolution and restored the Assembly.⁴¹⁹ Though cautious in exercising these powers, as not to interfere in the authority of other organs of the state,⁴²⁰ the superior courts have been using these powers extensively and have interpreted the provisions quite liberally to make the provisions more accessible for public interest litigation and to accommodate aggrieved persons.⁴²¹

There are a wide variety of cases where relief has been granted to the litigants against arbitrary orders of the executive. Particularly, after the 'revival of judiciary' movement, the superior courts have adopted the judicial activism approach rather than judicial restraint. The Supreme Court questioned the executive on untouched issues, and took extensive actions against Executive excesses and in just one year, 6000 human rights cases were taken up by the Supreme Court.⁴²²

In Pakistan Steel Mills Case, the Supreme Court nullified the privatization sale of Pakistan's state-owned steel mills industry and blamed the government for selling a major national asset below its price.⁴²³ In another historical case, Pakistan Supreme Court nullified another executive order and declared the National Reconciliation Ordinance (NRO) unconstitutional. NRO granted amnesty to politicians and bureaucrats who were accused of corruption, money laundering, embezzlement, and terrorism between January 1, 1986, and October 12, 1999.⁴²⁴ Also, the Supreme Court took suo moto action on News clipping dated 4.6.2013, against the Parliamentarians with fake/bogus degrees.⁴²⁵

417 State of Emergency: General Pervez Musharraf's Executive Assault on Judicial Independence in Pakistan, N.C. J. INT'L L. & COM. REG. Vol. XXXV, 2010, <http://www.law.unc.edu/components/handlers/document.ashx?category=24&subcategory=52&cid=909>; Maryam Khan & Osama Siddique, The 2005 South Asian Earthquake: Natural Calamity or Failure of State? State Liability and Remedies for Victims of Defective Construction in Pakistan, 9 AuSTL. J. ASIAN. L. 187, 216 (2007), http://www.spearheadresearch.org/pages/documents/2005_South_Asian_Earthquake-Australian_Journal_of_Asian_Law.pdf

418 The superior courts' weak interpretation of Article 58(2)(b), a Constitutional provision that provides the President with unrestrained discretionary powers based on his subjective judgment, to dissolve the National Assembly; by inventing doctrine of necessity & revolutionary legality); Moulvi Tamizuddin case 1955 Federal Court 240; State v. Dosso (PLD 1958 SC (Pak) 533); Federation of Pakistan Vs. Haji Saifullah Khan (PLD 1989 SC 166), Ahmed Tariq Rahim Vs. Federation of Pakistan (PLD 1992 SC 646); Benazir Bhutto Vs. President of Pakistan (PLD 1998 SC 388), Zafar Ali Shah Vs. Pervez Musharraf (PLD 2000 SC 869).

419 Muhammad Nawaz Sharif v. President of Pakistan, P LD 1993 SC 473

420 Brig. (Retd.) Imtiaz Ahmed v. Government of Pakistan through Secretary, Interior Division, 1994 SCMR 2142, <http://ppd.pitb.gov.pk/index.php?q=system/files/1994%20SCMR%202142.pdf>

421 Judgment on the Constitutional Petition Challenging the Validity of Martial Law, Begum Nusrat Bhutto V. Chief of the Army Staff, PLD 1977 SC 657, <http://www.bhutto.org/Acrobat/Judgment%20on%20the%20constitutional%20petition%20challenging%20martial%20law.pdf>

422 State of Emergency: General Pervez Musharraf's Executive Assault on Judicial Independence in Pakistan, N.C. J. INT'L L. & COM. REG. Vol. XXXV, 2010, <http://www.law.unc.edu/components/handlers/document.ashx?category=24&subcategory=52&cid=909>; Maryam Khan & Osama Siddique, The 2005 South Asian Earthquake: Natural Calamity or Failure of State? State Liability and Remedies for Victims of Defective Construction in Pakistan, 9 AuSTL. J. ASIAN. L. 187, 216 (2007), http://www.spearheadresearch.org/pages/documents/2005_South_Asian_Earthquake-Australian_Journal_of_Asian_Law.pdf

423 Pakistan Steel Mills Case, 23-June-2006, Constitution Petition No. 9 of 2006 & Civil Petition Nos. 345 & 394 of 2006, <http://www.supremecourt.gov.pk/web/page.asp?id=281>

424 C.P.No.76 TO 80 OF 2007 59/2009 & C.A 1094 OF 2009 (NRO JUDGMENT), Dated: 16-December-2009, <http://www.supremecourt.gov.pk/web/page.asp?id=369>

425 C.M.A. NO.3470 OF 2013 IN C.M.A. NO.1536 OF 2013 IN CIVIL APPEAL NO.191-L & 409 OF 2010. http://www.supremecourt.gov.pk/web/user_files/File/CMA.3470of2013etc.pdf

District Judiciary also has the power to review public actions and to declare them void and illegal under section 42 of the Specific Relief Act. Under Order 27-A of the Civil Procedure Code, 1908, even the Civil Courts have the power to interpret the Constitution.

3.3.2 Corruption Prosecution

Score 25%

Scoring Question To what extent is the judiciary committed to fighting corruption through prosecution and other activities?

Independence of Judiciary and eradication of corruption are main features of Judicial Policy.⁴²⁶ Since the National Judicial Reforms of 2009, the Supreme Court has been very actively playing its role of guardian of the constitution and of fundamental rights. With wide powers conferred on it by the Constitution, the Supreme Court has suo moto been taking action against corrupt political ruling elite and government functionaries. The first landmark case was the invalidation of the most controversial National Reconciliation Ordinance (NRO), 2007 and ordering reopening of all the corruption cases against politicians and bureaucrats, including the sitting President.⁴²⁷

Though there is no provision of separate statistics on corruption prosecution, scrutiny of judicial records shows quite vigilant involvement of Superior courts in prosecuting the corrupt. By 2012, the Supreme Court had recovered USD 0.95 billion of corruption money.⁴²⁸ Statistics show that during non-functionality of an anti-corruption court in Karachi, Supreme Court took notice of the 1400 pending graft cases and took up important cases like Pakistan Steel Mills (PSM) which involved a loss of USD 0.21 billion to the state and National Insurance Company Limited (NICL) scam involving dubious purchases worth PKR. 5 billion. The Supreme Court took suo moto notice of both the scams on a letter by the Transparency International Pakistan (TIP).⁴²⁹

The Hajj Scam involving corruption in the Hajj arrangements is yet another case where the SC took suo moto notice and a federal minister is behind bars in the said case.⁴³⁰

In Rs. 83 billion Oil and Gas Regulatory Authority (OGRA) corruption case involving its former chairman, The Supreme court reprimanded the apex anti-corruption agency National Accountability Bureau (NAB), for not doing a good job. In the said case, the Supreme Court saved around Rs. 455 billion through its judgment in the Rental Power Plants (RPPs) case.⁴³¹

426 Independence of Judiciary, eradication of corruption main features of Judicial Policy: CJP, Wednesday, 01 May 2013 02:20 Posted by Imaduddin, Business Recorder, <http://www.brecorder.com/top-news/108-pakistan-top-news/117584-independence-of-judiciary-eradication-of-corruption-main-features-of-judicial-policy-cjp.html>

427 Vanderbilt Journal of Transnational Law, VOLUME 46 JANUARY 2013 NUMBER 1, "Gray Zone" Constitutionalism and the Dilemma of Judicial Independence in Pakistan, by Anil Kalhan

428 Corruption – III, September 10, 2012 ANJUM IBRAHIM, Business Recorder, <http://www.brecorder.com/top-stories/single/595/0/1235686/>

429 Graft cases pile as anti-corruption court vacant for a year, DAWN.Com Published 2012-04-01, <http://beta.dawn.com/news/707221/graft-cases-pile-as-anti-corruption-court-vacant-for-a-year>

430 Hajj scam verdict: 'Court ruling only applies to retired persons', By Anwer Sumra Published: February 8, 201, the Tribune, <http://tribune.com.pk/story/115646/hajj-scam-verdict-court-ruling-only-applies-to-retired-persons/>

431 World Justice Report exposes Pak anti-graft institutions, Ansar Abbasi, Friday, November 30, 2012, The NEWS, <http://www.thenews.com.pk/Todays-News-13-19168-World-Justice-Report-exposes-Pak-anti-graft-institutions>

PILLAR 4

Public Sector

Pillar 4: Public Sector

Summary

Pakistan, on independence, inherited a weak economy, inexperienced politicians but a professional civil Service which, with its steel framework filled the void created by the lack of experienced politicians.⁴³² The civilian bureaucracy being institutionally autonomous and constitutionally protected, played a major in Pakistan's policymaking after independence, but eroded gradually over the period of six decades, mainly on account of extreme politicization, periods of military rule, corruption and incompetent appointments.

Though, the terms and conditions including that of appointments/recruitments, seniority and promotions, postings and transfers, conduct and discipline, dismissals and terminations along with right of petition, representation and appeals in case of any grievance are governed by relevant Federal and Provincial Laws.⁴³³ However, in practice, the political and military factions on pretext of reforms to bring it under political control and oversight, opened up the gates for political interference and exploitation.

Laws for accountability, transparency and integrity of civil officers are in place but are not very effective,⁴³⁴ and public officials are perceived to be the most corrupt.⁴³⁵ The abundant misuse of discretionary powers goes unchecked and absence of monitoring mechanism alongwith lack of whistle blower protection laws, discourage reporting of corrupt practices.

The scores based on desk research and interviews are given in Table 6 below.

Table 6:
Percentage Scores of Indicators
41.7/100

Dimension	Indictors	Law	Practice
Capacity 50.0/100	Resources	-	50
	Independence	75	25
Governance 41.7/100	Transparency	50	25
	Accountability	75	25
	Integrity Mechanisms	50	25
Role 33.3/100	Education		25
	Cooperation		25
	Procurement		50

432 National Accountability Bureau, 2002, National Anti-corruption Strategy(NACS), <http://www.nab.gov.pk/Downloads/Doc/NACS.pdf>

433 Civil Establishment Code (ESTACODE), Pakistan Public Administration Research Center Management Services Wing Establishment Division, Islamabad. <http://www.establishment.gov.pk/gop/index.php?q=aHR0cDovLzE5Mi4xNjguNzAuMTM2L2VzdGFyLy4vZnJtRGV0YWlscy5hc3B4P29wdD1taXNjbGlua3MmYW1wO2lkPTY%3D>

434 Government Servants (Conduct) Rules, 1964, and Civil Servants Act, 1973.

435 Global Corruption Barometer,2013, Transparency International

Structure and Organizations

Under 1973 Constitution of Pakistan and its amendments, all Federal Ministries, Divisions, Provincial Departments and Institutions belong to the public sector. There are 39 ministries at the federal level and more than 300 federal departments and there is almost equal number of departments in each province in addition to numerous semi-government institutions. Public sector is the machinery that runs the state affairs and governs it under state laws. Civil servants are its actors and are responsible for good governance.⁴³⁶

Recently, under 18th amendment of 1973 Constitution of Pakistan, many federal subjects have been devolved and handed over to the provinces.⁴³⁷

There are numerous laws, ordinances, regulations and notification under which state affairs are run by the Prime Minister and the Chief Ministers.⁴³⁸

4.1 Capacity

4.1.1 Resources (Practice)

Score 50%

Scoring Question To what extent does the public sector have adequate resources to effectively carry out its duties?

There is sufficient amount of budget earmarked for public sector annually. All concerned ministries forecast their own budgets for development and non-development projects. The authority lies with the finance department to make allocations but as per practice, ministries on their own, cut and control budgetary allocations for institutions under their jurisdiction. Payrolls of civil servants are designed according to their grades, but the salary structure of the civil servants are too low to maintain a decent standard of living.⁴³⁹

436 Chapter 1, Part XII, Constitution of Pakistan, and Civil Servants Act, 1973.

437 Eighteenth and nineteenth Amendments to the Constitution of Pakistan, 1973 on 19/4/2010 and 1/1/2011 respectively by the President of Pakistan

438 Civil Services Tribunal Act, 1973, Government Servants (Efficiency and Discipline) Rules, 1973 Revised Leave Rules, 1980

439 Interview Mr. Orya Maqbool Jan, S&GAD, Govt. of the Punjab, Civil Secretariat, Lahore and journalist, with Researcher on 16/1-/2012.

In 2012, young doctors throughout the nation protested against their low wages and service structure. Recently, Civil service Academy also delayed salaries of civil service officers.⁴⁴⁰

The public sector has some well-qualified civil servants who pass through short courses, tests, workshops and various on-job training courses organized by National Institute of Public Administration (NIPA)⁴⁴¹ and Pakistan Administrative Staff College (PASC), National School of Public Policy (NSPP) and Civil Service Academy (CSA).⁴⁴²

Policies regarding service rules for civil servants are in place but are not fully followed.⁴⁴³ Professional competence has not improved due to cuts in budgetary allocations for professional training. However, World Bank has financially supported Government of Pakistan on Public Sector Building Project (PSBP) and the PSBP, 2004 has improved resources for the public sector capacity and has helped in professional development of civil servants.⁴⁴⁴

4.1.2 Independence (Law)

Score 75%

Scoring Question To what extent is the independence of the public sector safeguarded by law?

According to the Constitution of Pakistan,⁴⁴⁵ civil services at Federal and Provincial level are to be regulated by Acts of Parliament⁴⁴⁶ and Acts of Provincial Assemblies⁴⁴⁷ respectively. All the terms and conditions including that of appointments/recruitments, seniority and promotions,⁴⁴⁸ postings and transfers,⁴⁴⁹ conduct and discipline,⁴⁵⁰ along with right of petition, representation and appeals in case of any grievance⁴⁵¹ are governed by relevant Federal and Provincial Laws, contained in the Civil Establishment Code (ESTACODE), a compendium of numerous laws, rules, regulations and operating procedures.⁴⁵² Candidates can enter the bureaucracy through the Central Superior Services (CSS) examination, an annual nationwide competition conducted by the Federal Public Service Commission (FPSC) and Provincial Public Service Commissions (PPSC). Constitutionally mandated body, FPSC, is responsible for direct recruitment of officers for all federal posts, of and above a specified level of seniority, after conducting tests, examinations and interviews. PPSCs are responsible for recruitments at provincial level.⁴⁵³

440 Ministry of Finance, Government of Pakistan." Highlights of Budget-2012-13". www.brecorder.com<top news>front top news, Interview Mr. Orya Maqbool Jan, S&GAD, and Govt. of the Punjab, Civil Secretariat, Lahore and journalist, with Researcher on 16/1-/2012.

441 National Institute Public Administration (NIPA), Lahore, Pakistan

442 The Civil Service Academy, Government of Pakistan, Lahore. www.csa.edu.pk

443 Interview of Dr. Muhammad Afzal, Director General, Jawaid Azfar Computer Centre, Planning Commission, Govt. of Pakistan, Islamabad with the Researcher on 10/9/2012

444 World Bank Report No. 28391, Public Sector Building Project, 2004 p 1-90.

445 Articles 240 and 241 of the Constitution of Pakistan, 1973

446 The Civil Servants Act of 1973

447 World Bank Report No. 28391, Public Sector Building Project, 2004 p 1-90.

448 Civil Servants (Appointment, Promotion and Transfer) Rules, 1973

449 Section 10 of the Civil Servants Act of 1973

450 Government Servants (Conduct)Rules, 1964; and Government Servants (Efficiency and Discipline) Rules, 1973;

451 Section 22 of the Civil Servants Act of 1973 and the Civil Servants(Appeal) Rules, 1977

452 Civil Establishment Code (ESTACODE), Pakistan Public Administration Research Center Management Services Wing Establishment Division, Islamabad. <http://www.establishment.gov.pk/gop/index.php?q=aHR0cDovLzE5Mi4xNjguNzAuMTM2L2VzdGFiLy4vZnJtRGV0YWlscy5hc3B4P29wdD1taXNjbGlua3MmYW1wO2lkPTY%3D>

453 Article 242, Constitution of Pakistan, 1973; Section 3 of the Federal Public Service Commission (Composition and Condition of Service)Regulations, 1978; 81 Section 3, Federal Public Service Commission (Functions)Rules, 1978.

In addition to direct recruitments, there are three other modes of induction in the civil bureaucracy. A 10% direct induction of military, without taking any test or the CSS examination, through advertisements against listed vacancies in ministries and departments and through adhoc recruitment by departments.⁴⁵⁴

Promotions in the bureaucracy are required to be based on seniority, merit, unblemished disciplinary record and on performance evaluation reports (PERs). Departmental Promotion Committees headed by the Secretary is the authority for promotions of BPS-17 18 posts, the Central Selection Board for posts of BS 19 and above, whereas, the Prime Minister decides on promotions to BPS-22.⁴⁵⁵

No public servant can be removed or terminated from service, or reduced in rank, unless he has been convicted on a criminal charge, or is a security threat to Pakistan, or has been found indulging in nepotism, favouritism, victimization and wilful abuse of office or has been unable to satisfactorily complete probationary period and has failed to pass any examination, test or training. Moreover, no such order can be taken until he has been given a reasonable opportunity of showing cause against the proposed action.⁴⁵⁶ These protections were constitutionally granted, but were taken away in 1973.⁴⁵⁷ However, to protect civil servants from arbitrary decisions of their departmental authorities, there are quasi-judicial authorities i.e. the Service Tribunals at Federal and Provincial level, specifically created by the Constitution,⁴⁵⁸ to hear appeals made by civil servants against departmental orders on issues relating to terms and conditions of their service or on disciplinary matters. These administrative courts, in exercise of their exclusive jurisdiction have the authority to set aside, confirm or modify any departmental injustice. There also exist Provincial Services Tribunals, with equivalent jurisdiction and functions, to resolve service matters of public sector employees at provincial level.⁴⁵⁹ Civil servants can also file writ petitions in the High Courts under Article 199 of the Constitution of 1973.

Civil officers and their dependent family members are prohibited from taking part in political activity, or from being a member of any political party or from taking part in, any political movement in Pakistan.⁴⁶⁰ Similarly, they are barred from using political or other outside influence, directly or indirectly, during their course of employment.⁴⁶¹

454 Crisis Group Report, Reforming Pakistan's Civil Service, Asia Report N°185 – 16 February 2010

455 Section 9 of the Civil Servants Act (CSA) 1973, read with rules 7, 7A and 8 of the Civil Servants (Appointments, Promotions and Transfers) Rules 1973 as well as the promotion policies amended up to date.

456 Chapter II. – Terms and Conditions Of Service of Civil Servants, the Civil Servants Act of 1973, Civil Establishment Code (ESTACODE)

457 Crisis Group Report, Reforming Pakistan's Civil Service, Asia Report N°185 – 16 February 2010

458 Article 212, the Constitution of Pakistan, 1973

459 Section 4(1) & 5(1), Service Tribunals Act of 1973.

460 Rule 24, Government Servants (Conduct) Rules, 1964

461 Rule 29, *ibid.*

4.1.3 Independence (Practice)

Score 25%

Scoring Question To what extent is the public sector free from external interference in its activities?

Pakistan's Public Sector has eroded in the last six decades due to politicization, periods of military rule, corruption and incompetent appointments. The civilian bureaucracy had played a major role in Pakistan's policymaking after independence, and the elected politicians had no scope for interference back then, as it was institutionally autonomous and constitutionally protected. The first political attack on the bureaucracy came in 1973, when the then elected Prime Minister, removed the constitutional shield and brought civil bureaucracy under political control through administrative reforms, and compulsorily retired approximately 1,300 civil service officers on flimsy charges of incompetence and corruption and directly recruited 5,000 officials of various ranks and grades, including 83 military officers to senior positions, through a policy of 'lateral recruitment'.⁴⁶²

The military regimes have also tried to bring bureaucracy under its control either by reserving 50% posts for ex-service men, or through contracts. The 1980s military regime institutionalized and permanently entrenched the military's presence in the bureaucracy by reserving 10% of senior vacancies for retired/released military officers and also employed them on contractual basis, without taking any test or the CSS examination. Yet in the next nine years rule of the last military regime ending in 2008, army monitoring teams of 3500 military personnel were established to supervise civil administration at all levels in the name of accountability, governance and reducing corruption.⁴⁶³ Consequently, all the major civil service institutions, semi government and autonomous organisations as well as public sector industries were headed by retired military officers, including the Federal Public Service Commission, civil service training institutions and the Civil Service Reform Unit responsible for overseeing recruitment and training.⁴⁶⁴

Instead of bringing it under political control and oversight, the reforms and measures have opened up the gates for political interference and exploitation. All the governments so far, whether democratic or undemocratic, have wanted their loyalists in key positions to promote their policies. In 2009, the then Prime Minister, promoted 51 officers violating all seniority provisions.⁴⁶⁵

⁴⁶² Crisis Group Report, Reforming Pakistan's Civil Service, Asia Report N°185 – 16 February 2010

⁴⁶³ *ibid.*

⁴⁶⁴ Andrew Wilder, 2009, The Politics of Civil Service Reform in Pakistan, *Journal of International Affairs* 2009 Page 19-37, Vol. 63, No. 1, Fall/W

⁴⁶⁵ DAWN.com, 2009, 51 officers promoted to grade 22, interior, information secretaries, CCP chief replaced: Massive reshuffle in bureaucracy, Published on 5th September, 2009, <http://www.dawn.com/news/857055/51-officers-promoted-to-grade-22-interior-information-secretaries-ccp-chief-replaced-massive-reshuffle-in-bureaucracy>

Promotions, transfers, postings and subsequent reinstatement, with the change of governments, have become arbitrary and very common, leading civil servants to file petitions. Moreover, the FPSC and the Superior Courts keep a check on these political manoeuvres. For example, in 2013, recruitments in the two major hospitals of the federal capital, just ahead of general elections were declared as illegal by FPSC, as the posts were not advertised as per the rules without taking FPSC on board and without informing the Establishment Division and Finance Division which is a mandatory requirement.⁴⁶⁶ In another case, a writ petition was filed in the High Court challenging 116 appointments in Ministry of Foreign Affairs on political basis and on the directives of former foreign minister.⁴⁶⁷

Again in 2013, the Supreme Court, on petition, had to intervene and annul the promotions of officers to BS-21 against 88 vacancies, for being unlawful and also, directed the government to conduct a fresh exercise of making the promotions. The notification about promotion of all officers issued in pursuance of the recommendations of the Central Selection Board (CSB) were set aside. The judgment also expressed concern over the lack of protection to civil servants in the 1973 constitution, and suggested to the government to amend civil service laws to free civil servants from any pressure for the purpose of assisting the executive in discharging its functions as well as maintaining the rule of law.⁴⁶⁸

4.2 Governance

4.2.1 Transparency (Law)

Score	50%
Scoring Question	To what extent are there provisions in place to ensure transparency in financial, human resource and information management of the public sector?

At the time of recruitment, every Government/civil servant is bound to make a declaration to the Government, of all immovable and movable properties including shares, certificates, securities, insurance policies and jewellery having a total value of approximately USD 470 or more belonging to or held by him or a member of his family. Also, a Government servant, when he is so required by Government by a general or special order, furnish information as to his assets disclosing liquid assets and all other properties, immovable and expenses during any period specified by such order in the form specified therein. He also shall submit to the Government, an annual return of assets in the month of December showing any increase or decrease of property as shown in the last annual return.⁴⁶⁹

⁴⁶⁶ Usman Manzoor, Hurried political appointments illegal: FPSC, the NEWS, Friday, January 11, 2013, <http://www.thenews.com.pk/Todays-News-13-20175-Hurried-political-appointments-illegal-FPSC>

⁴⁶⁷ Shahid Rao, IHC moved against political appointments in FO, the Nation, May 27, 2013, <http://www.nation.com.pk/editors-picks/27-May-2013/ihc-moved-against-political-appointments-in-fo>

⁴⁶⁸ Nasir Iqbal, SC calls for changes in civil service laws, DAWN.com, 4th October, 2013, <http://www.dawn.com/news/1047302/sc-calls-for-changes-in-civil-service-laws>

⁴⁶⁹ Rules 12 and 13, Government Servants (Conduct) Rules, 1964

Civil servants have to file returns according to the standardized forms i.e. (Declaration of Income and Assets Form). However there are no laws for mandatory cross-verification of declarations,⁴⁷⁰ neither is there any provision in law that specifies what type of content examination should be conducted⁴⁷¹ For non-compliance, the civil servants may only face administrative sanctions.

People's right to know was constitutionally acknowledged as one of the fundamental rights in 2010.⁴⁷² Pakistan ranks 66th among 90 countries, in the 2013 Right to Information ranking (RTI),⁴⁷³ and it was the first country in South Asia to introduce RTI legislation through Freedom of Information (FOI) Ordinance in 1997, which later on was replaced with the FOI in 2002.⁴⁷⁴ It is applicable at the federal level and has also been replicated by the provinces..⁴⁷⁵

Under the existing laws, any citizen can seek any information or ask for record from any public body, except for information categorized as 'exempt from disclosure'. The requested information has to be provided within 21 days, otherwise the requester can complain to the head of the public body, and subsequently to the Federal Ombudsman.⁴⁷⁶ However, the Right to Information Act, 2013 at federal level is in the making,⁴⁷⁷ which is more specific, has shorter time frames for responses, has an Information Commission body as opposed to the Ombudsman at provincial level and there is a penalty upon the officials for denying requests for no good reason.⁴⁷⁸

To introduce greater transparency and public disclosure, the Freedom of Information Ordinance 2002 delineates several key responsibilities of the public bodies, such as to maintain all their records, both manually and in computerized form, and make them accessible through a networked facility throughout the country. They also are directed to publish acts, regulations, manuals, orders and other rules that have a force of law. The law allows the public to have access to all government transactions, expenditures, contracts, final orders and decisions. But, the contents of files, minutes of meetings and any record declared as classified is exempt from disclosure. FOI stresses public bodies to encourage and facilitate prompt and low cost, disclosure of information, and to appoint a Designated Officer, a senior officer not below BPS 19,⁴⁷⁹ for ensuring easy public access to information.⁴⁸⁰

470 Interview Mr. Orya Maqbool Jan, S&GAD, Govt. of the Punjab, Civil Secretariat, Lahore and journalist, with Researcher on 16/1-/2012.

471 Maira Martini, Asset declaration regimes in selected Asian countries, 2 May 2013 Number: 381, U4 Expert Answer, Transparency International.

472 via Article 19-A, 18th Amendment in 2010

473 Global Right to Information Rating, 2013; http://www.rti-rating.org/view_country.php?country_name=Pakistan

474 Right to information, <http://www.foiapakistan.com/right-to-information.html>

475 Umar Cheema, KPK info bill a catalyst for change, the NEWS, Tuesday, August 20, 2013 <http://www.thenews.com.pk/Todays-News-2-196823-KPK-info-bill-a-catalyst-for-change>

476 Freedom of Information Ordinance, 2002, Balochistan Freedom of Information Act 2005; Sindh Access to Information Ordinance of 2006; draft "The Punjab Freedom of Information Act 2012

477 The Express Tribune, June 2013, Pakistan Right to Information Act, 2013, <http://tribune.com.pk/story/564305/right-to-information-act-2013/>

478 BOLOBHI, FAQ: Freedom of Information, <http://bolobhi.org/resources/press-kit/faq-freedom-of-information/>

479 The Freedom of Information Rules, 2004

480 the Freedom of Information Ordinance 2002

In case of denial, the applicant, can file a complaint with the head of the public body and on failing to get the requested information from him within the prescribed time may file a complaint with the Ombudsman or for tax related matters to the Federal Tax Ombudsman, who may, after hearing both sides, direct the designated official to give the information or, as the case may be, the copy of the record or may reject the complaint.⁴⁸¹

The Ombudsmen have the power to make binding orders. Officials that destroy records with the intention of preventing disclosure can be fined and imprisoned for up to two years. The Ombudsman can fine requesters USD 94 for making “frivolous, vexatious or malicious” complaints.⁴⁸²

As far as vacancies in the public sector are concerned, they are handled by FPSC and PPSCs. The Commissions ensure that all recruitments for the civil service are carried out on merit in a fair and transparent manner by providing equal opportunities to all citizens through widely circulated advertisements, and by encouraging impartial and objective competition.⁴⁸³

Public procurement in Pakistan is regulated by the Public Procurement Regulatory Authority (PPRA),⁴⁸⁴ and as per PPRA Rules 2004, all procuring agencies have to maintain a record of their respective procurement proceedings respect to purchase of goods, works and services, along with all associated documentation for a minimum period of five years.⁴⁸⁵ As soon as either the bids are accepted and contract awarded, or procurement proceedings are terminated without resulting in a contract, any person may, on request, obtain the records aforementioned, and the procuring agency is bound to make all documents related to the evaluation of the bid and award of contract public. The procuring agency can withhold disclosure, with permission of the Authority, only if such disclosure is related to the award of a contract⁴⁸⁶ that is proprietary in nature or where the procuring agency is convinced that such disclosure shall be against the public interest.⁴⁸⁷ Procurement opportunities of USD 0.02 million have to be advertised on PPRA website and all procurement opportunities over USD 0.02 million have to be advertised on the Authority’s website as well as in other print media or newspapers having wide circulation. The advertisement in the newspapers shall principally appear in at least two national dailies, one in English and the other in Urdu.⁴⁸⁸ All procuring agencies whether within or outside Pakistan are bound to post contract awards over USD 0.47 million on PPRA™s website on the prescribed proformas.⁴⁸⁹ Procuring agencies are required to use open competitive bidding as the principal method of procurement for the procurement of goods, services and works. Any company found indulging in corrupt or fraudulent practices in relation to public procurement are legally barred and blacklisted from future participation.⁴⁹⁰ The Provincial Procurement Regulatory Authorities regulate procurements at provincial level in the same manner.

481 S.3, 12- 19, *ibid.*

482 Ss. 20&21, *ibid.*

483 Federal Public Service Commission, Annual Report 2012; Civil Servants (Appointments, Promotion and Transfer) Rules 1973 are in place for proper appointment procedures

484 Under The Public Procurement Regulatory Authority Ordinance, 2002.

485 R.4., Public Procurement Regulations, 2008

486 R 5., Public Procurement Regulations, 2008

487 Rules 46 & 47, the Public Procurement Rules, 2004.

488 R.12, Public Procurement Rules, 2004

489 R.7., Public Procurement Regulations, 2008

490 R.19-21., Public Procurement Rules, 2004

Recently, SECP (Security Exchange Commission of Pakistan) through SRO 180, {/2013} on 8th March 2013 has notified governance rules for Public Sector Companies.⁴⁹¹

4.2.2 Transparency (Practice)

Score 25%

Scoring Question To what extent are the provisions on transparency in financial, human resource and information management in the public sector effectively implemented?

The present FOI Ordinance is comparatively a weak law of limited scope, wherein, a lot of information and many public bodies are exempted. Many public sector institutions still have very poor record keeping systems and the mechanism is ineffective.⁴⁹² There is lack of awareness amongst the populace and the procedure is complicated.⁴⁹³ Absence of any penalty for denying a request or ignoring it, long waiting time for responses, and possibility of being fined discourage citizens from pursuing for information. According to a nation-wide survey conducted by an NGO, ended up finding that only two out of 54 departments approached, provided the required information. 25 departments, responded positively only after Ombudsmen's intervention. 'Secrecy is the norm and provision of information is an exception', is the general perception, as government officials do not provide information.⁴⁹⁴ Approximately 1500-2000 freedom of information (FOI) requests have been filed between the promulgation of Ordinance in 2002, as of 2013. Most requests took one year or so to be attended to and that too through the Ombudsman's office.⁴⁹⁵

As far as declaration of assets by civil servant is concerned, implementation and enforcement of the law is more difficult since asset declarations submitted by them are confidential and therefore not available to the public.⁴⁹⁶ Since, there is no independent agency that handles asset declarations, responsibility, thus lies with the respective ministries and the government agencies for merely receiving and enforcing declaration from their officials. But these annual declarations may only be looked into, if a government official faces inquiry for corrupt practices.⁴⁹⁷

The information regarding public procurement tenders, bidding, contracts are available on PPRA website.⁴⁹⁸ Similarly, in observance of the PPRA Rules, various procuring agencies reported the firms which they have blacklisted permanently or temporarily to PPRA, and the list of such black listed firms too can be found on PPRA website for public information.⁴⁹⁹

491 http://www.secp.gov.pk/CG/SRO_180_PublicSectorCompanies_CGRules_2013.pdf

492 World Bank Workshop: 'Freedom of Information in Pakistan: Drawing on International Experience', Thursday 19 June 2008

493 Make a FOIA Request, <http://foiapakistan.com/request.html>

494 Ansar Abbasi, NGO exposes farce of freedom of information law, the NEWS, Thursday, June 28, 2012, <http://www.thenews.com.pk/Todays-News-13-15658-NGO-exposes-farce-of-freedom-of-information-law>

495 BOLOBHI, FAQ: <http://bolobhi.org/resources/press-kit/faq-freedom-of-information/>

496 <http://www.agidata.org/pam/ProfileIndicator.aspx?c=156&i=10981>

497 Huzaima Bukhari and Dr Ikram ul Haq, "Of asset disclosures and transparency", Monday, December 12, 2011 The NEWS(e-paper), 2011, <http://images.thenews.com.pk/12-12-2011/ethenews/e-81784.htm>

498 <http://www.ppra.org.pk/>

499 Black Listed Firms, *ibid*.

As far as transparency in hiring human resource is concerned, the Federal Public Service Commission (FPSC), annually advertises and declares examinations for recruitments to all civil posts. During 2012, it processed 328 cases of recruitment involving 2012 positions 202 cases were finalized and 929 nominations were issued.⁵⁰⁰

4.2.3 Accountability (Law)

Score	75%
Scoring Question	To what extent are there provisions in place to ensure that public sector employees have to report and be answerable for their actions?

Since independence in 1947, numerous measures have been taken to tackle corruption, including variety of laws and creation of almost 34 federal and provincial public accountability institutions at all levels of government.⁵⁰¹ The legal framework to deal with corruption in Pakistan consists of the Pakistan Penal Code (PPC),⁵⁰² the Prevention of Corruption Act (PCA)⁵⁰³ and the National Accountability Ordinance (NAO).⁵⁰⁴ The federal organizations authorized to penalize government officials for corrupt acts are the National Accountability Bureau (NAB),⁵⁰⁵ the Federal Investigation Authority (FIA)⁵⁰⁶ and the Anti-Corruption Establishments (ACEs),⁵⁰⁷ at provincial level, to investigate corruption by public officials. Citizens can also file complaints against any injustice done to them through maladministration on the part of a federal agency or a federal government official, with the Federal/Provincial Ombudsman,⁵⁰⁸ as the case maybe.

All public sector officers are answerable to their relevant higher authorities if they are guilty of misconduct or corruption and have to face minor and major penalties, depending upon the gravity of misconduct, of censure, withholding, of promotion or increment, stoppage, for a specific period, at an efficiency bar in the time scale, recovery from pay of the whole or any part of any pecuniary loss cause to Government by negligence or breach of orders, reduction to a lower post or time-scale, compulsory retirement, removal from service and dismissal from service, where dismissal from service disqualifies for future employment.⁵⁰⁹

500 Annual Report 2012, The Federal Public Service Commission (FPSC).

501 Daniyal Aziz, 'Anticorruption and its Discontents Anti-corruption in Post-Independence Colonial Bureaucracies', Prepared for presentation at IPMN conference: Innovations in Public Management for Controlling Corruption 27-29 June 2012 Honolulu, Hawaii, p.3

502 PPC 1860 (Sections 160-165) is the earliest law against corruption that still exists and corruption therein, is defined as taking gratification, dishonest misappropriation, forgery, breach of trust, cheating etc

503 Prevention of Corruption Act of 1947 (PCA)

504 Under the National Accountability Ordinance of 1999 (NAO)

505 National Accountability Ordinance of 1999 (NAO)

506 The FIA is a national investigative agency with a wide role in anti-terrorism, anti-corruption, human trafficking, and copyright infringement policing. The FIA was established in 1975 in accordance with the FIA Act 1974 and its work to some extent, overlaps with the work of the National Accountability Bureau (NAB)

507 E.g. The [Punjab] Anti-Corruption Establishment Ordinance, 1961, (W.P. Ordinance XX of 1961)

508 Established under the President Order I Of 1983

509 Sections 3&4 Government Servants (Efficiency and Discipline) Rules, 1973, and FIA Act, 1974

No whistle blowing laws exist in Pakistan for protection of civil servants and private sector employees, who report cases of corruption from recrimination. However, the National Accountability Ordinance provides for witness protection and requires the Chairman NAB or the Court to take necessary measures for the safety, security and protection of witnesses and their families, as per the circumstances.⁵¹⁰ NAB provides an anti-corruption reporting telephone service,⁵¹¹ whereas, Ombudsman provides an online corruption reporting mechanism along with access to downloadable complaints forms.⁵¹²

Upon receipt of a complaint, or on its own accord, the Chairman of NAB, or any officer on his authorization can refer the matter for inquiry or investigation. The proceedings are carried out according to the Criminal Procedure, 1898 (Act V of 1989), and NAB has all the powers of an officer-in-charge of a Police Station, including power to arrest or call for attendance of any person and call for any evidence.⁵¹³

Citizen's complaints⁵¹⁴ are accepted by Ombudsmen in person, by correspondence or by email without fear and favour, who on receipt of complaint, acts as a civil court, and has powers to issue and enforce subpoenas, to call for documents and evidence. However, the ombudsman is not empowered to investigate cases related to defence or service matters, nor has the power to impose penalties to offenders. The Ombudsman Office can only pass on its recommendations to the concerned departments.⁵¹⁵

Specific regulatory framework⁵¹⁶ for public procurement in Pakistan was set up in 2003, with the of establishment of Public Procurement Regulatory Authority (PPRA) and the Public Procurement Rules by PPRA in 2004 at Federal and later on at Provincial levels. According to the Rules, a bidder if aggrieved by any act of the procuring agency, after submission of his bid, can lodge a written complaint within 15 days after the announcement of the bid evaluation report. On such a complaint, the procuring agency has to constitute a committee of odd number of members, which shall investigate and decide upon the complaint within 15 days. Any bidder not satisfied with the decision of the committee of the procuring agency may lodge an appeal in the relevant court of jurisdiction.⁵¹⁷

510 Sec. 31 E, NAO, 1999.

511 <http://www.nab.gov.pk/contacts.asp>

512 <http://www.mohtasib.gov.pk/gop/index.php?q=aHR0cDovLzE5Mi4xNjguNzAuMTM2L3dhZmFxaW1vaC9mcm1EZXRhaWxzLmFzcHhG%2Fb3B0PW1pc2NsaW5rcyZpZD0xNw%3D%3D>

513 Section 18 & 19, National Accountability Bureau Ordinance, 1999

514 <http://www.mohtasib.gov.pk/gop/index.php?q=aHR0cDovLzE5Mi4xNjguNzAuMTM2L3dhZmFxaW1vaC9mcm1EZXRhaWxzLmFzcHhG%2Fb3B0PW1pc2NsaW5rcyZpZD0xNw%3D%3D>

515 Wafaqi Mohtasib (Investigation and Disposal of Complaints) Regulations, 2003, <http://www.mohtasib.gov.pk/gop/index.php?q=aHR0cDovLzE5Mi4xNjguNzAuMTM2L21vaHRhc2liL3VzZXJmaWxlczEvZmlsZS9Nb2h0YXNpYi9yZWd1bGF0aW9ucy9pZGNYMjAwMy5wZGY%3D>

516 Public Procurement Regulatory Authority Ordinance 2002; Public Procurement Rules 2004; Public Procurement Regulations 2008; Consultancy Services Regulations 2010

517 Rule 48, Public Procurements Rules, 2004

The PPRA neither has mandate nor the capacity to examine all procurements transaction-wise. All it can do is to monitor the procurement process, identify violations and send recommendations for changes to procuring agencies. It can also monitor overall performance of procuring agencies and make recommendations for improvements in their institutional set up, provide and coordinate assistance to procuring agencies for developing and improving their institutional framework and public procurement activities, submit reports to the Government in respect of public procurement activities of procuring agencies.⁵¹⁸ The audit of procurement is the duty of the Auditor General of Pakistan and mis-procurements are reported to the Public Accounts Committee (PAC) for necessary action.⁵¹⁹ Under the law, AGP has full access to all financial records and have the power to audit accounts annually of all public sector institutions and report it to the Public Accounts Committee of the National Assembly of any misuse of finances.⁵²⁰ In addition to AGP and PAC, NAB also under its preventive mandate require from all Ministries, Divisions and Attached Departments of the Federal Government, all departments of Provincial and local governments, statutory corporations or authorities established by the Federal Government or Provincial Government and holders of public office to furnish to NAB a copy of any contract, entered into by such bodies as the case may be, copy of contracts of the minimum monetary value of USD 0.47 million or more.⁵²¹

4.2.4 Accountability (Practice)

Score	25%
Scoring Question	To what extent do public sector employees have to report and be answerable for their actions in practice?

518 Section 5., Public Procurement Regulatory Authority Ordinance, 2002

519 Mian Abrar, Large-scale irregularities in PPRA, Pakistan Today, February 12, 2012, file:///D:/Downloads/large-scale-irregularities-in-ppra.htm

520 Accountant General of Pakistan (AGP), ordinance, XXIII, 2001; Ministry of Law, Justice, Human Rights & Parliamentary Affairs, Government of Pakistan, Islamabad.

521 S.33 B, NAO,1999.

A Civil Servant is answerable to his immediate supervisor and upwards to the secretary who, in his capacity as principal accounting officer, is accountable to the minister and to the parliament. However, Several factors such as weak standard management systems and procedures, the failure to regularly upgrade rules, inadequate training, meritless appointments, poor values, unchecked discretionary powers, and lack of follow up on complaints, break the chain of accountability.⁵²² Corruption is rampant in all sectors, be it health, education, taxation, law enforcement or power sector etc., however, 'sometimes' it is taken notice of, and the public sector organizations do initiate cases against their own officers. But the number and the level of alleged corruption is not proportionate to the actual amount of prevalent corruption.⁵²³

NAB, though is supposed to provide protection to witnesses and complainants, who report through the online/telephone reporting system, but in practice, the information about the complainant is revealed in most of the cases.⁵²⁴ Cases against corrupt officials are filed and investigated against by NAB, FIA and ACEs, including cases against high level government functionaries. The data are available in their annual reports and on official websites.⁵²⁵ Recently, the Oil and Gas Regulatory Authority (OGRA) chief is being investigated against, by NAB for misconduct and corruption in the case of wrongful issuance of compressed natural gas (CNG) station licenses.⁵²⁶

NAB too, under its mandate exercises its powers and keeps a check on public procurement contracts and contract Evaluation Form is available on its website.⁵²⁷ NAB has been arresting government officials for their alleged embezzlement in the procurement process⁵²⁸ and also probes into procurement contracts in case of suspected violations.⁵²⁹

4.2.5 Integrity Mechanisms (Law)

Score	50%
Scoring Question	To what extent are there provisions in place to ensure the integrity of public sector employees?

523 Sohail Sarfaraz, Issuance of bogus sales tax refunds: disciplinary action against two tax men sought, BUSINESS Recorder, December 31, 2012, <http://www.brecorder.com/taxation/181:pakistan/1274640:issuance-of-bogus-sales-tax-refunds-disciplinary-action-against-two-tax-men-sought/>; The Nation, 8 Lesco men held for embezzling millions, December 22, 2010, <http://www.nation.com.pk/lahore/22-Dec-2010/8-Lesco-men-held-for-embezzling-millions>; The NEWS, Lesco takes notice of corruption, Wednesday, May 29, 2013, <http://www.thenews.com.pk/Todays-News-5-180483-Lesco-takes-notice-of-corruption>; Corruption in Chitral Times.com, Pakistan's health sector: an emerging issue, January 22, 2012, <http://www.chitraltimes.com/english13/newsen-g29b.htm>

524 Business Anti-corruption Portal, <http://www.business-anti-corruption.com/country-profiles/south-asia/pakistan/show-all.aspx>

525 E.g. The Quarterly Update on NAB Operations, 2013, <http://www.nab.gov.pk/Downloads/NAB%20Update/NABUpdateJune13.pdf>; NAB Annual Report 2012 etc.; 'Progress report: FIA Punjab recovers Rs3.2 billion in 2010, Zahid Gishkori, January 16, 2011 The Express Tribune, <http://tribune.com.pk/story/104532/progress-report-fia-punjab-recovers-rs3-2-billion-in-2010/>

526 The Express Tribune, Rs83b scam: NAB report says former OGRA chief mishandled money, Published: August 7, 2012, <http://tribune.com.pk/story/418688/rs83b-scam-nab-report-says-former-ogra-chief-mishandled-money/>

527 <http://www.nab.gov.pk/>

528 Bureau report, NAB arrests two in police weapons procurement case, The NEWS, Friday, February 22, 2013, <http://www.thenews.com.pk/Todays-News-7-161393-NAB-arrests-two-in-police-weapons-procurement-case>

529 Imran Mukhtar, NAB decides probe against KPT after report of irregularities, the Nation, February 08, 2013, <http://www.nation.com.pk/national/08-Feb-2013/nab-decides-probe-against-kpt-after-report-of-irregularities>

Rules and instructions relating to the conduct of the civil servants are contained in Government Servants (Conduct) Rules, 1964. The rules are quite comprehensive, and cover almost all areas of conflict of interests, and prohibit civil servants from living beyond their means or indulge in ostentatious behaviours. A civil servant or his/her family members are prohibited from accepting gifts the receipt of which will place him under any form of official obligation to the donor. If, however, due to very exceptional reasons a gift cannot be refused, such as if a gift is offered by the head or representative of a foreign State or a foreign dignitary, and refusal might be offensive, the same may be accepted and its receipt must be intimated to the Cabinet Division. Such gift may either be kept for official use in the Department or Organization in which he is working or it may be deposited in the 'Toshakhana'. Cash awards too are unacceptable, except for BPS 1-4, and must immediately be deposited in the treasury under proper head of account. The recipient can only keep a gift, after certain percentage of the value of the gift as assessed by the Cabinet division.⁵³⁰

Similarly, foreign awards cannot be accepted except with prior permission of the President. Civil servants and their family members are prohibited from speculating in any investments, likely to embarrass or influence him in the discharge of their official duties. No Government/civil servant can, except with the previous sanction of the Government, take part in the promotion, registration or management of any bank or company, cannot engage in any trade or undertake any employment or work, other than his official duties, cannot sublet residential accommodation let to him by Government without prior permission of the head of the department.⁵³¹ A civil servant shall avoid habitual indebtedness that might lead to insolvency, cannot take part in politics, is prohibited from indulging in provincialism, parochialism, favoritism, victimization and willful abuse of office, using of political or other influence in support of any claim arising in connection with his employment. All the rules equally stand for their family members.⁵³²

A civil servant found indulged in any of the abovementioned activities, is held to be guilty of 'misconduct' under the Government Servants (Efficiency and Discipline) Rules, 1973 and ancillary instructions. A Government servant shall be considered corrupt if he/she is found living beyond means or is in possession of pecuniary resources or of property disproportionate to his/her known sources of income, or has a persistent reputation of being corrupt. In case a civil servant is found guilty of misconduct or corrupt⁵³³ behavior, the civil servant might have to face censure, stoppage of promotion, demotion, suspension, removal from service or dismissal from service. Dismissal leads to bar to further employment.⁵³⁴

530 Rule 5, Government Servants (Conduct) Rules, 1964

531 Rules 14-16, Ibid.

532 Rules 17, 24,26, Ibid.

533 Rule 3 of the Government Servants (Efficiency and Discipline) Rules, 1973

534 Rule 5, Ibid.

Besides these rules, corruption is also an offence under the general criminal law of the land and a public servant taking gratification other than legal remuneration in respect to an official act for showing or forbearing to show, favour or disfavour to any person, is liable to be punished with imprisonment of either description for a term which may extend to three years or with fine or with both.⁵³⁵ Similarly, a holder of a public office, is said to commit the offence of corruption if he accepts any gratification directly or indirectly, in relation to his official act and he shall be punished with rigorous imprisonment for a term which may extend to fourteen years, under the anti-corruption law.⁵³⁶

There is no restriction on accepting any job or position after retirement, except a retired civil servant shall not be re-employed under the Federal Government, unless such re-employment is necessary in the public interest and is made with the prior approval of the authority next above the appointing authority.⁵³⁷

Yet another screening is done by the FPSC and PPSC, at the time of recruitment for all public sector institutions, and the commissions ensure to include integrity as one of the criterion for selection.⁵³⁸

To prevent corruption in procurement, Pakistan's procurement framework requires all public sector agencies to sign an integrity pact with the suppliers of goods, services and works for all contracts exceeding USD 170,000. Suppliers or contractors can be blacklisted and debarred temporarily or permanently from future contracts with the procuring entity, if found to have committed corrupt or fraudulent practices.⁵³⁹

4.2.6 Integrity Mechanisms (Practice)

Score 25%

Scoring Question To what extent is the integrity of public sector employees ensured in practice?

Codes of conduct have been laid down by almost all Public Sector institutions,⁵⁴⁰ but they are violated often and are ineffective in ensuring ethical behaviour. Civil servants accept gifts and hospitality, but never disclose it. There have been instances, where they have used their official position to gain personal benefits.⁵⁴¹

535 Section 161, Pakistan Penal Code, 1860

536 Section 9, National Accountability Ordinance 1999.

537 Section 14, Civil Servants Act, 1973

538 Federal Public Service Commission Act 1977 and amendment Act No.XI,2004.

539 Rule 7, Public Procurement Rules, 2004; Section 7 of Notification of S.R.O 432(I)/2004 as authorized by Section 26,PPRA Ordinance, 2002 (XII of 2002)

540 Code of Conduct for Judges, Notification September 02, 2009 Supreme Judicial Council, 2009; Federal Board of Revenue (FBR) Booklet, (No date)

541 Interview Mr. Orya Maqbool Jan, S&GAD, Govt. of the Punjab, Civil Secretariat, Lahore and journalist, with Researcher on 16/1-/2012; Global Integrity Index, 2006, Pakistan

In general, public sector institutions have some core administration values but these are rarely communicated to their employees. In FBR, NAB, Judiciary, the ethical values are communicated to their new entrants. In FBR case, these are written in their appointment letters.⁵⁴² A booklet issued by FBR has laid down procedures where an employee is not supposed to accept any gift, ask for loans, set aside personal interest, and to resolve any conflict of interest between his/her "Official obligation and personal interest." The booklet has laid down a comprehensive list of codes of conduct while working in FBR.⁵⁴³

Pakistan Judicial Council, AGP, have also devised their codes of conducts and these are communicated to their employees.⁵⁴⁴

According to the decision by a public sector organization, Oil and Gas Development Company Limited (OGDCL) its management decided to accept the costliest contractor. It has opened new avenues of corruption. This is against the government norm of awarding a contract to the lowest bidders. Corruption if detected is punishable in accordance with level of corruption.⁵⁴⁵

There is no institution where public employees are given integrity training except that NIPA and Pakistan Administration staff provides training to fresh entrants and to those who are required to attend courses for their promotion. Some lectures are delivered to them on the integrity.⁵⁴⁶

Public officials in Pakistan are perceived as the most corrupt by 86% of the respondents in a recent survey.⁵⁴⁷ The laws are comprehensive, but the lack of compliance and oversight mechanism are ineffective. As quoted in the International Crisis Report, "There was a time when corrupt bureaucrats were exceptions to the rule and were shunned both by their peers as well as by society at large.... Today, there is a far greater acceptance of corruption and abuse of authority not only within the bureaucracy itself but also in society in general."⁵⁴⁸ There is abundant misuse of discretionary powers that goes unchecked, and the institutionalized corruption in the public sector often gets a cover of protection by the organization itself.⁵⁴⁹ Absence of whistle blower protection laws and mechanisms discourages honest officers from reporting, and they are either harassed, face retaliation or recrimination.⁵⁵⁰

542 Interview of Dr. Muhammad Afzal, Director General, Jawaid Azfar Computer Centre, Planning Commission, Govt. of Pakistan, Islamabad with the Researcher on 10/9/2012

543 Federal Board of Revenue (FBR) Booklet, (No date).

544 Code of conduct, Pakistan Federation of Union of Journalists, (PFUJ), No date of publication. pfuj.pk/code-2/

545 Oil and Gas Development Company (OGDC) Board Resolution, October, 8, 2010

546 Interview of Malik M. Saeed Khan, Ex-Member, Planning Commission, Islamabad with Researcher on 26/10/2012.

547 Global Corruption Barometer, 2013, Transparency International

548 Crisis Group Report, Reforming Pakistan's Civil Service, Asia Report N°185 – 16 February 2010

549 Ibid.

550 Sajid Bashir, Hamid Rafiq Khattak, Ayesha Hanif, and Sara Naseer Chohan, 2010, Whistle-Blowing in Public Sector Organizations: Evidence From Pakistan, The American Review of Public Administration, XX(X) 1–12, 2010 ; Global Integrity Report, 2006, <http://back.globalintegrity.org/reports/2006/pakistan/scorecard.cfm?subcategoryID=56&countryID=27>

4.3 Role

4.3.1 Public Education

Score 25%

Scoring Question To what extent does the public sector inform and educate the public on its role in fighting corruption?

No public sector department except NAB organizes lectures, workshops and seminars on corruption. There is no public sector institution that has a mandatory role in building public support for anti-corruption efforts.⁵⁵¹

Citizens do know that they can lodge a complaint with the Ombudsman or the Courts against any fraud and corruption, but no one reports on the prevalent corruption unless they themselves are affected by it.⁵⁵²

According to Section 33C of NAB Ordinance, Chairman shall constitute committees comprising of officers of NAB and other persons from public and private sectors to educate and advise public authorities, to develop, arrange, and participate in educational programmes or media campaigns, to examine laws in force and take preventive measures in order to eliminate corruption and corrupt practices. In 2012, fourteen committees were constituted, to look into working of various government departments, such as the housing authorities to avert chances of cheating public at large, a committee of members from SBP, SECP, Pakistan Banking Association, bank auditors and financial experts to examine the rules and regulations of banking sector, so as to prevent fraudulent activities that might cause loss to the state exchequer. Then there were committees to scrutinize health, education and revenue sector etc. Also different federal/provincial departments were asked to submit their bidding documents and the observations subsequently conveyed to them.⁵⁵³

4.3.2 Cooperation

Score 25%

Scoring Question To what extent does the public sector work with public watchdog agencies, business and civil society on anti-corruption initiatives?

⁵⁵¹ Federal Board of Statistics(FBS), Year Book, 2009. (Now Pakistan Bureau of Statistics, (PBS))

⁵⁵² Interview of Malik M. Saeed Khan Ex-Member Planning Commission, Islamabad with Researcher on 26/10/2012

⁵⁵³ Annual Report 2012, National Accountability Bureau Pakistan (NAB),

There is no coordination mechanism where public departments initiate cooperation with other departments and “such an expectation from public sector is generally out of question”.⁵⁵⁴ However in the recent past some Regulatory Bodies such as NAB, PPRAs, SECP, and Auditor General’s office have cooperated with CSOs who initiated complaints of corruption. This has resulted in fines, indictments, dismissal from service and even imprisonment.

In Pakistan, there are a few watchdogs and the judiciary is empowered to take suo-moto action on any incidence. Courts in Pakistan are allowed to take cognizance of many cases and can be considered as a watchdog but needs the full cooperation of Police, FIA and Attorney General. Courts are not happy about their cooperation as public sector institutions seem quite hesitant in cooperating with the Courts on the suo-moto cases.

4.3.3 Procurement

Score 50%

Scoring Question To what extent is there an effective framework in place to safeguard integrity in public procurement procedures, including meaningful sanctions for improper conduct by both suppliers and public officials, and review and complaint mechanisms?

A very comprehensive procedure for bidding is in place for purchase of goods and services by public sector bodies. Pakistan has procurement regulations at the national and provincial levels. The Pakistan Public Procurement Rules (PPR), 2004 applies to procurements by all procuring agencies of the federal and provincial governments. The Pakistan Public Procurement Regulatory Authority (PPRA) provides guidance for improvement in governance, management, transparency, accountability, and the quality of public procurement of goods, works, and services. The PPRA also monitors the application of laws and regulations, policies, and procedures to public sector departments.⁵⁵⁵

Under PPRA rules, all public procurement is through competitive bidding, which is being followed. Procurement is not allowed by any other means except in procuring of a proprietary item.

Under PPR 2004 laws, contractor’s selection is objectively done on the basis of a laid down criteria. If a contractor fulfils all conditions he is allowed to bid.⁵⁵⁶ In practice, the rule strictly followed as documents provided by contactors are open to all and are uploaded on the PPRA web-site.⁵⁵⁷

554 Interview Mr. Orya Maqbool Jan, S&GAD, Govt. of the Punjab, Civil Secretariat, Lahore and journalist, with Researcher on 16/1-/2012

555 Pakistan Public Procurement Regulatory Authority (PPRA), 2002; Pakistan Public Procurements Rules (PR) 2004, and as amended in 2008.

556 Clause 3A (i)(ii) and B(i)(ii), Notification No. SRO 1077 (I) 2010, www.ptclworkers.com/.../after-nab-finance-ministry-cautions-pta-on -

557 Interview of Malik M. Saeed Khan Ex-Member Planning Commission, Islamabad with Researcher on 26/10/2012

Bidding documents are prepared by the procuring departments, based on Standard Bidding Documents and issued to all intending contractors. Original documents are available on the PPRA website as well as supplied by the procuring departments. All bidding information has to be on the standard forms.⁵⁵⁸

The Federal and Provincial Public Procurement Regulatory Authorities are responsible for monitoring the bidding cases. The procuring agencies are also independent and can frame its own rules for the procurement, provided these are not in conflict with the PPRA rules. PPRA monitors, improves, manages and checks transparency and makes procuring agencies accountable for the mismanagement. PPRA reports to the federal government.⁵⁵⁹

Supervision of the contract implementation is done by the procuring agency if it has a capacity of its own or through consultants. In certain cases it is done by the Government Works Department.

A procuring agency is required to announce the contracts as required by PPRA⁵⁶⁰ and releases the following documents for public and stakeholders information:

- i) "Invitation for Bids (publication in newspapers)
- ii) Bidding Data
- iii) Schedule of Bid (Sample)
- iv) Schedule of Prices (Format)
- v) Contract Data
- vi) Specifications
- vii) Drawings, if any".

The PPR 2000, 2004 applies to all types of procurement by all procuring agencies of federal and provincial governments. ,^{561,562}

In practice, all public sector departments follow the mandatory procedures, model procurement forms and schedules are in place, tenders are opened in the presence of all bidders and decision of acceptance of a bid is made public. The departments that have procurement sections maintain registers and keep records of all bidders in safe custody.⁵⁶³ Clarifications and amendments, sought by bidders and procuring agencies during the bidding process, are also shared with all interested stakeholders.⁵⁶⁴

Procuring agencies announce the results of the evaluation of bids at least 10 days before the award of contract.⁵⁶⁵ All procuring agencies maintain records of bidding process till the award of the contract. Soon after award of the contract, all documents relating to the accepted contracts are made public and the public can have access to these documents.⁵⁶⁶

558 Clause 23, Pakistan Public Procurement Rules (PR), 2004, 2008.

559 Interview of Dr. Muhammad Afzal, Director General, Jawaid Azfar Computer Centre, Planning Commission, Govt. of Pakistan, Islamabad with the Researcher on 10/9/2012

560 Pakistan Engineer Council (PEC) Ordinance 2007

561 Clause 31, Public Procurement Rules (PR), 2004

562 Public Procurement Regulatory Authority (PPRA), 2004

563 ibid

564 Clause 31, Public Procurement Rules (PR), amendments, 2008

565 Clause 35, ibid.

566 Clause 46,47, Public Procurement Rules (PR), 2004; Records: Clause 3.4 PPRA SRO 805(I)/2009 Posting of contracts awards on website SRO 1170(I)/2009 Clause (2)

All grievances by bidders who lodge complaints in writing are heard and discussed by specially appointed committee. In case if the decision is made for revision, the committee is authorized to decide on the revision of contracts.⁵⁶⁷

To tackle corruption, misuse of power or fraud etc. by an employee, administrative actions are taken, in accordance with the Government Servants Rules (Conduct) 1964, Civil servants Act, 1973 and the Civil Servants Disciplinary Rules 1973.

However, despite comprehensive rule, corruption remains widespread in the areas of government procurement.⁵⁶⁸ Some high profile executives and civil servants have been charged and punished under these rules but many high profile officials had not been indicted because of political pressures.⁵⁶⁹ Also, between the period of March 1, 2008 to January 31, 2012, the government violated PPRA Rules in at least 15,767 tenders.⁵⁷⁰ The notorious case of high profile government corruption that surfaced in the recent years was that of the government's rental power plant projects (RPP), set up in 2006,⁵⁷¹ but approved in 2008, to address the acute energy crisis in Pakistan.⁵⁷² The government officials were accused of awarding extravagantly priced rental power plants to their close acquaintances and providing financial kickbacks. On March 30, 2012, the Supreme Court of Pakistan declared the RPPs contracts 'non-transparent, illegal and void abinitio' and directed the National Accountability Bureau to investigate the case, and ordered the arrest of the then Prime Minister and other government functionaries involved in the case.⁵⁷³ The case is pending adjudication.⁵⁷⁴ The Auditor General, government's financial watchdog, in its annual audit report for the fiscal year ending June 30, 2011, noted that the government had created a liability of \$1.7 billion for itself through the contracts that it had signed with several rental power companies and recommended cancelling the contracts of power companies that had failed to achieve their commercial operation date.⁵⁷⁵

Redressal of grievance, requires constitution of committees of odd numbers for this purpose, however, in practice, these have neither been constituted nor notified. There is a complaint cell headed by a Deputy Director in PPRA,⁵⁷⁶ but it is not effective, as it does not have sufficient administrative or legal backing, neither technical or professional expertise nor does it have members from civil society or private sector. Moreover, Its decisions are not binding and there is no evidence available to substantiate whether decisions, if any, were taken in time. Data of procurement complaints lodged, resolved and resolution time are not available as well,⁵⁷⁷ except for what little information is revealed in the official gazette issued by PPRA.⁵⁷⁸

567 Clause 48-51,, Public Procurement Rules (PR), 2004

568 2013 Investment Climate Statement – Pakistan, Bureau of Economic and Business Affairs, February 2013, Report

569 Interview Mr. Orya Maqbool Jan, S&GAD, Govt. of the Punjab, Civil Secretariat, Lahore and journalist, with Researcher on 16/1-/2012.

570 Mian-scale irregularities in PPRA, Pakistan Today, February 12, 2012, file:///D:/Downloads/large-scale-irregularities-in-ppra.htm

571 DAWN.com, Rental power plants scam, Published on 11 November, 2012, <http://www.dawn.com/news/763278/rental-power-plants-scam>

572 Syed Ovais Akhtar, The sad saga of rental power plants, Pakistan Today, 7th April, 2012, <http://www.pakistantoday.com.pk/2012/04/07/news/profit/the-sad-saga-of-rental-power-plants/>

573 Azam Khan, Blackout: Court strikes down rental power deals, The Express Tribune, Published on March 31, 2012, <http://tribune.com.pk/story/357736/blackout-court-strikes-down-rental-power-deals/>

574 Dunya News, Rental power case: Ex-PM Raja Pervez couldn't be indicted today, last Updated On 14 December, 2013, http://dunyaanews.tv/index.php/en/Pakistan/204739-Rental-power-case-ExPM-Raja-Pervez-couldnt-be-i#.Ur_AZdKBkhM

575 Zafar Bhutta, Rental power projects: Audit report reveals massive discrepancies, the Express Tribune, Published: June 6, 2011, <http://tribune.com.pk/story/183284/rental-power-projects-audit-report-reveals-massive-discrepancies/>

576 Using its authority under section 5. Of PPRA Ordinance, 2002.

577 Pakistan: Federal Government, Public Financial Management and Accountability Assessment, Report No. 69185-PK, June 2012

578 <http://www.ppra.org.pk/doc/gazette/jan10.pdf>

Companies found guilty of irregular practices are often not stopped from participating in future bids. Despite involvement of international organizations such as the World Bank and the Asian Development Bank in modernising the procurement process, and despite better rules and enhanced transparency, corruption is still widespread in the public procurement in Pakistan due to political influence, and long delays in bureaucratic decision-making on one hand, and material irregularities on the other, such as inadequate bidding documents, insufficient response time for bidders, prequalification used as a measure to limit competition, price negotiations, and a lack of an independent complaint handling system.⁵⁷⁹

More than USD 4 billion is lost due to corruption in procurement which can be saved annually, if Public Procurement Rules 2004 are truly implemented in the federal government, armed forces, and all the four provinces, corporations, and authorities.⁵⁸⁰

⁵⁷⁹ Bureau of Economic and Business Affairs, 2013 Investment Climate Statement, February 2013, Report; Public Procurement and Contracting, Business Anti-corruption Portal, <http://www.business-anti-corruption.com/country-profiles/south-asia/pakistan/corruption-levels/public-procurement-and-contracting.aspx>

⁵⁸⁰ Ibid.

PILLAR 5

Law Enforcement Agencies

Pillar 5: Law Enforcement Agencies

Summary

Pakistan's law enforcement system has eighteen law enforcement agencies. Out of which Federal Investigation Agency (FIA) and police are foremost agencies with high level of authority while the others deal in specific offences. There is feudal and political influence over these agencies. Feudal elements in the rural areas of Pakistan have also been exploiting the police for torturing political opponents and rigging elections.

These law enforcement agencies work under tough conditions as there is political instability, rampant corruption in addition to lack of resources, poor working conditions, and lack of qualified personnel.

Most of the law enforcement agencies have low credibility and do not enjoy public respect. The right to information laws are not strong and the public does not dare question the public functionaries. The major causes of law enforcement failures can be assigned to ineffective accountability mechanisms and above all lack of integrity and political will to improve conditions.

Pakistan's police force has been described as "ill-equipped, poorly trained and chronically corrupt".⁵⁸¹ Pakistan has been victimized by terrorism badly and the failure of law enforcement agencies is resulting in instability, corruption and violence in the country. But 'Pakistan's law enforcement is by no means too flawed to fix'⁵⁸² and political will plus pro-reform attitude of the law enforcement agencies is required for improvement.

581 Hassan Abbas, "Police and Law Enforcement Reform in Pakistan: Crucial for Counterinsurgency and Counterterrorism Success", Institute for Social Policy and Understanding (ISPU), April 2009, p.8

582 Hassan Abbas. Reforming Pakistan's Police and Law Enforcement Infrastructure: Is It Too Flawed to Fix? Washington, D.C.: Report for United States Institute of Peace, February 2011, p.15

Table 7:
Percentage Scores of Indicators
37.5/100

Dimension	Indicators	Law	Practice
Capacity 41.7/100	Resources	-	25
	Independence	75	25
Governance 45.8/100	Transparency	50	25
	Accountability	50	25
	Integrity Mechanisms	100	25
Role 25.0/100	Corruption prosecution	25	

Structure and Organization

FIA and Police are leading law enforcement agencies. FIA is a federally controlled agency, whereas policing has always been the task of provincial governments for better maintenance of law and order at local level. The four provincial police forces and the capital police (Islamabad), though independent of each other, share similar characteristics and structures across Pakistan. They have similar selection procedures and functions and have the same applicable substantive and procedural laws.

As far as prosecution services in Pakistan are concerned, FIA⁵⁸³ and National Accountability Bureau (NAB)⁵⁸⁴ have their own prosecutors. For Police cases new and independent⁵⁸⁵ prosecution service has been established.

Total strength of law enforcement agencies is approximately 575,000 inclusive of personnel of all federal, provincial paramilitary and intelligence forces. With a population of around 180 million, for every 304 people there is one police official. The ratio apparently seems in line with the UN policing standards in peace time which requires 1:400 of police-population ratio. However, excluding all paramilitary, intelligence and administrative personnel, the ground reality turns out to be altogether different, and Police/Population ratio for Karachi in 2008 was 1:571 and in 2011 it was 1:625 for Pakistan and 1:529⁵⁸⁶ for Punjab.⁵⁸⁷

583 Section 5A of the FIA Act 1974; Assistant Directors (Legal) and the Deputy Directors (Law) are designated as Public Prosecutors and prosecute cases sent to the concerned Special Court for trial.

584 See National Accountability Ordinance, 1999 & ACA Pillar

585 Chapters V,IX and Article 91, Police Order 2002, along with Sections 492 to 495 of the Code of Criminal Procedure (CrPC). Also 'The Baluchistan Prosecution Service,' 'the North-West Frontier Province Prosecution Service,' 'The Punjab Criminal Prosecution Service' and 'The Sindh Criminal Prosecution Service' Police Orders.

586 Iran Ayub, "KARACHI: City's Police-Population Ratio Abysmally Low," Dawn, November 24, 2008.

587 Annual Administration Report Punjab Police, 2011, p.11

5.1 Capacity

5.1.1 Resources (Practice)

Score 25%

Scoring Question To what extent do law enforcement agencies have adequate levels of financial resources, staffing and infrastructure to operate effectively in practice?

Police establishments are the responsibility of the provinces; hence the provinces bear their entire budget.⁵⁸⁸ Despite efforts, Pakistan's law enforcement agencies face a number of gaps in existing financial, human and infrastructural resources.⁵⁸⁹ Such insufficient resources, poor infrastructure, lack of weapons, intelligence technology, skilled personnel and training lead to certain degree of ineffectiveness in carrying out duties.⁵⁹⁰ Salaries are low, thus qualified and committed staff are not attracted to serve in the law enforcement. However, salaries for NAB employees are slightly better than the police force. The federal Government has been trying to improve policing and has invested in quite a few projects.⁵⁹¹ The budget is allocated for new recruitments, training, increase in salaries, arms and ammunition, video surveillance systems, transports and other operational expenses.⁵⁹² Automated Fingerprint Identification System (AFIS), Nationwide Integrated Radio Communication System for the Police (NIRCSP), and an e-project 'Police Record and Office Management Information System (PROMIS)' was initiated, to computerize records of 1,350 police stations in 120 districts throughout the country. Fully implemented, it would have links with Federal Investigation Agency (FIA), National Database and Registration Authority (NADRA) and National Alien Registration Authority (NARA). The System is fully operational only in Baluchistan province, whereas it is still in progress in Punjab, Sindh and KPK provinces.⁵⁹³ Sometimes, the agencies do seek for out of budget funding,⁵⁹⁴ and also complain about 'unjustified cuts',⁵⁹⁵ however, there has been a steady increase in the law enforcement budget by 131% in the last four years,⁵⁹⁶ but again there are calls for some cuts as law enforcement agencies have failed to control crime, corruption as well as other law and order situations.⁵⁹⁷

588 Asad Jamal.(2010), Police Organizations in Pakistan, CHRI-HRCP joint publication, http://www.hrcp-web.org/pdf/Police_Organisations_in_Pakistan, p.59

589 Interview of Mr. K.B. Malik, Additional I.G. Police, Punjab with Researcher on 24/8/12.

590 Hassan Abbas (Editor). Stabilizing Pakistan Through Police Reforms, a Report by the Asia Society Independent Commission on Pakistan Police Reform, 2012, p.84.

591 Interview of Malik Khuda Bukhsh Awan, Additional Inspector General of Police with Researcher on 24/8/2012; Imran Mukhtar, the Nation, June 02, 2012. PK R 6509.76 (\$65.10) Million given to Interior Ministry

592 "Sindh Police gets Rest. 39.3 bn in budget 2012-13", Business Recorder, Monday, 11 June 2012, by Shoaib-ur-Rehman Siddiqui;" Baluchistan government gives Rs 210 mn to FC", by Asad Naeem, Tuesday, 12 June 2012, Business Recorder; White Paper 2012-2013, Government of Khyber Pakhtunkhwa Finance Department, p.14, <http://www.financckpp.gov.pk/>

593 Asad Jamal.(2010), Police Organizations in Pakistan, CHRI-HRCP joint publication, http://www.hrcp-web.org/pdf/Police_Organisations_in_Pakistan, p 59;

594 Karachi vice: Sindh gets 7,500 new police jobs", The Express Tribune, June 12, 2012

595 S. Raza Hassan, DAWN.COM (Pakistan) seeks higher budgetary allocation", <http://archives.dawn.com/archives/65956>

596 Shoaib-ur-Rehman Siddiqui "Sindh Police gets PKR 39.3 (\$ 0.393) billion in budget 2012-13", Business Recorder, Monday, 11 June 2012

597 "MPA demands curtailing police budget", Financial Post, June 24, 2012

The National Highways and Motorway Police established in 1997, with merit based recruitment, high salaries, modern training facilities and latest equipment is one of the most efficient and nearly a corruption-free institution. On the other hand, requests for CCTVs, scanners and bomb detectors by the Pakistan Railways Police and Airport Security Force have not been met due to lack of funds.⁵⁹⁸

Law enforcement agencies especially police requires serious and major reforms to be put in place in order to reshape the infrastructure to meet the needs of the evolving world. The service conditions for paramilitary forces, such as Pakistan Rangers and Frontier Corps are perceived to be slightly better than the police organizations in Pakistan.⁵⁹⁹ But Pakistan's police system needs serious reforms particularly the police organizations, which have insufficient resources poor infrastructure and lack weapons, intelligence technology, skilled personnel, and training.⁶⁰⁰ According to a study on 90 police stations in 62 districts over Pakistan, 23% of police stations were not housed in proper buildings, health and hygiene conditions in 45% of police stations were poor and 29% of police stations lacked clean drinking water facility, at 12% of police stations people were asked for logistic support for investigation of cases, 27% lacked stationary for registration of FIRs and at 15% of police stations the complainants were asked to bring their own stationary.⁶⁰¹

Another major flaw in Pakistan's law enforcement is the lack of modern forensic investigation techniques and facilities. By 2007, five forensic laboratories had been established, but budgetary constraints have left them under equipped and unable to meet the demand.⁶⁰²

There is no specific unit within police dedicated to investigate corruption related cases, however, within the domain of Law Enforcement agencies National Accountability Bureau (NAB) is entitled by law to investigate cases pertaining to corruption within Police. Prior to the issuance of NAB Ordinance in 1999, Federal Investigation Authority (FIA) was responsible for looking after corruption related offences within Police, but since the ordinance NAB has been transferred the responsibility.

5.1.2 Independence (Law)

Score	75%
Scoring Question	To what extent are law enforcement agencies independent by law?

598 Hassan Abbas. Reforming Pakistan's Police and Law Enforcement Infrastructure: Is It Too Flawed to Fix? Washington, D.C.: Report for United States Institute of Peace, February 2011, p.8

599 Hassan Abbas, "Police and Law Enforcement Reform in Pakistan: Crucial for Counterinsurgency and Counterterrorism Success", Institute for Social Policy and Understanding (ISPU), April 2009, p.17

600 Stabilizing Pakistan Through Police Reforms, a Report by the Asia Society Independent Commission on Pakistan Police Reform, Hassan Abbas (Editor) 2012, p.84.

601 "Police Stations Understaffed in Punjab, KPK and Sindh", FAFEN (Free and Fair Election Network) Police Station Monitor, Issue: 044 /May 2011, p.1-2

602 Hassan Abbas. Reforming Pakistan's Police and Law Enforcement Infrastructure: Is It Too Flawed to Fix? Washington, D.C.: Report for United States Institute of Peace, February 2011, p.8

To ensure independence of federal or provisional law enforcement agencies in Pakistan there are comprehensive laws⁶⁰³ and a number of rules exist that stipulate merit based appointments,⁶⁰⁴ on the basis of clear professional criteria.⁶⁰⁵

The Police Act, 1861 along with Police Rules, 1934 were the central laws for policing, inherited by Pakistan at the time of independence. Provisions were made for bureaucratic control without clearly defined accountability mechanism. These laws made police a state apparatus to suppress people and political opposition.⁶⁰⁶ After 54 years,⁶⁰⁷ the Police Act, 1861 was repealed⁶⁰⁸ and replaced by Police Order, 2002.⁶⁰⁹

The present law, inspired by the Japanese National Safety Commission system,⁶¹⁰ focused on operational autonomy, placed checks on political interference, and provided for police accountability by people, which according to a report of 'the Commonwealth Human Rights Initiative' on police reforms and accountability in South Asia, made Pakistan the only country in the region incorporating constitutional protection and 'rights-based' policing in its police law.⁶¹¹

As far as prosecution services in Pakistan are concerned, FIA⁶¹² and NAB⁶¹³ have their own prosecutors. For prosecution of police cases, until the enactment of Police Order 2002, prosecution services were under the Home Department and Police had their administrative control in all provinces. Now there exist independent provincial criminal prosecution services, at provincial level,⁶¹⁴ under the control of Law Departments⁶¹⁵ and governed by sections 492 to 495 of the Code of Criminal Procedure (CrPC).

603 Interview of Mr. Tariq Mahmood SP investigation with Researcher on 24/8/12

604 Section 18, 42 66,78 and 90 Chapter III, Police Order, 2002.

605 Interview of Mr. K.B. Malik Additional IG Police with Researcher on 24/8/12

606 Hassan Abbas (Editor): Stabilizing Pakistan Through Police Reforms, a Report by the Asia Society Independent Commission on Pakistan Police Reform, 2012, p.24-25

607 as part of criminal justice sector reform program funded by the Asian Development Bank. Source: Swati Mehta, Feudal Forces: Democratic Nations Police accountability in Commonwealth South Asia, Commonwealth Human Rights Initiative, 2007, p.36

608 Section 185, Police Order 2002 with amendment by Ordinance 2006.

609 The Order available @http://www.npb.gov.pk/police_order/Police_order_2002_with_amendment_ordinance_2006.pdf

610 Hassan Abbas, "Police and Law Enforcement Reform in Pakistan: Crucial for Counterinsurgency and Counterterrorism Success", Institute for Social Policy and Understanding (ISPU), April 2009, p.11.

611 Swati Mehta, Feudal Forces: Democratic Nations Police accountability in Commonwealth South Asia, Commonwealth Human Rights Initiative, 2007, p.19

612 Under Section 5A of the FIA Act 1974. Assistant Directors (Legal) and the Deputy Directors (Law) are designated as Public Prosecutors and prosecute cases sent to the concerned Special Court for trial.

613 National Accountability Ordinance, 1999.

614 The Baluchistan Prosecution Service (Constitution, Functions And Powers) Act, 2003; The North-West Frontier Province Prosecution Service (Constitution, Functions and Powers) Act, 2005;

The Punjab Criminal Prosecution Service (Constitution, Functions and Powers) Act, 2006; The Sindh Criminal Prosecution Service (Constitution, Functions and Powers) Act, 2009

615 Asad Jamal (2010), Police Organizations in Pakistan, CHRI-HRCP joint publication, http://www.hrcp-web.org/pdf/Police_Organisations_in_Pakistan, p.13

The organizational hierarchy⁶¹⁶ of criminal prosecution services is governed by the relevant provincial Criminal prosecution service (constitution, functions and Powers) all other officers are recruited through Federal and Provincial Public Service Commissions, the appointing authorities which ensure meritocracy and transparency in recruitment.⁶¹⁷ Terms of service, appointments, promotions and transfers are regulated by provincial prosecution service laws.⁶¹⁸ According to Code of Conduct framed under the new Criminal Prosecution Service (Constitution, Functions and Powers) Acts, recruitment and promotion of prosecutors has to be based on professional qualifications, experience, performance and integrity.⁶¹⁹

For conducting prosecutions there are ample legal provisions and rules such as the Code of Conduct, Standard Operating Procedures, Performance Standards, Prosecutor General Guidelines and standardized guidelines for Prosecutorial Decision Making. There is no law where a prosecutor can be instructed not to prosecute a person and no one is authorized to ask a prosecutor not to prosecute a specific person.

5.1.3 Independence (practice)

Score 25%

Scoring Question To what extent are law enforcement agencies independent in practice?

According to one expert, law enforcement agencies in Pakistan have never been free from political⁶²⁰ and feudal influence⁶²¹ and the situation is no different from colonial times.⁶²²

The Police Order was never implemented in its true spirit. Senior police officials and the bureaucracy referred to the Police Order as the 'Police Disorder'⁶²³ and provinces saw the Order as encroachment on their authority to maintain law and order and refused its implementation.⁶²⁴ Consequently, on provincial executive pressure, eight amendments from 2004 to 2007 considerably diluted the Order.⁶²⁵

The Punjab Criminal Prosecution Service (Constitution, Functions and Powers) Act, 2006; The Sindh Criminal Prosecution Service (Constitution, Functions and Powers) Act, 2009

615 Asad Jamal (2010), Police Organizations in Pakistan, CHRI-HRCP joint publication, http://www.hrcp-web.org/pdf/Police_Organisations_in_Pakistan, p.13

616 such as Prosecutor General, Additional Prosecutors General, Deputy Prosecutors General

617 Second Technical Progress Report (January – June 2007), Governance Institutions Network International (GINI, 2007), p.97,100

618 as per the provincial criminal prosecution services laws. e.g. Punjab Criminal Prosecution Service,(conditions of service) Service Rules, 2007

619 Section 7.1.4, Code of Conduct for the Public Prosecutors in Punjab, http://prosecution.punjab.gov.pk/?q=system/files/Code%20of%20Conduct_0.pdf

620 Pakistan Observer (e-paper), <http://pakobserver.net/201204/13/detailnews.asp?id=150033>

621 Swati Mehta, Feudal Forces: Democratic Nations Police accountability in Commonwealth South Asia, Commonwealth Human Rights Initiative, 2007, p.36

621 Revisiting Police Laws, Compiled and edited by Asad Jamal, Published by Human Rights Commission of Pakistan, January 2011, p.12

622 Paul Petzschmann, "Pakistan's Police between Centralization and Devolution", Report by Norwegian Institute of International Affairs, 2010, p.7

623 Paul Petzschmann, "Pakistan's Police between Centralization and Devolution", Report by Norwegian Institute of International Affairs, 2010, p.20.

624 Revisiting Police Laws, Compiled and edited by Asad Jamal, Published by Human Rights Commission of Pakistan, January 2011, p.4

625 Dr Azhar Hassan Nadeem "Don't meddle with the police!", The Express Tribune, July 19, 2012

(In 2009, with lapse of the constitutional protection provided by its sixth schedule, Provincial governments regained the powers of legislating with respect to policing and could repeal, replace and amend the Order. Sindh assembly has repealed the Police Order 2002 and has restored the Police Act, 1861. Baluchistan has replaced the Police Order 2002 with the Police Act, 2011. In Punjab, The Police Order, 2002 is being amended to make the police subordinate to the provincial government as an attached department)

Appointments to key posts, in all law enforcement agencies are based on political considerations.⁶²⁶ The Inspector General's (IGs) of police is from a federal cadre appointed to the post with the consent of the Provincial Government. They do not have a fixed tenure and can be appointed or transferred at the will of the ruling government.⁶²⁷ A survey of police officers disclosed that 64.44% of police officers felt 'insecure' because of the role of influential political elites in illegal suspensions or transfers.⁶²⁸

Recruitments are done in violation of rules and set standards and a large number of police personnel were found in a survey of 278 police stations in 32 districts of Pakistan, to be under-qualified.⁶²⁹

Promotions are usually based on 'seniority cum fitness', instead of performance based criteria,⁶³⁰ which relies on the Annual Confidential Report (ACR) system. The ACRs are either over-stated or are manipulated to pressurize honest officers and are referred to by these officers as 'Annual Confidential Revenge Report'.⁶³¹

As a result, police forces are being used to serve the elites instead of protecting public, for e.g. out of approximately 180,000 police force members, only 40,000 are deputed at police stations whereas 120,000 are deployed for VIP security and controlling traffic. Moreover, the police are reluctant to take up complicated investigations, unless ordered by the political elites.⁶³²

Federally administered FIA is prone to political influence and its powers are limited when it comes to investigation of senior-level officials or politicians in major corruption cases, which cannot be undertaken without permission from the Ministry of Interior. Resultantly, FIA only takes action against low level employees.⁶³³

The only police organization in Pakistan which can said to be 'insulated' from political influence is The National Highways and Motorways Police (NHMP). The NHMP is a role model for other law enforcement agencies.⁶³⁴

626 e.g. appointment to the post of inspector general (IG) of police from amongst Police Service of Pakistan officers, is made by the federal government with consent of the provincial Chief Minister, Source: Hassan Abbas (Editor): Stabilizing Pakistan Through Police Reforms, a Report by the Asia Society Independent Commission on Pakistan Police Reform, 2012, p.33

627 Hassan Abbas (Editor): Stabilizing Pakistan Through Police Reforms, a Report by the Asia Society Independent Commission on Pakistan Police Reform, 2012, p.33; Hassan Abbas. Reforming Pakistan's Police and Law Enforcement Infrastructure: Is It Too Flawed to Fix?. Washington, D.C.: Report for United States Institute of Peace, February 2011, p.17,33.

628 Azhar Hassan Nadeem, (2002) Political Economy of Lawlessness; p. 285.

629 Kalim Imam, Good Governance and Police Administration in Pakistan, Journal of Political Studies, Vol. 18, Issue - 2, 2011: 133-154, p.138-139

630 Interview of Mr. Tariq Mahmood, SP (Investigation), with Researcher on 24/8/2012.

631 Syndicate Report, "Accountability in Public Sector of Pakistan". Syndicate 2, 36th specialized Training Program, 22 April, 2010, p.29

632 Paul Petzschmann, "Pakistan's Police between Centralization and Devolution", Report by Norwegian Institute of International Affairs, 2010, p.7

633 Hassan Abbas (Editor) "Stabilizing Pakistan Through Police Reforms" Report by the Asia Society Independent Commission on Pakistan Police Reform, 2012, p.102

634 Asad Jamal. (2010), Police Organizations in Pakistan, CHRI-HRCP joint publication along with a survey held by Transparency International Pakistan in 2009.

As far as Prosecution Services are concerned, they gained an independent status and got separated from the police force in 2002, giving prosecutors supervision of police investigations, but the lack of coordination amongst the two has always been a hindrance in achieving convictions.⁶³⁵ These Prosecution services are still in their infancy and not only are they under resourced but their functioning too is hampered by corruption and political interference.⁶³⁶ Since it is responsible for conducting prosecution on behalf of the Government, hence is bound to follow government directives.⁶³⁷

The prosecutors have legal indemnity and authorities are required to provide physical protection to prosecutors and their families in case of threats. But, the prosecution services face pressures from the politicians, government officials, accused, complainants, victims and the police⁶³⁸ particularly when it comes to prosecuting high profile. Most cases are not properly investigated. Hence, there is low percentage of prosecutions.

5.2 Governance

5.2.1 Transparency (law)

Score 50%

Scoring Question To what extent are there provisions in place to ensure that the public can access the relevant information on law enforcement agency activities?

The right to information was only recently incorporated as a fundamental right.⁶³⁹ The newly framed Freedom of Information Ordinance 2002 also contains provisions for access to information, wherein, any designated officer is bound to furnish requested information within twenty one days.⁶⁴⁰

Provisions for access to information can also be found in the Qanun-e-Shahadat Ordinance, 1984.⁶⁴¹ Also, the first information reports (FIRs)⁶⁴² lodged by the police when they receive initial information about commission of a cognizable offence and criminal data are all part of public documents.⁶⁴³

635 , Crisis Group Asia Report N°196, "Reforming Pakistan's Criminal Justice System", 6 December 2010, p.17-18.

636 Reforming Pakistan's Criminal Justice System, Crisis Group Asia Report N°196, 6 December 2010, p.17-18.

637 Chapter I, Police Order, 2002.

638 Mr. Shahadat Awan, Prosecutor General, Sindh, presented a paper in a Summit held at Sindh Judicial Academy on " Role of Prosecution in Criminal Justice System", 25-26 June, 2011, <http://www.sja.gos.pk/JAS/seminar/seminar.html>; Express Tribune. "Special allowances proposed for ATC prosecutors", Monday, September 10, 2012

639 Article 19-A, Constitution of Pakistan, 1973 and Eighteenth amendment in 2010 along with 'Freedom of expression, 2002.

640 Freedom of Information Ordinance, 2002, Balochistan Freedom of Information Act 2005; Sindh Access to Information Ordinance of 2006; draft "The Punjab Freedom of Information Act 2013; KPK Freedom of Information Ordinance, 2013

641 Articles 85-87, Qanun-e-Shahadat Ordinance, 1984 (former Evidence Act 1872).

642 Section 154, Criminal Procedure Code (Cr.PC). Cr.PC 1868.

643 Articles 85-87, Qanun-e-Shahadat Order, 1984

Existing laws/provisions do not cover all aspects related to the transparency of law enforcement agencies and contain loopholes and there is need to strengthen these laws. Government is proposing a new right to information bill (RTI) to parliament, which shall guarantee access to information within specified time, clearly defined exempted information and concrete explanation in case of denial of information.⁶⁴⁴

Under Civil Services Tribunal Act⁶⁴⁵ and taxations rules,⁶⁴⁶ all officers are required to declare their personal assets, and incomes and wife's assets annually and deposit with their departments and the Revenue Department.⁶⁴⁷

5.2.2 Transparency (practice)

Score 25%

Scoring Question To what extent is there transparency in the activities and decision-making processes of law enforcement agencies in practice?

Access to information mechanism is in place, but the implementation and awareness of the same is lacking.⁶⁴⁸ The government efforts⁶⁴⁹ to provide access to information about public bodies' functioning seem to be insincere.⁶⁵⁰ A study conducted during April-June 2012, on 171 police stations in 98 districts across Pakistan reports that, 21% of station house officers (SHOs) had no idea about the existence of such a policy. 40% of police stations did not have registers for access to information requests, 38% of police stations in Punjab and Sindh did not have information access officers. 49% of police stations did not receive any request for access to information.⁶⁵¹ It is more difficult to obtain official copies of FIRs than to get unofficial copies, particularly without resorting to bribery.⁶⁵²

Annual reports and performance evaluations are also inaccessible to public. Consequently, the public cannot keep a watch over or question law enforcement agencies' actions or mal-practices.⁶⁵³

644 Mr. Maha Mussadaq, October 17, 2011, the Express Tribune "Sherry Rehman's bill: Public may eventually access organizations' official records".<http://tribune.com.pk/story/275663/sherry-rehmans-bill-public-may-eventually-access-organisations-official-records/>

645 Civil Services Tribunal Act, 1973

646 Taxation Rules, Federal Board of revenue, Government of Pakistan. www.cbr.gov.pk/

647 Civil Services Tribunal Act, 1973.

648 Gulmina Bilal Ahmad, Daily Times, Empowering the people' Friday, December 09, 2011, http://www.dailytimes.com.pk/default.asp?page=2011%5C12%5C09%5Cstory_9-12-2011_pg3_2.

649 Freedom of Information (FOI) Act 2002 along with the Punjab Police in 2006 (Punjab Police Access) and Sindh Police, 2007.

650 Ansar Abbasi, Thursday, June 28, 2012, The News, From Print Edition,<http://www.thenews.com.pk/Todays-News-13-15658-NGO-exposes-farce-of-freedom-of-information-law>. A survey on "NGO exposes farce of freedom of information law" by Centre for Peace and Development Initiatives (CPDI).

651 Free and Fair Election Network (FAFEN). "12% police stations need proper buildings," Released on September 06, 2012.

652 Immigration and Refugee Board of Canada, Pakistan: First Information Reports (FIRs), 4 November 2010, PAK103605.E, available at: <http://www.unhcr.org/refworld/docid/4dd100012.html> [accessed 24 January 2012].

653 Kalim Imam, Good Governance and Police Administration in Pakistan, Journal of Political Studies, Vol. 18, Issue - 2, 2011: 133-154, p.137

Although submission of disclosure of assets is compulsory, there are no mechanisms to verify the same, making them ineffective. Disclosures of assets never come to light⁶⁵⁴ except when an investigation is initiated against an official for misconduct. Officers do not usually file their returns and the omissions go undetected. Many times, properties gained through improper means are declared as 'inherited property'.⁶⁵⁵

Nearly all the law enforcement agencies have their official websites disclosing information regarding their laws, functions, organizational structures, performance statistics, public service messages, and procedural guidelines and help lines.⁶⁵⁶

5.2.3 Accountability (law)

Score 50%

Scoring Question To what extent are there provisions in place to ensure that law enforcement agencies have to report and be answerable for their actions?

In Pakistan, general criminal law of the land provides protection to all public servants from being prosecuted for acts done in the course of performing their duties and police officials cannot be prosecuted without prior permission of the employing government.⁵⁵⁷ But for any neglect, failure or excess committed by a police officer, and illegal activities such as extortion/ bribery, illegal confinement, police torture or refusal to register a police report etc. law enforcement officials are answerable and a citizen is entitled to initiate either departmental/ internal disciplinary proceedings, or can have recourse to other avenues. Few of these remedies such as Justice of Peace,⁶⁵⁸ the Federal/Provincial Ombudsmen⁶⁵⁹ and Citizens Police Liaison Committees (CPLCs)⁶⁶⁰ are merely directional and recommendatory in nature.

Remedies that entail penal consequences include registering cases with the Federal Investigation Authority (FIA) and the National Accountability Bureau (NAB) that have authority to initiate investigations into allegations of corruption by law enforcement officials.⁶⁶¹ The Higher Courts too, have the supervisory jurisdiction⁶⁶² over administrative actions.

Most of the law enforcement agencies and the Criminal Prosecution Services⁶⁶³ are also required to submit their annual performance reports to their respective governments.⁶⁶⁴

654 Huzaima Bukhari and Dr Ikram ul Haq, "Of asset disclosures and transparency",

Monday, December 12, 2011 The NEWS(e-paper), 2011, <http://images.thenews.com.pk/12-12-2011/ethenews/e-81784.htm>

655 'The accumulation of unexplained wealth by public officials: Making the offence of illicit enrichment enforceable', U4 Brief January 2012 No 1, p.3,

656 <http://www.fia.gov.pk/>; <http://www.punjabpolice.gov.pk/>; <http://www.cplc.org.pk/>

657 Sections 132 & 197 of the Criminal Procedure Code, 1898

658 Section 22-A (6) (iii), of the Criminal Procedure Code (CrPC), 1898.

659, Crisis Group Asia Report N°185, 16 February 2010, p.12. Wafaqi Mohtasib (Ombudsman) Order 1983, which has jurisdiction to hear complaints against any injustice done to any person through "maladministration" by any governmental agency including federal law enforcement agencies, whereas for misconduct by provincial agencies, there exist four Provincial Ombudsman offices Reforming Pakistan's Civil Service.

660 Police Order 2002, and Dr Qaisar Rashid, "A Few Words: Punjab police face challenges", Wednesday, April 04, 2012, Daily Times.

661 PILLAR on Anti-corruption Agencies(ACA)

662 Article 199 of the Constitution of Pakistan, 1973 along with the Section 173 of the Criminal Procedure Code 1868.

663 Mr. Taha Raouf, April 2011. "Criminal Prosecution Services" (Section on Structure).

664 Provincial Criminal Prosecution Service Acts, 2006. Pakistan Criminal Prosecution Service Act is in progress.

5.2.4 Accountability (practice)

Score	25%
Scoring Question	To what extent do law enforcement agencies have to report and be answerable for their actions in practice?

Information on working of law enforcement agencies, particularly the abuse of authority and violations of laws/rules is extremely difficult to find. Various international and domestic civil society rights organizations are usually the only source to bring to light, information on police abuses and violations.⁶⁶⁵

The public prosecution office does not always account periodically and publicly for its activities as a whole and in particular the way in which its priorities are carried out and prosecutors also do not give reasons to relevant stakeholders regarding their decision to prosecute.⁶⁶⁶ The public prosecution office, being new is in the course of establishing its practices. So far, only the newly formed Service in Punjab has published its first annual report for 2010.

Decisions to prosecute do not lie with the prosecutors, and they have to formally approve the case before sending it to trial under section 9 of Criminal Prosecution Act. But there is neither a separate training institute nor follow up training facilities for prosecutors to enhance their limited criminal law expertise. Sindh Judicial Academy launched a training program for prosecutors in 2007, but not a single prosecutor got enrolled for it.⁶⁶⁷ Prosecutors have powers to scrutinize the available evidence, pin point the defects in investigation and to direct the investigating agency to remove the same.⁶⁶⁸ But being poorly trained, prosecutors do not get closely involved with investigation, do not interact with the witnesses at pre-trial stage nor make visits to crime scenes and mainly depend upon the police for collection of evidence, creating legal lacunae.⁶⁶⁹

Courts then act in a supervisory capacity and see to it that the prosecutors do not use their discretionary powers arbitrarily and contrary to public interest. Though, opinions of prosecutors as experts are respected but are not binding upon the courts. Courts are the ultimate authority to decide whether an accused ought to be prosecuted or not and the decision has to be fair, just and based on reasons justifying the order.⁶⁷⁰

Complaints against law enforcement agencies in Pakistan are usually based on their rude behaviour, refusal to file first information reports (FIR) and illegal detentions mainly for extorting money.⁶⁷¹ Public usually refrains from going to the police in case of minor theft or injury for fear of extortion.⁶⁷² In practice, some policing authorities file FIRs to intimidate detainees without supporting evidence or they do not file them when adequate evidence is available unless the complainant pays a bribe.⁶⁷³

665 Swati Mehta, *Feudal Forces: Democratic Nations Police Accountability In Commonwealth South Asia*, Commonwealth Human Rights Initiative (CHRI), 2007, p.81

666 Interviews of Additional IG Mr. K.B. Malil and Mr. Tariq Mahmood on 24/8/12

667 *Reforming Pakistan's Criminal Justice System*, Crisis Group Asia Report N°196, 6 December 2010, p.18

668 *Tanveer Hussain Qureshi and 8 others Versus District Public Prosecutor, Sialkot and 2 others*, 2009 P Cr.L J 1043.

669 *Reforming Pakistan's Criminal Justice System*, Crisis Group Asia Report N°196, 6 December 2010, p.18

670 *Allah Yar Versus Hussain Ali and another*, PLD 2009 Lahore 87

671 *Revisiting Police Laws*, Compiled and edited by Asad Jamal, Published by Human Rights Commission of Pakistan, January 2011, p.2-3

672 Warraich, Ahmad N. "Police Powers in Pakistan: The Need for Balance Between Operational Independence And Accountability" *Human Rights Brief* 11, no. 2 (2004): 45-47, p.1

673 *Immigration and Refugee Board of Canada*, Pakistan: Police corruption; the authorities responsible for receiving complaints against the police, including their effectiveness; the procedures to submit a complaint;

In practice, law enforcement agencies are immune from criminal prosecutions for all their acts under the legal justification of 'in line of their duty'. Also, obtaining requisite permission from the employing government to file a complaint against a police official is a daunting task.⁶⁷⁴ Mechanisms within the police departments for receiving complaints against police is said to be ineffective, as there is always reluctance in acceptance of a complaint against fellow police officials. There have also been complaints of "humiliating treatment" at police stations.⁶⁷⁵ In a number of cases, courts have also provided relief against police excesses.⁶⁷⁶ However, courts are reluctant to directly interfere in police investigations and consider it ill-advised to substitute their own decisions for that of the competent authority and only issue directions to competent authorities to pass an appropriate order where required.⁶⁷⁷ Authority vested in Sessions judge acting as ex-officio Justice of Peace is merely administrative and ministerial. A Justice of the Peace in Pakistan neither has the judicial powers nor can it take up the role of investigating authority, rather it acts as a facilitator or a bridge between the complaining persons and the police authorities.⁶⁷⁸

Institutions of Federal and Provincial Ombudsman are also weak when it comes to police accountability and can only make recommendations which are rarely accepted.⁶⁷⁹

Citizens Police Liaison Committees (CPLCs) have also been set up under Police Order 2002, in various cities of Pakistan to free the police from political influence, hold police accountable to citizens and check police corruption and abuse of authority.⁶⁸⁰ But CPLCs can only keep track of police misconduct or neglect of duty. They are ineffective as they cannot "take any action against the police excesses" and only function as a "post office" between the public and the police.⁶⁸¹ However these committees have successfully provided assistance in registration of 2,857 FIRs in different police stations.⁶⁸²

According to one study, lack of political will is the main factor behind lack of police accountability.⁶⁸³

police training programs, 30 November 2011, PAK103867.E, available at: <http://www.unhcr.org/refworld/docid/5072d1ec2.html> [accessed 11 November 2012]

674 Swati Mehta, *Feudal Forces: Democratic Nations Police Accountability In Commonwealth South Asia*, Commonwealth Human Rights Initiative, 2007, p.

675 complaint; police training programs, 30 November 2011, PAK103867.E, available at: <http://www.unhcr.org/refworld/docid/5072d1ec2.html> [accessed 11 November 2012 (Immigration and Refugee Board of Canada, Pakistan: Police corruption; the authorities responsible for receiving complaints against the police, including their effectiveness)

676 : "SC orders action against Punjab police hierarchy", 24th July, 2012, DAWN.COM (Pakistan), <http://dawn.com/2012/07/24/sc-orders-action-against-punjab-police-hierarchy/>

677 Khizer Hayat and others Versus Inspector-General of Police (Punjab), Lahore and others, Writ Petitions Nos. 11862, 14415, 17169 and 16453 of 2004, decided on 1st June, 2005, PLD 2005 Lahore 470

678 Khizer Hayat and others Versus Inspector-General of Police (Punjab), Lahore and others, Writ Petitions Nos. 11862, 14415, 17169 and 16453 of 2004, decided on 1st June, 2005, PLD 2005 Lahore 470

679 Swati Mehta, *Feudal Forces: Democratic Nations Police Accountability In Commonwealth South Asia*, Commonwealth Human Rights Initiative (CHRI), 2007, p.72

680 Dr Qaisar Rashid, "A Few Words: Punjab police face challenges", Wednesday, April 04, 2012, Daily Times.

681 Immigration and Refugee Board of Canada, Pakistan: Police corruption; the authorities responsible for receiving complaints against the police, including their effectiveness; the procedures to submit a complaint; police training programs, 30 November 2011, PAK103867.E, available at: <http://www.unhcr.org/refworld/docid/5072d1ec2.html> [accessed 11 November 2012]

682 "Punjab govt. blocks Citizens Police Liaison Committee's funds", 21 November 2011, Dunya News.

683 Kalim Imam, *Good Governance and Police Administration in Pakistan*, Journal of Political Studies, Vol. 18, Issue - 2, 2011: 133-154, p.142

5.2.5 Integrity Mechanisms (law)

Score 100%

Scoring Question To what extent is the integrity of law enforcement agencies ensured by law?

Other than the general laws,⁶⁸⁴ every law enforcement agency has its own code of conduct. For instance, the conduct of the criminal prosecutors are governed by the laws and rules applicable to civil servants and any violation thereof, entails action and punishment under the respective Employees Efficiency, Discipline and Accountability Acts and the Civil Servants Laws. e.g. The conduct of the members of the Punjab Criminal Prosecution Services are regulated by the Punjab Employees (Efficiency, Discipline and Accountability) Act, 2006 and all other laws or rules that are applicable to civil servants. Comprehensive provisions in form of Performance Standards Document delineating job descriptions and performance measures have also been formulated.

An 18 points 'Code of Conduct for Punjab Police Officers' enforced by the Government under the Police Order, 2002, was issued by the Government in 2011.⁶⁸⁵ The Punjab regulates police practices and provides guidelines for police conduct and behaviour in official capacity as well as off duty. The code prohibits taking of gifts, promises or incentives demanded or accepted in connection with one's duties and treats any of such acts as corruption. The police official is required to report if h/she has been offered a bribe and failure to do so amounts to breach of discipline. Abuse of power, mistreatment of accused in custody, involvement in political activities, keeping confidentiality, communicating with the press, use of external influence, honesty, integrity, fairness and impartiality are other such issues addressed by the above said code of conduct. Violation of the same entails disciplinary proceedings.⁶⁸⁶

There are other numbers of provisions in place to ensure the integrity of members of law enforcement agencies. For instance, under the Government Servants (Conduct) Rules, 1964, a member of law enforcement agencies or any of his family member like any other government servant, is not permitted to accept any gift or foreign trips from commercial organizations and is also not allowed to be involved in any pecuniary or non-pecuniary transaction that might place him under any official obligation.

⁶⁸⁴ Pillar on Public Sector & Pillar on ACAs; The general laws of integrity, such as the ESTACODE, the Government Servants (Conduct) Rules, 1964 and Civil Servants Act, 1973 are applicable on the members of law enforcement agencies like rest of the public officials. Initiation of criminal proceedings under the National Accountability Ordinance, 1999 and FIA Act is also available for alleged corrupt behavior.

⁶⁸⁵ Punjab Police Official Website, <http://www.punjabpolice.gov.pk/7072011pr>; The Nation, "New code of conduct comes for police", Friday July 08, 2011., The

⁶⁸⁶ Under the Punjab Employees (Efficiency, Disciplinary And Accountability) Act, 2006

The members of all law enforcement agencies, like any other civil/government servants are bound by the Civil Establishment Code (ESTACODE),⁶⁸⁷ and as per the code, it is the duty of every officer to keep an eye on the activities and conduct of their subordinates and 'Heads of Departments/Organizations' are responsible and answerable for corruption within their domain. In case of inefficiency, misconduct, corruption, subversive activities or even failure to comply with provisions relating to disclosure of assets, a law enforcement official is liable to severe disciplinary actions that may include censure, withholding of promotion or increment, demotion, compulsory retirement or removal/dismissal from service under the Government Servants (Efficiency and Discipline) Rules, 1973.

The codes of conduct for National Accountability Bureau and Federal Investigation Authority have been discussed in the pillar related to ACAs. The Punjab Criminal Prosecution Services has its own code of conduct⁶⁸⁸ on prosecutorial decision making, effective reporting formats, and job description and performance indicators for the prosecutors.⁶⁸⁹

5.2.6 Integrity Mechanisms (practice)

Score 25%

Scoring Question To what extent is the integrity of members of law enforcement agencies ensured in practice?

Public image, credibility and integrity of the law enforcement agencies in Pakistan have suffered a lot of damage on account of corruption, cronyism, nepotism, and political exploitation. Police has been ranked the most corrupt institution in the country for four consecutive years in surveys conducted by Transparency International Pakistan from 2002 to 2010. In Transparency International Global Corruption Barometer 2013, the surveyed households ranked police as the most corrupt institution and approximately three out of five respondents reported to have paid a bribe. Low salaries, lack of accountability and discretionary power have been identified as three main factors responsible for corruption in this sector.⁶⁹⁰

687 A comprehensive document of 1520 pages, comprising laws on every aspect, terms and conditions regarding civil/government services. ESTACODE includes the Government Servants (Conduct) Rules, 1964, which require every Government servant to make a declaration to the Government and disclose all his/her assets whether immovable or movable including jewels worth PKR 50,000 (USD 526.3) or more, shares, securities and certificates, belonging to him or any of his family member. This disclosure is to be submitted at the time of entering into service and then annually showing any increase or decrease of property

688 Section 17 of Punjab Criminal Prosecution Service Act, 2006 and the Punjab Employees (Efficiency, Discipline and Accountability) Act, 2006.

689 Annual Report, Public Prosecution Department, 2010

690 Business Anti-corruption Portal, <http://www.business-anti-corruption.com/country-profiles/south-asia/pakistan/show-all.aspx>

Present Integrity and disciplinary mechanisms are quite sound if implemented in their true spirit, but it seems that the issue of integrity has never been taken seriously. Courses on ethics and integrity are not given due importance during training programmes. Consequently, rules on acceptance of gifts, using political influence for transfers and postings, engaging in private employment without permission of the government, sub-letting of official residences are commonly violated.⁶⁹¹

Instead of adopting a proactive/ preventive approach and detecting beforehand potential misconducts through internal systematic checks, identifying underlying factors like external and internal pressures, fear of demotions, unjustified postings and transfers, the internal integrity mechanisms are limited to reactive approach, disciplinary actions and punishing individuals. Honest officers pay a heavy price for their integrity and either have to give up key posts, are transferred, removed from service or are deprived of promotions.⁶⁹²

However, efforts are being made⁶⁹³ such as, for internal discipline and accountability, Punjab Police has a discipline branch which deals with public complaints against Police. The Inspection and Vigilance Cell was also established in 2005, which carries out inspections of police stations, conducts discreet enquiries into police performance/conduct, corruption, high handedness and violation of human rights.⁶⁹⁴

Recently, the Punjab Police has also taken another initiative and has established a Punjab Police Citizen Feedback Cell across the province⁶⁹⁵ with working hours from 8.00 a.m. to 9.00 p.m.

All the law enforcement agencies must strive to raise their integrity standards and public image. The internal integrity mechanism must be vigilant enough to spot conducts that might lead to misconducts and corrupt behaviour.

5.3 Role

5.3.1 Corruption prosecution

Score 25%

Scoring Question To what extent do law enforcement agencies detect and investigate corruption cases in the country?

⁶⁹¹ Accountability In Public Sector of Pakistan, Syndicate Report, Syndicate 2, 36th specialized Training Program, 22 April, 2010, p. 49-50

⁶⁹² Pakistan Observer (e-paper), 'Why civil servants comply with unlawful orders?' <http://pakobserver.net/201204/13/detailnews.asp?id=150033>

⁶⁹³ '100 corrupt Pakistani police officers take oath never to receive bribes', August 2, 2010 maverickpakistanis.com, <http://www.maverickpakistanis.com/2010/08/100-corrupt-pakistani-police-officers-take-oath-never-to-receive-bribes/>

⁶⁹⁴ Annual Administration Report Punjab Police, 2011, p.73

⁶⁹⁵ 'Citizen Feedback Cell – A Positive Step', January 21, 2012, Awami Politics, <http://www.awamipolitics.com/citizen-feedback-cell-%E2%80%93-a-positive-step-2405.html>

Anti-Corruption & Economic Crime Wing of the FIA and NAB at federal level and ACEs at provincial level are specialized anti-corruption agencies. Rest of the law enforcement agencies do not usually take up corruption cases (For NAB & ACEs please refer to the ACAs Pillar).

FIA is empowered to investigate into cases of corruption pertaining to pilferage of Government revenues, tax evasion, bank or public sector frauds and mal-practices in bodies set up, controlled or administered by or under the authority of the Federal Government, which has a special Economic Crime Wing that handles such matters. The latest case of corruption registered with the FIA has been a probe into 11 road project contracts for over PKR 40 million (USD 0.41 million) with 7 contractors by the Pakistan Public Works Department (Pak-PWD) in violation of Public Procurement Rules (PPRA) 2004.⁶⁹⁶

However, due to FIA's past performance such as in 'Hajj Scam' case (see Independence Practice), people are not ready to accept a probe through FIA accusing it to be a corrupt agency.⁶⁹⁷ In a number of high profile cases, the apex court too has shown distrust on the performance of NAB and FIA.⁶⁹⁸ Unfortunately the level of prosecution is very low.

Ideally, Law enforcement agencies should promote internal accountability system, governance and prosecution at all levels to ensure eradication of corruption and to promote equity.

696 Mr. Asad Kharal, The Express Tribune, July 9, 2012. 'FIA probe: Substandard material used in 11 roads in Okara. <http://tribune.com.pk/story/405603/fia-probe-substandard-material-used-in-11-roads-in-okara/>

697 Mr. Amir Wasim, The Nation, 22nd October, 2012 'PML-N rejects investigation by FIA'.

698 Supreme Court, October 23, 201. 'Institutions like NAB, FIA lack credibility: <http://www.nation.com.pk/pakistan-news-newspaper-daily-english-online/national/23-Oct-2012/institutions-like-nab-fia-lack-credibility-sc>

PILLAR 6

Electoral Management Body

Pillar 6: Electoral Management Body

SUMMARY

The Election Commission of Pakistan (ECP) is a Constitutional body, responsible for holding free and fair elections in the country. Under Article 218 of the Constitution of the Islamic Republic of Pakistan, the Election Commission is responsible for organizing and conducting elections and making such arrangements as are necessary to ensure that the election is conducted honestly, justly and fairly.

The ECP is an independent and autonomous institution and Chief Election Commissioner (CEC) is appointed by the President of Pakistan for a term 4 years. His/her removal from office is only possible through Supreme Judicial Council of Pakistan. He/she is fully empowered to hold impartial, free and fair elections. The present CEC was in office on July 20, 2012. The CEC has recently issued a 46-item directive for election candidates and their parties. The directives state that the President, Governors and ministers cannot visit the election constitutions, women cannot be barred from participating in the election process, and campaigning is allowed beyond 400 meters, among other regulations.⁶⁹⁹

The performance of the ECP, prior to the appointment of the current Chief Election Commissioner (CEC) had fallen well short of what it should have been and was regarded as somewhat unsatisfactory.⁷⁰⁰ The current CEC meanwhile is generally considered to be independent, impartial, accountable and efficient.

For the 2013 election, a report by Free and Fair Election Network (FAFEN) provides an analysis that shows irregularities in polling stations during voting and in election results management, last minute changes in polling schemes, pre-election violence, government interference, Code of Conduct violations and constituency delimitations.⁷⁰¹

The table below summarizes the findings of the assessment of the present Election Commission of Pakistan in terms of its capacity, its internal governance and its role within the Pakistan Integrity System.

699 Mumtaz Alvi. Wednesday, January 30, 2013.. International NEWS. Available at www.thenews.com.pk/Todays-News-13-20595-President-governors-cant.

700 Azam Khan, the Express Tribune, Oct 19, 2012

701 Free and Fair Election Network (FAFEN) report on "Observation of General Election 2013: Key Findings and Recommendations." May, 22, 2013. Available at www.electionpakistan.org/.../bb90e-FAFEN-Election-Observation-Repor

Table 8
Percentage Scores of Indicators
55.5/100

Dimension	Indictors	Law	Practice
Capacity 83.3/100	Resources	-	75
	Independence	100	75
Governance 58.3/100	Transparency	75	75
	Accountability	100	50
	Integrity Mechanisms	25	25
Role 25.0/100	Campaign regulations	25	
	Election Administration	25	

Structure and Organization

The Election Commission of Pakistan came into being on the 23rd of March, 1956⁷⁰² when the Second Constituent Assembly succeeded in framing and adopting the first Constitution of Pakistan. It was charged with the duties of the preparation of electoral rolls, their annual revisions and organization and the conduct of elections to Assemblies. Elections to the National and Provisional assemblies were to be held on one vote-one person basis. A separate institution, the "Delimitation Commission", was also established to provide for the delimitation of Constituencies.⁷⁰³

An Ordinance was promulgated in 1962, which provided the election of members of National and Provincial Assemblies through Electoral College consisting of 80,000 Basic Democrats ("basic democrats" were members of the urban and regional councils who voted for the election of President of Pakistan in 1965 election). At the time, the Chief Election Commissioner (CEC) was appointed by the President of Pakistan for a term of three years and enjoyed the privileges of a Judge of Supreme Court. The Commission had two Members, one each from West and East Pakistan, who were Judges of their respective High Courts. After abrogation of 1962 Constitution in 1969, the Election Commission continued working on the basis of the "Provisional Constitution Order".⁷⁰⁴

The Constitution of Pakistan 1973, provided for an Election Commission consisting of Chairman/Chief Election Commissioner and two members, who were retired judges of High Courts. The number of Members of the Election Commission was later raised to four.

The leadership of the Election Commission of Pakistan (ECP) rests with the Chief Election Commissioner, the Secretary of the Election Commission manages the human and material resources. The ECP has more than 1800 staff members across the country.⁷⁰⁵

702 Ecp.gov.pk/introduction.aspx, Constitution of Pakistan 1956

703 Ecp.gov.pk/introduction.aspx, Constitution of Pakistan 1956

704 Chapter 1, Part VIII Constitution of Pakistan, 1973

705 M. Bashir PC# 09, 7B of the Election Commission order. 2002, Election Commission of Pakistan, p-33 and Clause 2, Article 218 read with Article 219 of Constitution of Pakistan, 1973

The provincial set-up of the Election Commission of Pakistan is headed by a Provincial Election Commissioner (PEC). The PEC's offices are located in the four provincial capitals: Karachi, Lahore, Peshawar and Quetta. The PEC's are supported by the Joint Provincial Election Commissioners (JPEC's). There is one JPEC in each of the four provincial offices .⁷⁰⁶

The lowest tier of the Election Commission of Pakistan (ECP)'s organizational set-up in the country is at the district level, headed by an Assistant Election Commissioner (AEC). There are 124 such district offices throughout Pakistan. The AEC is assisted by an Election Officer. In addition to managing the district office and establishing and maintaining liaison with district administration and other executive authorities, the AEC is also the Registration Officer tasked with maintaining electoral rolls. Under the Electoral Poll Act, 1974, a Registration Officer is appointed by the ECP.⁷⁰⁷

6.1 Capacity

6.1.1 Resources (Practice)

Score 75%

Scoring Question To what extent does the electoral management body (EMB) have adequate resources to achieve its goals in practice?

The budget is allocated by Finance Division, Ministry of Finance to Election Commission which is approved by both houses. The Election Commission has full powers to utilize the funds. Moreover, the Commission may transfer funds from one head of account to another according to their needs.⁷⁰⁸

In 2006, the International Foundation of Election System (IFES) assisted ECP by offering a PKR 720 (USD 9.0) million through USAID for fair and free elections.⁷⁰⁹

There is a lack of monitoring staff though number of staff members in terms of the following is sufficient.

- (i) The Election Commissioner who is the Chairman of the commission.
- (ii) Four judges from four provinces as Members of the Commission
- (iii) About 1800 other employees of the Commission

The ECP can employ or engage any number of staff members during the election year.⁷¹⁰ ECP has also employed a number of persons from different departments, which are hardly

⁷⁰⁶ <http://www.ecp.gov.pk/Aboutus.aspx>

⁷⁰⁷ Section 5, Electoral Roll Act, 1974, p-269

⁷⁰⁸ Mr.Kanwar Muhammad Dilshad, Ex-Secretary, Election Commission of Pakistan, with Researcher on 22/1/2013

⁷⁰⁹ International Foundation for Electoral System (IFES) Pakistan Election Support Group, 2009

⁷¹⁰ Section 5 and 7B, Election Commission of Pakistan Order 2002

sufficient during the election days to conduct fair and free elections.⁷¹¹ ECP has appointed electoral officers for each district and staff for polling stations.⁷¹²

The Election Commission is adequately equipped with all the required physical facilities including offices, transportation and communication. The Commission can ask for any other facility as required to carry out its duties.⁷¹³ However, The Election Commission does not have sufficient human resources to carry out monitoring of the staff, which is a major issue. Though they employed photographers to film the process, but, the staff was scanty. Availability of the budget is not an issue for the Election Commission but the provision of human resources on a short notice.

The ECP has the records of the results of all elections in Pakistan and the records are saved in a digital system. Pak Electiononline.org has records of 2002, 2008 and 2013 elections. The individual candidate's votes are available in the Election Commission's archives. Results are available for the general elections for the years 1955, 1960, 1965, 1970, 1985, 1988, 1990, 1993, 1997, 2002, 2008 and 2013.⁷¹⁴

All members of the Commission are highly qualified and experienced as under Article 213 of the Constitution, the CEC has to be a serving or a former judge of the Supreme Court or of a High Court eligible for appointment as Judge of the Supreme Court. The Members of the Election Commission shall be former judges of each of the four High Courts as such.⁷¹⁵

6.1.2 Independence (Law)

Score 100%

Scoring Question To what extent is the electoral management body independent by law?

The Election Commission of Pakistan (ECP) was established in 1956 and later retained its name under the 1973 Constitution of Pakistan as an independent and autonomous constitutional body with the responsibility of conducting transparent, free, fair and impartial elections of both the Houses of Parliament and of Provincial Assemblies.⁷¹⁶

In accordance with the 18th Amendment to the 1973 Constitution, the appointments of CEC and four members are now made on the recommendation of a Parliamentary Committee comprising equal number of members of the Government and the

711 Article 221, Constitution of Pakistan, 1973.

712 R. ftikhar Khan, Dawn NEWS "ECP appoints electoral officers" March, 02, 2013.

713 Interview of Mr. Nadeem Zubair, District Election Commissioner wit Researcher on 22/1/2013 and Election results www.OnlineInsider.com

714 Interview of Mr. Nadeem Zubair, District Election Commissioner wit Researcher on 22/1/2013 and Election Commission Of Pakistan: A Brief Introduction www.ecp.gov.pk/sp/win-intro.html

715 Article 175(A) Constitution of Pakistan 1973 and ELECTION COMMISSION OF PAKISTAN: A BRIEF INTRODUCTION www.ecp.gov.pk/sp/win-intro.html

716 Article 218 (3) Constitution of Pakistan 1973.

Opposition. The Prime Minister jointly with the leader of opposition forwards three names to the parliamentary committee for appointment of CEC. The Parliament Committee recommends one name for the Chief Election Commissioner to the President. The CEC and four members of the Commission are appointed by the President. The Election Commission of Pakistan, under Article 218 of the Constitution is now a permanent independent constitutional body.⁷¹⁷

The CEC is empowered to conduct elections with assistance from administrative staff. In the larger perspective, all members of the public sector administrative departments are required to assist him.⁷¹⁸

The CEC is vested with the authority to recruit election personnel. There is a selection committee which oversees and ensures that the recruitments are advertised through print/electronic media and Election Commission's website and are carried out in a non-discriminatory and a transparent manner.⁷¹⁹

The CEC can be removed in the same manner as judges of the High/ Supreme Court. Since the judges are removed by the Pakistan Supreme Judiciary Council on the grounds of illness or incapability of properly performing his/her duties or is guilty of misconduct, so on the same criteria, the Commissioner and any of the four members of the Commission can be removed by the Council.⁷²⁰ Other officers and servants of the Commission office can be removed by the Chief Election Commissioner in accordance with the Civil Servants Act. Officers and officials are protected by Civil Servants Ordinances and can appeal to CEC, Ombudsman and/or the court in case an employee considers that he/she has been victimized.⁷²¹

6.1.3 Independence (Practice)

Score 75 %

Scoring Question To what extent does the electoral management body function independently in practice?

In the past elections, the Election Commission could not work professionally and impartially due to major external and internal interference.⁷²² Announcing the short order of a 16-year-old case, the Supreme Court said that the then Army chief, president and DG ISI interfered and were involved in rigging the elections of 1990. The former head of Military Intelligence (MI), Sindh also submitted to the Supreme Court that the 1990 election operations were initiated and supervised by MI, thereby violating Article 6 and Article 244, Constitution of Pakistan.⁷²³

717 Articles, 213-226, Constitution of Pakistan, 1973

718 Article 220 ibid

719 Article 221 ibid

720 Article 209(5), ibid

721 Article 209 Constitution of Pakistan 1973

722 tribune.com.pk/.../asghar-khan-case-sc-reserves-verdict-to-announce-sho and Azam Khan, the Express Tribune, October, 19,2012

723 Ibid. Some details on the rigging in the past elections have been for comparison purposes

The newly appointed CEC was considered to be independent, impartial, accountable and efficient, by all political parties, most citizens and international monitors⁷²⁴ and many media reports had words of praise for the CEC.⁷²⁵

CEC has financial and administrative control of the election process in Pakistan without interference from the executive or the political parties.⁷²⁶

Recently in 2013 election, the CEC devised an application form, where the candidates had to provide information regarding their finances and assets etc. but the Executive and political parties showed some reservations as the asked information could potentially harm their credibility in their constituencies, but the CEC did not yield to their pressures and the candidates had to submit the form with full information asked for.

The weak aspect of the CEC was the inaction on part of the commissioner against some observed irregularities during the 2013 elections. Women voters were barred from voting in NA-9 of Mardan but CEC could not take any action.⁷²⁷

Though the caretaker governments in Khyber Pakhtunkhwa and Punjab and ECP took measures to discourage such social agreements barring women's voting, however, reports of political parties' and candidates' consensus against female voting were reported. Out of 264 Statements of Count reviewed by FAFEN, no women turned out to vote at 13 combined polling stations, including 12 in KP and one in Punjab. NA-28 and NA-33 in KP reported the most cases of zero present women turnout.⁷²⁸

There is no example where senior staff members were appointed during the elections year and were removed. A few junior staff members were removed and replaced on the basis of their refusal to work for the election.⁷²⁹

At the polling stations, police and security officials are placed inside the polling stations. In the 2013 Election Day, there were reports of partisan remarks made in a polling station in the city of Sahiwal.⁷³⁰ There are at least 7 different cases of rigging of different kind that were videoed. In particular, NA 250 and NA 125, where multiple ballot papers were cast and stamped.

724 Pakistan Institute of Legislative Development and Transparency (PILDAT). State of Electoral Reforms in Pakistan, Monthly Report January, 2013, <http://www.pildat.org/Publications/publication/elections/StateofElectoralReformsinPakistanMonthlyReportJanuary2013.pdf>

725 EU Election Observation Mission, Final Report, July 2013, Pakistan 2013 Final Report, General Elections – 11 May 2013, http://www.eueom.eu/files/pressreleases/english/eu-eom-pakistan-2013-final-report_en.pdf

726 Interview of Mr. Nadeem Zubair, District Election Commissioner with Researcher on 22/1/2013

727 Free and Fair Election Network (FAFEN) report on "Observation of General Election 2013: Key Findings and Recommendations." May, 22, 2013. Available at [www.electionpakistan.org/assets/publication/bb90e-FAFEN-Election-Observation-Report--Key-Findings-and-Recommendations-\(22-May-2013\).pdf](http://www.electionpakistan.org/assets/publication/bb90e-FAFEN-Election-Observation-Report--Key-Findings-and-Recommendations-(22-May-2013).pdf) (This is the actual link)

728 Ibid.

729 Section 3, Chapter II, Civil Servants Ordinance, 1973 read with Articles 240 and 241, Constitution of Pakistan, 1973.

730 Report by Free and Fair Election Network (FAFEN) on "Observation of General Election 2013: Key Findings and Recommendation s." May, 22, 2013. Available at www.electionpakistan.org/assets/publication/bb90e-FAFEN-Election-Observation-Report

The man casting votes was caught by police but allowed the man to leave without arresting him.⁷³¹ A number of similar cases have been reported by Free and Fair Election Network (FAFEN).⁷³² Police and other party agents were supposed to be restricted and monitored by the Election staff and the Media and other international bodies for the fairness of the election polls.⁷³³ However, there are various reports that rigging took place in the elections 2013. In fact, all political parties including those who won most of the seats have also lodged complaints with ECP. Almost all papers and electronic media have shown the cases of rigging.⁷³⁴

6.2 Governance

6.2.1 Transparency (Law)

Score 75%

Scoring Question To what extent are there provisions in place to ensure that the public can obtain relevant information on the activities and decision-making processes of the EMB?

Under the elections laws, it is mandatory on the part of the ECP to monitor and scrutinize the funding and operational costs of political parties and to make all types of funds and operational costs public.⁷³⁵ The ECP is required to announce publicly all matters relating to holding of elections.⁷³⁶ Under the Representation of People Act and the Constitution of Pakistan, the ECP is bound to release the following information: (i) Voter's list, (ii) election procedures, (iii) sources of income of candidates, (iv) types of election expenses, (v) polling stations and their locations (vi) dates of elections and (vii) results. All election information relating to ECP activities, actions, notifications, laws governing elections and code of ethics have to be made public and available on ECP website.⁷³⁷

731 Pakistan Elections 2013 7 videos proving election was rigged. Impaired link. Actual link is as follows>>>>> <http://www.policymic.com/articles/41287/pakistan-elections-2013-7-videos-proving-election-was-rigged>

732 Report by Free and Fair Election Network (FAFEN) on "Observation of General Election 2013: Key Findings and Recommendations." May, 22, 2013. Available at www.electionpakistan.org/.../bb90e-FAFEN-Election-Observation-Report (Impaired or incorrect link) – Following is the actual link to the report>>> [http://www.electionpakistan.org/assets/publication/bb90e-FAFEN-Election-Observation-Report---Key-Findings-and-Recommendations-\(22-May-2013\).pdf](http://www.electionpakistan.org/assets/publication/bb90e-FAFEN-Election-Observation-Report---Key-Findings-and-Recommendations-(22-May-2013).pdf)

733 Interview of Mr. Nadeem Zubair, District Election Commissioner with the Researcher on 22/1/2013.

734 dawn.com/2013/.../rigging-49-polling-stations-received-over-100pc-turn

735 Section 13 of Convention Muslim League and Awami League Scrutiny of Funds Regulation, 1971.

736 Section 8(F), Conduct of General Elections Order No. 7, 2002.

737 Chief Election Commissioner of Pakistan; 46-point item of code of conduct. Reported by the NEWS on 31/1/2013

6.2.2 Transparency (Practice)

Score 75%

Scoring Question To what extent are reports and decisions of the electoral management body made public in practice?

Every citizen can check his/her name on the voting list issued by ECP on its mobile website. ECP announces its email address, telephone numbers for any information a citizen likes to have. It is very easy to actually get information through one's mobile phone.⁷³⁸ A cell number is available where voters can feed in their National Identity Card number and receive an automatic message informing them of their polling station and electoral identity number.⁷³⁹

CEC or his spokesperson holds regular press conferences on any new issues decided or to be decided by the Commission. All types of schedules of operation, such as dates of registration of parties, nomination, withdrawal dates, election dates etc. have also been announced quite extensively through media and on ECP mobile website.⁷⁴⁰ The Election Commission published Five Year Strategic Plan (2010-2014) providing future activities including its financial affairs, dispute resolution mechanism etc. The report is a brief version of the detailed 5-year Strategic Plan that the Election Commission of Pakistan has developed. The report is on ECP website for public consumption. Occasionally, minutes of meetings of special committees are also available on the website.⁷⁴¹

The information on all types of election rules are passed on to almost all the officials to the last tier of the hierarchy and to the public at large. The CEC has made a schedule of meeting regularly with his staff so as to check if the staff members are performing their duties honestly and efficiently.⁷⁴²

Press conferences or meetings with leaders of political parties are arranged when an announcement on an important issue has to be made.⁷⁴³

6.2.3 Accountability (Law)

Score 100%

Scoring Question To what extent are there provisions in place to ensure that the EMB has to report and be answerable for its actions?

738 Interview of Mr. Nadeem Zubair, District Election Commissioner, with Researcher on 22/1/2013 and www.ecp.gov.pk/VoterStats.aspx

739 www.ecp.gov.pk/VoterStats.aspx

740 *ibid*

741 A brief version of the detailed 5-year Strategic Plan that the Election Commission of Pakistan has developed. www.ecp.gov.pk/aboutus.aspx.reports, 2012

742 Interview of Mr. Nadeem Zubair, District Election Commissioner, with Researcher on 22/1/2013.

743 *ibid*

The Constitution of Pakistan, 1973 has laid down the rules to the relationship of ECP with the Legislation, Executive and the Judiciary. The external stakeholders of ECP are (i) The Executive (ii) Political Parties (iii) EC Staff (iv) Legislature (v) Judiciary (vi) Law Enforcement Agencies (vii) Civil Society (viii) Media and (ix) NADRA.⁷⁴⁴

ECP is required to present reports on its activities particularly voters' lists, delimitation of constitution boundaries, list of candidates etc. to the President and to all stakeholders. The reports are also to be published through media for public information. The annual report containing comprehensive details of ECP's activities are to be made public and uploaded on the Commission's website.⁷⁴⁵

Any grievances, complaints and disputes made by any political party or a candidate against electoral irregularities are to be investigated and redressed.⁷⁴⁶ The ECP has to appoint Election Tribunals which can be approached by any complainant in case the ECP receives cases of irregularities, rigging; polling stations mismanagement etc. or one is not satisfied with the ECP's redressal of his complaint.⁷⁴⁷

The ECP is required to follow guidelines of Auditor General of Pakistan (AGP) on financial management and if there is any discrepancy in financial statements, then ECP is answerable to the Executive.⁷⁴⁸

6.2.4 Accountability (Practice)

Score 50%

Scoring Question To what extent does the ECP have to report and be answerable for its actions in practice?

Auditor-General of Pakistan (AGP) and Provincial Accountant Generals are responsible for auditing the financial activities of ECP. The audit report is submitted to ECP, the President and Public Accounts Committee (PAC) for taking necessary actions.⁷⁴⁹

The Superior Courts are also vigilant regarding any complaints or constitutional issues received by ECP from any individual or political party or media or civil society. The reports are made public. ECP keeps in touch with all the stakeholders on different occasions and for various issues. For instance, Oct 17, 2012 was declared by the ECP as the National voters Day with the main objective of contacting people and to make them aware of the importance of voting on Election Day.⁷⁵⁰

⁷⁴⁴ Election Commission of Pakistan. Progress Report on Implementation of the Five-Year Strategic Plan. www.ecp.gov.pk

⁷⁴⁵ Article 225, Constitution of Pakistan,

⁷⁴⁶ Article 225, Constitution of Pakistan,

⁷⁴⁷ tribune.com.pk/.../ecp-forms-14-election-tribunals-to-investigate-rigging

⁷⁴⁸ Controller General Accounts (CGP) ordinances No. XXIV, 2001

⁷⁴⁹ Section 5 Controller General Accounts (CGP) ordinances No. XXIV, 2001

⁷⁵⁰ Election and Stakeholders: Dawn Report on October, 24, 2012.

Before the elections in 2013, almost all the opposition parties⁷⁵¹ lodged complaints with the ECP, about the pre-rigging activities by the parties in power at the time, such as transfer of bureaucrats and police to the places of their constituencies. The nature of a few complaints has also been confirmed by Free and Fair Election Network (FAFEN).⁷⁵² ECP reviewed the complaints on May 13, 2013 and had ordered recounting of votes in many polling stations and set up 14 Election Tribunals to investigate the complaints. The results of the Tribunals are still awaited. So far, no candidate or political party has been punished for any irregularity.⁷⁵³

On January 22, 2013, the ECP banned all recruitments to any ministry, division and department and institutions under Federal, Provincial and Local governments and they were only allowed to hire through the Federal or Provincial Public Service Commissions, and has sought explanation from various government functionaries and departments for violating its directives.⁷⁵⁴

The Election Commission of Pakistan (ECP) had undertaken ruthless scrutiny of electoral candidates and former lawmakers for presenting fake degrees and having dual nationalities during the 2008 general elections. On the presentation of cases before the Supreme Court, some lawmakers were imprisoned and a fine of PKR 3,000 (USD 30) was imposed. Recently, on receipts of complaints of poll rigging with proofs from candidates, ECP decided to cancel the results of a few constituencies and ordered recounting of some polling stations and re-election of some constituencies. Election in NA 83 was postponed and a candidate from NA 162 was disqualified on the basis of dual nationality.⁷⁵⁵ ECP forwards the complaints to the election tribunals for investigation.

ECP had schedule of meetings with the political leaders, EU observers, FAFEN members and media during the election days. Press conferences and meetings with leaders of political parties are generally arranged when announcement on important issues are to be made.⁷⁵⁷

6.2.5 Integrity (Law)

Score 25%

Scoring Question To what extent are there mechanisms in place to ensure the integrity of the electoral management body?

751 Jamat-e-Islami, Pakistan (JIP) as per the Reporter, Frontier Post, Feb. 2, 2013 and PML-N as per the Reporter, The International NEWS, Jan 30, 2013

752 Ibid and Free and Fair Election Network (FAFEN) report on "Observation of General Election 2013: Key Findings and Recommendations" May, 22, 2013. Available at www.electionpakistan.org/.../bb90e-FAFEN-Election-Observation-Report

753 Article 225, constitution of Pakistan and, 1973 and www.tribune.com.pk/.../ecp-forms-14-election-tribunals-to-investigate-rigging

754 Reporter, the Express Tribune, June 30, 2013

755 AAJ TV report available at www.aaj.tv/2013/05/elections-postponed-in-na-83-faislabad

756 Report by Pakistan Today. Available at www.pakistantoday.com.pk/2013/.../elections-postponed-in-na-83-cand... Meeting held with political parties and media on 7 May 2013

757 www.dailytimes.com.pk/default.asp?page...20-9-2012_pg7_18 scheduled meeting held on 20 Sep 2012 and www.newspakistan.pk/.../chief-election-commissioner-holds-talks-baloch... scheduled meeting held on 28 Mar 2013 with political leaders from Balochistan

Unfortunately there is no code of conduct for the Election Commission except what is laid down in the Oath which CEC and his four members have to take. CEC has made code of ethics for the candidates, the political parties, by-polls, polling staff, security personnel and the media, but not for the election commission. Election Commissioners⁷⁵⁸ may adopt the Judges Code of conduct.⁷⁵⁹

Under the Constitution, the CEC has to perform his duties in accordance with the Article 222 read with Article 219 which states that the Commission has to be non-partisan, provide quality services to voters and to all stakeholders, amicably resolve disputes that arise from election, control corrupt practices and other irregularities.⁷⁶⁰

Permanent EC staff is required to sign appointment letter showing their integrity and professionalism. The polling-day staff and the Presiding Officers are not required to sign any contract, swear-on-oath etc. but they are required to use professionalism and honesty in the election process.⁷⁶¹

6.2.6 Integrity (Practice)

Score 25%

Scoring Question To what extent is the integrity of the electoral management body ensured in practice?

Since there is no code of conduct for the Commission officials except for the polling and security staff, the CEC and the members being former judges of superior courts, followed the code of conduct for the judges that barred them from accepting gifts, hospitalities etc.⁷⁶²

The CEC emphasized on his staff and new staff members to show their credibility, fairness, integrity in conducting elections and performing their duties efficiently. Permanent EC staff at their appointment, vowed to observe honesty, professionalism and efficient conduct their official duties during the election processes. Temporary staff including Presiding Officers and polling staff did not sign any contract. The CEC and Secretary and Members are vigilant in observing staff for corrupt practices and irregularities. So far there is no reported case of dismissal of an ECP employee during the period 2012-2013.⁷⁶³

⁷⁵⁸ Election Commission OF Pakistan DRAFT code of political parties and contesting candidates www.ecp.gov.pk/misc/draft.pdf
⁷⁵⁹ Code of Conduct for Judges of the Supreme Court and the High Courts. www.supremecourt.gov.pk & www.pakistantoday.com.pk/.../election-commission-issues-elections-code... And Interview of Mr. NadeemZubair, District Election Commissioner wit Researcher on 22/1/2013

⁷⁶⁰ Article 219 and 222, Constitution of Pakistan 1973 updated 2012

⁷⁶¹ Code of Conduct for Judges of the Supreme Court and the High Courts. www.supremecourt.gov.pk

⁷⁶² Interview of Mr. NadeemZubair, District Election Commissioner wit Researcher on 22/1/2013

⁷⁶³ Ibid and Mr.Kanwar Muhammad Dilshad, Ex-Secretary, Election Commission of Pakistan, with Researcher on 22/1/2013.

6.3 Role

6.3.1 Campaign Regulation

Score 25%

Scoring Question Does the electoral management body effectively regulate candidate and political party finance?

Campaign expenses are regulated by Chapter VI of The Representation of People Act (ROPA) of 1976, which details that the maximum upper limit for candidates' expenses must not exceed USD 13999.50 for National Assembly candidates and USD 9333 for Provincial Assembly candidates. Successful candidates are required to submit expenses information to the Returning Officers within 10 days of election day, while unsuccessful candidates have up to 30 days.

To enhance transparency in the campaign financing, ECP has added substantial provisions in the Code of Conduct and candidates are required to channelize their campaign expenses through a separate bank account.⁷⁶⁴ All election expenditures are to be made out of the amount deposited in the aforesaid account and no transaction towards the election expenses shall be made through an account other than the account opened for the purpose. All transactions relating to the election expenses shall be entered with General Sales Tax registered firms. Moreover, every contesting candidate shall maintain his account of election expenditure on day-to-day basis, and submit the same to the District Returning Officer on weekly basis.⁷⁶⁵

But the campaign financing provisions have many loopholes. In the first place, the ceiling is too low and unrealistic keeping in view the probable expenditure of campaigns. Secondly, the Political Parties are not subject to it and provisions can easily be bypassed. Thirdly, without oversight by the ECP over the delegated authority of the Returning Officers, there is no way of ascertaining their credibility, who have full discretion in exercising powers to accept or reject the nomination papers and daily election expenses of the candidates and fourthly, without the backing of the enforcement and sanctioning mechanism, ECP has no means of monitoring or preventing violations. All it can do is hear complaints post elections. All these factors undermine the credibility and transparency of the newly inserted reform meant to regulate candidates campaign expenditure and make them a mere insignificant formality.⁷⁶⁶

Besides the respective regulatory control of the Ministry of Information and Broadcasting and Print & Media Regulatory Authority (PEMRA) on the public and private broadcasters,

⁷⁶⁴ Sections 42(3A) and 50, The Representation of People Act (ROPA) of 1976

⁷⁶⁵ Chief Election Commissioner of Pakistan; 46-point item of code of conduct, <http://www.ecp.gov.pk/ViewPressReleaseNotification.aspx?ID=1834&TypeID=1>

⁷⁶⁶ European Union Election Observation Mission (EU EOM), Pakistan 2013 Final Report General Elections – 11 May 2013, Published on July, 2013

and of the Press Council of Pakistan (PCP) on the print media, the ECP has also issued instructions/Code for the election coverage by the media. As per the Code, Political parties and candidates are not entitled to free airtime or space, but they can place advertisements in print and broadcast media. The Code puts a duty on the media to differentiate between paid and non-paid content and prohibits airing any paid or sponsored news, views, editorial, election evaluation or analyses. However, again, there is no mechanism of verifying the same.

Moreover, issuing of advertisements at the cost of public exchequer, misuse of official mass media during the election period for sponsored/partisan coverage of political news and publicity by the Federal, Provincial and Local governments is prohibited. The Political Parties, candidates and their workers are also restrained from exerting undue pressure against the print and electronic media.⁷⁶⁷

State and private media will make every effort to ensure allocation of specific time on proportionate basis, fairly and avoid disinformation, particularly when it relates to specific political parties, or candidates and where malicious intent is demonstrated. However, unfair electoral coverage, by both the print and electronic media was observed in the 2013 elections, and Time/space shares preferences were determined by editorial and provincial interests. The ECP also issued a press release to end broadcasting and printing of campaign-related materials “from midnight between the 9 May and 10 May”. No breaches of the campaign silence period were reported to regulatory bodies.⁷⁶⁸

6.3.2 Election Administration

Score 25%

Scoring Question Does the EMB ensure the integrity of the electoral process?

Election Commission is charged with the duty of holding general elections and to make arrangements that are necessary to ensure the conduct of elections honestly, justly and fairly in accordance with the law and to guard against corrupt practices. The commission regulates political parties’ election campaigns and other activities, with the aid of at least fifteen laws.⁷⁶⁹ These election laws and regulations are quite comprehensive and cover the details of procedures of holding general elections, rules for the political parties, allocation of party symbols, allocation of national and provincial seats, campaign financing and Code of Conduct etc. Moreover, all the executive authorities in the Federation and in the Provinces are required to assist Chief Election Commissioner and the Election Commission in the discharge of their functions.

⁷⁶⁷ Media code for elections finalized: Secretary ECP, Pakistan Press Foundation (PPF), April 4, 2013, file:///D:/latest%20NIS/Media%20code%20for%20elections%20finalized%20%20Secretary%20ECP%20%20%20Pakistan%20Press%20Foundation%20(PPF).htm

⁷⁶⁸ European Union Election Observation Mission (EU EOM), Pakistan 2013 Final Report General Elections – 11 May 2013, Published on July, 2013

⁷⁶⁹ Election Commission of Pakistan: Election Laws Volume I, www.ecp.gov.pk/ElectionLaws/Volume-I.pdf; the Representation of the People (Conduct of Election) Rules of 1977, the Electoral Rolls Act of 1977, the Electoral Rolls Rules of 1974, the Delimitation of Constituencies Act of 1974, the Election Commission Order of 2002, the Conduct of General Elections Order of 2002, the Political Parties Order of 2002, the Political Parties Rules of 2002, the Allocation of Symbols Order of 2002, the National Assembly and Provincial Assemblies Allocation of Reserved seats for Women and Non-Muslims Rules of 2002. Certain provisions of the Penal Code of 1860, the Code of Criminal Procedure of 1898, and the Code of Civil Procedure of 1908 are also relevant.

To fulfil the eligibility criteria for a voter in Pakistan a person has to be an 18 years old, sane Pakistani national, who is a resident of the electoral area and, has a Computerized National Identity Card (CNIC) issued by the National Database and Registration Authority (NADRA). ECP, in collaboration with NADRA, prepared a fully computerized electoral roll, after a door to door verification. The electoral roll was then displayed for 21 days at more than 50,000 display centres across the country, and the list was amended after some 3 million corrections and objections. The list kept on updating till the elections and 1 million more were added who had obtained CNIC subsequently. For the production of the final electoral rolls photographs of each person were added.⁷⁷⁰

The ECP also established an SMS system to facilitate voter verification. The voters could text their CNIC number to 8300 and receive an automated response and find out their registration details, polling station location, polling block number and their serial number on the Electoral Roll. 40 million people approximately utilized this facility.⁷⁷¹

The registration of women voters was substantially lower than men, and same goes for a minority community, who refused to register as voters, as they did not appreciate their being on a supplementary voter's list.⁷⁷²

Provisions for Overseas Voting have also been made on 9 May 2013, just two days before the elections via the Election Laws (Amendment) Ordinance, providing for the right to vote for overseas Pakistanis, which without a system could not be implemented.⁷⁷³ ECP also conducted an awareness campaign for the public and provided directions to ensure smooth conduct of elections and maintenance of public order. It observed one-day mock voting practice on National Voter's Day for the voter's education.⁷⁷⁴

The ECP used social media for voter education and provided material to be used by other, with support from national and international organizations and civil society groups. Twitter and face book were extensively used to convey messages. Voter education through print media was not extensive and only consisted of a few public service announcements. Specific messages on voting procedures and SMS system were conveyed only four days before Election Day. Few state and private media broadcasters worked their own voter education pots and targeted various social groups through "go out and vote" messages.⁷⁷⁵

770 Report of the Commonwealth Observer Mission, Pakistan General Elections, 11 May 2013, <http://thecommonwealth.org/sites/default/files/news-items/documents/130520.pdf>

771 European Union Election Observation Mission (EU EOM), Pakistan 2013 Final Report General Elections – 11 May 2013, Published on July, 2013

772 Report of the Commonwealth Observer Mission, Pakistan General Elections, 11 May 2013, <http://thecommonwealth.org/sites/default/files/news-items/documents/130520.pdf>

773 European Union Election Observation Mission (EU EOM), Pakistan 2013 Final Report General Elections – 11 May 2013, Published on July, 2013

774 www.ifes.org/countries/Pakistan.aspx.

775 European Union Election Observation Mission (EU EOM), Pakistan 2013 Final Report General Elections – 11 May 2013, Published on July, 2013

The voter turnout was almost 53.4%, only 15 incidents were reported wherein, women were barred from voting due to either militants fear, or due to influence of some community or religious leaders. 2.7 women voters do not have photographs on their CNICs, which makes them an easy target for impersonation. In some areas of KPK and Punjab, consensus between Political parties' and candidates' against female voting was reported. No women turned out to vote at 13 combined polling stations, including 12 in KP and one in Punjab. Moreover, women's polling booths were rated as poor or inadequate as compared to booths for men or combined population.⁷⁷⁶

Women's polling booths were more negatively assessed and were rated as 15% more poor or inadequate (as compared to a 9% overall average for male, female and combined stations).⁷⁷⁷

The ECP created monitoring teams to report on violations of the campaign Code of Conduct. These teams monitored the process in provinces and reported possible violations to respective Provincial Election Commission Offices for instance on campaign activities and campaign financing. Similarly, the ECP also invited the media and independent groups to observe the election process, for just one day, Election Day, and also ensured availability of tabulation data.⁷⁷⁸

There were reports of rigging in many of the constituencies, and collusion of the ECP staff and the administration has been suspected.⁷⁷⁹ Weak management of valid election results was observed by FAFEN at many polling stations.⁷⁸⁰ Political Parties had approached the ECP to recount in certain polling stations.⁷⁸¹

The European Union Election Observation Mission (EU EOM) to Pakistan claimed that the Election Commission of Pakistan (ECP) did not fully comply with its responsibilities during the general elections 2013.⁷⁸² Almost all Pakistan political parties protested and claimed that the elections were not completely free and fair, but nevertheless accepted the results by considering them largely fair.

776 Report by Free and Fair Election Network (FAFEN) on "Observation of General Election 2013: Key Findings and Recommendations." May, 22, 2013.

777 EU EOM,

778 Ibid.

779 dawn.com/2013/.../rigging-49-polling-stations-received-over-100pc-tur

780 Report by Free and Fair Election Network (FAFEN) on "Observation of General Election 2013: Key Findings and Recommendations." May, 22, 2013.

781 jafrianews.com/2013/.../deadly-elections-in-pakistan-create-chaos-all-par...

782 EU Election Observation Mission, Final Report, July 2013, Pakistan 2013 Final Report, General Elections – 11 May 2013, http://www.eueom.eu/files/pressreleases/english/eu-eom-pakistan-2013-final-report_en.pdf

PILLAR 7

Ombudsman

Pillar 7: Ombudsman

SUMMARY

The office of the Ombudsmen was established in 1983 through the Office of Wafaqi Mohtasib (Ombudsman) Order, 1983 (President's Order No. 1 of 1983).⁷⁸³

The Ombudsman is an official appointed by the President⁷⁸⁴ with a significant degree of independence. The Ombudsman's primary responsibilities are to assess, evaluate, investigate, redress and rectify any injustice caused to a person through maladministration on the part of a Provincial Agency or a Provincial Government official.

The Ombudsman has adequate financial and human resources to carry out his/ her duties. The Ombudsman's decision making is absolutely independent and decisions are disseminated via media for public.

The annual reports from the office of the Federal Ombudsman are submitted to the President whereas reports from the Provincial Ombudsman are submitted to Governors. These reports are then released to the press for public consumption. The Ombudsman and his/her officials are not, however, answerable for their implemented decisions.

In case a government department resists the implementation of the Ombudsman's decisions, the Federal Ombudsman reports to the President to take action against the department and/or the official. Similarly, Provincial Ombudsmen report to Governors who take necessary actions against the department and/or the official. The Ombudsman has to follow his/her oath of integrity. Generally, Ombudsmen and their staff members do not violate integrity rules. They investigate cases according to the law and deal with the public complaints against the injustices done by the government departments and/or the officials.

The scores of integrity indicators are given in Table 9 below:

⁷⁸³ Establishment of the Office of the Wafaqi Mohtasib (Ombudsman) Order 1983 <http://202.83.164.28/mohtasib/userfiles1/file/Mohtasib/regulations/presidential-order-1983.pdf>

⁷⁸⁴ Establishment of the Office of the Wafaqi Mohtasib (Ombudsman) Order 1983 <http://202.83.164.28/mohtasib/userfiles1/file/Mohtasib/regulations/presidential-order-1983.pdf>

Table 9
Percentage Scores of Indicators
51.4/100

Dimension	Indictors	Law	Practice
Capacity 66.7/100	Resources	-	75
	Independence	50	75
Governance 50.0/100	Transparency	50	50
	Accountability	50	50
	Integrity Mechanisms	50	50
Role 37.5/100	Investigation	50	
	Promoting Good Practice	25	

Structure and Organization

The Federal Ombudsman was established in 1983.⁷⁸⁵ The Ombudsman is appointed by the President. In Pakistan, there are 5 Federal Ombudsmen viz. Federal Ombudsman (FO), Federal Tax Ombudsman (FTO), Federal Insurance Ombudsman (FIO), Federal Ombudsman for Woman (FOW) and Federal Banking Ombudsman (FBO).

The FO has (i) an Investigation Wing, (ii) Advisor (Complaints), (iii) Advisor (Appraisal) with regional offices in Lahore, Karachi, Peshawar, Quetta, Sukkur, Multan, Faisalabad, and D.I. Khan well as International Cooperation and Media Wings. The Federal Secretary is the administrator in charge of the office of the Ombudsman.⁷⁸⁶

The FTO is a quasi-judicial institution established under the Ordinance (No XXXV) of 2000, with the objective of providing inexpensive and expeditious remedy to taxpayers against the injustices of the Revenue Division/ Federal Board of Revenue.

Its Regional Offices are located in Karachi, Lahore, Peshawar and Quetta.⁷⁸⁷

In pursuance of the Insurance Ordinance No. XXXIX of 2000, the Office of Federal Insurance Ombudsman (FIO) was established on 2nd May, 2006.⁷⁸⁸

On the same grounds, a female Federal Ombudsperson was appointed for the protection of women at the workplace under the Protection against Harassment of Women at the Workplace Act, 2010. The Act extended to the whole of Pakistan. The Federal Ombudsperson was appointed on the 13th of January, 2011 for protection against harassment of Women at the Workplace.⁷⁸⁹

⁷⁸⁵ Office of Wafaqi Mohtasib (Ombudsman) order 1983 amended and updated by Ordinance no LXXII, 2002

⁷⁸⁶ www.fto.gov.pk/ the ornomogram of the FTO show that the Secretary is in charge of the office of the FTO.

⁷⁸⁷ The Federal Tax Ombudsman Ordinance No. XXXV, 2000

⁷⁸⁸ The Federal Insurance Ordinance No. XXXIX, 2000

⁷⁸⁹ The Protection against Harassment of women at the Workplace Act, 2010

The Institution of Ombudsman, Punjab was established under The Punjab Office of the Ombudsman Act, 1997.⁷⁹⁰

The establishment of the Mohtasib Sindh (Provincial Ombudsman Sindh) took place through the Sindh Act No. 1 of 1992 (Establishment of the Office of Ombudsman for the Province of Sindh Act, 1991).⁷⁹¹ The office of Ombudsman for the province of Baluchistan was established under the Baluchistan Provincial Act, 2001⁷⁹² and of the Provincial Ombudsman Khyber Pakhtunkhwa under the Khyber Pakhtunkhwa Provincial Ombudsman ACT, 2010.⁷⁹³

7.1 Capacity

7.1.1 Resources (Practice)

Score 75%

Scoring Question To what extent does an Ombudsman or its equivalent have adequate resources to achieve its goals in practice?

As with all pillars, the budget allocation for the Ombudsman is made by the Finance Division, Ministry of Finance, after the approval of the National Assembly and the Senate. The budget is prepared by the offices of the Ombudsman, both at the Federal level and Provincial level according to their requirements. The Ombudsman is the Principal Accounting officer in respect of expenditure against approved budget allocation and has full control over the allocated budget.⁷⁹⁴

The budget for the year 2012-13 amounts to PKR 299.544 (USD 3.09) Million for various offices of the Ombudsmen.⁷⁹⁵ This amount is considered sufficient for the Ombudsmen to carry out their duties effectively.⁷⁹⁶

The Staff members of the Ombudsmen have appropriate skills. Secretaries of the offices of the Ombudsmen are of a level of Federal Secretary to Government of Pakistan.⁷⁶⁷ In accordance with section 8(2) of the 1983 as amended in 2002, "It shall not be necessary to consult the Federal Public Service Commission for making appointment of the members of the staff or on matters relating to qualification for such appointment and methods of their recruitment."⁷⁹⁸

The staff also has adequate career development and training facilities for FO and FTO but in other offices this facility is not yet available.⁷⁹⁹

⁷⁹⁰ The Punjab office of the Ombudsman Act, 1997.

⁷⁹¹ The Sindh Act the Sindh Act No. 1 of 1992 (Establishment of the Office of Ombudsman for the Province of Sindh Act, 1991)

⁷⁹² The Baluchistan Provincial Act, 2001

⁷⁹³ The Khyber Pakhtunkhwan Provincial Ombudsman ACT, 2010.

⁷⁹⁴ Section 24(2): Establishment of the office of Wafaqi Mohtshib (Ombudsman) Order, 1983 updated vide ordinance no. LXXII, 2002.

⁷⁹⁵ Finance.gov.pk/budget/ombudsman

⁷⁹⁶ Interview of Mr. Khalid Mahmood, Provincial Ombudsman with Researcher on 8/10/2012

⁷⁹⁷ (Amended and updated vide Ordinance No. LXXII of 2002) Amended up to 2002. Also Amended Order (PO_1_83_Up to date).

⁷⁹⁸ Section 8(2) ibid

⁷⁹⁹ Interview of Mr. Khalid Mahmood, Provincial Ombudsman with researcher on 08.10.2012

7.1.2 Independence (Law)

Score 50%

Scoring Question To what extent is the Ombudsman independent by law?

The offices of the Federal and Provincial Ombudsmen are established in law. Federal Ombudsmen are not appointed by the Parliament but by the President of Pakistan or his nominee only. Provincial Ombudsmen are appointed by Provincial Governors. The Ombudsmen have to take an oath before the President or the Governors whichever is the case.⁸⁰⁰ The Ombudsmen perform their functions and exercise their powers sincerely and independently of the executive.⁸⁰¹

Federal Ombudsman's staff members are selected on the basis of Federal Public Service Commission (FPSC) criteria of qualifications and experience,⁸⁰² and appointed by the President or by a person authorized by him, in such a manner as may be prescribed by him. The Ombudsmen are not appointed by the Parliament but by the President of Pakistan or his nominee only.⁸⁰³

The Ombudsmen have a number of legal restrictions. They shall not: (1) hold any other office of profit during the services of the present office and (2) occupy any other position carrying the right of remuneration.⁸⁰⁴

Ombudsmen are not allowed to engage in political activities and other activities to ensure their independence. They are required to function honestly, diligently and independently of the Executives.⁸⁰⁵

The Ombudsmen hold office for a period of four years and are not eligible for any extension of tenure or re-appointment as Ombudsmen under any circumstances.⁸⁰⁶ An Ombudsman may only be removed from office through Supreme Judicial Council on the grounds of being incapable of properly performing duties of his/her office by reason of physical or mental incapacity or found to have been guilty of misconduct. The Ombudsmen and their staff members may not be prosecuted during the term of their office.⁸⁰⁷

800 Article 3(3) Establishment of the office of Wafaqi Mohtasib (EWM) (Ombudsman) order 1983 as amended and updated vide ordinance No LXXII, 2002.

801 Article 4 Establishment of the office of Wafaqi Mohtasib (Ombudsman) order 1983 as amended and updated vide ordinance No LXXII, 2002.

802 Article 8(1) Establishment of the office of Wafaqi Mohtasib (Ombudsman) order 1983 as amended and updated vide ordinance No LXXII, 2002.

803 Article 4 Establishment of the office of Wafaqi Mohtasib (Ombudsman) order 1983 as amended and updated vide ordinance No LXXII, 2002.

804 Article 5(1), 5(2). Establishment of the office of Wafaqi Mohtasib (Ombudsman) order 1983 as amended and updated vide ordinance No LXXII, 2002.

805 Interview of Mr. Mohammad Shoaib Suddle with the Researcher on 18/12/2012.

806 Article 4, EWM (ombudsman) order 1983

807Section 30,Federal Tax Ombudsman Ordinance, 2000,

The salary structures of Ombudsman are defined by the President⁸⁰⁸ and are generally equivalent to the salary of Judge of High/Supreme Court.⁸⁰⁹

In case the decision of an Ombudsman is not implemented by the concerned department or the individual, the Federal Ombudsman applies to the President for the implementation of his/her findings and appeals to reinforce the powers invested by law. However, the Ombudsman's decisions may be challenged by an individual and he/she is required to communicate his/her findings to the Agency from where the complaint was initiated.⁸¹⁰ Under section 10, of Order 1983, the Ombudsman is required to investigate the complaints independently by taking any course of action on a particular complaint.⁸¹¹

7.1.3 Independence (Practice)

Score 75%

Scoring Question To what extent is the Ombudsman independent in practice?

As far as it can be ascertained that Ombudsman is largely immune to political intervention and influence in practice. No instance of Ombudsmen's political engagement has surfaced in the last five years.⁸¹² There is not a single case where an Ombudsman has been re-appointed, nor is there single case of removal from the service before the end of his/her tenure.

Anyone can lodge a complaint against any member of the government or government department.

7.2 Governance

7.2.1 Transparency (Law)

Score 50%

Scoring Question To what extent are there provisions in place to ensure that the public can obtain relevant information on the activities and decision-making processes of the Ombudsman?

808 Article 6(1) Establishment of the office of Wafaqi Mohtasib (Ombudsman) order 1983 as amended and updated vide ordinance No LXXII, 2002.

809 Interview of Mr. Khalid Mahmood, Provincial Ombudsman with Researcher on 09/10/12

810 Article 11(1) EWM (Ombudsman) order 1983 as amended by the President order No LXXII, 2002.

811 Section 10, Office Of Wafaqi Mohtasib (Ombudsman) Order, 1983 (Amended and updated vide Ordinance No. LXXII of 2002);Section 12, Federal Tax Ombudsman Ordinance, 2000

812 Interview of Mr. Khalid Mahmood, Provincial Ombudsman with Researcher on 08/10/12

In response to a complaint against a government department, if the department requests the Ombudsman to keep the report or a part of the report confidential, the Ombudsman can exercise his/ her powers on taking a decision on the issue.⁸¹³

All the decisions, recommendations and reports are required to be made available for public consumption,⁸¹⁴ However, there is no deadline for the Ombudsman to make the information of his/her findings public. Thus the Ombudsman acts as a judge and makes all his/her judgments public as and when he/she deems appropriate. The Ombudsman is required to submit annual reports to the President and to release the report simultaneously for publication.⁸¹⁵

There is no public committee or council that is involved in the Ombudsman functions.⁸¹⁶

7.2.2 Transparency (Practice)

Score 50%

Scoring Question To what extent is there transparency in the activities and decision-making processes of the Ombudsman in practice?

All the findings, recommendations, and decisions on complaints are made public and are available on the website and in the annual reports. These findings and their copies can be obtained from the offices of the Ombudsmen. The public has access to all the decisions and recommendations of the Ombudsman.⁸¹⁷

Each Ombudsman has his/her website and information on all cases is available.⁸¹⁸

The activities and investigation procedures of the offices of Ombudsmen are quite transparent as all documents/ decisions are made public almost immediately when a case is decided and a comprehensive report of the judgment is submitted to the relevant department.⁸¹⁹

All Government employees have to submit annual asset declarations to their heads of the organizations which are then sent to the Establishment Division. As the Ombudsmen and its employees are all government officials, as per law they are required to submit their asset declaration.⁸²⁰ But in practice, Ombudsmen usually do not declare their assets.⁸²¹

813 Article 14(4) Wafaqi Mohtasib (Investigation and Disposal of Complaints) regulation, 2003

814 Interview of Mr. Khalid Mahmood, Provincial Ombudsman with researcher on 08/10/12

815 Article 28 EWM (Ombudsman) order 1983 as amended by president order No LXXII, 2002.

816 Interview of Mr. Khalid Mahmood, Provincial Ombudsman with Researcher on 08/10/12

817 Federal Ombudsman Annual Report, 2009. Available at www.theioi.org/downloads/g21o/pakistan%20Annual-Report-2009.pdf

818 Punjab Ombudsman Annual Report, 2010 submitted on April 1, 2011

819 Interview of Mr. Mohammad with the Researcher on 18/12/2012

820 Government of Pakistan, Establishment Division. Office Memorandum, No. 2/1/2010-D-4, dated 3/4/2013; Zeeshan Javaid.

Daily Times 5/01/2012 "All government employees will declare assets" Information Minister announced the Cabinet decision as "Everyone who gets salary from government exchequer, whether from judiciary, armed forces or any other department, will be bound to declare assets and make them public." Available at www.dailytimes.com.pk/default.asp?page...5-1-2012_pg1_2

821 Interview of Mr. Khalid Mahmood, Provincial Ombudsman with researcher on 08.10.2012

7.2.3 Accountability (Law)

Score 50%

Scoring Question To what extent are there provisions in place to ensure that the Ombudsman has to report and be answerable for its actions?

The Federal Ombudsmen are accountable to the President and Provincial Ombudsmen are accountable to the Governors of the Provinces.⁸²² Under Article 6, the Ombudsman can fight his/her case with the Supreme Court of Pakistan if a complainant is not satisfied with the decision of Ombudsman and approaches the higher courts.⁸²³

Generally, the annual report is required to be submitted to the President by Federal Ombudsman and to Governor by Provincial Ombudsman. It is customary that Ombudsman may lay a special report on a specific case before the President. Ombudsmen are required to lay before the President such other reports relating to their functions or as may be desired by the President later.⁸²⁴ Under Article 28(5) "The report and other documents mentioned in this Article shall be placed before the Federal Council or the National Assembly, as the case may be."⁸²⁵

No court shall question the decisions of the Ombudsmen and no suit, prosecution, legal proceedings shall be made against Ombudsmen or their staff members, inspection team, nominees, members of a standing Committee or the Advisory Committee.⁸²⁶ Various laws exist, that ensure that the Ombudsmen have to report to the President and National Assembly, if required and all reports are to be made accessible to the public.

The FTO is also required to report to the President of Pakistan.

"The Revenue Division or any person aggrieved by a recommendation of the Federal Tax Ombudsman may, within thirty days of the recommendation, make a representation to the President who may pass such order thereon as he may deem fit."⁸²⁷

The FTO presents reports pertinent to his functions to the President as he may deem appropriate or as may be desired by the President. Simultaneously, the FTO may release such reports for publications and copies thereof are made available to the public at reasonable cost. The FTO may also from time to time make public any of his studies, research, conclusions, recommendations, ideas or suggestions in respect of any matter being dealt with by the office. These reports and other documents mentioned in this section are required to be placed before the Senate and the National Assembly, as the case may be. "⁸²⁸

822 Article 3 EWM (Ombudsman) order 1983 as amended by President order No LXXII, 2002.

823 Article 6 EWM (Ombudsman) order 1983 as amended by President order No LXXII, 2002.

824 Article 28 and 28(3) EWM (Ombudsman) order 1983 as amended by president order No LXXII, 2002.

825 Article 28(5), OFFICE OF WAFAQI MOHTASIB (OMBUDSMAN) ORDER, 1983 (Amended and updated vide Ordinance No. LXXII of 2002)www.mohtasib.gov.pk/

826 Article 29 and 30 EWM (Ombudsman) order 1983 as amended by President Order No LXXII, 2002.

827 Article 32, Federal Tax Ombudsman Ordinance 2000 Available at fto.gov.pk

828 Interview of Mr. Mohammad with the Researcher on 18/12/2012

On receipt of information against any Ombudsman, the President may refer the case to Supreme Judicial Council for taking action on charges of maladministration, misconduct, incapable of appropriately carrying out his/her duties of his/her office by reasons of physical or mental incapacity. In case a department does not implement the decision of the Ombudsman, he/she refers the case of implementation against the department to President who directs the department to implement the Ombudsman's decision.⁸²⁹

The President and the Governors may scrutinize the report which is submitted to the President within 3 months of the conclusion of the Calendar Year.^{830 831}

There is no whistleblowing policy within the Ombudsmen offices.

7.2.4 Accountability (Practice)

Score 50%

Scoring Question To what extent does the Ombudsman report and is answerable for his/ her actions in practice?

Staff and officers of the offices of the Ombudsmen are accountable to their own Ombudsmen who are the Chief Executives of their secretariats and strict actions are taken against anyone, if found guilty of any misuse of powers and corruption.⁸³²

The Ombudsmen submit their annual and other reports relating to their functions and recommendations and cases of implementation to the President or Governors.⁸³³ The last report by Federal Ombudsman is of the year 2009.⁸³⁴ Later Annual Reports are not available as the position of Federal Ombudsman remained vacant for a period of two years from 2011 to 2013. Annual Report of FTO for the year 2011-2012 is available on its website. Other Ombudsmen have not yet produced their reports.⁸³⁵ As discussed in Transparency (practice), the reports are delayed because the reports are debated by the office of the President and the offices of Governors.⁸³⁶

7.2.5 Integrity Mechanisms (Law)

Score 50%

Scoring Question To what extent are there provisions in place to ensure the integrity of the Ombudsman?

829 Article 11(1), 11(2A), and 12 of EWM (Ombudsman) order 1983 as amended by President Order No LXXII, 2002.

830 Section 29(1), Establishment of the office of the Federal Tax Ombudsman Ordinance, 2000

831 ombudsmanpunjab.gov.pk/wp-content/uploads/.../AnnualReport2006.pdf

832 *ibid*

833 Article 24 Establishment of Wafaqi Mohtasib Ordinance 1983 and updated (LXII) 2002 (Ombudsman) order 1983 as amended by President order No LXXII, 2002.

834 Federal Ombudsman Annual Report 2009.<http://202.83.164.28/wafaqimoh/userfiles1/file/publications/Annual-Report-2009.pdf>

835 2010-11 Annual Report of FTO is available on its website fto.gov.pk/AnnualReports.php

836 Interview of Mr. Khalid Mahmood, Provincial Ombudsman with Researcher on 08/10/12

The provisions of FTO Ordinance 2000 are quite comprehensive and are in place to ensure the integrity of the Ombudsman. The Federal Tax Ombudsman may be removed from office by the President on grounds of misconduct or of being incapable of properly performing the duties. FTO can then request an open public evidentiary hearing before the Supreme Judicial Council if he deems fit to refute the charges. If such a hearing is not held within thirty days of the receipt of such request or not concluded within ninety days of its receipt, the Federal Tax Ombudsman will be absolved of any charge whatsoever. In such circumstances, the Federal Tax Ombudsman may choose to leave his office and shall be entitled to receive full remuneration and benefits for the rest of his term.⁸³⁷

In early 2010 Pakistan Government passed a Law 'Protection against Harassment of Women at Workplace, Act 2010.'⁸³⁸ The intention of the Law is to provide an opportunity to all organizations, public, private and civil society, to develop a self-regulatory mechanism whereby Organizations could handle the problems related to sexual harassment internally. Adoption of this law has become mandatory for all organizations.

However, there is no official Code of Conduct for the Ombudsmen and their officers. The only Code is that of the version of oath that an Ombudsman takes before the President or the Governor whatever the case may be. The oath is given at First Schedule which is a sort of code of ethics that includes discharge of their duties and performance of their functions honestly and faithfully according to the laws of the Islamic Republic of Pakistan without fear or favour, affection or ill will. It neither allows personal interest in fulfilling the duties nor does it favour to reveal any matter to any person communicated directly or indirectly.⁸³⁹ The Federal Ombudsman is currently a member of the International Ombudsmen Association and has adopted its Code of Ethics that covers (a) Conflict of interest, (b) Rules on gifts and hospitality, (c) Non-political activities, and (d) Declaration of assets but unfortunately the code is not yet adopted as a law.⁸⁴⁰

7.2.6 Integrity Mechanisms (Practice)

Score 50%

Scoring Question To what extent is the integrity of the Ombudsman ensured in practice?

There is no case in the public domain that might indicate any Ombudsmen's involvement in the acceptance of any kind of benefits from their complainants or the departments of these complainants except one case of a driver of FTO office who was involved in a case and was reprimanded.⁸⁴¹

Unfortunately, there is no regulation to enforce Ombudsmen's staff to undergo training course on the integrity issues. There is no case where ombudsman or his /she staff has violated the integrity.

⁸³⁷ Section 6(2), FTO Ordinance 2002

⁸³⁸ Published in The Gazette of Pakistan, Thursday, March 11, 2010. Protection against Harassment of Women at the Workplace Act, 2010. No. F. 9(5)/ 2009 – Legis. <http://www.infopak.gov.pk/WomenHarassment.aspx>

⁸³⁹ Oath in First Schedule against Article 3(2) of the EWM(Ombudsman) order 1983

⁸⁴⁰ The International Ombudsman Association, 1985

⁸⁴¹ Interview of Mr. Mohammad with the Researcher on 18/12/2012

Ombudsmen declare their assets before the taxation department for income tax purposes but never declare the assets for public in practice, although, the office of the Ombudsman is subject to asset declaration due to its adoption of Code of Ethics of the International Association of Ombudsman, but this has never been put into practice Taxation Department does not publish assets or income of any taxpayers.⁸⁴² However as reported earlier, all government servants submit their assets to their departments. The integrity of Federal Tax Ombudsman has been ensured on the basis of the general people perception as shown by TI-P survey in 2011.⁸⁴³

7.3 Role

7.3.1 Investigation

Score 50%

Scoring Question To what extent is the Ombudsman active and effective in dealing with complaints from the public?

Citizen or any member of Civil Society can lodge a complaint in person or can send by other means of communication to the office of an Ombudsman. A complaint is made on solemn affirmation or oath. Anonymous complaints are not investigated. The complaint needs to be lodged within 3 months from the day on which the person was first aggrieved.⁸⁴⁴ The public experience is that complaints are entertained almost immediately and investigated.

In the annual report of 2009 there were 29,700 cases registered with the FO in 2009. Of the total 29,700 complaints reviewed in 2009, "cases disposed of within this timeframe stood at 48% of the total complaints decided during the year, which was a significant improvement over the figures of 28% in the year 2008. Against the disposal target of 40 cases per month per investigation officer, the average monthly disposal by each investigation officer was 43 cases. The figure for implemented cases was 88% as compared to 75% in 2008. 5. During the year under report, 798 representations were filed against the Wafaqi Mohtasib's findings to the President out of which the President upheld 77% of the findings represented against..^{845 846} , A total of 6,269 cases were implemented on the recommendation of the Ombudsman. Of the 29,700 registered cases, more than 48% got relief after proper investigation by the Ombudsman's team of investigators.

There is no special program with Ombudsmen or the government to make Ombudsmen's services known to public. However, interviewees have given a positive response to the investigation of complaints lodged by the public. And that FTO stated that the cases were investigated very effectively. "The TI-P survey published in May 2011 bears testimony."⁸⁴⁷

⁸⁴² Interview of Mr. Khalid Mahmood, Provincial Ombudsman with Researcher on 8/10/2012

⁸⁴³ Interview of Mr. Mohammad with the Researcher on 18/12/2012

⁸⁴⁴ Article 10 (1,2) of EWM (Ombudsman) order, 1985

⁸⁴⁵ Ombudsman Annual Report 2009;

⁸⁴⁶ Section 1 Chapter 2 Ombudsman Annual Report 2009 P.

⁸⁴⁷ Interview of Mr. Mohammad with the Researcher on 18/12/2012

7.3.2 Promoting Good Practice

Score 25%

Scoring Question To what extent is the Ombudsman active and effective in raising awareness within government and the public about standards of ethical behaviour?

All government departments at Federal and Provincial levels and private sector agencies are under the Ombudsman's jurisdiction.⁸⁴⁸ However, matters that are Sub-Judice, and matters relating to External Affairs, Defence, Service, Federally Administered Areas and Federal Public Service Commission are beyond the jurisdiction of an Ombudsman. The Ordinance indicates that the Judiciary does not lie within the jurisdiction of an Ombudsman.

It is basically a routine function of Ombudsman's office to consult the department against whom the complaint is lodged and ask for the departmental response. The procedure is that each complaint is examined by Registrar who accepts it for further investigation. The final decision is made by Ombudsman on the complaints. If a case is rejected, the complainant is not blamed but if the case is accepted, against the official or the Agency, the Ombudsman communicates his/her findings to the relevant Agencies.⁸⁴⁹

There is no example where public campaigns are held against government officials. The office of the Federal Ombudsman is not very active in publishing reports on the good governance of the department's on the basis of his findings and recommendations, but reports on complaints received by his office are submitted to the departments and are published.

The Ombudsman monitors whether his recommendations have been implemented or not. As mentioned earlier, Ombudsman does not specifically raise awareness within government and the public about the government official's ethical behaviour. Monitoring and the implementation of the decisions is a fundamental aspect of the Ombudsman's job.⁸⁵⁰

The office of the Federal Ombudsman is quite active and efficient in investigating cases or complaints and sending messages to the Government and the public about the ethical issues of providing relief to the Civil Society.

⁸⁴⁸ Table 3, Section 3, chapter 2, ombudsman 2002-2005 Annual Report, 2005. p.13; Section 9(1) c,, Establishment of Wafaqi Mohtasib Ordinance 1983 and updated (LXII)2002

⁸⁴⁹ Article 11 (1) of EWM (Ombudsman) order, 1985

⁸⁵⁰ Interview of Mr. Mohammad with the Researcher on 18/12/2012

PILLAR 8

**Supreme Audit
Institution**

Pillar 8: Supreme Audit Institution

SUMMARY

The Auditor General of Pakistan (AGP) is the major institution that audits financial activities of Federal and Provincial Government ministries, departments and other government funded organizations. Its main purpose is public accountability and fiscal transparency in governmental operations.

AGP has a sanctioned budget that is generally sufficient to carry out its duties and has full powers to expend within the budgetary provisions independently. However, the control of finances lies with the Federal Finance Division and Provisional Finance Departments who may make budget cuts under executive orders.

AGP has qualified and experienced audit personnel. It has numerous training facilities for new hires and staff working in different federal ministries and provincial departments.

AGP has authority to inspect any office accounts. In this regard, all officials are required to provide all information and documents on demand.⁸⁵¹ But recently about 16 Government entities resisted mandatory audit and ignored AGP's directives. AGP has no power to force departments to have their accounts audited except to report their cases to the Public Accounts Committee (PAC) and the President of Pakistan. So far no instructions have been given to these 16 departments from the President or the PAC. As such, AGPs independence is restricted.⁸⁵²

Transparency laws for AGP are quite comprehensive and have constitutional support but in practice, AGP is forced to ignore certain procedures under political and executive pressure. AGP prepares annual reports and submits to the President, PAC and the Assemblies during the month of March each year. Many a time, these reports are delayed for unknown reasons. The 2011-2012 report presented to the President of Pakistan by the Auditor-General of Pakistan on March, 2013, showed that of total outlay valuing PKR 4.474 billion (USD 0.04 billion) was audited and out of it an amount of PKR 1.857 billion (USD 0.02 billion) was placed under audit observation.

AGP has developed core ethical values and international quality assurance auditing techniques,⁸⁵³ but in practice the quality control system is not strictly followed and auditors become soft in auditing and sometimes indulge in corrupt practices by accepting bribery from public sector's employees whose pensions or salaries are stuck in the AG office for disbursement.⁸⁵⁴

AGP has recently taken up the task of updating the auditing techniques and adopting IT methods. AGP has emphasized training, research and publication tools and improving the auditing procedures.

⁸⁵¹ Article 14 of Accountant General Ordinance 2001

⁸⁵² Mr. Khaleeq Kiani, Reporter, Dawn, November 07, 2012

⁸⁵³ International Organization of Supreme Audit Institution (INTOSA) Auditing Standards 2002

⁸⁵⁴ Interview of Mr. Shakir Ali Khan, Ex-Chairman of Audit Officials,(Itehad Group), Punjab with Researcher on 18/12/2012.

**Table 10:
Percentage Scores of Indicators
57.7/100**

Dimension	Indictors	Law	Practice
Capacity 75.0/100	Resources	-	50
	Independence	100	75
Governance 43.8/100	Transparency	75	75
	Accountability	50	25
	Integrity Mechanisms	75	25
Role 50.0/100	Effective financial audits	50	
	Detecting and sanctioning misbehaviour	25	
	Improving financial management	75	

Structure and Organization

The Auditor General's organization is the Supreme Audit Institution in the country. Appointed under Article 168 of the Constitution of 1973 by the President of Pakistan, the Auditor General and his Office are responsible for ensuring public accountability and fiscal transparency in governmental operations. The organization is expected to bring about improvements in the financial discipline and internal control environment in the executive departments for minimizing the possibility of waste and fraud.⁸⁵⁵ The Auditor General of Pakistan holds a constitutional position. However, his Department is attached administratively to the Ministry of Finance. The Auditor General of Pakistan compiles, maintains and audits most of the Federal and Provincial Accounts through its field offices headed by the Accountants General and Directors General of Audit. Provincial Audit Wing headed by the Deputy Auditor General (Provincial Audit) too, facilitates Auditor General of Pakistan for accomplishing its mandate.⁸⁵⁶

855 Auditor General of Pakistan, <http://www.agp.gov.pk/about-us.html>

856 http://www.asosai.org/R_P_financial_accountability/chapter_10_pakistan.htm; <http://www.agp.gov.pk/provincial-audit.html>

8.1 Capacity

8.1.1 Resources (Practice)

Score 50%

Scoring Question To what extent does the audit institution have adequate resources to achieve its goals in practice?

The structure and authority of the Auditor General is provided for in the Constitution as well as under the Auditor General's (Functions, Powers and Terms and Conditions of Service) Ordinance 2001. The Auditor General, with the approval of the President of Pakistan, has full financial authority and independence to define and expend its own budget. The budget is generally sufficient to perform their basic routine works and AGP has full power to incur expenditure within the budgetary provisions. AGP's budget is classified as "charged" expenditure, which though discussed in the National Assembly and Senate, is not voted upon.

Increases in the budget are made annually, and are given after the approval of the annual budget by the parliaments. AGP's and Provincial AG's do not approach the legislature directly for the increase in budget and apply to the Ministry of Finance.

AGP is provided with sufficient human resources to carry out its duties. SAI of Pakistan is an equal opportunity employer and about 1500 qualified officers assist the Auditor General in the discharge of his responsibilities. There are over 700 audit professionals who are recruited from different fields and are converted into audit and accounts professionals under a rigorous conversion training program. For instance they are trained in performance auditing of projects and programmes, in evaluating performance of State Owned Enterprises and in skills to conduct performance appraisal and audit of foreign missions etc.⁸⁵⁷

Nevertheless, experts feel that the office of the AGP is under staffed, barring it from carrying out its duties effectively.⁸⁵⁸ In addition, the work environment is not congenial particularly at the provincial level. The situation at the Punjab AG office is dilapidated because of non-availability of furniture, stationary, water-coolers and other equipment.⁸⁵⁹ The security of staff services is guaranteed by government rules and regulations.⁸⁶⁰

Research publications, training and development are the main tools for the AGP's employees. For example, there is a Financial Audit Manual that includes guidelines and research papers and AG publishes a quarterly journal named "Performit". However, due to poor instructional techniques and insufficient resources the potential of employees is not harnessed to its fullest.⁸⁶¹

⁸⁵⁷ [www.agp.gov.pk/AGP human resources](http://www.agp.gov.pk/AGP%20human%20resources)

⁸⁵⁸ Interview of Mr. Tanvir Ali Agha Ex-AGP with Researcher on 2/11/12

⁸⁵⁹ Interview of Mr. Shakir Ali Khan, Ex-Chairman of Audit Officials, (Itehad Group), Punjab with Researcher on 18/12/201

⁸⁶⁰ Civil Servants Act, 1973. And Auditor-General (Functions, Powers and Terms & Conditions of Service) Ordinance, 2001

⁸⁶¹ Interview of Mr. Tanvir Ali Agha Ex-AGP with Researcher on 2/11/12

8.1.2 Independence (Law)

Score 100%

Scoring Question To what extent is there formal operational independence of the audit institution?

The AGP's office is established by the Constitution of Pakistan and the AGP is appointed by the President. Before entering office, the Auditor-General by law has to take oath before the Chief Justice of Pakistan as set out in the Third Schedule.⁸⁶²

In accordance with AG Ordinance and International System of accounting, AGP operates and works professionally and effectively. The staff is required to verify accounts of public sector independently.⁸⁶³

The AGP has the authority to inspect any office accounts including their own and officers are required to provide all information, papers and documents on demand under Article No 14 of the Auditor General Ordinance, 2001.⁸⁶⁴ The AGP and PACs are required to conduct audits according to the system laid down in the "Auditor General Ordinance, 2001" and to the International Auditing Standards of INTOSAI which were adopted by AGP in conjunction with Article 157 of the Act of Parliament. In addition, Project to Improve Financial Reporting and Auditing (PIFRA) has devised various Manuals and codes that are being followed by all AGP's.⁸⁶⁵

The recruitment of the AGP and AG offices is based on the qualifications criteria laid down in the AGP's conditions of services and Federal Public Service Commission (FPSC) and Provincial Public Service Commission (PPSC).⁸⁶⁶

Directors and posts of equivalent status are appointed by AGP. There is no rule where terms of offices of Directors are fixed.⁸⁶⁷ "No Government servant shall take part in aid of or assist in any way, any political movement in Pakistan or relating to the affairs of Pakistan."⁸⁶⁸ Any one taking part in any kind of movement against government is punishable under the laws governed by (i) the Pakistan Essential Services (Maintenance) Act, 1952, (ii) the Government Servants (Conduct) Rules, 1964, and (iii) the Government Servants (Efficiency and Discipline) Rules. However, no staff member of the AGP office can be removed arbitrarily, as services are protected by the Civil Servants Act 1973.⁸⁶⁹ During normal duties, no staff member can be prosecuted except in cases of malpractice, corruption, or misuse of powers.⁸⁷⁰

862 Article 168, Constitution of Pakistan, 1973

863 Article 14, Auditor General of Pakistan (Functions, Powers and Terms and Conditions of Service) Ordinance, 2001. And Section 7, AG Ordinance No. XXIII, 2001.

864 Article 14, Auditor General of Pakistan (Functions, Powers and Terms and Conditions of Service) Ordinance, 2001.

865 International Organization of Supreme Audit Institution (INTOSAI) Auditing Standards 2002

866 Auditor General of Pakistan (Functions, Powers and Terms and Conditions of Service) Ordinance, 2001.

867 Table at Section 6(2), Part I Serial no. 1. RECRUITMENT/APPOINTMENTS, SENIORITY AND PROMOTIONS. Civil Servants (Appointment, Promotion and Transfer Rules, 1973 p 37 of 1520. www.infopak.gov.pk/Significant_Announcements/ESTACODE.pdf

868 Section 24, RULES AND INSTRUCTIONS RELATING TO THE CONDUCT OF GOVERNMENT Servants (Conduct) Rules, 1964. p614 of 1520 read with Serial nos. 31(3), 51, 53... Available at www.infopak.gov.pk/Significant_Announcements/ESTACODE.pdf

869 Act No. LXXI of (1973) of AG Ordinance, 1973

870 Article 168, Constitution of Pakistan, 1973.

The procedure for the removal of the Auditor General from his office is the same as that of a Judge of the Supreme Court. This clause guarantees the AGP's independence. His services are governed by the constitution of Pakistan, 1973, Civil Servants Act, 1973 and AGP Ordinance 2001.^{871,872}

The President of Pakistan cannot influence the AGP's decisions but can ask for an explanation on its decisions under the Constitution. The Public Accounts Committee (PAC) can examine the report of the Auditor-General of Pakistan and scrutinize the appropriation accounts of the Government and the reports of the Auditor-General of Pakistan. "If any money has been spent on any service during a financial year in excess of the amount granted by the Assembly for that purpose, the Committee shall examine with reference to the facts of each case, the circumstances leading to such an excess and make such recommendation as it may deem fit." PAC is required to submit the AGP's report to the National Assembly.⁸⁷³

The President or the Governor of each province makes regulations with respect to the functions of Audit receipts and expenses.⁸⁷⁴

8.1.3 Independence (Practice)

Score 75%

Scoring Question To what extent is the audit institution free from external interference in the performance of its work in practice?

There is no evidence that would ascertain that appointments of AG officials are made under political duress⁸⁷⁵ but it was a common perception amongst the employees of the AG office that attempts for numerous appointments were made on political basis.⁸⁷⁶ However AGP had resisted such attempts and set examples to counter political influence.⁸⁷⁷

Officially there has been no case where a staff member of AG office has engaged in other activities.⁸⁷⁸

Generally, retired or removed persons from service have not been re-hired but in certain cases, qualified legal personnel were re-appointed for a second term.⁸⁷⁹ In practice most of the auditors are qualified bearing Master's degree in Audit/ Finance related disciplines.

So far, no one has been removed from services, but transfer of an official to another position did take place. In few cases employees on contract had been removed by the AGP.⁸⁸¹

871 Auditor-General (Functions, Powers and Terms and Conditions of Service) Ordinance, 2001

872 Article 14, AGP (Functions, Powers and Terms and Conditions of Service) Ordinance, 2001.

873 Functions of Public Accounts Committee. Available at www.na.gov.pk/pac/

874 Para 11(3), Pakistan (Audit and Accounts) Ordinance, 1973

875 Interview of Mr. Tanvir Ali Agha Ex-AGP with Researcher on 2/11/2012

876 Interview of Mr. Shakir Ali Khan, Ex-Chairman of Audit Officials, (Itehad Group), Punjab with Researcher on 18/12/2012

877 Ibid.

878 Interview of Mr. Shakir Ali Khan, Ex-Chairman of Audit Officials, (Itehad Group), Punjab with Researcher on 18/12/2012

879 ibid

880 Interview of Mr. Shakir Ali Khan, Ex-Chairman of Audit Officials, (Itehad Group), Punjab with Researcher on 18/12/2012

881 Interview of Mr. Tanvir Ali Agha Ex-AGP with Researcher on 2/11/12

8.2 Governance

8.2.1 Transparency (Law)

Score 75%

Scoring Question To what extent are there provisions in place to ensure that the public can obtain relevant information on the relevant activities and decisions by the SAI?

The audit reports on the financial management and the income and expenditure of AGP offices/departments are to be prepared by the internal auditors of AGP/AGPR in accordance with the guidelines given in Annexure of the AG's document on "Quality Management Framework for Public Sector Auditing in Pakistan, 2011".⁸⁸²

Under Article 170 of the Constitution, the Auditor General has devised a procedure that provides details on all transactions, adjustments, and how to report against entities. Under Article (7) of Constitution of Pakistan, an Audit Report must be printed every year in March in its final form. The Federal Audit Report is to be submitted to the President who puts it before the legislature. The Audit Report is also considered by PAC. A report by PAC on the Audit Report is to be placed before the Legislature for action by the Government. A similar process is followed by the Provincial Auditor-Generals but these Reports are not required to be debated by the legislature. However the Public Accounts Committees of the federal and provincial governments are required to examine the audit findings and the executive departments are held responsible for the enforcement of directives of the PACs. The AGP reports to the PAC for follow-up actions.⁸⁸³

The AGP may share audit reports with the public and media after formal approval by the President, PAC and the parliament who do not amend AGP's financial statements. The points raised by PAC have to be communicated to the concerned departments of the AGP for explanation and to the government for taking action against the department. As a part of its transparency requirements, reports are to be released through media and the AGP's website.⁸⁸⁴ All PAC reports on the AGP findings are to be published by the National Assembly Secretariat after presentation of the AGP report and PAC comments to the National Assembly.⁸⁸⁵

882 Annexures 1-6, Quality Management Framework for Public Sector Auditing in Pakistan, 2011 p.24-51.

883 Article 7, Constitution of Pakistan, 1973 and ASOSAI Chap 19, www.asosai.org/asosai-old/R_P.../Chapter19_Report on Pakistan

884 Report of the PAC: Report Of The Public Accounts Committee On Review Of Implementation Status Of Pac Directives On Audit Reports For The Years 1996-97, 1999-2000, 2000-01, 2005-06 & 2008-09 Submitted To National Assembly Secretariat, Islamabad.

885 www.agp.gov.pk/

8.2.2 Transparency (Practice)

Score 75%

Scoring Question To what extent is there transparency in the activities and decisions of the audit institution in practice?

All the documents have been prepared by Audit Department in accordance with the guidelines given in Annexure 1-6, Quality Management Framework. The Federal AGP prepared its audit report by March and had submitted it to the President of Pakistan and PAC Chairman for onward transmission to National Assembly. The report has been submitted to the President/ PAC on March 6, 2013.⁸⁸⁶ Provincial AG's had also submitted their reports to Governors of the province and to Provincial PAC for onward transmission to the provincial Assemblies. (Baluchistan has no PAC at the moment).⁸⁸⁷

The office of the AGP has also developed an e-governance program to provide information on its activities directly to the public.⁸⁸⁸

Every year before June, all reports are displayed and released on website, print and electronic media for legislator's consumption after the approval of the National Assembly and PAC. Public also has access to AGP's website.⁸⁸⁹ PAC reviewed the AGP report and made detailed comments and directives for the departments and the governments for actions against the defaulters. The detailed comments and reviews are available on its website.⁸⁹⁰

8.2.3 Accountability (Law)

Score 50%

Scoring Question To what extent are there provisions in place to ensure that the SAI has to report and be answerable for its actions?

⁸⁸⁶ www.na.gov.pk/pac PAC Reports

⁸⁸⁷ Asian Organization of Supreme Audit Institute (Asosai) Report on Pakistan Chapter 19, Section 7. www.asosai.org/R_P_government-revenues/chapter_19_pakistan.htm

⁸⁸⁸ Quality Management of SAIs, AGP, 2011

⁸⁸⁹ www.agp.gov.pk. (The AGP's website is quite comprehensive and is accessible to the public)

⁸⁹⁰ Report of the PAC: REPORT OF THE PUBLIC ACCOUNTS COMMITTEE ON REVIEW OF IMPLEMENTATION STATUS OF PAC DIRECTIVES ON AUDIT REPORTS FOR THE YEARS 1996-97, 1999-2000, 2000-01, 2005-06 & 2008-09 SUBMITTED TO NATIONAL ASSEMBLY SECRETARIAT, ISLAMABAD.

Under Articles 168-171 of the Constitution of Pakistan, AGP is required to submit annual Federal audit reports to the President of Pakistan by March each year and thereafter President puts up the report to the National Assembly. It is also mandatory for AGP to submit the annual report to PAC for their decision.⁸⁹¹ However, there is no legal requirement on the contents of the reports.⁸⁹²

Under Article 171 of the Constitution, any department, who does not agree to the AGP reports, may contest and lodge an appeal with the AGP and /or with the President of Pakistan to expunge the remarks from the report against the department.⁸⁹³

8.2.4 Accountability (Practice)

Score 25%

Scoring Question To what extent does the SAI have to report and be answerable for its actions in practice?

The Federal AGP submits Annual Audit Reports to the President and PAC Chairman and Provincial AG's submit to AGP for action. The reports of AGP accounts are not exhaustive and do not cover all aspects of accounts that are presented in the designed forms. The audit is done by its own auditors i.e. internal auditors of Accountant General of Pakistan Revenue (AGPR) conducted audit of provincial AGs accounts.⁸⁹⁴ AGPR asked for all documents related to departmental accounts, and the departments submitted the information in the said format for scrutiny. Since the internal auditors belong to AGP, the audits were not independently conducted and as such accountability of the said offices are not done in practice.⁸⁹⁵

AGP had recently submitted the annual audit reports for the year 2011-2012 of all federal and provincial AGs to the President and PAC.⁸⁹⁶ PAC had also recently reviewed the AGP audit reports for the years from 1996-1997 to 2008-2009 and submitted it to National Assembly Secretariat on March 6, 2013 for its presentation to the National Assembly. The report did not include the audit of the AGP and provincial AGs accounts.⁸⁹⁷

891 Article 171, Constitution of Pakistan, 1973.

892 Article 170, Constitution of Pakistan, 1973

893 Article 171, Constitution Pakistan, 1973

894 Form XXX, Supreme Court Rules, 1980, updated 2008

895 Interview of Mr. Shakir Ali Khan, Ex-Chairman of Audit Officials, (Itehad Group), Punjab with Researcher on 18/12/2012.

896 Staff report. Dawn News March 21, 2013. "AGP presents annual report 2011-12 to president" www.dailytimes.com.pk/default.asp?page...21-3-2013_pg5_2

897 Report of the PAC: REPORT OF THE PUBLIC ACCOUNTS COMMITTEE ON REVIEW OF IMPLEMENTATION STATUS OF PAC DIRECTIVES ON AUDIT REPORTS FOR THE YEARS 1996-97, 1999-2000, 2000-01, 2005-06 & 2008-09 SUBMITTED TO NATIONAL ASSEMBLY SECRETARIAT, ISLAMABAD.

Following are some comments of an Ex-AGP regarding audit of the Audit departments: “The department’s claims for budgetary funds are subject to the same pre-audit that is applicable to all offices of the Government. The appropriation accounts of the Departments are published and submitted to the PAC. The Department and its activities are continuously under the scrutiny of the relevant PAC throughout the year at the Federal and Provincial levels. In addition there is a Deputy Director (BS-21) who undertakes financial and administrative tasks of all Audit offices and the office of AGP and reports directly to AGP. Secondly, the audits of the office of the AGP are conducted by a separate office which cannot be termed as independent audits. In a draft law, it had been proposed that the President should appoint an independent Auditor”.⁸⁹⁸

The contents of the report shows financial diversions, misappropriation of funds, misuse of powers and procurement irregularities etc. AGP submits its reports to the President and PAC Chairman. AGP does not report to the legislators directly and as such is not answerable for its auditing except to the President and PAC. Legislators may debate on the reports provided by PAC.⁸⁹⁹

The Federal Annual Audit Report and the Provincial Audit Reports contain full activities of financial management of the AGP offices.⁹⁰⁰

Some public sector departments have challenged the outcome of the AGP’s audits. PAC has settled 174 cases pertaining to 41 departments, whereas 237 cases were postponed as departments did not comply with PAC’s recommendations. Recently, a case of poor auditing has come to the surface. PAC of the Khyber Pakhtunkhwa Assembly dropped some audit paras which the departments and their officials did not agree with the reports of the AGPs.⁹⁰¹

According to a reporter, AGP reports that expenditure of PKR 1.858 trillion (USD 18.58 billion) have been misappropriated by Federal and Provincial Governments during 2011-12. The AGP further informed the committee that 16 government departments are resisting audits that are required by constitution of Pakistan.⁹⁰²

8.2.5 Integrity Mechanisms (Law)

Score 75%

Scoring Question To what extent are there mechanisms in place to ensure the integrity of the audit institution?

⁸⁹⁸ Interview of Mr. Tanvir Ali Agha, Ex-AGP, with Researcher on 2/11/12.

⁸⁹⁹ Public Accounts Committee Report 2001-2002 submitted by National Assembly Secretariat on September 30, 2011.

⁹⁰⁰ Interview of Mr. Tanvir Ali Agha, Ex-AGP, with Researcher on 2/11/12.

⁹⁰¹ Zulfiqar Ali report, Dawn, November 24, 2012.

⁹⁰² Kiani, Khaleeq. Sixteen Government Entities Resisting Audit, Dawn, Nov 08, 2012.

AGP has a very comprehensive code of ethics, reinforcing the Auditing Standards issued by the Auditor General of Pakistan in June 2002 in line with INTOSAI Code of Ethics and Auditing Standards. The Code Ethics is meant for the individual auditor, the Auditor-General of Pakistan, executive officers and all individuals working for or on behalf of the AGP who are involved in audit work.⁹⁰³

Stressed core values as per the code are integrity, conformance to ethical standards, honesty, trust, impartiality and objectivity in carrying out duties.⁹⁰⁴ The code promotes good behaviour with legislature, executives and public, cooperation and good relations, public confidence, fairness and credibility. It also demands independence, fair-mindedness, integrity and objectivity during the auditing process. The auditors have to apply with dedication the audit tools that encompass international best practices provided by the Financial Audit Manual while auditing government departments and its own departments.⁹⁰⁵

AGP's ethical standards also include the ethics of the International Organization of SAI (INTOSAI). The code emphasizes mutual respect among every one. Conflict of interest rules state that auditors ought to "protect their independence and avoid any possible conflict of interest by refusing gifts or gratuities that could influence or be perceived as influencing their independence and integrity. Government servants, Conduct Rules, 1964 shall also apply in this regard".⁹⁰⁶ There is no restriction on post-employment of the AGP or his/her officers.⁹⁰⁷

8.2.6 Integrity Mechanisms (Practice)

Score 25%

Scoring Question To what extent is the integrity of the audit institution ensured in practice?

Data on violations of Code of Ethics by the Auditors or employees of the AGP office have not come to light and are not available for public information. Integrity concepts to the junior staff are central to an SAI's credibility. According to Ex-Chairman of Audit officials most of the employees violate the code of ethics as they are not trained on integrity issues.^{908,909} They accept gifts, small amounts of money for doing favours to the other public sector employees regarding their salary adjustments, pensions, loans, etc.⁹¹⁰ Integrity is not observed by the AG officials as cases of petty corruption are known to all in the department.⁹¹¹

903 AGP's Manual Chapter 3

904 Quality Management Framework for Public Sector Auditing in Pakistan, 2011, The Audit Quality Management Wing, Department of the Auditor-General of Pakistan

905 Department of the Director General of Pakistan. "Guidelines for the Audit of the Federal Government Operations." The Directorate General of Audit. March 2010

906 Section 3.3.1, Chapter 3, The job of Auditors; Section 21-25, Chapter 3, The job of Auditors

907 Interview of Mr. Tanvir Ali Agha, Ex-AGP, with Researcher on 2/11/12.

909 Interview of Mr. Shakir Ali Khan, Ex-Chairman of Audit Officials, (Itehad Group), Punjab with Researcher on 18/12/2012.

910 ibid

911 Interview of Mr. Shakir Ali Khan, Ex-Chairman of Audit Officials, (Itehad Group), Punjab with Researcher on 18/12/2012.

8.3 Role

8.3.1 Effective financial audits

Score 50%

Scoring Question To what extent does the audit institution provide effective audits of public expenditure?

The Ex-AGP made the following remarks on the effective audits of public expenditure. "The 18th Amendment to the Constitution gives the AGP complete authority to conduct any kind of audit in any kind of organization set up or controlled by the federal and provincial governments. It is important to note that the AGP audits not just the expenditures, but receipts also. Besides financial and performance audits it also conducts special audits and studies on matters of public interest"⁹¹²

The AGP office audits and examines the internal-audits of all public sector departments and their performances. Effectiveness of audit is judged in terms of results and impacts achieved. The AGP ensured the effectiveness of the audit through a Quality Control Mechanism. The audit reports are prepared by Field Audit Officers (FAO) who passes on their reports to Quality Control Wing for evaluation. Quality Management Specialists (QMS) check the quality of the Internal Audit Reports and implement the corrective measures for continuous quality improvement. Effectiveness of internal audit departments is reported to AGP⁹¹³. The AGP submitted its report to PAC who examined the report very comprehensively and pointed out weaknesses and irregularities of the public sector departments, has been considered as complete and comprehensive.⁹¹⁴

The Field Audit Officers submit their reports regularly to the QMSs for evaluation. No dates are fixed for submission of their reports.

The AGP had presented its Annual Report on March 20, 2013. The audit reports are not presented to legislature directly but these are submitted to the President and PAC. The President sent the report to the National Assembly and asked PAC to examine it.⁹¹⁵

The AGP's Field Audit Officers (FAO) has audited the accounts of various public sector departments quite comprehensively. Quality Management Specialists evaluated the FAO reports. The reports are highly professional.⁹¹⁶ But AGP could not audit all departments as some departments refused to get their accounts audited. The AGP had reported the matter to the President. Recently Supreme Court has ordered that all departments are required to get their accounts including secret funds audited by AGP.⁹¹⁷

912 Interview of Mr. Tanvir Ali Agha, Ex-AGP with Researcher on 2/11/2012

913 Quality Management Framework for Public Sector Auditing in Pakistan 2011. The Audit Quality Management Wing, AGP Available at www.agp.gov.pk/.../Quality%20Management%20Framework-Revised.do

914 ibid

915 Interview of Mr. Tanvir Ali Agha, Ex-AGP with Researcher on 2/11/2012

916 Article 169, Constitution of Pakistan, 1973

917 www.tribune.com.pk/.../secret-funds-must-be-audited-annually-to-avoid-irreg ..July 16,2013 .

8.3.2 Detecting and Sanctioning Misbehaviour

Score 25%

Scoring Question Do the audit institutions detect and investigate misbehaviour of public officeholders?

The AGP has no mechanism whereby to identify or investigate misbehaviour of the audited departments, though AGP has full authority on access to all kinds of records pertaining to departmental finances. In view of the lack of authority on sanctions of audited bodies, officials pay less attention to their findings. It has been noted in the previous section that 16 departments refused audit of their respective accounts. Despite this refusal, AGP did not do anything, though the office of the AGP had legal authority to report it to the President and PAC.⁹¹⁸ "The AGP itself does not investigate and fix responsibilities, but recommends an investigation for this purpose".⁹¹⁹ Recently the Supreme Court has ordered that "all expenditure from the public exchequer including the secret funds of nine governmental departments must be audited transparently annually to avoid irregularities."⁹²⁰

According to a reporter, AGP reports that expenditure of PKR 1.858 (\$.01858) trillion have been misappropriated by Federal and Provincial Governments during 2011-12. The AGP further informed the committee that 16 government departments are resisting audits that are required by constitution of Pakistan.⁹²¹

8.3.3 Improving Financial Management

Score 75%

Scoring Question To what extent is the SAI effective in improving the financial management of government?

AGP develops a document on Quality Management of SAI (Supreme Audit Institution) where they give comprehensive details of mechanisms and make recommendations and review processes. The mechanism comprises of three systems including Quality Assurance Mechanism, Quality Control Mechanism and Quality Improvement Mechanism. The mechanisms are to be implemented by the Audit Officials Quality Assurance Wing, who is responsible to conduct field audits.⁹²²

918 Mr. Khaleeq Kiani, Reporter, Dawn, November 07, 2012

919 Interview of Mr. Tanvir Ali Agha, Ex-AGP with Researcher on 2/11/2012

920 www.tribune.com.pk/.../secret-funds-must-be-audited-annually-to-avoid-irreg.. July 16, 2013.

921 Kiani, Khaleeq. Sixteen Government Entities Resisting Audit, Dawn, Nov 08, 2012.

922 Quality Management Framework for Public Sector Auditing in Pakistan 2011. The Audit Quality Management Wing, AGP Available at www.agp.gov.pk/.../Quality%20Management%20Framework-Revised.do

The AGP has made its recommendations to its auditors/internal auditors for different public sector departments which the departments have to follow in their accounting system. "The AGP does make recommendations and it does follow up through various forums for implementation. Where implementation is delayed, the matter is reported to PAC."⁹²³ It has devised forms where implementation processes are recorded.⁹²⁴

Now, AGP and AG's have taken steps in improving their audit procedures by adopting modern technologies of computers, audit management, data management, audit formats, revenue audits, proper sampling techniques for audit and increasing their capacity to skilled and qualified human resources.

Extensive training programmes have been chalked out. Training, research and publications are the main tools of the AGs of Pakistan to keep abreast of the developments in the profession. It has a network of training establishments spread across the country, where public servants are trained in auditing, accounting, and financial management. Its research operations have produced a Public Audit Manual, an internationally recognized Performance Audit Methodology with 13 sector specific Guidelines, and a series of research papers.⁹²⁵

⁹²³ Interview of Mr. Tanvir Ali Agha Ex-AGP with Researcher on 2/11/12

⁹²⁴ Quality Management Framework for Public Sector Auditing in Pakistan 2011. The Audit Quality Management Wing, AGP Available at www.agp.gov.pk/.../Quality%20Management%20Framework-Revised.do

⁹²⁵ *ibid*

PILLAR 9

Anti-Corruption Agencies

Pillar 9: Anti-Corruption Agencies

SUMMARY

National Anti-corruption Bureau (NAB) is the apex anti-corruption agency in Pakistan with a legal framework that provides wide operational powers and independence. Its enabling law is the National Accountability Ordinance which extends to the whole of Pakistan and is applicable to all persons in Pakistan. It overrides all other laws on corruption that otherwise control criminal prosecutions and no court has the power to grant bail to any person accused of an offence under this Ordinance. It can seek information from any organization/department in connection with any investigation pending before it and has extra ordinary powers to seize, freeze or transfer assets of an accused even at the inquiry stage. Its unique features include its retroactive effect dating back to 1985, shifting the onus of proof on the accused and compelling him to be his own witness and turning a civil matter like breach of contract into a crime by introducing concepts of 'Wilful Default' and 'plea-bargain'. The National Accountability Order (NAO), 1999 confers wide powers to NAB to frame its own rules for carrying out the purposes of the Ordinance.⁹²⁶

⁹²⁶ The National Accountability Ordinance, 1999 (No. XVIII of 1999)

There is no external control and the organization is answerable only to the President. However, in practice NAB is not free from political pressures and recently, a sitting chairman was pressurized to resign, although he refused to do so.⁹²⁷ The previous government had also introduced a new “National Accountability Commission Bill, 2012” in the National Assembly, which was its second attempt at replacing NAB with a new institution. The first bill was presented in 2009 but was withdrawn for being controversial.⁹²⁸ The recently proposed bill has also generated controversies and is said to be totally powerless with limited scope and jurisdiction. NAB too has commented against the bill.⁹²⁹

NAB has to submit annual reports to the President but the law does not give any guidelines as to the contents of the report. Annual reports are publicized for public information. However, it is the researchers’ and experts’ opinion that the NAB’s official website is not as impressive or transparent as it could be and a lot of information is missing.

Internal integrity and accountability mechanisms are guided by a Code of Conduct and Ethics, but no case against any NAB employee, during the tenure of service has ever surfaced or reached the public domain. However, in 2013, NAB took action against its own Chairman in NICL mega corruption scam.⁹³⁰

**Table 11:
Percentage Scores of Indicators
52.1/100**

Dimension	Indictors	Law	Practice
Capacity 56.3/100	Resources	75	50
	Independence	75	25
Governance 41.7/100	Transparency	50	25
	Accountability	50	25
	Integrity Mechanisms	75	25
Role 58.3/100	Prevention	50	
	Education	50	
	Investigation	75	

927 Mr. Umar Nangiana, ‘Despite ‘pressure’, NAB chief refuses to resign’, November 17, 2012, the Express Tribune, <http://tribune.com.pk/story/467282/remove-me-if-you-want-nab-chief-refuses-to-resign/?print=true>.

928 Mr. Imaduddin, ‘Government introduces new accountability bill in NA’, Business Recorder Tuesday, 09 October 2012 <http://www.brecorder.com/top-news/108-pakistan-top-news/84625-government-introduces-new-accountability-bill-in-na-.html>

929 New accountability law is toothless, lame duck: NAB; By Asim Yasin, Wednesday, October 31, 2012, The NEWS, <http://www.the-news.com.pk/Todays-News-13-18498-New-accountability-law-is-toothless-lame-duck-NAB>

930 GEO.tv, NICL Scam: NAB to take action against own chairman, November 26, 2013, <http://www.geo.tv/article-127931-NICL-Scam-NAB-to-take-action-against-own-chairman->

Structure and Organizations

There are more than 34 institutions at federal and provincial levels, with a mandate to hold accountable, public/private sector. These institutions are run by staff of thousands, costing billions to the government of Pakistan.⁹³¹ Yet, in the last four years alone, Pakistan lost PKR 8.5 trillion (US\$ 94 billion) to corruption.⁹³²

There are two Anti-Corruption Agencies (ACAs) in Pakistan, viz., National Accountability Bureau (NAB) at Federal level and Provincial Anti-Corruption Establishments (ACEs) at the provincial level.

The NAB was established under the National Accountability Ordinance, and is the apex anticorruption agency with a very strong and an independent legal framework.⁹³³ It functions both at the federal as well as regional levels with its Headquarter in Islamabad and five regional offices each headed by a Director General.

The NAB has separate Accountability Courts that deal with cases sent by NAB and there are a few exceptional provisions in the National Accountability Ordinance (NAO), 1999 that provide extraordinary powers to NAB. These provisions relate to 'Wilful Default', breach of contracts, non-payment of bank loans etc.⁹³⁴ Validity of the National Accountability Bureau Ordinance, 1999 was challenged on various grounds in the Supreme Court, and most of the powers of NAB were upheld by the Court.⁹³⁵

Pakistan is now an active participant in the anti-corruption drive and a customer of global anti-corruption industry of worth \$300 billion. However, fifty-six days after Pakistan ratifying the United Nations Convention against Corruption (UNCAC), the Federal Government promulgated the National Reconciliation Ordinance (NRO) which terminated all investigations of corruption offenses by public officials prior to October 12, 1999.⁹³⁶

931 Daniyal Aziz, 'Anticorruption and its Discontents Anti-corruption in Post-Independence Colonial Bureaucracies', Prepared for presentation at IPMN conference: Innovations in Public Management for Controlling Corruption 27-29 June 2012 Honolulu, Hawaii, p.3

932 PKR 8,500 bln. Corruption mars PPP tenure' February 05, 2012, The NEWS, (From Web Edition), <http://www.thenews.com.pk/article-34007-Rs-8,500-bn-corruption-mars-PPP-tenure>; The Institute of Forensic Accountants of Pakistan (IFAP), Newsletter March, The Forensic Accountant (FA), 2012, p. 15).

933 Section.1, National Accountability Ordinance (NAO), 1999 (No.XVIII of 1999); Pakistan Penal Code (PPC), 1860 (Sections 160-165) along with NAO,1999, are also applicable to all corruption cases)

934 Sections 14, 18, 19, NAO, 1999 as amended in 2000 and Qanun-e-Shahadat Order 1984 (previously known as Evidence Act) along with Criminal Procedure Code 1868.

935 Press Release, posted on official website of Supreme Court of Pakistan, http://www.supremecourt.gov.pk/web/user_files/File/JR_Validity_of_NAB_Ordinance_Press_Release.pdf.p.7

936 Mr. Daniyal Aziz, 'Anticorruption and its Discontents Anti-corruption in Post-Independence Colonial Bureaucracies', Prepared for presentation at IPMN conference: Innovations in Public Management for Controlling Corruption,27-29 June 2012, Honolulu, Hawaii, p.13

9.1 Capacity

9.1.1 Resources (law)

Score 75%

Scoring Question To what extent are there provisions in place that provide the ACAs with adequate resources to effectively carry out duties?

The ACAs are more or less bound by the System of Financial Control and Budgeting and the General Financial Rules.⁹³⁷

The National Accountability Bureau is an independent federal executive bureau of the Government of Pakistan and as such enjoys wide financial autonomy. Financial authority of NAB lies with its Chairman, who is responsible for the expenditure incurred against the budget grant. Not only does NAB have budgetary resources, but it also has the authority to retain a certain percentage from the recoveries it makes under Voluntary Return (VR) and Plea Bargain (PB).⁹³⁸ The Chairman is empowered to determine the amounts of recovery from the accused under Voluntary Return and Plea Bargain.

The ACEs, being attached departments, are totally dependent on funding from the budgetary sources. There is no delegation of financial authority and the Finance Departments handles all the financial matters including budget making, sanction, approval and expenditure of the resources.⁹³⁹

⁹³⁷ General Financial Rules of the Central Government (GFR), Volume 1, Chapter 2, II-Expenditure and Payment of Moneys, Rules 11 – 17. and System of Financial Control and Budgeting 2006

⁹³⁸ Section 25 of NAO 1999,

⁹³⁹ Second Interim Technical Report on Public Accountability Institutions in Pakistan and their macroeconomic Impacts, Governance Institutions Network International (GINI, 2007),p. 126, 131, 136&140.

9.1.2 Resources (practice)

Score 50%

Scoring Question To what extent do the ACAs have adequate resources to achieve goals in practice?

Though there is no formal guarantee of fiscal stability for NAB, the data reveals an uneven trend in budget grants. There was a huge drop in the budget grants in the year 2009 from almost USD 8.4 million to USD 3.73 million and then an upward trend till date reaching up to USD 15.8 million.⁹⁴⁰ The budget along with additional amount recovered from various sources is sufficient to carry on with their duties.⁹⁴¹ The retained amount from VR and PB worth USD 12.11 million has been spent on employees welfare, within the period from 2003-2011.⁹⁴² Spending on employees' welfare for the year 2012 is reported to be USD 0.05, which is very low as compared to previous years.⁹⁴³

NAB started functioning with the total manpower strength of 402, and it hired personnel from FIA, police, banks, income tax and armed forces on contract or on deputation. Later on, FIA⁹⁴⁴ and Pakistan Army⁶⁴⁵ called back all its officers and personnel, leaving a huge gap of human resource.⁹⁴⁶

Employees at NAB have sufficient expertise to carry out their duties.⁹⁴⁷ NAB also has a Training & Evaluation Wing (T&E) which plans continuous training at national and foreign institutes. In 2011, the T&E Wing managed 58 courses and 41 courses in 2012.⁹⁴⁸

As far as provincial Anticorruption Establishments (ACEs) are concerned, there has been increasing trend in the allocation of budgets to ACEs over the years.⁹⁴⁹ The Director of an ACE has to seek permission from the Chief Secretary to take action against any gazette officer. There is shortage of permanent staff and ACEs borrow employees from Police Department or other agencies. There are no efforts for capacity building of the employees. Lack of professional expertise and specialized training particularly at investigation level has badly affected the credibility of the ACEs.⁹⁵⁰

940 Annual Report 2012, National Accountability Bureau Pakistan (NAB),

941 *ibid*

942 As per the NAB annual report of 2011,

943 Annual Report 2012, National Accountability Bureau Pakistan (NAB),

944 Dilshad Azeem, Thursday, November 06, 2008 from Print Edition, The NEWS. <http://www.thenews.com.pk/TodaysPrintDetail.aspx?ID=145110&Cat=2&dt=11/6/2008>

945 Source: 'Pak army officers recalled from civilian postings', February 12, 2008, the Times of India, <http://articles.timesofindia.in/iatimes.com/keyword/national-accountability-bureau/featured/3>.

946 The ANNUAL REPORT 2011, National Accountability Bureau Pakistan (NAB), <http://www.nab.gov.pk/Downloads/Annual-Report-2011.pdf>, p.44

947 Training in the. National Institute of Public Administration (NIPA) and the Administrative Staff College, Lahore and Training & Evaluation Wing (T&E) which plans continuous training at national and foreign institutes.

948 Annual Report 2011 & 2012, National Accountability Bureau Pakistan (NAB),

949 Second Interim Technical Report on Public Accountability Institutions in Pakistan and their macroeconomic Impacts, Governance Institutions Network International (GINI, 2007), p. 126, 131, 136&140.

950 Second Interim Technical Report on Public Accountability Institutions in Pakistan and their macroeconomic Impacts, Governance Institutions Network International (GINI, 2007), p.508-509, 514, and 518-520.

9.1.3 Independence (law)

Score 75%

Scoring Question To what extent are the ACAs independent by law?

NAB is a statutory body and has a very strong and an independent legal setup. The legal framework gives NAB independence in terms of its functions, authority and jurisdiction. It overrides all other laws and its operation extends to the whole of Pakistan and applies to all persons, public or private.⁹⁵¹ It is authorized to investigate and inquire complaints that include any act as offence and take immediate actions under the ordinance 1999 against anyone involved in the offence.⁹⁵² Being the apex ACE, when NAB takes cognizance of an offence punishable under NAO, 1999, all other agencies are precluded from taking cognizance of the same.⁹⁵³

The appointments to the key posts in NAB are made according to the provisions laid down in the NAO, 1999. The chairman NAB is appointed by the President, with the mutual consent of the Leader of the House and the Leader of the Opposition in the National Assembly. For other selections, NAB has the National Accountability Bureau (NAB) employees Terms & Conditions of Services (TCS) 2002, whereby the selection Board and Departmental Selection Committees, make selections as per methods of appointment & conditions of promotion specifically given in TCS for all posts, giving a clear career path to employees.⁹⁵⁴

The independence of NAB is ensured by the fact that the Chairman NAB⁹⁵⁵ is appointed for a non-extendable period of four years and can only be removed on the grounds that necessitate removal of a Judge of Supreme Court of Pakistan.⁹⁵⁶

NAB has its own policies and rules regarding recruitment and selection. Selection is made by Selection board. There are initial appointments as well which are made on recommendations of Departmental Selection Committee or in some cases by promotions or transfer.⁹⁵⁷

The Chairman is authorized to determine the salaries, allowances and other terms and conditions of service of the officers and staff, but with the approval of the president.⁹⁵⁸

951 Section 2-3, National Accountability Ordinance (NAO), 1999 (No. XVIII of 1999).

952 Section 18, NAB Ordinance, 1999. As amended 2000.

953 Section 18(d), National Accountability Ordinance, (NAO) No. XVIII, 1999

954 The President, with the mutual consent of the Leader of the House and the Leader of the Opposition in the National Assembly appoints the Chairman.

955 Section 6-8, National Accountability Ordinance (NAO), 1999 (No. XVIII of 1999). The President of Pakistan appoints the three main administrative and operational persons of the Bureau being the Chairman, Deputy Chairman and Prosecutor General

956 Section 6, NAO, 1999

957 National Accountability Bureau (NAB) employees Terms & Conditions of Services (TCS) 2002. Source: Second Interim Technical Report on Public Accountability Institutions in Pakistan and their macroeconomic Impacts, Governance Institutions Network International (GINI, 2007), p.160

958 Section 28(c) of the NAB Ordinance, 1999.

Indemnity is provided to the Chairman NAB, or any other member of the NAB against institution of any suit, prosecution, or any other proceedings for any act done in good faith during the normal discharge of their duties.⁹⁵⁹ Moreover, NAB's employees cannot be removed from their position before the end of their term unless strong grounds of misconduct and legal justification exist.⁹⁶⁰

All offences under the Ordinance are non-bail able and no Court has jurisdiction to grant bail to any person accused of any offence under the said Ordinance.⁹⁶¹

NAB has the power to seek assistance from any government department⁹⁶² in Pakistan and being a member of UNCAC, can also request assistance from foreign governments.⁹⁶³

The ACEs are under the supervisory control of the Provincial Governments. The appointments to key posts, service conditions and salaries are determined by the Government. The appointments are politically influenced and Heads of Department and other officers are not appointed on merit, but are generally appointed by the Chief Secretary of the Provinces.⁹⁶⁴ The indemnity to ACE officials is granted vide its enabling law.⁹⁶⁵

9.1.4 Independence (practice)

Score 25%

Scoring Question To what extent are the ACAs independent in practice?

NAB was established to focus solely on corruption issues, and thus was given extra ordinary powers to tackle corruption. For initial three years NAB received complete backing of the government and enjoyed constitutional protection. Cases on corruption charges were launched against a number of politicians, government employees as also against the deposed Prime Minister, wherein he was sentenced to 14 years rigorous imprisonment (RI) by the Accountability Court in 2000, but due to political reasons he was pardoned and exiled to Saudi Arabia. Other than this conviction, no high profile politician until now has been successfully prosecuted.⁹⁶⁶

959 Section 36-D, NAO 1999,

960 As per the National Accountability Bureau (NAB) employees Terms & Conditions of Services (TCS) 2002.

961 Section. 9, National Accountability Ordinance (NAO), 1999 (No. XVIII of 1999); Ordinary Civil and criminal Courts are barred by law to interfere in the investigative powers of NAB and only the Accountability Courts have exclusive jurisdiction to hear NAB cases. Even the Higher courts generally do not interfere in NAB proceedings.

962 Section 22 of the NAO, 1999.

963 ANNUAL REPORT 2011, National Accountability Bureau Pakistan (NAB),

964 Interview of Mr. Abid Javed, Director General, ACE, Lahore with Researcher on 25/8/2012

965 The West Pakistan Anti-Corruption Establishment Ordinance, 1961 and all provincial ACE Laws.

966 Masood Khan, Niaz A. Shah Kakakhel, Melvin J Dubnick, Prosecuting Corruption: The Case of Pakistan, Working Paper for the Ethics Forum held by the American Society for Public Administration, Portland, 26-27 March, 2004, <http://unpan1.un.org/intra/doc/groups/public/documents/APCITY/UNPAN019113.pdf>

Later on, though formally independent, the NAB has had its share of countering external pressures. The influence of military is evident and most of the chairmen have been chosen from senior military officials. So far five out of eight Chairmen have been from the military including the sitting chairman who was the fourteenth Chief of Naval. Only one of the Chairmen has completed his full term.⁹⁶⁷ He has also been accused of becoming 'sluggish' due to political and administrative interferences.⁹⁶⁸ NAB has been facing allegations of being a partisan agency used for political victimization by the government.⁹⁶⁹

(NAB had to drop cases against 8041 persons and the list of NRO beneficiaries included 34 politicians, 214 bureaucrats, and three diplomats.⁹⁷⁰ Meanwhile, in early 2008, NAB was allegedly ordered by the Pakistan's law ministry, not to proceed forward with any of the pending corruption cases against politicians and the bureaucrats supporting the governing political party and not to register any fresh corruption case which made the only accountability organization of the country NAB, quite powerless.⁹⁷¹ In 2008, the Government also showed intentions of demolishing NAB and replacing it with another anti-corruption authority.⁹⁷² NRO was subsequently struck down and declared void abs-initio by the Supreme Court on Dec. 16, 2009 and all the cases withdrawn under it were reopened by the then chairman NAB.

NAB has been active in bringing back looted money from abroad and in 2011 NAB sent 66 requests for legal assistance to foreign jurisdictions and received one similar request from abroad, forwarded five extradition/deportation requests, received information/evidence from eleven jurisdictions and forwarded the same to four jurisdictions. In 2012, NAB sent 12 such requests and received evidence/information in 14 requests.⁹⁷³

Post-NRO period,⁹⁷⁴ extensive political⁹⁷⁵ and government interference⁹⁷⁶ made the only accountability organization of the country quite powerless.⁹⁷⁷ In 2012 too, the then Chairman NAB was pressurized to resign,⁹⁷⁸ and in the same year, the Supreme Court declared the chairman's appointment as illegal. The next chairman's appointment too was challenged in the Supreme Court.⁹⁷⁹

967 Annual Report 2011, National Accountability Bureau Pakistan (NAB),

968 Ibid p.10.

969 Crisis Group Asia Report N°196, Reforming Pakistan's Criminal Justice System December 6,2010, p.4

970 GEO Pakistan, List of 8041 NRO beneficiaries issues, Saturday, November 21, 2009, Geo television network, <http://www.geo.tv/11-21-2009/53376.htm>

971 NAB conviction rate drops to a pathetic 23 per cent, 23 November 2009, Awaz.tv(internet tv) <http://www.awaztoday.com/singlenews/1/3613/Political-News/NAB-conviction-rate-drops-to-a-pathetic-23-per-cent.aspx>

972 Committee approves draft of NAB Ordinance, Masood Rehman, Friday, January 30, 2009, Daily Times, http://www.dailytimes.com.pk/default.asp?page=2009%5C01%5C30%5Cstory_30-1-2009_pg7_26

973 As per the ANNUAL REPORTS 2011& 2012, National Accountability Bureau Pakistan (NAB),

974 Awaz.tv (internet TV). 23 November 2009 The conviction rate of the National Accountability Bureau (NAB) dropped from 67 percent in January 2008 to 23 per cent in 2009." <http://www.awaztoday.com/singlenews/1/3613/Political-News/NAB-conviction-rate-drops-to-a-pathetic-23-per-cent.aspx>

975 Business Recorder, February 27,2010, 'Electing a new NAB chairman', posted on Transparency International Pakistan's website, <http://www.transparency.org.pk/news/newsdetail.php?nid=34>

976 Masood Rehman, Daily Times January 30, 2009 "Committee approves draft of NAB Ordinance", http://www.dailytimes.com.pk/default.asp?page=2009%5C01%5C30%5Cstory_30-1-2009_p_7_26; Farzand Ahmed, May 18, 2010, India Today: 'Court proposes Zardari disposes'. The President remitted the sentence passed in absentia, against an Interior Minister under Article 45 of the constitution. These sentences were revived by the High Court in its appellate jurisdiction. Source in, <http://indiatoday.intoday.in/story/Court+proposes+Zardari+disposes+/1/97824.html>

977 Awaz.tv (internet TV) November 23, 2009. Source: 'NAB conviction rate drops to a pathetic 23 per cent',<http://www.awaztoday.com/singlenews/1/3613/Political-News/NAB-conviction-rate-drops-to-a-pathetic-23-per-cent.aspx>

978 Umar Nangiana, November 17, 2012, The Express Tribune, NAB chief refuses to resign <http://tribune.com.pk/story/467282/remove-me-if-you-want-nab-chief-refuses-to-resign/>

979 The Nation, Chairman NAB appointment challenged in SC, October 29, 2013,<http://www.nation.com.pk/islamabad/29-Oct-2013/chairman-nab-appointment-challenged-in-sc>

The last government had showed its intentions of replacing NAB with another independent anticorruption agency viz. The Accountability Commission, but the proposed 'National Accountability Commission Bill 2012', faced opposition in the parliament.⁹⁸⁰ So far, the new established government in 2013 has not yet taken up the matter.

9.2 Transparency

9.2.1 Transparency (law)

Score 50%

Scoring Question To what extent are there provisions in place to ensure that the public can obtain relevant information on the activities and decision-making processes of the ACAs?

Right to information has been constitutionally guaranteed⁹⁸¹ and has also been dealt with under the Freedom of Information laws.⁹⁸² Under its own law as well, NAB is required to submit an annual report to the President of Pakistan, as soon as possible after the end of every calendar year but before 30th of March.⁹⁸³ However, the law does not give any guidelines as to the contents of the report. Other than these provisions, there are no particular provisions in law for NAB to inform the public or any regulatory authority about its activities. Information to the public or press is provided through the authorized media officers of NAB. According to the Code of Conduct & Ethics, officers can make public comments on behalf of NAB but only with the Chairman's authorization. Other than the authorised comment, the NAB officials are not allowed to indulge in discussions about NAB's work unless it is confined to material that is already in the public domain.⁹⁸⁴

980 Staff Reporter The Express Tribune November 13, 2012, National Accountability Bill: NA panel fails to win over the opposition', <http://tribune.com.pk/story/464884/national-accountability-bill-na-panel-fails-to-win-over-the-opposition/>

981 Article 19A, inserted by the Constitution (Eighteenth Amendment) Act, 2010 of the Constitution of Pakistan, 1973

982 Freedom of Information Ordinance 2002(NO. XCVI OF 2002).,Government of Pakistan, Ministry of law, Human Rights and Parliamentary affairs (Law, Justice and Human Rights Division), F. No. 2(1)/2002-Pub. Islamabad. 26th October 2002. Also, under the Official Secrets Act, 1923 and under Article 7 of the Qanun-e-Shahadat Order (X of 1984),

983 Section 33-D, National Accountability Ordinance (XVIII of 1999)...

984 NAB Code of Conduct and Ethics, http://www.nab.gov.pk/Downloads/Code_of_Conduct.asp

9.2.2 Transparency (practice)

Score 25%

Scoring Question To what extent is there transparency in the activities and decision-making processes of NAB in practice?

All the ACAs have their separate web portals where public information material can be accessed. NAB's work involves sensitive or confidential information during the course of an investigation. Such information may be relating to political leaders, government departments and other Government officials or may pertain to personal or commercial information relating to individuals or companies.

Due to highly sensitive nature of work, NAB ensures that information considered appropriate only for public comment, is released. Information to the public or press is provided through the authorized media officers of NAB.⁹⁸⁵

As far as published information is concerned, there have been eight annual reports. These reports are uploaded on the NAB's official website.⁹⁸⁶ However, only the report for year 2012 is available and the rest have been removed.⁹⁸⁷

Important legal documents like the NAB Ordinance 1999(modified up to March 2010), Code of Conduct & Ethics and updated statistics about cases and investigations along with weekly account of Executive Board Meetings, significant cases, inquiries, investigations, recoveries, case studies, Awareness and Prevention Events are uploaded as 'activity log' on the website for public perusal. Only the 'Activity Log' is active and is regularly modified, but the NAB Operations including investigations, inquiries, prosecution and recoveries are not regularly updated. Moreover, the official website of NAB is not self-explanatory as it has missing information and past recorded documents have been removed, which equates to the inability to carry out comparative and trend analysis.⁹⁸⁸

Secondly, neither the reports nor the website, contain any information or data regarding public perception of corruption or of the NAB itself, although a number of international organizations release indices and data on corruption in Pakistan. Display of afore mentioned information can raise NAB's credibility and improve its public image. Also, a number of relevant legal Acts and documents such as Recruitment Policies and integrity screening processes, National Accountability Bureau (NAB) employees Terms & Conditions of Services (TCS) 2002 and National Accountability Bureau (Recovery and Reward) Rules-2002 are missing.

985 NAB Code of Conduct & Ethics:http://www.nab.gov.pk/Downloads/Code_of_Conduct.asp

986 Annual Reports, NAB for the years 2001, 2002, 2003, 2004, 2005, 2007 and 2011 and 2012.

987 <http://www.nab.gov.pk/>

988 <http://www.nab.gov.pk/>

The lack of information about NAB rules causes misconceptions and misperceptions in the public, for example about the payment of allowances and honoraria granted to the NAB employees.⁹⁸⁹ The display might raise NAB's credibility and improve its public image.

All provincial ACEs and their spokesmen release information to public through media and so far a few annual reports are available for public information, such as ACE Punjab has managed to produce two year books for 2004 and 2005.⁹⁹⁰

9.2.3 Accountability (law)

Score 50%

Scoring Question To what extent are there provisions in place to ensure that the ACAs have to report and be answerable for their actions?

NAB was established to focus solely on corruption issues, and thus was given extra ordinary powers to tackle corruption. Therefore, there is no restriction or external supervision on NAB's functional powers and authority. NAB is a completely autonomous institution and is not answerable to any provincial or federal government or any other institution and Chairman reports directly to the President and is answerable to him.⁹⁹¹

Indemnity is provided to the Chairman NAB, or any other member of the NAB against institution of any suit, prosecution, or any other proceedings for any act done in good faith during the normal discharge of their duties.⁹⁹²

But no law can override the inherent constitutional powers of judicial review of higher courts and NAB's actions can be challenged in the higher courts.⁹⁹³

The legal framework of NAB also provides for protection of witnesses and confers a duty on the courts and the Chairman NAB to take measures necessary for the safety, security and protection of witnesses and their families.⁹⁹⁴ Provisions regarding Bonuses or ex-gratia payments to the officers and staff of the NAB and rewards to members of public for detection, investigation and prosecution of corruption activities are also provided for.⁹⁹⁵

As far as accountability in financial matters is concerned, NAB is partially independent. The financial control and authority of NAB lies with its Chairman NAB.

989 'Payments to NAB officials as per rules'. Daily Post, May 9, 2010, High Beam Research, <http://www.highbeam.com/doc/1G1-227008356.html>

990 Interview of Mr. Abid Javed, Director General, ACE, Punjab with Researcher on 25/8/2012

991 Section 33-D, National Accountability Ordinance (NAO), 1999 (No.XVIII of 1999).

992 Section 36-D, NAO 1999,

993 Article 184(3) of the Constitution, 1973.

994 Section 16(A) NAB Ordinance, 1999 as amended, 2000 and Section 31E of the NAO, 1999.& Article 8 of the Qanun-e-Shahadat Order (X of 1984.

995 Section 33-A of NAO, 1999 and rules prescribed by the 'National Accountability Bureau (Recovery and Reward) Rules-2002.

And keep the informer's identity secret.⁹⁹⁶ NAB's official website guides the "informers" to provide information or evidence that leads to investigation and prosecution of corruption or corrupt parties, bank loan defaults & write-offs, and help in recovering the looted public money.⁹⁹⁷ Such informers are duly rewarded under the power granted by section 33-A of NAO, 1999 and rules prescribed by the 'National Accountability Bureau (Recovery and Reward) Rules-2002'.⁹⁹⁸ Informers' reward would be 20 percent if NAB recovers amount up to PKR 1,000,000 on informer's lead, 10 percent for recoveries up to PKR 5,000,000 (USD 56,306), 7 percent for PKR 10,000,000 (USD 112,612) and 4 percent for recoveries up to PKR 30,000,000 (USD 337,837) and above.⁹⁹⁹

ACEs are responsible to the provincial Chief Minister and submit annual reports to him. The reports that contain investigative information are available to public. As regards financial accountability, ACEs are bound by the financial controls of the Provincial Auditor Generals.

Complaints against ACEs employees are received by the ACE from various Heads of Government Departments and general public. Enquires are conducted under the provincial ACE Rules 1995.

Anti-corruption mechanism is available to initiate enquiry by first identifying the complainants. Various levels of officers can conduct investigations against different categories of public employees. The laws authorize the provincial Governments to make rules for carrying out the said investigations against any public employee.¹⁰⁰⁰

There are no citizen oversight committees to watch over any of the ACAs actions, but there have been demands from the public for establishing such bodies.¹⁰⁰¹

9.2.4 Accountability (practice)

Score 25%

Scoring Question To what extent do the ACAs have to report and be answerable for its actions in practice?

There is no external accountability mechanism to monitor NAB's actions. But the Higher Courts have been exercising their supervisory jurisdiction and power of judicial review whenever NAB's transgresses its limits. For instance, appointments of Chairmen, National Accountability Bureau by the President of Pakistan have been declared ultra-virus the Ordinance and thus illegal, by the Supreme Court.¹⁰⁰²

996 Sec. 31-E, National Accountability Ordinance (XVIII of 1999).

997 <http://www.nab.gov.pk/home/introduction.asp>

998 NAB defends payment of allowances, May 8, 2010, The Express Tribune, <http://tribune.com.pk/story/11678/nab-defends-payment-of-allowances/>

999 Public Accountability Institutions of Pakistan & Their Macro Economic Impacts, Ahmed Hassan Foundation, IDRC GRANT No. 103655, December, 2008 Islamabad, p.167

1000 ACE Rules, 1995; The prevention of corruption Act, 1947 Section 5(2) 47 and the Punjab Anti-corruption establishment Rules 1985

1001 Interview of Mr. Abid Javed, Director General, ACE, Lahore with Researcher on 25/8/2012

1002 Accountability chief sent packing; Qaiser Zulfiqar, March 11, 2011, The Express Tribune, <http://tribune.com.pk/story/130501/sc-declares-nab-chairmans-appointment-illegal/>; The Nation, Chairman NAB appointment challenged in SC, October 29, 2013, <http://www.nation.com.pk/islamabad/29-Oct-2013/chairman-nab-appointment-challenged-in-sc>

In 2011, NAB was accused of violating rules and procedures of appointment and 80 NAB officials filed a case in the court. Alleging favouritism on part of the Chairman.¹⁰⁰³ The Supremecourt, in 2013 ordered registration of a case against the chairman NAB, appointed the same year, for creating hurdles in an investigation into the National Insurance Corporation Limited (NICL) mega corruption scam. The Acting Chairman, has formed a joint investigation committee to take action against its own Chairman,¹⁰⁰⁴ who has gone on leave since the Court's ruling.¹⁰⁰⁵

Public is encouraged to report incidents of corruption via emails, telephonic voice messages or placing simple calls¹⁰⁰⁶ and the NAB authorities claim to provide complete protection and keep the informer's identity secret. But whistle-blowers are afraid to come forward to report cases and consider them at risk as the protective provisions are not practiced.¹⁰⁰⁷

Informers' reward has been set up to 20 percent if NAB recovers amount up to Rs. 1,000,000 on informer's lead, 10 percent for recoveries up to Rs. 5,000,000 (USD 56,306), 7 percent for Rs. 10,000,000 (USD 112,612) and 4 percent for recoveries up to Rs. 30,000,000 (USD 337,837) and above.¹⁰⁰⁸ However, the announcement of rewards to informers in case of conviction of accused and recoveries on the informer's lead has not been acted upon. One informer is still awaiting the widely publicized reward of 10% of the recovered amount. The informer had assisted (the then Ehtasab Bureau and existing National Accountability Bureau) 14 years back in 1997, in recovering \$0.03 billion.¹⁰⁰⁹

Director Generals of Provincial ACEs are responsible for the activities of their staff. In practice, all enquiries and cases registered and disposed of during each year are published in annual reports. Details of each complaint enquiry and cases registered are recorded and reported to the provincial government for necessary actions according to ACE rules.¹⁰¹⁰

9.2.5 Integrity Mechanisms (law)

Score 75%

Scoring Question To what extent are there mechanisms in place to ensure the integrity of members of the ACA(s)?

1003 Ansar Abbasi, 'Internal revolt in NAB against chairman', Wednesday, August 08, 2012, The NEWS, <http://www.thenews.com.pk/Todays-News-13-16635-Internal-revolt-in-NAB-against-chairman>

1004 GEO.tv, NICL Scam: NAB to take action against own chairman, November 26, 2013, <http://www.geo.tv/article-127931-NICL-Scam-NAB-to-take-action-against-own-chairman->

1005 GEO.tv, NAB Boss goes on leave after SC Ruling, November 22, 2013, <http://www.geo.tv/article-127438-NAB-boss-goes-on-leave-after-SC-ruling->

1006 <http://www.nab.gov.pk/contacts.asp>

1007 Interview of Mr. Jawed Ahmed Qureshi, A.D. FIA with Researcher on 22/9/2012 and Global Integrity, 2010, Pakistan: Integrity

1008 Indicators Scorecard <http://report.globalintegrity.org/Pakistan/2008/scorecard/88>

1009 Public Accountability Institutions of Pakistan & Their Macro Economic Impacts, Ahmed Hassan Foundation, IDRC GRANT No. 103655, December, 2008 Islamabad, p.167 'Asad Kharal, The Express Tribune, February 13, 2012 Exposing graft: 14 years on, informant awaits just reward', <http://tribune.com.pk/story/335672/exposing-graft-14-years-on-informant-awaits-just-reward/>

1010 Interview of Mr. Tariq Masood Khan, Deputy Director, ACE, Punjab with Researcher on 21/9/2012 and ACE Year Book, 2010-11.

There is a code of conduct and ethics which is based on the core values of NAB which requires employees to focus on what is right, to set high moral and ethical standards, working with dedication, honesty, fairness and building trust.¹⁰¹¹

The code makes it obligatory on its employees to be highly professional and strive for excellence in performance of their duties. Any professional activity undertaken by them must not be compromised or affected by their personal interest.

The employees are required to declare their personal and financial assets at the time of their appointment and to report any subsequent significant change thereto. The Bureau has powers to make its own service rules and regulations, and there are no explicit legal provisions that require integrity screening during recruitment of the NAB employees but, like any other law enforcement agency, integrity screening through psychological tests and through various intelligence agencies are ensured. After being employed, officials working within the organization are strictly monitored and watched by 'Efficient Vigilance Wing' that works within NAB and has been upgraded to Intelligence Wing 2002.

The Code is quite clear on the Conflict of interests, which has been defined as "a situation in which an employee's "private interests" interfere with the proper discharge of his official duties because of the divided loyalties'. The 'Code' makes it obligatory on NAB employees to declare any personal or financial interest that might hinder in the performance of their duties. The employees of NAB are also warned against accepting any gift, bribe or any undue advantage that might compromise their integrity or impartiality in performance of their duties at NAB. Any such act would amount to a crime under the criminal laws of the land as well as an offence under the Government of Pakistan employee's efficiency and discipline rules.

The Code also makes provisions for whistle blowing and the NAB employees are ethically obliged to report to authorities any corrupt act that comes to their notice outside the NAB or if any one of NAB's employees engages in conduct that is unlawful, unethical or unfair, including acceptance any gift or hospitality by officials to higher NAB authorities.

9.2.6 Integrity Mechanisms (practice)

Score 25%

Scoring Question To what extent is the integrity of members of the ACA(s) ensured in practice?

NAB has been quite confident about the integrity of its employees and a reward of PKR. 1 million (USD 10,000) was announced by NAB, for any person providing authentic and prosecutable information/evidence about corruption of any NAB officer.¹⁰¹²

At the time of hiring, the employees are required to go through the Code and sign a commitment, which is placed in their personal files. Though the code is not a formal

¹⁰¹¹ Code of Conduct and Ethics'http://www.nab.gov.pk/Downloads/Code_of_Conduct.asp

¹⁰¹² 'NAB will pay informers', Wednesday, May 17, 2006, 'Daily Times', http://www.dailytimes.com.pk/default.asp?page=2006%5C05%5C17%5Cstory_17-5-2006_pg7_14

piece of legislation, but any violation of the code entails corrective or disciplinary action by NAB which may lead to dismissal or prosecution.

The employees of NAB are also warned against involvement in corrupt behaviours.¹⁰¹³ During their tenure at NAB, the employees are prohibited from engaging in any paid or unpaid employment outside NAB without having formal permission from NAB. After leaving the organization, the NAB employees are obliged to maintain the confidentiality of the information acquired during their work, and should not in any way infringe NAB's intellectual property rights.¹⁰¹⁴

Additional efforts have also been made to improve functioning and ensuring integrity, such as direct enrolment of Security Guards and provision of equipment as per requirements, Introduction of "Access Control System", Provision of CCTV system to keep check over the movement of individuals/visitors, installation of "Mail scanners" and walk through gates at the entrance.¹⁰¹⁵

The internal security network system has been operating effectively in the organization and few instances of corruption have been detected in the organization, resulting in prosecution of officers.¹⁰¹⁶ But record of cases against NAB employees has never been shared with the public.

Ex-employees though, have been accused of acting in conflict of interest during their tenure at NAB and cases against them have come to light through media. Former NAB officials have been accused of enjoying perks after the expiry of their employment contracts and even in cases where they have been ousted by the courts.¹⁰¹⁷ One of the officers has been accused of keeping six vehicles while in service, despite being allowed only one. Many of them have been accused of excessive fuel expenditure, and some have also been keeping the official residence even after the end of their employments, resulting in a loss of millions of rupees to the national exchequer.¹⁰¹⁸ The Public Accounts Committee (PAC) has ordered an inquiry and has directed NAB to investigate the two former NAB Chairmen and two Generals for allegedly taking Liquefied Petroleum Gas (LPG) quota illegally.¹⁰¹⁹

9.3 Role

9.3.1 Prevention

Score 50%

Scoring Question To what extent do the ACAs engage in preventive activities regarding fighting corruption?

1013 'Code of Conduct and Ethics', http://www.nab.gov.pk/Downloads/Code_of_Conduct.asp

1014 Interview of Mr. Jawad Ahmed Qureshi, A.D. FIA, with Researcher on 22/9/2012

1015 Governance Institutions Network International (GINI), 2007. "Second Interim Technical Report on Public Accountability Institutions in Pakistan and their macroeconomic Impacts", p.168

1016 Ahmed Hassan, Foundation, IDRC GRANT No. 103655, December, 2008 Islamabad "Public Accountability Institutions of Pakistan & Their Macro Economic Impacts", p.168

1017 'NAB's sacked official still enjoying perks, privileges', 06 October 2010, Awaz. TV. internet TV, http://www.awaztoday.com/News_NABs-sacked-official-still-enjoying-perks-privileges_1_7362_Political-News.aspx

1018, 'Hard to let go: Ex-NAB Punjab chief still using official facilities', The Express Tribune, May 29th, 2011, <http://tribune.com.pk/story/178084/hard-to-let-go-ex-nab-punjab-chief-still-using-official-facilities/>

1019 Shahbaz Rana, 'Politically-motivated' cases can be sent to parliament, August 2, 2012, The Express Tribune, <http://tribune.com.pk/story/416323/another-nro-politically-motivated-cases-can-be-sent-to-parliament-says-nab-chief/>

NAB is now following a comprehensive approach towards anti-corruption plan rather than enforcement based approach.¹⁰²⁰ It by virtue of its law can scrutinize mega public projects/contracts¹⁰²¹ examine any laws/ regulations¹⁰²² to identify loopholes responsible for corruption & corrupt practices.

NAB has also established a Hotline, facilitating the general public to file complaints of corruption and corrupt practices. The hotline started operating from 9th December 2007.¹⁰²³

So far NAB is not well equipped and lacks resources for extensive preventive activities, but it is concentrating its efforts towards it. NAB has undertaken various preventive projects and forms specialized committees to look into rules and regulations of various Federal/Provincial departments and ministries, to avert corruption and corrupt practices and bring needed changes.¹⁰²⁴ During the prevention efforts, NAB has been also able to unearth mega scams and prevented huge losses.¹⁰²⁵

The Bureau has also started working with provincial governments and Public Procurement Regulatory Authority (PPRA) to make sure that the public sector follows all rules and procedures and is transparent in their tendering, procurement and auctioning processes.¹⁰²⁶ And in 2012, NAB, undertook scrutiny of many projects and ensured compliance of PPRA Rules.¹⁰²⁷

9.3.2 Education

Score 50%

Scoring Question To what extent does the ACA engage in educational activities regarding fighting corruption?

The purpose of creating awareness is to develop zero-tolerance attitude in the society, towards corruption. NAB's awareness strategy builds around character building, building political will and using all means including the media to create awareness against corruption.¹⁰²⁸ NAB Ordinance empowers the Bureau to form committees to initiate awareness activities, like disseminating information through media campaigns and educational programs and creating awareness in the general public and in public authorities, about corruption, its adverse effects and measures that can be taken to eliminate corruption.¹⁰²⁹

1020 Sections 33-B and 33-C NA), 1999 as amended 2000. Awareness and prevention wings were created in 2005 entrusted with the function of eliminating corruption by implementing preventive measures in public sector and by creating awareness in public, using media campaigns and educational programs.

1021 Section 33-B, NAB Ordinance, 1999. And ANNUAL REPORT 2011, <http://www.nab.gov.pk/Downloads/Annual-Report-2011.pdf>, p.18

1022 Section 33-C, National Accountability Ordinance (NAO), 1999 (No.XVIII of 1999).

1023 'NAB sets up Fraud and Anti-Corruption Hotline', Press Release by NAB, 7-Dec-2007, <http://www.nab.gov.pk/press/new.asp?454>

1024 NAB Annual Report, 2011 & 2012;

1025 http://www.nab.gov.pk/Downloads/Case_studies/PostOfficePensionScam.pdf

1026 NAB Annual Report of 2011,

1027 NAB Annual Report of 2012,

1028 Ibid.

1029 Section 33-C, NAB Ordinance, 1999

NAB's awareness campaign focuses particularly on the youth and building up coalitions. For the purpose, regional NAB offices, have been conducting seminars, workshops, debates & poster competitions with awards for winners. NAB has also been conducting lectures and presentations on good governance, adverse effects of corruption and role of youth in corruption free Pakistan, at educational institutions to create awareness about corruption among students. Seminars were also organized in collaboration with Anti-Corruption Establishment and Transparency International.

Senior NAB officials have been participating in different radio/TV programs as part of anti-corruption campaign. Anti-corruption days too, have been celebrated on 9th December each year. 'Character Building Societies' are being promoted in educational institutions.¹⁰³⁰

As part of its awareness campaign, NAB is building coalition with civil society to raise awareness and change attitude of society towards corruption from acceptance to no-tolerance. In 2011, NAB arranged a conference, in collaboration with Transparency International Pakistan (TIP) and United Nations Office on Drugs and Crimes (UNODC) to mark anti-corruption day and all segments of society participated including students, media, academia, intelligentsia, NGOs and members of public.¹⁰³¹ It has also held a seminar on whistle blowing and witness protection in 2012.¹⁰³²

Some studies have been conducted on assessing the impact of its educational activities. NAB, after every seminar, workshop and conference, asks its participants if the knowledge they gained during these activities have any impact on their concept of anti-corruption.

9.3.3 Investigation

Score 75%

Scoring Question To what extent does the ACA engage in investigation regarding alleged corruption?

The earlier laws mainly dealt with holders of public office i.e. politicians or the bureaucrats. The National Accountability Ordinance is unique¹⁰³³ amongst all accountability institutions in Pakistan, as it gives NAB extensive and comprehensive powers to investigate and prosecute alleged corrupt behaviour both by private individuals and the "Holders of Public Office"¹⁰³⁴ who were involved in corruption¹⁰³⁵ including persons committing will full default which was a civil liability and not an offence in Pakistan.¹⁰³⁶ There is another new concept of 'Voluntary Return and Plea Bargain' under section 25 of NAO 1999, which empowers NAB to enter into arrangements with accused loan defaulters. Section 19 of NAO, 1999 authorizes NAB to seek information from anyone, which means compelling the accused to act as his own witness and the provision under section 14 of NAO, 1999 places the burden of proof on the accused, both provisions exceed the powers given by the ordinary criminal laws of the land.

1030 ANNUAL REPORT 2012, National Accountability Bureau Pakistan (NAB),

1031 ANNUAL REPORT 2011, National Accountability Bureau Pakistan (NAB),

1032 ANNUAL REPORT 2012, National Accountability Bureau Pakistan (NAB),

1033 ANNUAL REPORT 2011, National Accountability Bureau Pakistan (NAB), <http://www.nab.gov.pk/Downloads/Annual-Report-2011.pdf>, p.10

1034 Section 5(m), National Accountability Ordinance (NAO), 1999 (No.XVIII of 1999).

1035 Section 9, NAB Ordinance 1999.

1036 ANNUAL REPORT 2011, National Accountability Bureau Pakistan (NAB), <http://www.nab.gov.pk/Downloads/Annual-Report-2011.pdf>, p.10

It can prosecute members of the public, politicians and public service officials, whether sitting or former, including the Chief Minister of a province or Prime Minister, former President or the Governor of a Province. Anyone serving in any organization connected with the affairs of the Federation, or of a province, corporations, banks, financial institutions, any institution or organization working under or in connection with the Federal Government¹⁰³⁷ or a Provincial Government. NAB also has the authority to freeze/seize assets even at the inquiry stage, ask any government or private entity for any information required during investigation.¹⁰³⁸

NAB has suffered a lot on account of lack of political will in fight against corruption, and has faced many governments that have tried to suffocate and rob NAB of its powers, either by budget cuts, downsizing or through decisions of demolishing it. Consequently, there is a huge financial and human resource gap;¹⁰³⁹ the prosecution rate has gone down.¹⁰⁴⁰

Notwithstanding the budget cuts and lack of officers, NAB has been investigating corruption cases.¹⁰⁴¹ During 2012, the Bureau handled 9353 complaints, finalized 147 investigations and in 208 cases of voluntary return and plea bargain, got recovered USD 17.46 million. It filed 95 references reaching a total of 719 cases in Accountability Courts.¹⁰⁴²

Despite allegations of political victimization and of working under political influences, NAB has had quite a few achievements to its credit. So far, NAB has recovered of PKR 233.3 (\$2.333) billion and put in government's kitty.¹⁰⁴³ In famous cases like 'Post Pension Scam',¹⁰⁴⁴ NAB saved a loss of PKR 94.6 (\$ 0.946) million, and in the 'Double Shah Scam',¹⁰⁴⁵ NAB recovered and reimbursed 100% to all 6,500 affectees.

The Bureau has also brought to an end, forex scams, and fraudulent housing societies schemes and has tried to satisfy most of the claimants by returning misappropriated amounts. Huge amounts and assets of banks and other financial institutions that had been siphoned off have been recovered from wilful loan defaulters and other accused. NAB has also successfully prosecuted a number of high profile public office holders, government officials, politicians, presidents, prime ministers, chief ministers, ex-army officers and businessmen in cases involving kickbacks, embezzlement of government assets, misuse of authority and cheating public at large.¹⁰⁴⁶

1037 Section 5, NAB Ordinance, 1999

1038 Sections 12 & 19, ibid

1039 Syed Irfan Raza, 'NAB plans to sack over 1,500 employees: Financial crunch', The DAWN.com, Thursday, August 07, 2008, <http://archives.dawn.com/2008/08/07/nat12.htm>; ANNUAL REPORT 2011,

1040 Awaz.tv, NAB conviction rate drops to a pathetic 23 per cent, 23 November 2009, <http://www.awaztoday.com/singlenews/1/3613/Political-News/NAB-conviction-rate-drops-to-a-pathetic-23-per-cent.aspx>

1041 NAB pursuing 800 probes despite cut in budget', Mon February 08, 2010, KAL POINT national news, <http://www.kalpoint.com/national-news/nab-pursuing-800-probes-despite-cut-in-budget.html>,

1042 ANNUAL REPORT 2012, National Accountability Bureau Pakistan (NAB),

1043 ANNUAL REPORT 2011 & 2012, National Accountability Bureau Pakistan (NAB),

1044 Mr. Jameel Ahmed Deputy Director, FIA raided Gujranwala Post Office and detected pension fraud by Senior Post Master on Oct 15, 2012. tribune.com.pk/story/451163/pension-fraud-four-held-in-fia-raid/

1045 The 'Double Shah Scam', the biggest financial fraud of cheating public at large in the history of Pakistan, was intercepted by NAB, in 2007 and after due prosecution, got the accused convicted for 14 years, recovered the amount from the accused and reimbursed 100% to all 6,500 affectees.

1046 Case Studies, Info available at NAB's official website http://www.nab.gov.pk/Public_info_material.asp#CASE_STUDIES

PILLAR 10

Political

Parties

Pillar 10: Political Parties

SUMMARY

The Constitution, the Government and the Election Commission of Pakistan (ECP) have provided a system for political parties and candidates to operate in a congenial environment and hold elections in the country despite uncertain law and order situations in certain parts of the country.¹⁰⁴⁷

But the military and undemocratic rule of most of the 66 years since independence of Pakistan have taken their toll, and has resulted in communal, local, parochial, sectarian, and constituency based patterns of politics, along with factionalization of all the major parties. Pakistan's political system is not well developed and political parties neither have been able to modernize their structures nor promote internal good governance systems. The major political parties of Pakistan, are dynastical in nature, and there is no system that encourages party workers to develop themselves into leaders.¹⁰⁴⁸

ECP has issued guidelines for political parties on their campaign funds usage and limits and placed certain sanctions on non-compliance by any party but there is no oversight body in the system, either to enforce those sanctions or to ascertain whether the limit prescribed by the ECP is adhered to or not. Political Parties have to submit their accounts in a designated form to ECP, which may choose to make these accounts public, and parties themselves, barring a few, do not publish their financial information.¹⁰⁴⁹

Legitimacy of political parties among the population is yet another issue. People of Pakistan, concerned about growing poverty, inflation, unemployment and corruption, have been appeased and exploited by political parties through 'hollow pledges'. Similarly, anti-corruption commitment is on every major political party's manifesto, but so far it appears a matter of lip service propagated in public to gain popularity.¹⁰⁵⁰

1047 Part VIII, Constitution of Pakistan, 1973, update 2012

1048 Zain, Farooq, O. "Paradox of our Political Parties", South Asian Studies, A Research Journal of South Asian Studies, Vol. 25, No. 1, January-June 2010

1049 Sabir Shah, Election Commission yet to check finances of political parties, Monday, April 01, 2013, From Print Edition the NEWS, <http://www.thenews.com.pk/Todays-News-2-168699-Election-Commission-yet-to-check-finances-of-political-parties>

1050 Zubeida Mustafa, Manifestos and population, May 1st, 2013, DAWN.com, <http://www.dawn.com/news/794930/manifestos-and-population>

Table 12
Percentage Scores of Indicators
41.7/100

Dimension	Indictors	Law	Practice
Capacity 50.0/100	Resources	75	25
	Independence	50	50
Governance 37.5/100	Transparency	25	25
	Accountability	75	25
	Integrity Mechanisms	50	0
Role 37.5/100	Interest Aggregation and Representation	25	
	Anti-Corruption Commitment	50	

Structure and Organization

Pakistan has a multiple political party system, as there are two hundred and fifty three, political parties that are currently registered according to ECP's official website, as of August 1st, 2013.¹⁰⁵¹ Of these 19 are major political parties, 10 have seats in the National Assembly, 14 in the Senate, 12 are left wing parties, 5 secular and liberal parties, while 2 Nationalist and 4 right wing parties. There are other extreme left wing and extreme right wing parties as well.

Pakistan political system is highly elitist, with candidates and political leaders largely drawn from the feudal classes and, in recent years, the affluent business classes. The political party system is thus dictatorial and undemocratic. Most political parties are personality-driven, with virtually no alternative leadership. Elections for party posts are unopposed. Party funding is non-transparent. Party accounts are seldom audited despite the Political Parties Order 2002 which stipulates in Article 13:

Every political party shall, in such manner and in such form as may be prescribed or specified by the Chief Election Commissioner, submit to the Election Commission, within sixty days from the close of each financial year, a consolidated statement of accounts of the party audited by a Chartered Accountant containing (a) annual income and expenses; (b) sources of its funds; and (c) assets and liabilities.

The statement referred to in clause (1), shall be accompanied by a certificate signed by the party leader stating that (a) no funds from any source prohibited under this Order were received by the party; and (b) the statement contains an accurate financial position of the party.

¹⁰⁵¹ <http://ecp.gov.pk/Misc/ListPolPartiesWithaddresses.pdf>

10.1 Capacity

10.1.1 Resources (Law)

Score 75%

Scoring Question To what extent does the legal framework provide an environment conducive to the formation and operations of political parties?

Under the Constitution of Pakistan, every citizen except for a state employee has a right to form or be a member of a political party, subject to any reasonable restrictions imposed by law in the interest of sovereignty or integrity of Pakistan, public order or morality.¹⁰⁵²

Political parties also need to ensure that they have a distinct name along with structure at the national, provincial and local levels along with internal structure of having aims and objectives, criteria of membership, membership fee, qualification and tenure of the party leader, criteria of receipts and collections of funds, election of party leader, rules of intra-party election, criteria for suspension or expulsion of a member.¹⁰⁵³

Contributions made by any foreign government, multi-national or domestically incorporated public or private company, firm, trade or professional association are prohibited and are liable to be confiscated in favour of the state.¹⁰⁵⁴ A political party may be dissolved if it is found to be foreign-funded, involved in activities prejudicial to the sovereignty or integrity of Pakistan or in promoting sectarian, ethnic or regional hatred or found involved in terrorism. Members of dissolved parties are disqualified for the remaining term of the Parliament or the Provincial Assembly, and are also not allowed to participate in election for any elective office or any legislative body for the next four years from the date of his disqualification. The right to declare the dissolution of any parties lies with the Federal Government, which sends a reference to the Supreme Court of Pakistan, whose decision on the said reference stands final.¹⁰⁵⁵

The Election Commission of Pakistan (ECP) has issued a revised code of conduct for political parties in October 2012, which requires political parties to refrain from undermining the ideology of Pakistan or ridicule its judiciary or armed forces. Moreover, the Code sets out limits on campaign spending, use of government resources, size of campaign materials and their placement, use of firearms and interaction with the media.¹⁰⁵⁶

The provisions in the Constitution of Pakistan, adequately serve establishment of political parties, however there does not appear to be any legal provisions for Government of

¹⁰⁵² Article 17(2), Constitution of Pakistan, 1973; Chapter II, Article 3(4), The Political Parties Order, 2002

¹⁰⁵³ Article 3, *ibid*

¹⁰⁵⁴ The Political Parties Order, 2002

¹⁰⁵⁵ Chapter III, *ibid*

¹⁰⁵⁶ Election Commission of Pakistan, Notification, the 18th January, 2013, <http://www.ecp.gov.pk/ViewPressReleaseNotific.aspx?ID=1834&TypeID=1>; Report of the Commonwealth Observer Mission, Pakistan General Elections, 11 May 2013, <http://thecommonwealth.org/sites/default/files/news-items/documents/130520.pdf>

Pakistan to support political parties financially or otherwise, and no regulation for direct or indirect public funding as yet.¹⁰⁵⁷

10.1.2 Resources (Practice)

Score 25%

Scoring Question To what extent do the financial resources available to political parties allow for effective political competition?

Political parties can raise their funds only through membership fee, candidates nominated by parties for election, their own party or voluntary contributions from individuals and the law is silent about any limit on donations.¹⁰⁵⁸ The individual contributions imposes serious pressure on candidates not personally well off who are left with little resources to carry on political campaigns. Candidate's personal wealth them party seats and as a result, personal rather than party interest takes over. Parties try to raise funds through application fees to run as their candidates, and according to a study, the fee could go as high as USD 1000 in the 'bidding war'.¹⁰⁵⁹ Parties are legally bound to publish annual audits of income and expenditures but due to lack of means and mechanism, financial resources of parties remain un-verified.¹⁰⁶⁰

On the other hand, financial support for the ruling party is far less an issue whose activities are subsidised by the state. The Government agencies were alleged to have distributed money among party leaders of their choice in the elections of 1999 and 2005.¹⁰⁶¹ The airtime too is not uniform for all parties. Each party except the party in power has to pay for the airtime¹⁰⁶² and with state-owned broadcasters such as PTV and PBC which have a monopolistic position in the provision of terrestrial services, the ruling political party gets the widest penetration particularly in the rural areas.

Despite that the ECP issued the Code of Conduct for the Media, without an efficient enforcement mechanism it could not ensure equal and equitable coverage of candidates and parties in the 2013 elections. Telecasting of long-lasting live rallies by TV Channels benefited a few parties, with little space left for other parties and independent candidates, who were unable to undertake hefty campaigns. Only one fourth of the parties who had obtained their symbols from the ECP could gain access to air time.¹⁰⁶³

1057 European Union Election Observation Mission (2008) Islamic Republic of Pakistan, Final Report, National and Provincial Assembly Elections 18 February 2008)

1058 Election Commission of Pakistan (2010), Political Finance Report from National Workshop 3-4 November 2010, Election Commission of Pakistan, Pakistan

1059 Crisis Group Asia Report N°102, Authoritarianism and Political Party Reform in Pakistan, 28 September 2005

1060 Ibid; Interviewee Mr. Ameer-ul-Azeem, Jamat-e-Islami with researcher on as on 08/09/12

1061 Crisis Group Asia Report N°102, Authoritarianism and Political Party Reform in Pakistan, 28 September 2005; Supreme Court decision on Air Marshal (Rtd) Mohammad Asghar Khan case where ISI, Govt. of Pakistan had distributed the money to political statements published in Express on 19/10/2012.

1062 Interview of Mr. Sirdar Hissam-ud-Din Khan Khosa, MPA, Punjab with the Researcher on 10/1/2013

1063 European Union Election Observation Mission, Pakistan 2013, General Elections – 11 May 2013

10.1.3 Independence (Law)

Score 50%

Scoring Question To what extent are there legal safeguards to prevent unwarranted External interference in the activities of political parties?

The overall Constitution of Pakistan does not have any specific provisions regarding surveillance of the activities of any political party nor are there any regulations that would require the state to attend political party meetings. However banning a political party has a due process for which the Supreme Court of Pakistan's decision stands in authority even if the government has made its decision. If a political party does not follow or advocate any of the elements of basic principles laid down in Political Parties Act, then the Federal Government is empowered to make a declaration of dissolution of such party by a notification in the official Gazette and within 15 days of the declaration, Federal Government refers the matter to Supreme Court, whose decision on the reference is final.¹⁰⁶⁴ There is a Code of Conduct for the political parties, which requires political parties not to disseminate false information to defame other political parties, avoid criticism of any aspect of private life of any political opponent, but parties themselves have to guide their workers, supporters and candidates to follow the Code and create discipline.¹⁰⁶⁵

10.1.4 Independence (Practice)

Score 50%

Scoring Question To what extent are political parties free from unwarranted external interference in their activities in practice?

There have been examples of state interference in the activities of political parties in the past, particularly in the military regimes or military controlled regimes,¹⁰⁶⁶ in the form of curbs on media, on political party association and mobilization and the use of security agencies against political opponents.¹⁰⁶⁷

In the late 1980s, there were accusations of a political cell within the Pakistan's Inter-Services Intelligence (ISI) agency that worked with the government to distribute money to selected politicians to get them elected, and again such an allegation surfaced and a case was filed in Supreme Court in 1996, for sponsoring a political alliance.¹⁰⁶⁸

¹⁰⁶⁴ Chapter III, The Political Parties Order, 2002

¹⁰⁶⁵ Election Commission of Pakistan, Notification, the 18th January, 2013, <http://ecp.gov.pk/ViewPressReleaseNotific.aspx?ID=1841&TypeID=1>

¹⁰⁶⁶ Ishrat Husain, Pakistan & Afghanistan: Domestic Pressures and Regional Threats : The Role of Politics in Pakistan's Economy, *Journal of International Affairs*, Vol. 63, No. 1, Fall/Winter 2009 page 1-18, <http://jia.sipa.columbia.edu/role-politics-pakistans-economy-0>

¹⁰⁶⁷ Election Reform in Pakistan, Crisis Group Asia Briefing N°137, 16 August 2012

¹⁰⁶⁸ Mubasher Bukhari, Pakistan court rules army must stop interfering in politics, Islamabad, Fri Oct 19, 2012, Reuters, <http://www.reuters.com/article/2012/10/19/us-pakistan-justice-military-idUSBRE89I0LW20121019>.

In 2008, media was allegedly restricted from airing coverage of election rallies, live talk shows or any live broadcasts of protests against the then government, prior to elections.¹⁰⁶⁹

Government has banned some religious parties and groups for violating basic principles of the Constitution of Pakistan and taking part in violence and ethnic killings¹⁰⁷⁰ for instance, two parties i.e. Ahl-e-Sunnat-wal-Jamaat and Sipah-e-Sahaba were banned in March 2012.¹⁰⁷¹

However, in the recent elections held in 2013, political parties along with the state authorities and civil society expressed strong commitment to the democratic process. Overall the elections 2013 indicated a political maturity.¹⁰⁷² First time in the history of Pakistan, a Shiite Political Party of Pakistan, has contested the Elections 2013.¹⁰⁷³ The political leaders have accepted the results with minimal allegations of rigging, mismanagement and fraud. Most of all, despite threats and violence by the terrorist organizations, there was general participation by the public.¹⁰⁷⁴ In a study, done in 2013 the question "How freely are parties able to form and recruit members, engage with the public and campaign for office?" received the highest score of 81%.¹⁰⁷⁵

10.2 Governance

10.2.1 Transparency (Law)

Score 25%

Scoring Question To what extent are there regulations in place that require parties to make their financial information publicly available?

Each political party is required to maintain its accounts in a manner stated in Form I indicating its income, expenditure, source of funds, assets and liabilities to be submitted to ECP within 60 days from the close of each financial year, duly audited by a Chartered Accountant with a certificate from the party leader, that no funds from any source other than mentioned in the party financial statement are forthcoming,¹⁰⁷⁶ but there is no law that

¹⁰⁶⁹ Human Rights Watch, Pakistan: Media Restrictions Undermine Election, Curbs on Journalists Hamper Election Reporting, February 17, 2008, <http://www.hrw.org/news/2008/02/15/pakistan-media-restrictions-undermine-election>

¹⁰⁷⁰ Jafria News: Jafria community voice, March 10, 2012.

¹⁰⁷¹ Interview of Mr. Sirdar Hissam-ud-Din Khan Khosa, MPA, Punjab with the Researcher on 10/1/2013.

¹⁰⁷² Spearhead Analysis, Post Elections 2013: Change in Pakistan?, 13 May, 2013, http://spearheadresearch.org/SR_CMS/index.php/researchopinions/post-elections-2013-change-in-pakistan2013.

¹⁰⁷³ Jafria News, First Time In Pakistani History Shia Political Party Announces The List Of Its Candidates For The Election 2013, May 2, 2013, <http://jafrianews.com/2013/05/02/first-time-in-pakistani-history-shia-political-party-announces-the-list-of-its-candidates-for-the-election-2013/>.

¹⁰⁷⁴ D. Suba Chandran, Pakistan Elections 2013: A Preliminary Analysis, Pakistan Articles, #3933, 16 May 2013, IPCS, <http://www.ipcs.org/article/pakistan/pakistan-elections-2013-a-preliminary-analysis-3933.html>.

¹⁰⁷⁵ PILDAT Report, September 2013, Assessment of the Quality of Democracy in First 100 Days of National and Provincial Governments, June 6 – September 13, 2013, Pakistan Institute of Legislative Development And Transparency - PILDAT

¹⁰⁷⁶ <http://www.ecp.gov.pk/Reports/ECPPoliticalFinanceWorkshopReportv12010-12-14en.pdf>; Article 13(1), of the Political Parties Orders, 2002; Rule 4, The Political Parties Rules, 2002

requires a political party to disclose its resources or source of funding to the public. However, ECP may make information public as was decided and done in the 2013 elections of Pakistan National and Provincial Assembly.¹⁰⁷⁷ In the past, there was no requirement for political parties to disclose funds spent on campaigning or details of donors.¹⁰⁷⁸ But now, political candidates too have to file their election campaign returns. The returns and documents are kept by the Returning Officer and are open to inspection for one year from the date of their receipt by him. Any person on an application and payment of the prescribed fee, can get copies of any such return or document.¹⁰⁷⁹ Although, candidates reports are available to the public upon request, but there is no such requirement for the political parties reports.¹⁰⁸⁰

10.2.2 Transparency (Practice)

Score 25%

Scoring Question To what extent can the public obtain relevant financial information from political parties?

Political parties in general barring a few do not publish their financial information and do not make it public. The ECP gets information on financial information through nomination papers of the candidates, and until the recent past, ECP did not publicise the said information.¹⁰⁸¹ ECP had made a commitment in its Five-Year Strategic Plan 2010-2014 to publish the financial statements of political parties on the ECP website,¹⁰⁸² and on the 25th of July, 2012, ECP informed all political parties that their documents including financial information will be published in official gazette,¹⁰⁸³ and almost all of the political parties submitted the required information, though after delays.¹⁰⁸⁴ Some parties have websites where information is released to the public.¹⁰⁸⁵

10.2.3 Accountability (Law)

Score 75%

Scoring Question To what extent are there provisions governing financial oversight of political parties by a designated state body?

1077 Interview of Mr. Sirdar Hissam-ud-Din Khan Khosa, MPA, Punjab with Researcher 10/1/2013.

1078 Election Commission of Pakistan, Notification, Islamabad, the 27th March, 2013, <http://ecp.gov.pk/ViewPressReleaseNotification.aspx?ID=1906&TypeID=1>

1079 Article 51, The Representation of People Act, 1976

1080 European Union Election Observation Mission (2008) Islamic Republic of Pakistan, Final Report, National and Provincial Assembly Elections 18 February 2008)

1081 PILDAT Policy Brief, The Unfurnished Agenda of Electoral Reforms in Pakistan, July 2012, http://www.pildat.org/publications/publication/elections/TheunfinishedAgendaofElectoralReformsPILDAT_July2012.pdf

1082 Ibid.

1083 EC Notification of Political Parties Rules, 2002, Daily Times, July 25, 2012.

1084 Irfan Ghauri, Financial transparency: Barring PTI, all major parties file details of assets August 30, 2013, the Express Tribune, <http://tribune.com.pk/story/597270/financial-transparency-barring-pti-all-major-parties-file-details-of-assets/>

1085 Zahid Gishkori, Extraordinary amount of financial details' behind PTI delay in submitting statement, The Express Tribune, August 31, 2013, <http://tribune.com.pk/story/597898/extraordinary-amount-of-financial-details-behind-pti-delay-in-submitting-statements/>

ECP can ask for all types of financial information by the political parties, duly audited by a Chartered Accountant, both during, between and after the election period.¹⁰⁸⁶

Every political party has to submit to the Election Commission, a consolidated statement of accounts of the party audited by a Chartered Accountant containing an accurate financial position of the party, all financial transactions, its income and expenditure, sources of funds, assets and liabilities at the time of submission of nomination form, total income, receipts for the year, total expenses for the year, net Balance on the close of year, total value of assets and liabilities on the close of year, within sixty days from the close of each financially year.¹⁰⁸⁷ The contesting candidates too have to file return of election expenses to returning officer, statement of all moneys, securities or equivalent of money received from, or spent, by any person for the benefit of the candidate, specifying the name of every such person.¹⁰⁸⁸

On March 27, 2013, ECP, as per the law¹⁰⁸⁹ reaffirmed the upper limit on election expenditure of USD 0.016 million for National Assembly expenditures and USD 0.011 million for provincial assemblies. If the political party doesn't follow the regulation on financial reporting, and where a candidate has been found exceeding the limit of election expenses or has failed to file the return of election expenses or has been found guilty of any corrupt or illegal practice, it shall not be entitled to obtain an election symbol, and can lose the right to be elected as, a member of an assembly for a period up to five years.¹⁰⁹⁰

10.2.4 Accountability (Practice)

Score 25%

Scoring Question To what extent is there effective financial oversight of political parties in practice?

Political Parties in Pakistan have to submit their financial reports to ECP annually. But there is no mechanism whereby parties' accounts could be verified except that the accounts are audited by a qualified Chartered Accountant. ECP scrutinizes, Party Constitution, other documents and information and if these documents are not in conformity with the Order, ECP returns the report for re-submission. The ECP has also taken some steps like, instructions to candidates to open a single bank account for election expenses, submission¹⁰⁹¹ of weekly statement account for election expenses and deployment of constituency monitors to check the election expenses, to ensure the compliance of laws regarding the election expenses in the light of the Supreme Court judgment of July 8, 2012.¹⁰⁹²

¹⁰⁸⁶ Article 4, 5, & 6, Political Parties Rules, 2002.

¹⁰⁸⁷ Article 13(1), The Political Parties Order, 2002

¹⁰⁸⁸ Rule 4-5, The Political Parties Rules, 2002

¹⁰⁸⁹ Article 49(2), The Representation of People Act, 1976

¹⁰⁹⁰ Article 50(2), The Representation of People Act, 1976.

¹⁰⁹¹ Article 10, Political Parties Rules, 2002.

¹⁰⁹² Election Commission of Pakistan, Notification, Islamabad, the 27th March, 2013, <http://ecp.gov.pk/ViewPressReleaseNotific.aspx?ID=1906&TypeID=1>

Moreover, the ECP, prior to elections, made some new rules, one being disclosure of income of past three years by the candidates.¹⁰⁹³ There have been accusations of excessive spending by candidates on election campaigns since there is no limit on party expenditure; the candidate expense limits are easily circumvented.¹⁰⁹⁴ Though ECP puts certain sanctions on non-compliance by any party but there is no oversight body in the system to either to enforce those sanctions or to ascertain whether the limit prescribed by the ECP is adhered to or not.¹⁰⁹⁵ Hence, no candidate so far has been disqualified on this basis.¹⁰⁹⁶

10.2.5 Integrity (Law)

Score 50%

Scoring Question To what extent are there organizational regulations regarding the internal democratic governance of the main political parties?

The party leader and other office-bearers of every political party, either at the Federal, Provincial or local levels have to be elected periodically in accordance with party's constitution through secret ballot based on a democratic and transparent system. The intra party elections have to be conducted not later than every four years, and every member of the political party should be provided with an equal opportunity of contesting election for any party office, including that of the party leader. The party leader then has to submit to the ECP within seven days from completion of the intra-party elections, a certificate with information as to the date of the last intra-party elections, the election results, the total number of votes cast and the number of votes secured by each contestant, copy of the party's notifications declaring the results of the election. Whereupon, the Election Commission has to publish the same in the official gazette for public information.¹⁰⁹⁷

10.2.6 Integrity Mechanisms (Practice)

Score 0%

Scoring Question To what extent is there effective internal democratic governance of political parties in practice?

¹⁰⁹³ The Express Tribune, ECP approves stringent scrutiny processes for nomination papers, February 19, 2013, <http://tribune.com.pk/story/509446/ecp-approves-stringent-scrutiny-processes-for-nomination-papers/>

¹⁰⁹⁴ European Union Election Observation Mission (2008) Islamic Republic of Pakistan, Final Report, National and Provincial Assembly Elections 18 February 2008)

¹⁰⁹⁵ Sabir Shah, Election Commission yet to check finances of political parties, Monday, April 01, 2013, From Print Edition the NEWS, <http://www.thenews.com.pk/Todays-News-2-168699-Election-Commission-yet-to-check-finances-of-political-parties>

¹⁰⁹⁶ PILDAT Policy Brief, The Unfinished Agenda of Electoral Reforms in Pakistan, July 2012, http://www.pildat.org/publications/publication/elections/TheunfinishedAgendaofElectoralReformsPILDAT_July2012.pdf

¹⁰⁹⁷ Articles 11 and 12 Political Parties Order, 2002; Rule 7, Political Party Rules, 2002.

Pakistan's political system is not well developed and political parties neither have been able to modernize their structures nor promote internal good governance systems.¹⁰⁹⁸ The major political parties of Pakistan, are dynastical in nature,¹⁰⁹⁹ and 597 families have so far been identified as political dynasties, with at least two members having served in the National/Provincial Assemblies and the Senate, since 1970. Out of these, 379 are based in Punjab, 110 in Sindh, 56 in KPK and 45 in Baluchistan.¹¹⁰⁰ The rest of the parties are either feudal or caste based, whereas, small and regional parties are 'single man' run parties.¹¹⁰¹

Although, Intra-party elections are a legal requirement, and major parties in Pakistan do have their constitutions and party manifestos and are supposed to run their parties according to their constitutions but most of the parties do not effectively follow it, and the top leadership in political parties, despite apparently struggling for democracy, get elected "un-opposed". There is absence of any hierarchical pattern within the internal structure that could encourage party workers to develop themselves into leaders.¹¹⁰² Intra-party elections of almost all the mainstream parties are usually held close to the general elections and that too, to meet ECP's requirements.¹¹⁰³ Thus, hereditary politics has bred selection rather than election and has undermined the transparency of the intra-party elections, making it a futile exercise.¹¹⁰⁴ The constitutions and manifestos are formulated by party leaders and their close associates only.¹¹⁰⁵ Selection of candidates in some parties is through a parliamentary board which is also made by the party leaders.¹¹⁰⁶ According to a recent study, the winning party of 2013 elections, while forming government had no provision in its constitution for a consultative process for decision making on issues like selection for the post of the president of the country or the governor of a province. Similarly, the losing parties did not go under any internal accountability for poor results.¹¹⁰⁷

Before the 2013 elections, the Election Commission of Pakistan (ECP), issued a list of 114 of 216 registered political parties that were likely to be barred from participating in 2013 general election, as they had failed to hold the intra-party elections, within the time frame given in their manifestos. The list included country's major parties, which had failed to hold intra-party elections and submit the relevant documents to the ECP.¹¹⁰⁸ One of the leading party had held its last elections in 2006, though it was required to hold elections every two years, similarly other parties, with their manifestoes to hold elections every two months or six months, also failed to fulfill their constitutional requirement.¹¹⁰⁹

1098 Zain, Farooq, O. "Paradox of our Political Parties", South Asian Studies, A Research Journal of South Asian Studies, Vol. 25, No. 1, January-June 2010; Bokhari, S. "Constitutional History of Pakistan." Qureshi and Sons, Lahore.

1099 RasulBakhshRais, Heinrich Boll Stiftung, Pakistan. Writing on 'Democracy within parties' www.boell.org/web/111-309.html.

1100 Alizeh-Kohari, Herald exclusive: Political dynasties in Pakistan, 9th May, 2013, DAWN.com, <http://www.dawn.com/news/1026679/herald-exclusive-political-dynasties-in-pakistan>

1101 Saeed Shah, Political Dynasties Shape Course of Pakistan Election, May 10, 2013, The Wall Street Journal, <http://online.wsj.com/news/articles/SB10001424127887324244304578473600331757908>

1102 Zain, Farooq, O. "Paradox of our Political Parties", South Asian Studies, A Research Journal of South Asian Studies, Vol. 25, No. 1, January-June 2010

1103 Human Rights Commission of Pakistan (HRCPC), March, 2013, State of Human Rights in 2012,

1104 Saeed Shah, Political Dynasties Shape Course of Pakistan Election, May 10, 2013, The Wall Street Journal, <http://online.wsj.com/news/articles/SB10001424127887324244304578473600331757908>

1105 PILDAT, Discussion Paper, Blue Print for Creating Think Tank in Political Parties in Pakistan, September, 2012, Interview of Mr. Sirdar Hissam-ud-Din Khan Khosa, MPA, Punjab with Researcher 10/1/2013.

1106 Interview Mr. Ameer-ul-Azeem, Jamat-e-Islami with the researcher on 8.9.2012

1107 Pildat Report, Assessment of the Quality of Democracy in Pakistan in first 100 Days of National & Provincial Government, June 6 – September 13, 2013.

1108 Maverick Report, 114 Pakistani political parties may be barred from contesting 2013 election

<http://www.maverickpakistanis.com/2013/01/114-pakistani-political-parties-barrred-contesting-2013-election/>

1109 Irfan Ghauri, Intra-party elections: 114 parties fail to fulfill legalities before polls Published in The Express Tribune, January 11th, 2013.

The party after holding elections has to submit a list of the 'elected' office bearers of the party, but in absence of a mechanism to check the authenticity of such statements, the election authorities have no means to check the authenticity of such statements.¹¹¹⁰ Hence, most of the party leadership rarely undergoes any change.

10.3 Role

10.3.1 Interest aggregation and representation

Score 25%

Scoring Question To what extent do political parties aggregate and represent relevant social interests in the political sphere?

A number of factors are responsible for the political decay in Pakistan politics and military rule of almost 36 out of 66 years of independence of Pakistan tops the list. Harsh anti-political laws / regulations,¹¹¹¹ bans on political parties and witch-hunt of politicians during the said 36 years of un-democratic rules have taken their toll.¹¹¹² To survive, many political parties either worked in structural constraints or alternatively joined hands with the illegitimate rulers sabotaging the democratic political culture. Political exploitation to weaken larger parties and manoeuvrings by military rulers to legitimize their own rule, left no room for manifestos or policies and resulted in communal, local, parochial, sectarian, and constituency based patterns of politics, along with factionalization of all the major parties,¹¹¹³ and some major parties have four to six of these splinter groups,¹¹¹⁴ which usually keep the original party name to identify themselves with their parent party's political legacy and ideology.¹¹¹⁵

Legitimacy of political parties among the population is yet another issue. People of Pakistan, concerned about growing poverty, inflation, unemployment and corruption, have been appeased and exploited by political parties through 'hollow pledges'¹¹¹⁶ of democracy, Islamization, religious tolerance, people's power, equal economic opportunity,

<http://tribune.com.pk/story/492452/intra-party-elections-114-parties-fail-to-fulfill-legalities-before-polls/>

1110 *ibid.*

1111 Elective Bodies (Disqualification), Order, 1959 (popularly known as EBDO)

1112 Nazeer Ahmad, *Political Parties in Pakistan: A Long Way Ahead*, 2004, Published by Centre for Democratic Governance, The Network for Consumer Protection, <http://www.thenetwork.org.pk/Resources/Magazines/PDF/12-8-2011-3-0-19-222-Political%20Parties.pdf>

1113 Zain, Farooq, O. "Paradox of our Political Parties", *South Asian Studies*, A Research Journal of South Asian Studies, Vol. 25, No. 1, January-June 2010; Bokhari, S. "Constitutional History of Pakistan." Qureshi and Sons, Lahore.

1114 Nazeer Ahmad, *Political Parties in Pakistan: A Long Way Ahead*, 2004, Published by Centre for Democratic Governance, The Network for Consumer Protection, <http://www.thenetwork.org.pk/Resources/Magazines/PDF/12-8-2011-3-0-19-222-Political%20Parties.pdf>

1115 Crisis Group Asia Report N°102, *Authoritarianism and Political Party Reform in Pakistan*, 28 September 2005

1116 Zubeida Mustafa, *Manifestos and population*, May 1st, 2013, DAWN.com, <http://www.dawn.com/news/794930/manifestos-and-population>

moderation, war against terror, moderation, accountability, justice, nationalization or business-friendly agendas. But, the political parties have always failed to come up with effective strategies, and there is still not much hope for change.¹¹¹⁷ The distrust on political parties was revealed in a survey, wherein, 69% of younger population viewed political parties unfavorably and only 29% of young people favored democracy, as compared to the 32% who preferred the military rule.¹¹¹⁸

Civil Society in Pakistan has actively been involved in advocacy for rule of law, human rights and gender equality,¹¹¹⁹ but political parties in Pakistan have failed to engage the Civil Society (CS) in the cause for democracy as the CS does not seem to trust the political parties, due to their political incompetence, corruption and nepotism.¹¹²⁰

10.3.2 Anti-corruption commitment

Score 50%

Scoring Question To what extent do political parties give due attention to public accountability and the fight against corruption?

Political Parties are quite aware of the accountability demands, talk about anti-corruption in their speeches and TV discussions and always resolute to fight against corruption. Most¹¹²¹ of the political parties have always had either full or partial anti-corruption commitments in their manifestos.¹¹²²

The agreement, popularly known as the Charter of Democracy (CoD) between the two major rival parties in Pakistan, also contained provisions for public accountability of the military and the judiciary and declaration of their assets.¹¹²³ And prior to elections in 2008, the main political parties had declared in their manifestos, the intention to disband the National Accountability Bureau¹⁰²⁴ which according to them had only been used for political victimization.¹¹²⁵

1117 Shahid Javed Burki, Manifestoes and Political Preferences in Pakistan ISAS Special Report No. 12 – 24 April 2013; Dr. Mughees Ahmed, Legitimacy crises in Pakistan (A comparative study of political behavior), Journal of Political Studies, Volume 12, 2007, http://pu.edu.pk/home/journal/6/Vol_12_2007.html

1118 Jon Boone in Islamabad, Pakistan's young voters view democracy with despair, finds survey, The Guardian, Tuesday 2 April 2013

1119 Shehzadi Zamurad Awan, Role of Civil Society in Empowering Pakistani Women, A Research Journal of South Asian Studies, Vol. 27, No. 2, July-December 2012, pp.439-458

1120 Taimur-ul-Hassan & Munawar Sabir, Civil Society-Democracy Nexus in Pakistan, A Research Journal of South Asian Studies. Vol. 26, No. 2, July-December 2011, pp. 325-347

1121 Interview of Mr. Sirdar Hissam-ud-Din Khan Khosa, MPA, Punjab with Researcher 10/1/2013; Pakistan Today, NA informed that corruption will not be tolerated at any cost, Wednesday, 25 Sep 2013, <http://www.pakistantoday.com.pk/2013/09/25/news/national/na-informed-that-corruption-will-not-be-tolerated-at-any-cost/>

1122 Dr. Rashid Ahmad Khan, A Comparative Study of Manifestos of Major Pakistani Political Parties in Election – 2002, <http://ipripa.k.org/journal/winter2003/acomparativestudy.shtml>

1123 PILDAT, Comparative Analysis of Election Manifestoes, Civil-Military Relations in Pakistan, January 2012. <http://www.pildat.org/Publications/publication/cmr/ComparativeAnalysisofElectionManifestoes-CMR.pdf>

1124 Marie Chêne, Overview of corruption in Pakistan, U4 Anti-Corruption Resource Centre, 8th August, 2008

1125 Manifesto 2013 Pakistan Muslim League, <http://election2013.pk/app/webroot/files/Manifestos/PML-QManifesto2013.pdf>

For the 2013 elections, the party manifestos of major political parties in Pakistan had comprehensive provisions rather chapters on rooting out corruption, promising good governance, across the board accountability, strong state institutions and rule of law if voted to power.¹¹²⁶ One party even got its top leadership's assets declared on its website.¹¹²⁷

However, so far it just seems a matter of lip service and propagated in public to gain popularity. In 2007, corrupt elements were given immunity under the National Reconciliation Ordinance 2007, and many were appointed to important ministries.¹¹²⁸ Corruption could not be curbed during the tenure of 12th National Assembly¹¹²⁹ and according to a study done on 5 years performance of the 13th Assembly, corruption and governance issues emerged as crises for Pakistan.¹¹³⁰ The resolutions of the winning party too have so far proven to be hollow, as a study done recently in 2013 reveals that first 100 days of the Federal Government have passed without the appointment of the Chairperson of the National Accountability Bureau (NAB). And the question 'how successful is the democratic set-up in putting in place an effective mechanism to curb corruption' has received a score of 26.9%.¹¹³¹

1126 PILDAT Report, A Comparative Analysis of Election Manifestoes of Major Political Parties, April 2013, Pakistan Institute of Legislative Development and Transparency - PILDAT

1127 Zahid Gishkori, PTI publishes Imran's asset declaration, The Express Tribune, August 29, 2012, <http://tribune.com.pk/story/427617/pti-publishes-imrans-asset-declaration/>

1128 Marie Chêne, Overview of corruption in Pakistan, U4 Anti-Corruption Resource Centre, 8th August, 2008

1129 Naeem Mirza & Wasim Wagha, A Five-Year Report on: Performance of Women Parliamentarians in the 12th National Assembly (2002-2007), Legislative Watch Programme of Aurat Foundation

1130 Citizens Report, March 2013, 5-Year Performance of the 13 National Assembly of Pakistan, March 17, 2008 - March 16, 2013, Pakistan Institute of Legislative Development And Transparency PILDAT

1131 PILDAT Report, September 2013, Assessment of the Quality of Democracy in First 100 Days of National and Provincial Governments, June 6 – September 13, 2013, Pakistan Institute of Legislative Development And Transparency - PILDAT

PILLAR 1 1

Media

Pillar 11: Media

SUMMARY

Both print and electronic media represent the entire political, social, economic and cultural spectrum of Pakistan. Under the Constitution of Pakistan media enjoys freedom of association, freedom of profession and freedom of speech/expression with certain restrictions imposed by law in the interest of Islam or the integrity, security and defence of Pakistan.¹¹³² Transparency and accountability laws do exist, but there is lack of enforcement mechanisms. The editorial policies by media are not made public.¹¹³³

The media is often active and successful in exposing corruption, but does not necessarily run specific programs educating the public against corruption.¹¹³⁴

Since liberalization of the media in 2002, there has been an exponential increase in the number of TV channels and radio stations. With the increase in internet usage, online/ social media too has spread its roots in Pakistan, providing the public with a diverse and a vibrant info-entertainment range. However, quality of journalism has not kept pace with the speedy media growth, and needs a lot of improvement in terms of qualifications and training according to specific media type.

Table 13:
Percentage Scores of Indicators
47.2 /100

Dimension	Indicators	Law	Practice
Capacity 50.0/100	Resources	50	75
	Independence	50	25
Governance 50.0/100	Transparency	75	50
	Accountability	75	25
	Integrity Mechanisms	50	25
Role 41.7/100	Investigate and expose cases of corruption practice	50	
	Inform public on corruption and its impact	25	
	Inform public on governance issues	50	

1132 Article 18, Constitution of Pakistan, 1973

1133 Interview of Mr. Ali Abid Tehami Group Editor and Advisor Jang Group, Pakistan on 31/8/2012

1134 Interview of Mr. Orya Maqbool Jan, Columnist with Researcher, on 6/11/12

Structure and Organization

In 1947, there were only a few newspapers viz. Pakistan Times, Zamidar, Nawa-e-Wqat, Civil and Military Gazette, Dawn, Jang and Anjam. Under the 1973 constitution of Pakistan, any citizen or a group of citizens can register a newspaper, a magazine and/or a journal and get a license for starting a TV channel, a radio station etc.¹¹³⁵ At the beginning of 2013, more than 1500 newspapers and journals were being published in the country.

The Pakistan Government has established a regulatory authority for Media and Broadcasting organizations viz. Pakistan Electronic Media Regulatory Authority (PEMRA). By 2009, PEMRA had issued licenses to 78 local T.V. channels and 28 foreign based TV channels, 129 FM radio stations including 18 commercial radios. There are about 2,346 cable operators in Pakistan, 6 Multichannel Multi-point Distribution Services (MMDS), 2 internet protocols TV (IPTV) and 2 mobile TV channels.¹¹³⁶

Pakistan has approximately 7 news agencies and 4 societies/ Unions/ Associations. The Pakistan Federal Union of Journalists (PFUJ), The Pakistan Press Foundation (PPF), Council of Pakistan Newspapers Editors (CPNE), All Pakistan Newspaper Society (APNS), Associated Press of Pakistan (APP), Pakistan Press International (PPI), Associated Press Service (APS), News Network International (NNI), Independent News Pakistan (INP), South Asian News Agency (SANA), Asian News Network (ANN). All but a few media outlets are outside the capital of Pakistan.

11.1 Capacity

11.1.1 Resources (Law)

Score 50%

Scoring Question To what extent does the legal framework provide an environment conducive to a diverse independent media?

There are a number of laws that regulate print and electronic media.¹¹³⁷ Procedures for registration of publications and criteria of media ownerships are dealt with under the Press, Newspapers, News Agencies and Books Registration Ordinance (PNNABRO), 2002. There are strict controls and regulations for registrations under this law. Only Pakistani

¹¹³⁵ Article 18, Constitution of Pakistan, 1973

¹¹³⁶ PEMRA Ordinance, 2009

¹¹³⁷ Revised Press and Publication Ordinance (RPPO) 1999; Printing Presses and Publications Ordinance 1988; Freedom of Information Ordinance of 2002; Pakistan Electronic Media Regulatory Authority (PEMRA) of 2002; Defamation Ordinance of 2002; Contempt of Court Ordinance of 2003; Press, Newspapers, News Agencies and Books Registration Ordinance 2002; Press Council of Pakistan Ordinance 2002; Intellectual Property Organization of Pakistan Ordinance 2005; Balochistan Freedom of Information Act 2005; Sindh Access to Information Ordinance of 2006; PEMRA Amendment Act 2007; Pakistan Electronic Media Regulatory Authority Rules, 2009.

nationals can own publications (newspapers and news agencies), whereas minors are prohibited from applying. Foreign involvement is subject to permission from the government and cannot exceed 25 percent. Publishers have to provide bank and financial funding and publication details, and editors have to provide a guarantee to abide by the code of ethics provided by the Press Council Ordinance, 2002.

National Broadcaster i.e. Pakistan Television Corporation PTV and Pakistan Broadcasting Corporation PBC are the state owned mega corporations responsible for broadcasting. PTV, an autonomous public sector organization, is under the control of the Ministry of Information and Broadcasting.¹¹³⁸ PBC too is a statutory organization operating under the Pakistan Broadcasting Corporation Act, 1973.¹¹³⁹

To encourage and regulate private TV and radio channels, there exists the Pakistan Electronic Media Regulatory Authority (PEMRA),¹¹⁴⁰ which is an independent body established by the government in 2002, for licensing of private television, Cable TV,¹¹⁴¹ radio stations and for monitoring programs or advertisements. No person can establish any broadcast station without a valid license issued by PEMRA inside Pakistan. A license can only be granted to Pakistani nationals. A foreign company or persons funded by foreign company or government are not eligible for a license.¹¹⁴² The Ordinance also contains provisions regarding exclusion of monopolies in the matter of broadcasting or in the supply/purchase and ensures open and fair competition.¹¹⁴³ For instance, no one can own more than four TV channels, FM Radio licenses and two landing rights permissions.¹¹⁴⁴

Any person aggrieved by any decision or order of the regulatory/licensing authorities may appeal to the High Court within thirty days of the receipt of the decision of the authority.¹¹⁴⁵

Pakistan telecommunication authority is the licensing authority for the internet or online media.¹¹⁴⁶

11.1.2 Resources (Practice)

Score	75%
Scoring Question	To what extent is there a diverse independent media providing a variety of perspectives?

1138 www.ptv.com.pk

1139 www.radio.gov.pk

1140 PEMRA is governed by the PEMRA Ordinance, 2002; PEMRA Amendment Act 2007, PEMRA Rules 2009 and PEMRA regulations.

1141 Initially Pakistan Telecommunication Authority (PTA) started regulating this service under Pakistan Telecommunication Act 1996. Later on, when PEMRA was established in 2002 under PEMRA Ordinance, it took over licensing of all distribution services and broadcasting media in Pakistan.

1142 Sections 25, PEMRA Ordinance, 2002

1143 Sections 23, PEMRA Ordinance, 2002

1144 Sections 13, The Pakistan Electronic Media Regulatory Authority Rules, 2009

1145 Sections 30A, PEMRA Ordinance, 2002; Section 20, the Press, Newspaper, News Agencies and Books Registration Ordinance, 2002.

1146 CVAS Information Memorandum, http://www.pta.gov.pk/media/cvas_im_261011.pdf

Since the media law reforms in 2002, the regulatory framework has managed to offer not only an independent and free but also a diverse and a vigorous media comprising print, TV, radio, internet and cell phones. In print media, there are 769 newspapers and periodicals.¹¹⁴⁷ Despite the boom of electronic media, 60 % of urban and 36% of rural populations still read newspapers.¹¹⁴⁸ However, according to the latest statistics, newspaper publication has dropped significantly from 1820 publications in 2007 to 769 in 2011.¹¹⁴⁹ The three large news agencies in Pakistan are government-controlled and supply readymade news and information to Pakistani media.¹¹⁵⁰

Television was introduced in Pakistan after 14 years of independence in 1964 and until 1990s, state-owned Pakistan Television (PTV), was the only channel available, which now consists of six television channels. PTV has a monopoly of free-to-air terrestrial broadcasting whereas, private TV channels are only allowed to broadcast on cable, satellite and the internet.¹¹⁵¹ PEMRA has granted license to 85 private Satellite TV channels,¹¹⁵² landing rights to 26 foreign channels¹¹⁵³ including global news channels and by 2008-2009, licenses to 2224 analogue/digital cable operators.¹¹⁵⁴

All of this satellite and cable surge has taken away the PTV's monopoly¹¹⁵⁵ and there is now a diverse range of channels available to viewers,¹¹⁵⁶ offering 24-hour news, current affairs programs, political talk shows, and documentaries, special reports including crime and corruption reports, comedic political satire shows, religious programs, shows on culture, society and food. Moreover, the easy availability of foreign channels has opened up gateways for cable service providers, particularly, the smaller ones to offer popular Indian, foreign and CD channels, despite prohibition and crackdown by PEMRA.¹¹⁵⁷

1147 599 are in Urdu, 73 in English, 7 in Punjabi, 17 in Pashto, 17 in Sindhi, 12 in Balochi and 44 in other languages, Federal Bureau of Statistics, Government of Pakistan, 2013. <http://www.pbs.gov.pk/sites/default/files/other/yearbook2012/Social%20and%20Cullture/19-2.pdf>.

1148 Huma Yusuf, 2013, Mapping Digital Media: Pakistan, A Report by the Open Society Foundations. <http://www.opensocietyfoundations.org/sites/default/files/mapping-digital-media-pakistan-20130703.pdf>

1149 Federal Bureau of Statistics, Government of Pakistan, 2013. <http://www.pbs.gov.pk/sites/default/files/other/yearbook2012/Social%20and%20Cullture/19-2.pdf>.

1150 The Associated Press of Pakistan (APP), www.app.com.pk; the Pakistan Press International (PPI) <http://www.ppinewsagency.com>; and the United Press of Pakistan (UPP), <http://www.united-press.com/united-press-of-pakistan>

1151 Infoasaid, 2012, Pakistan Media and Telecoms Landscape Guide, http://www.infoasaid.org/sites/infoasaid.org/files/pdf/pakistan_guide_update_final.pdf; terrestrial television channels in Pakistan are those broadcast by the state-owned Pakistan Television (PTV) and the privately owned ATV, of which PTV and the official Pakistan Broadcasting Corporation are majority (80 percent) shareholders

1152 69 channels are operational and 16 are non-operational. 20 of these 85 channels are 24-hour news and current affairs, 38 entertainment, 1 agriculture, 4 sports and 2 educations. 19 of these are in regional languages.

1153 Including news channels such as BBC, CNN, Sky News and Al-Jazeera. Foreign channels have to obtain landing rights permission against a prescribed fee which can go up to USD 0.05 million to relay their transmissions in Pakistan.

1154 Any company registered with the Securities and Exchange Commission of Pakistan (SECP) having paid-up Capital of Rs. 3.0 million can obtain license from PEMRA against a prescribed fee of Rs. 60,000/- to Rs. 1,700,000/-. With an annual renewal fee equal to 50% of the license fee and annual subscribers fee at a specific rate of Rs.12/- per subscriber

1155 Infoasaid, 2012, Pakistan Media and Telecoms Landscape Guide, http://www.infoasaid.org/sites/infoasaid.org/files/pdf/pakistan_guide_update_final.pdf

1156 The major networks are PTV Network, GEO network, EYE TV Network, Indus Network, ARY Network, Express Media Group, AAJ Network and ATV Network.

1157 The Daily Times, PEMRA warns of crackdown on channels, operators, Friday, January 27, 2012, http://www.dailytimes.com.pk/default.asp?page=2012%5C01%5C27%5Cstory_27-1-2012_pg7_14

State-run Pakistan Broadcasting Corporation (PBC)¹¹⁵⁸ and foreign radio stations¹¹⁵⁹ are a major source of news, information and entertainment in the conflict zones as well as remote and poorly developed rural areas where satellite and cable TV are not available.¹¹⁶⁰ The latest technology of mobile TV service is also being provided via cell phones. Three Mobile TV licenses have been issued and two companies are providing¹¹⁶¹ this service and offer channels including regional language news channels.¹¹⁶²

There are 30 internet service providers and by 2011, about 16% of the population i.e. 29 million people had access to Internet, 6.4 million people are Face book users, and Twitter, was one of the first sites to release the news of the strong earthquake that hit Pakistan in mid-January 2011.¹¹⁶³ Blogging too has opened a new avenue for self-expression and has become an important part of political life.¹¹⁶⁴

With proliferation of 24-hour news channels and current affairs programs, the number of journalists has risen from 2,000 to 17,000 between 2002 and 2010,¹¹⁶⁵ but quality of journalism could not keep its pace with the speedy media growth. Journalism, mass communication and electronic broadcasts are widely offered and easily accessible courses in universities across Pakistan. The curriculum, however is quite out-dated and of no practical relevance. There are no specialized courses for training reporters nor is there adequate equipment in case of electronic media courses.¹¹⁶⁶ Journalists are not trained to tackle important social, cultural and political issues and their reporting is biased, un-investigated and without follow-ups. By 2010, there were 32 media schools, along with some media support organizations, such as the PFUJ and South Asian Free Media Association (SAFMA), which provide refresher and short-term training courses on safety, technical and reporting issues to journalists.¹¹⁶⁷

Print and electronic media generate their revenues from advertisements and program sponsorships. However, the TV and radio channels in regional languages are operating at a loss and under financial constraints as they do not receive advertisements/sponsorships due to limited audiences. PTV receives advertising revenue along with US \$0.35 and

1158 www.radio.gov.pk; PBC operates 22 local radio stations broadcasting in 23 local languages attracts big audiences in rural areas and among low-income groups.

1159 such as BBC and Voice of America, broadcasting in the Urdu and Pashto languages

1160 Infoasaid, 2012, Pakistan Media and Telecoms Landscape Guide, http://www.infoasaid.org/sites/infoasaid.org/files/pdf/pakistan_guide_update_final.pdf

1161 PEMRA Annual Report, 2010, An Overview of the Current Status of Electronic Media in Pakistan, http://www.pemra.gov.pk/pemra/images/docs/pub-rep/annual_report_2010.pdf; M/s Brands Promotion Centre Pvt. Ltd., M/s Cellevision Pvt.Ltd., and M/s Dialogue Pvt. Ltd; Telenor and Mobilink are the two cellular companies currently providing this service to their customers in Pakistan. Telenor's mobile TV package offers 13 channels, including regional-language news channels, and has plans to expand.

1162 Huma Yusuf, 2013, Mapping Digital Media: Pakistan, A Report by the Open Society Foundations. <http://www.opensocietyfoundations.org/sites/default/files/mapping-digital-media-pakistan-20130703.pdf>; Telenor's mobile TV package offers 13 channels, including regional-language news channels, and has plans to expand

1163 Open NetInitiative, Pakistan 2012, <https://opennet.net/research/profiles/pakistan>

1164 Infoasaid, 2012, Pakistan Media and Telecoms Landscape Guide, http://www.infoasaid.org/sites/infoasaid.org/files/pdf/pakistan_guide_update_final.pdf; Some of the leading ISPs include Wateen, Paknet, Linkdotnet, Comsats, and Cybernet. In 2007, Wateen Telecom, a subsidiary of Warid Telecom, introduced Worldwide Interoperability for Microwave Access (WiMAX), a telecommunications technology that provides a third-generation (3G) wireless alternative to cable and DSL.

1165 D. Nakamura, "Pakistan's press piles on president," Washington Post, 21 October 2010, at <http://www.washingtonpost.com/wp-dyn/content/article/2010/10/21/AR2010102102292.html>

1166 Amir Jahangir, Maria Gulraiz Khan and Qurut-ul-Ain Hussain, 2011, Situational Analysis of "Right to Information" In the communication & Information sector in Pakistan, Report Submitted to UNESCO, http://unesco.org.pk/ci/documents/situationanalysis/Situational_Analysis_of_RTI_in_Pakistan.pdf

1167 Marco Mezzera and Safdar Sial, October 2010, Media and Governance in Pakistan: A controversial yet essential relationship, Initiative for Peace building, IFP Democratization and Transitional Justice Cluster, Country case study: Pakistan, <http://www.initiativeforpeacebuilding.eu/pdf/pakistanOct.pdf>

US\$ 1.78 per month license fee included in electricity bills of all domestic consumers and commercial consumers respectively.¹¹⁶⁸

Cable TV operators generate income through their connection fee and local advertisements. Subscription and installation charges range from US \$ 38 to US \$ 50 and monthly subscription fee from end users ranges from US \$3.0-5.0.¹¹⁶⁹

11.1.3 Independence (Law)

Score 50 %

Scoring Question To what extent are there legal safeguards to prevent unwarranted external interference in the activities of the media?

The Constitution of Pakistan guarantees freedom of expression and freedom of press, but subject to restrictions in the interest of Islam, integrity/security of Pakistan, public decency/ morality, relationships with friendly states and also disallows freedom that might amount to contempt of court or commission/ provocation of an offence.¹¹⁷⁰

There also exist legal provisions that restrict freedom of expression and flow of information.¹¹⁷¹ The registration of a newspaper can be cancelled if the publishers are found to violate the provisions of the enabling Ordinance.¹¹⁷² Channels and cable operators can be suspended/shutdown if programming violates the PEMRA laws and rules.¹¹⁷³ License can be revoked or suspended on non-payment of renewal fee or on the violation of any of the provisions of PEMRA Ordinance. PEMRA is authorized to enter, inspect the premises, impose fine up to US \$ten thousand, seal the premises or seize the equipment of any broadcast media or distribution service operator. It can also vary any of the terms and conditions of the license or grant exceptions where it finds it appropriate in the public interest.¹¹⁷⁴

1168 Huma Yusuf, 2013, Mapping Digital Media: Pakistan, A Report by the Open Society Foundations. <http://www.opensocietyfoundations.org/sites/default/files/mapping-digital-media-pakistan-20130703.pdf>

1169 Schedule-B, Schedule A, PEMRA Rules, 2009; Propakistani, 2010, Digital Cable TV System Hits Pakistan, <http://propakistani.pk/2010/03/03/digital-cable-tv-system-hits-pakistan/>

1170 Article 19 & 19A, Constitution of Pakistan, 1973

1171 The Officials Secret Act of 1926, a colonial law used to detain and prosecute editors and journalists, has since been repealed.

1172 Section 19, the Press, Newspapers, News Agencies and Books Registration Ordinance (PNNABRO), 2002

1173 Sections 27, 30 & Code of Conduct (Schedule A), PEMRA Ordinance, 2002

1174 Sections 29-30, PEMRA Ordinance, 2002

Licenses in any category or sub-category of print¹¹⁷⁵ and broadcast¹¹⁷⁶ media or distribution service can be obtained, subject to the fulfilment of the given criteria.

While granting licenses to the broadcasters, the authority not only oversees technical aspects of broadcasting but also regulates the programming content and makes it mandatory for the media broadcasters to follow the code of conduct.¹¹⁷⁷

The licensees cannot air anything derogatory against the Judiciary or any individual, group, organization or any religion.¹¹⁷⁸ They are also prohibited from airing militant groups' statements, or video footage of terrorists, suicide bombers, bodies of terrorism victims, pronouncements of militants or any act which may, promote or aid terrorism.¹¹⁷⁹

Contraventions of ethical standards, programming contents, Code of Conduct or the quality of the services is punishable with a fine which may extend to US \$0.1 million. Repetition of violation entails punishment with imprisonment for a term which may extend to three years, and/or fine. Violation by a non-licensee is punishable with imprisonment for a term which may extend to four years, and/or fine along with confiscation of the equipment.¹¹⁸⁰

Apart from the aforementioned provisions, there are a number of other laws that contain provisions that authorize the government to close down a press or a broadcasting organization, to carry out a search and seizure operation, impose pre-censorship, prohibit publication, force disclosure of sources and detain people including journalists. Under these laws, action could be taken against publications or broadcasts on a number of grounds such as matters likely to endanger the defense or external affairs/security of Pakistan, material prejudicial to ideology of Pakistan, seditious matter or any matter which is prejudicial to national integration, or promotes racial, parochial, regional or class hatred, or incites religious hatred or violence, or amounts to contempt of court, or is defamatory/derogatory under any law or is against decency/morality etc.¹¹⁸¹ Internet and mobile content are monitored and regulated by the PTA under the aforementioned laws.

1175 Sections 9 & 19, Press, Newspapers, News Agencies and Books Registration Ordinance 2002; For print media, the applicant has to seek authenticated declaration from the District Co-ordination Officer which might be refused or subsequently cancelled if the applicant is convicted of a criminal offence involving moral turpitude and or for willful default of public dues.

1176 Sections 7, 9 & 19, The Pakistan Electronic Media Regulatory Authority Rules, 2009; . Expressions of Interest (EOIs) or direct applications on prescribed forms against non-refundable fee are invited by PEMRA. Criteria for evaluating license application are technical feasibility, financial viability, financial strength, credibility and track record, prospects of technical progress and introduction of new technology, market advancement such as improved service features or market concepts, contribution to universal service, social and economic development objectives. Licenses are granted to successful bidders in an open and transparent bidding within one hundred days after applying. The licensee is allowed to operate within the specific allocated area only

1177 Appendix-A,, The Pakistan Electronic Media Regulatory Authority Rules, 2009 & Ethical Code of Practice contained in the Schedule to the Press Council of Pakistan Ordinance, 2002

1178 Pakistan Electronic Media Regulatory Authority (content) Regulations, 2012

1179 DAWN.com, New Pemra rules allow: TV discussion on sub judice issues, by Malik Asad 2012-10-16, <http://dawn.com/news/757031/new-pemra-rules-allow-tv-discussion-on-sub-judice-issues>

1180 Sections 30 & 33, PEMRA Ordinance, 2002

1181 The Security of Pakistan Act of 1952; Maintenance of Public Order Ordinance 1960; Sections 123-A, 124-A, 153-B, 292; 295-C of Pakistan Penal Code (PPC); 99-A Cr.PC; contempt of Court Act, Anti-terrorism Act, The Defamation Ordinance 2002.

11.1.4 Independence (Practice)

Score 25%

Scoring Question To what extent is the media free from unwarranted external interference in its work in practice?

Pakistan's rank on Press Freedom Index, 2013 has dropped nine places to 159th out of 179 countries, indicating a worsened situation for media due to increase in violence against the journalists, not only from the militant groups but threats allegedly from the military and intelligence agencies as well.¹¹⁸² Although, the Pakistani Constitution curtails Censorship in Pakistan, imposition of "reasonable restrictions in the interests of the sovereignty and integrity of Pakistan or public order or morality" is wide enough to authorize the government, under various laws, to restrict media's freedom of expression, particularly in matters of religion, judiciary and the military.

Independence of the regulatory authorities such as the PEMRA is questionable as its chairman and members are appointed by the president, and it also is legally bound to obey the policy directives of the Federal government.¹¹⁸³ Similarly, PTV and PBC are state run organizations, and support official viewpoints on directives from the Information Ministry. Government officials, political actors, military and intelligence officers attempt to control media content through unofficial "guidance".¹¹⁸⁴ Print media too is subject to broadly interpretable legal provisions, whereas the Press Council of Pakistan has recently been established and not efficient enough as yet. Consequently, state authorities get plenty of space to misuse the phrase 'reasonable restrictions', to exert pressure and control over the media.¹¹⁸⁵

Many newspapers and broadcasts in the past, have been banned and their publishers/ reporters/ journalists harassed, tortured, imprisoned on serious criminal charges including blasphemy, sedition, instigating the public against government, army, president etc.¹¹⁸⁶ Actions, like suspension/revocation of advertisement funds have also been taken against media organizations for not abiding by the press advice.¹¹⁸⁷

A Private television network is currently facing a formal charge of violating the Anti-Terrorism Act by broadcasting images of insurgents in Baluchistan province attacking the last residence of Pakistan's founder. The case is pending in the court of law. In another case, charges have been filed against seven newspapers, for publishing a statement by an outlawed militant group.¹¹⁸⁸

1182 Reporters Without Borders, 2013 Press Freedom Index, http://fr.rsf.org/IMG/pdf/classement_2013_gb-bd.pdf

1183 Section 5, Pakistan Electronic Media Regulatory Authority Ordinance 2002

1184 Freedom House, 2012, Pakistan, <http://www.freedomhouse.org/report/freedom-press/2012/pakistan>

1185 Amir Jahangir, Maria Gulraize Khan and Qurut-ul-Ain Hussain, 2011, Situational Analysis of "Right to Information" In the communication & Information sector in Pakistan, Report Submitted to UNESCO, http://unesco.org.pk/ci/documents/situationalanalysis/Situational_Analysis_of_RTI_in_Pakistan.pdf

1186 I. A. Rehman, 2004-2006, Freedom of expression in conflict situations: Pakistan A tradition of information control, <http://www.pppusa.org/Human%20Rights/Article-10.htm>

1187 Marco Mezzera and Safdar Sial, October 2010, Media and Governance in Pakistan:

A controversial yet essential relationship, Initiative for Peacebuilding, IFP Democratization and Transitional Justice Cluster, Country case study: Pakistan, <http://www.initiativeforpeacebuilding.eu/pdf/pakistanOct.pdf>

1188 Reporters without Borders, TV Network Prosecuted Under Anti-Terrorism Law, Published on Thursday 29 August 2013, <http://en.rsf.org/pakistan-tv-network-prosecuted-under-anti-29-08-2013,45117.html>

Since there are no separate laws for internet monitoring, Internet filtering is being regulated by the Federal Investigation Agency (FIA), the Ministry of Information Technology (MoIT), Pakistan Telecommunication Authority (PTA), and the Supreme Court.¹¹⁸⁹ In 2010, High Court banned nine leading websites (including Facebook), allegedly for posting blasphemous material and Blackberry services along with 10,548 other websites, including YouTube and pages on Wikipedia and Flickr have too been banned.¹¹⁹⁰

Pakistan has been declared as one of the world's most dangerous countries for reporters.¹¹⁹¹ UNESCO has declared Pakistan as the second most dangerous country in the world for journalists.¹¹⁹² Since 1992, 72 journalists have been killed in Pakistan and 52 of these have been confirmed as deaths in the line of their duty. 54% of the journalists have been victims of target killing, 6% killed in crossfire and 40% during dangerous assignments.¹¹⁹³ In 2009, Peshawar Press Club was attacked by a suicide bomber killing 3 people and wounding 20. During 2001-2012, 12 journalists were killed in the FATA along the Afghan borderline. In June 2012, Taliban claimed a gun attack against the Karachi offices of the privately owned TV channel, as it failed to sufficiently cover their activities.¹¹⁹⁴

In 2011, a well-known investigative reporter who covered national security and terrorism was beaten to death. Fingers have been pointing towards intelligence agencies along with the Al-Qaida.¹¹⁹⁵ In the same year, a TV reporter was shot in the head and neck in Karachi. Four witnesses and the investigating police officer too were later killed. The third largest political party in Pakistan, known for its hostility toward journalists is blamed for it.¹¹⁹⁶

One of the senior most journalists and a TV anchor was fired his program taken off air after 10 minutes of airing, when the channel received threats to safety of its 600 employees from the same above mentioned party.¹¹⁹⁷

No justice or conviction has been obtained in 96% of the cases.¹¹⁹⁸ So far, there is only one case where partial justice was observed, i.e. the high-profile killing in 2002, of a reporter Daniel Pearl in Pakistan, in which four of the 27 allegedly involved were charged and convicted.¹¹⁹⁹

1189, Pakistan 2012, <https://opennet.net/research/profiles/pakistan>

1190 Amir Jahangir, Maria Gulraize Khan and Qurut-ul-Ain Hussain, 2011, Situational Analysis of "Right to Information" In the communication & Information sector in Pakistan, Report Submitted to UNESCO, http://unesco.org.pk/ci/documents/situationalanalysis/Situational_Analysis_of_RTI_in_Pakistan.pdf

1191 International Programme for the Development of Communication (IPDC), 2010, The Safety of Journalists and The Danger of Impunity Report by the Director-General, Intergovernmental Council of the IPDC, (Twenty-eighth session), UNESCO Headquarters, Paris, 22 – 23 MARCH 2012, http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CI/CI/pdf/IPDC/ipdc_dg_safety_report_rev.pdf

1192 Reporters Without Borders, 2013 Press Freedom Index, http://fr.rsf.org/IMG/pdf/classement_2013_gb-bd.pdf

1193 Committee to protect Journalists (CJP), 52 Journalists Killed in Pakistan since 1992/Motive Confirmed, <http://www.cjp.org/killed/asia/pakistan/>

1194 Huma Yusuf, 2013, Mapping Digital Media: Pakistan, A Report by the Open Society Foundations. <http://www.opensocietyfoundations.org/sites/default/files/mapping-digital-media-pakistan-20130703.pdf>

1195 <http://www.opensocietyfoundations.org/sites/default/files/mapping-digital-media-pakistan-20130703.pdf> Saleem Shahzad Murder Inquiry, Report of the Commission of Inquiry, concerning the gruesome incident of the abduction and murder of Syed Saleem Shahzad, [Submitted to the Government of Pakistan on January 10, 2012], http://app.com.pk/en/_images/pdf/report.pdf

1196 Committee to Protect Journalists, Journalists Killed in 2011 - Motive Confirmed: Wali Khan Babar, 20 December 2011, available at: <http://www.refworld.org/docid/4f045a8fc.html> [accessed 12 September 2013]

1197 LUBP, Dr Uzma Ali, September 10, 2011, Nusrat Javed sacked for speaking against MQM Quaid Altaf Hussain, <http://lubpak.com/archives/57223>

1198 Committee to protect Journalists (CJP), 52 Journalists Killed in Pakistan since 1992/Motive Confirmed, <http://www.cjp.org/killed/asia/pakistan/>

1199 Barbara Feinman Todd and Asra Nomani, 2011, The Pearl Project : The Truth Left Behind, Inside the Kidnapping and Murder of Daniel Pearl, the Centre for Public Integrity. http://cloudfront-files-1.iwatchnews.org/documents/pdfs/The_Pearl_Project.pdf

Despite the efforts to curb the lively and diverse media of Pakistan, the electronic media and privately owned newspapers criticize the government and keep on discussing public. Over the period of years, media has developed a strong sense of self-censorship around sensitive issues. Recently, a media broadcasting organization has drafted code of conduct for self-censorship for “Better media for a Better Pakistan.”¹²⁰⁰ Journalists have shown fear and have identified certain ‘no go areas’ for themselves, such as religion/blasphemy laws, army/ intelligence agencies, political interference/corruption, security situation in Baluchistan and terrorism.¹²⁰¹

Government, to curb the media, not only used press laws, bans or coercive measures, but other tactics such as controlling news distribution through its own agency like the Associated Press of Pakistan (APP), introduction of a press advice system, monetary and other benefits to opinion maker journalists, distribution of newsprint quota, allocation of government advertisements or revocation of the same.¹²⁰²

Accessing official information is not easy and in 2011, the government directed the public employees not to disclose any “embarrassing” information to the media.¹²⁰³ Judiciary too at times censors media, as in 2008, Supreme Court issued a directive that no TV channel or newspaper could air or publish any news, report, discussion or talk show about the court without the Supreme Court registrar’s and public relation officer’s approval, which was later modified and confined to prohibition of any derogatory remarks about the judiciary.¹²⁰⁴

11.2 Governance

11.2.1 Transparency (Law)

Score 75%

Scoring Question To what extent are there provisions to ensure transparency in the activities of the media?

Media laws in Pakistan contain provisions requiring disclosure of ownerships. For instance, the print media legislation requires the personal details of all the printers, publishers, editors and owners of a book or a newspaper in form of a declaration that has to be authenticated by the District Co-ordination officer. The name of the owner/editor and publication date has to be printed clearly on each copy of the newspaper. No news agency is allowed to disseminate or defuse news unless it has an authenticated declaration.

¹²⁰⁰ Geo documents on “Better Media for Better Pakistan”. Undated. If the document is approved by all media authorities, then self-censorship will be widespread.

¹²⁰¹ Huma Yusuf, 2013, Mapping Digital Media: Pakistan, A Report by the Open Society Foundations. <http://www.opensocietyfoundations.org/sites/default/files/mapping-digital-media-pakistan-20130703.pdf>

¹²⁰² Between Radicalisation and Democratization in an Unfolding Conflict: Media in Pakistan, a report by International Media Support, July 2009, <http://www.i-m-s.dk/wp-content/uploads/2012/11/ims-media-pakistan-radicalisation-2009.pdf>

¹²⁰³ Freedom House, 2012, Pakistan, <http://www.freedomhouse.org/report/freedom-press/2012/pakistan>

¹²⁰⁴ Pakistan Press Foundation (PPF), April 14, 2008, Contempt of court and the media, <http://www.pakistanpressfoundation.org/views-and-opinions/40964/contempt-of-court-and-the-media/>

Every declaration has to specify the title of the newspaper, the language in, which it is to be published, and the periodicity of its publication. The bank account and funding sources. Any change in any of the aforementioned information has to be notified to the authorities.¹²⁰⁵

Similarly, for broadcast media, PEMRA entertains applications on prescribed forms and licenses are granted after an open bidding process.

The state-run PTV and PBC are statutory corporations and hence have to abide by their statutory provisions.¹²⁰⁶

11.2.2 Transparency (Practice)

Score 50%

Scoring Question To what extent is there transparency in the media in practice?

The newspaper market is dominated by well-known large media groups which have a long history of publishing and their ownership is quite public. Due to permissibility of cross-media ownership, each of these groups also owns television channels and online broadcasting rights too. Almost all the newspapers also have their online versions.¹²⁰⁷ Some broadcast media licenses have been obtained by well-established businesses groups who under the company's laws have to publicly declare their holdings.¹²⁰⁸ Most of the media organizations have their own websites, with information about their working, blogs, news archives, and contacts. Apparently, there are no ownership-transparency issues, however, non-transparency of funding resources does raise some issues, particularly of proxy ownerships coupled with hidden agendas. For example, two Pakistani journalists have allegedly been drawing their salaries from US State Department funding through a non-profit intermediary, as part of America's efforts to shape its image abroad.¹²⁰⁹ Also, in September 2012, the US spent \$70,000 to air the clip showing news clips of current US President condemning an anti-Islam film made in the US, on seven Pakistani TV stations.¹²¹⁰

1205 Section 19, the Press, Newspapers, News Agencies and Books Registration Ordinance (PNNABRO), 2002

1206 Jang, Dawn, Nawa-e-Waqt, Express, Daily times, Khabrein.

1207 Jang Group Online editions <http://jang.com.pk/>; Dawn Media Group's www.dawn.com ; the Frontier Post, <http://www.the-frontierpost.com/>; Daily Aaj www.dailyaaj.com.pk/; Daily Express, www.express.com.pk

1208 for example, the Express Media Group is owned by the Lakson Group, a business conglomerate that owns more than 15 companies in many sectors, including consumer goods, fast-food restaurants, internet services, textiles, and paper and board

1209 Mr. Assam Ahmed, Correspondent / September 2, 2011 " US funding for Pakistani journalists raises questions of transparency", <http://www.csmonitor.com/World/Asia-South-Central/2011/0902/US-funding-for-Pakistani-journalists-raises-questions-of-transparency>

1210 BBC News Online, "Pakistan TV shows US ads condemning anti-Islam film," 20 September 2012, <http://www.bbc.co.uk/news/world-asia-19664392>

11.2.3 Accountability (Law)

Score 75%

Scoring Question To what extent are there legal provisions to ensure that media outlets are answerable for their activities?

There is no legal requirement as such, for media outlets to submit any kind of report to PEMRA, but there is a Council of Complaints, established under PEMRA law, to which any person from the general public, can file a complaint against any aspect of a program or an advertisement. The council may recommend to the Authority, appropriate action of censure, fine, and suspension, revocation of the license of broadcast media or the distribution service.¹²¹¹

For print media, the relevant accountability body is the Press Council of Pakistan (PCP), formed in 2011, whereas it's enabling Ordinance was passed in 2002. It is an independent body¹²¹² assigned with functions such as to receive complaints about the violation of Ethical Code of Practice relating to newspapers, editors, news agencies and journalists, and to update, implement and enforce the Ethical Code of Practice for the newspapers, editors, journalists, news agencies and publishers.¹²¹³

According to the Ethical Code of Practice under the PCPO the press has to afford the right of reply to persons criticized and rectify any harmful erroneous information as soon as possible, and ensure that corrections and apologies receive due prominence.¹²¹⁴ The Council can receive complaints about the violation of Ethical Code of Practice.

Relating to newspapers, news agencies editors and journalists, and after hearing, it may warn, reprimand or censure the same. It may also appoint an Enquiry Commissions, which may after hearing, direct the editor or publisher to publish a contradiction or clarification in the manner and time specified by the Commission. The commission may also issue a warning to be carried out or circulated by the newspaper or news agency itself, and in case of non-compliance, may direct other such newspapers and it also may recommend, to the competent authority, suspension or cancellation of the registration/ declaration.¹²¹⁵

1211 Section 26, PEMRA Ordinance, 2002; Council of Complaints Rules, 2010, http://www.pemra.gov.pk/pemra/index.php?option=com_content&view=article&id=15&Itemid=20

1212 Section 6. Press Council of Pakistan Ordinance 2002

1213 Ethical Code of Practice, as set out in the Schedule to the Press Council of Pakistan Ordinance, 2002; <http://www.presscouncil.org.pk/>

1214 Clause (11), Ethical code of Practice,

1215 Press Council of Pakistan Ordinance, 2002; <http://www.presscouncil.org.pk/>

Civil and criminal laws of the land also provide remedies to any person aggrieved of a publication or a broadcast. A civil suit can be filed against the publisher or a broadcaster under the Defamation laws. As per the law, if defamation is proved to have occurred, the publisher has to tender an apology, if acceptable to the plaintiff, and publish the same in similar manner and with the same prominence as the defamatory statement made and pay reasonable compensatory damages.¹²¹⁶ Also a criminal case under the provisions of criminal defamation laws can be registered, and in case of proof, defamatory or derogatory publications entail imprisonments with or without fine.¹²¹⁷

11.2.4 Accountability (Practice)

Score 25%

Scoring Question To what extent can media outlets be held accountable in practice?

The Press Council of Pakistan has recently been established and few complaints and actions taken on them can be seen on its official website.¹²¹⁸ However, it has still got to go a long way to make a significant impact. The Council has been complaining against lack of resources and asking for government funding but that might jeopardize its independence.¹²¹⁹

PEMRA and its Council of Complaints are entertaining complaints against TV channels and cable operators. At present, Councils of Complaints are operating in Federal Capital Territory and each provincial capital. Each Council of Complaints has eminent citizens who are experts of Law, journalism, public relations, electronic media, etc. for complete autonomy, none of the Councils has any official from PEMRA or any other government department. There are at least two female members in each Council of complaints to encourage women to lodge their complaints without any reluctance. From December 2011 to august 2013, PEMRA has received 25688 complaints against TV channels through its Council.¹²²⁰ Actions have also been taken accordingly for instance, fine was imposed on 15 Satellite TV Channels for airing excessive advertisements, Warning and legal Notices were issued to many STV licensees for airing un-ethical and misleading health related advertisements in violation of Drug Act, 1976. Warnings were also issued to 05 channels for airing un-confirmed / false news stirring panic.¹²²¹

¹²¹⁶ Defamation Ordinance, 2002

¹²¹⁷ Pakistan Penal Code, 1860,

¹²¹⁸ http://www.presscouncil.org.pk/media/docs/complaint_details.pdf

¹²¹⁹ DAWN.Com, Press council to be party to oppose code of ethics plea, 2012-08-03, <http://beta.dawn.com/news/739375/press-council-to-be-party-to-oppose-code-of-ethics-plea>

¹²²⁰ Pakistan Electronic Media Regulatory Authority, Viewer's Feedback & Complaint, Management System, <http://www.pemra.gov.pk/complaints/>

¹²²¹ PEMRA Annual Report, 2010, An Overview of the Current Status of Electronic Media in Pakistan, http://www.pemra.gov.pk/pemra/images/docs/pub-rep/annual_report_2010.pdf; M/s Brands Promotion Centre Pvt. Ltd., M/s Cellevision Pvt.Ltd., and M/s Dialogue Pvt. Ltd; Telenor and Mobilink are the two cellular companies currently providing this service to the ir customers in Pakistan. Telenor's mobile TV package offers 13 channels, including regional-language news channels, and has plans to expand.

All media agencies have open forums, blogs, face book and Twitter accounts, etc. where editors, reporters and anchors respond to comments and questions from the public. These sources are interactive as each reporter, anchor and editor reads the messages and generally responds to them.¹²²²

Judiciary too has been watchful of the media and recently, PEMRA was questioned by the Supreme Court for the live coverage of a hostage situation that lasted for several hours between a gunman and the Islamabad police. The Court of Pakistan on August 23, 2013 has directed the government to submit a full report on how to control live transmissions of television channels.¹²²³

11.2.5 Integrity Mechanisms (Law)

Score 50%

Scoring Question To what extent are there provisions in place to ensure the integrity of media employees?

PEMRA has a comprehensive Code of Conduct for guiding the broadcasters and cable TV operators with the right to impose penalties for violation of the code.¹²²⁴ For print media, there is an Ethical Code of Practice to be followed by newspapers, journalists, editors and news agencies etc. and the Press Council has the right to penalize the violation thereof.¹²²⁵ Both of these codes prohibit to air, any program or advertisement or publish any material, which is against the ideology, security or integrity of Pakistan, is likely to create hatred or incite violence among people of different sects, religions, castes, contains anything defamatory or knowingly false; maligns or slanders the Judiciary and the Armed Forces of Pakistan, is obscene, pornographic, vulgar or offensive to the commonly accepted standards of decency.

There are a number of codes for maintaining ethical standards at industry-level, developed by various groups, which are largely voluntary in nature with no provisions for mandatory compliance or enforcement mechanism. The Council of Pakistan Newspaper Editors (CPNE) established in 1957, is the combined body of Newspaper Editors in Pakistan, which has adopted a Code of Ethics which lays down the norms for maintaining the dignity of the print media.¹²²⁶ Pakistan Federal Union of Journalists (PFUJ) has also developed a comprehensive code of conduct for all the journalists working in Pakistan's print or electronic media and TV channels.¹²²⁷ PFUJ is said to have developed the first Code of Ethics in Pakistan in 1949.¹²²⁸

¹²²² ibid

¹²²³ Pakistan Press Foundation (PPF), Pakistan Freedom of Expression Monitor Pakistan: Court seeks to impose restrictions on live TV coverage, Journalists oppose curbs on media, Posted on August 27, 2013 by PPF Editor, <http://pakistanfoemonitor.org/pakistan-court-seeks-to-impose-restrictions-on-live-tv-coverage-journalists-oppose-curbs-on-media-2/>

¹²²⁴ Code of Conduct (Schedule A), PEMRA Ordinance, 2002

¹²²⁵ Ethical Code of Practice, as set out in the Schedule to the Press Council of Pakistan Ordinance, 2002.

¹²²⁶ <http://cpne.webs.com/aboutcpne.htm>

¹²²⁷ Code of conduct, PFUJ, <http://pfuj.org/code-2/>

¹²²⁸ Marco Mezzera and Safdar Sial, October 2010, Media and Governance in Pakistan: A controversial yet essential relationship, Initiative for Peacebuilding, IFP Democratization and Transitional Justice Cluster, Country case study: Pakistan, <http://www.initiativeforpeacebuilding.eu/pdf/pakistanOct.pdf>

The All Pakistan Newspapers Society is a body of newspapers publishers; formed to protect the interests of the newspaper industry also has a code of ethics for the advertisers and one for the journalists.¹²²⁹ Pakistan Broadcasters Association (PBA), which works for the interest of television channels, Broadcasting/media buying houses, and advertising agencies, has, as part of self- regulation of electronic media devised a Code of Conduct for TV channels.¹²³⁰ White Ribbon Campaign Pakistan (WRCP) was initiated in July 2006 by Women’s Empowerment Group (WEG), has developed the WRCP Code of Ethics for Media. Individual media¹²³¹ groups too have developed codes of conduct and all the employees are expected to comply with the rules.¹²³²

11.2.6 Integrity Mechanisms (Practice)

Score 25%

Scoring Question To what extent is the integrity of media employees ensured in practice?

There is presently no uniform industry-wide self-regulatory mechanism for the media. The government’s media regulatory Authorities are mainly involved in regulating licensing and operational issues and are not well-equipped to handle ethical misconducts. The number and kinds of complaints received by PEMRA is a good indicator of public’s dissatisfaction with the quality of aired programs. Most of the complaints relate to portrayal of anti-Pakistani culture.¹²³³ Last year, a petition was filed in the Supreme Court against broadcast of vulgarity and obscenity on electronic media. PEMRA was consequently directed to define ‘obscenity’ in Pakistan’s context, for guidance of electronic media.¹²³⁴

Media in Pakistan is often accused of sensationalist journalism and corruption. Commercialization of media, the mushroom growth of TV channels, the program rating systems, competition for more advertisement/sponsorship shares, and inexperienced/untrained journalists are a few of the main causes.¹²³⁵

Media houses are more interested in selling news, and look for sensational issues, creating unnecessary hype, and ignoring more important social and cultural issues. Media is also blamed for under coverage of areas like Baluchistan and FATA and over coverage of areas like Punjab and Karachi capable of giving more business.¹²³⁶

1229 APN News & Media Editorial Code of Ethics, 2011 http://www.apn.com.au/apn/assets/File/APN_Editorial_Code%20of%20Ethics_29_07_11.pdf; Advertisement Rules and Code of Ethics, http://www.apns.com.pk/faqs/rules_and_code_of_ethics.php

1230 Draft of Self-Regulatory Code of Conduct <http://www.pba.org.pk/admin/UploadFolder/108-pba.pdf>

1231 <http://www.whiteribbon.org.pk/wrcp-code-of-ethics-for-media/>

1232 GEO Asool, <http://www.geo.tv/asool/>

1233 Pakistan Electronic Media Regulatory Authority, Viewer’s Feedback & Complaint, Management System, <http://www.pemra.gov.pk/complaints/>

1234 The Express Tribune, August 25th, 2012. Supreme Court’s directives: PEMRA meeting to define term ‘obscenity’ on August 27, <http://tribune.com.pk/story/425940/supreme-courts-directives-pemra-meeting-to-define-term-obscenity-on-august-27/>

1235 Between Radicalisation and Democratization in an Unfolding Conflict: Media in Pakistan, a report by International Media Support, July 2009, <http://www.i-m-s.dk/wp-content/uploads/2012/11/ims-media-pakistan-radicalisation-2009.pdf>

1236 Huma Yusuf, 2013, Mapping Digital Media: Pakistan, A Report by the Open Society Foundations. <http://www.opensocietyfoundations.org/sites/default/files/mapping-digital-media-pakistan-20130703.pdf>

News channels, talk shows and newspaper headlines all thrive on 'breaking News', blowing an issue out of proportion and News are republished and rebroadcasted without verification. Newspapers rely on their counterpart electronic media for news, and do not make any further effort to improve their version.¹²³⁷

Off and on allegations of corruption against TV anchors and journalists too come to surface. In 2012, 'Media Gate' scandal shook the credibility of Pakistani media, when a off-air clips of a planted interview aired by a private TV channel, was leaked on YouTube. One of the anchors was suspended, the channel's Director Current Affairs resigned and the Supreme Court formed a two membered committee to investigate the controversial off-air video.¹²³⁸ This subsequently led to leakage of the information about payments allegedly made to 19 senior-journalists on Twitter.¹²³⁹

Another media scandal surfaced during a petition regarding media accountability initiated by some television anchors, wherein the Supreme Court of Pakistan, taking Suo Moto notice, ordered an investigation into misuse of secret funds by the government and ordered to freeze the same.¹²⁴⁰ Recently, the SC has ordered publication of a list of 282 journalists who received payments and gifts from the secret fund of the information ministry. Another list of 155 journalists will also be made public, who have taken gifts and payments from the information ministry to write favourable stories.¹²⁴¹

11.3 Role

11.3.1 Investigate and expose cases of corruption practice

Score 50%

Scoring Question To what extent is the media active and successful in investigating and exposing cases of corruption?

An investigative reporter from Pakistan along with a Russian journalist won the 2013 Knight International Journalism Award by the International Center for Journalists (ICJ).¹²⁴² The said Pakistani journalist despite being abducted, tortured and humiliated for criticizing the government, the army and the intelligence agencies,¹²⁴³ never gave up his

1237 Between Radicalisation and Democratization in an Unfolding Conflict: Media in Pakistan, a report by International Media Support, July 2009, <http://www.i-m-s.dk/wp-content/uploads/2012/11/ims-media-pakistan-radicalisation-2009.pdf>

1238 Pakistan Today, Puppets on a String?, Sajid Khan Lodhy Thursday, 14 Jun 2012, <http://www.pakistantoday.com.pk/2012/06/14/news/national/mubashar-lucman-suspended-for-%E2%80%98off-air%E2%80%99-comments/>

1239 Pakistan Herald.com, Pakistani Media Gate: List of 19 Anchors and Journalists, Author: News Desk, Posted On: Wednesday, June 20, 2012, <http://www.pakistanherald.com/Articles/Pakistani-Media-Gate-List-of-19-Anchors-and-Journalists-3015>

1240 DAWN.COM, SC orders information ministry to freeze secret funds, by Saleem Shahid, 2012-09-06, <http://dawn.com/news/747560/sc-orders-information-ministry-to-freeze-secret-funds>

1241 Pakistan Today, Secret funds case: SC publicises list of 'beneficiaries', by Tayyab Hussain, Tuesday, 23 Apr 2013, <http://www.pakistantoday.com.pk/2013/04/23/news/national/secret-funds-case-sc-publicises-list-of-beneficiaries-2/>

1242 International Center for Journalists (ICJ), June 10, 2013, Intrepid Investigative Reporters in Russia and Pakistan Win Premier International Journalism Award, <http://www.icj.org/news/intrepid-investigative-reporters-russia-and-pakistan-win-premier-international-journalism-award>

1243 The Wall Street Journal, Wednesday, October 13, 2010, Abducted and Tortured—for Reporting the News: 'This is the consequence of writing against the government,' my captors said., by Umar Cheema, <http://online.wsj.com/article/SB10001424052748703794104575545914180906100.html>

investigative reporting, and in 2012, unearthed tax evasion by elected leaders who had an average net wealth of \$882,000, and also launched 'the Centre for Investigative Reporting in Pakistan'.¹²⁴⁴ In 2012, three journalists were conferred with the best investigative reports award on business economics, environmental and gender issues.¹²⁴⁵ These awards are a sign of hope for quality journalism in Pakistan, which otherwise, for three consecutive years in a row, has been ranked as the 2nd most dangerous country for journalists, particularly those involved in investigative reporting of sensitive issues and dare to cross the 'imaginary red line'.¹²⁴⁶

There are no specific channels for investigative reports, neither is there any specific agenda, but various channels do indulge in investigative reporting and relay programs on injustice, quackery, social issues and uncovering the truth behind social murders and target killings. Many are reality crime shows, raid based with the help of the police and some are dramatizations based on true incidents.¹²⁴⁷ Many TV anchors as also, print media journalists, and are renowned for their investigative reporting on political and social issues, corruption and on situations in troubled areas.¹²⁴⁸ Many journalists have been injured, abducted, assaulted upon and murdered during their investigative assignments, particularly in the troubled areas like FATA and Karachi.¹²⁴⁹

Pakistan's vibrant media has unearthed many high profile corruption cases. The tax story by the award winning journalist shows that investigative reporting is still alive in Pakistan. According to the report, only 49 of 104 senators paid any income tax in 2011 and among the sitting 341 National Assembly members, only 90 even bothered to file returns.¹²⁵⁰

Pakistan Steel Mill's US\$ 0.25 billion scam, National Insurance Corporation Limited (NICL) scam, corruption in Pakistan International Airlines and Pakistan Railways, NATO containers' case, Haj corruption case, rental power projects, the ephedrine quota case and National Logistics Cell (NLC) scam, involving high ranking government and military officials and politicians.¹²⁵¹

Investigative journalism is a very expensive and a painstaking task. Media in Pakistan is mainly involved in day to day reporting and is inclined towards sensationalism. The security situation, lack of proper training and education of the journalists, meagre salaries, job insecurity, financial constraints and contractual conditions leave no room for investigative journalism.

1244 Tribe The Express Tribune, Report unmasks tax evasion among Pakistan leaders, By AFP Published: December 12, 2012, <http://tribune.com.pk/story/478812/report-unmasks-tax-evasion-among-pakistan-leaders/>; <http://cirp.pk/about-us.htm>

1245 The NEWS, Wednesday, April 11, 2012, 22nd APNS Awards ceremony to be held on 16th, From Print Edition <http://www.thenews.com.pk/Todays-News-2-102435-22nd-APNS-Awards-ceremony-to-be-held-on-16th>

1246 Sherry Ricchiardi, July 30, 2012, Challenges for Independent: News Media in Pakistan, A Report to the Center for International Media Assistance (CIMA) http://reliefweb.int/sites/reliefweb.int/files/resources/Challenges%20for%20Independent%20News%20Media%20in%20Pakistan_Ricchiardi.pdf

1247 CNBC, <http://www.cnbc.com/pakistan/programs.html>; DAWN News <http://dawnnews.tv/investigative-reporting/khabardaar>

1248 Arshad Sharif, http://en.wikipedia.org/wiki/Arshad_Sharif, Kamran Khan, [http://en.wikipedia.org/wiki/Kamran_Khan_\(journalist\)](http://en.wikipedia.org/wiki/Kamran_Khan_(journalist)); Saleem Shahzad, http://en.wikipedia.org/wiki/Saleem_Shahzad

1249 Refer to section on Independence (Practice)

1250 Committee to protect Journalists (CJP), Tax story shows investigative reporting alive in Pakistan, By Bob Dietz/CPJ Asia Program Coordinator, <http://www.cpj.org/blog/2013/04/tax-story-shows-investigative-reporting-alive-in-p.php>

1251 The NEWS, Friday, October 05, 2012, NLC scam & accountability process, By Khalid A. Khokhar, From Print Edition, <http://www.thenews.com.pk/Todays-News-6-135752-NLC-scam-&accountability-process>

85 % of them do not even have a contract and can be fired at any time, neither are they provided with identity cards by media owners they work for.¹²⁵² There are no funds available to journalists for research and investigation. Journalism investigations that uncover corruption, breaches of minority or human rights, or the effects that abuse /misuse of political power has on the individual, need more of media attention.¹²⁵³

11.3.2 Inform public on corruption and its impact

Score 25%

Scoring Question To what extent is the media active and successful in informing the public on corruption and its impact on the country?

There are some channels and newspapers that run programs on corruption and mal-practices wherein public is informed about the corrupt practices, provide discussions on the need to curb it and the shaming of the corrupt officials.¹²⁵⁴ Majority of the TV anchors of political talk shows without hesitating hold discussions on corruption of the politicians and government departments and confronted the politicians etc.,¹²⁵⁵ for example a high profile 'Hajj corruption scandal' was discussed by a political talk show host.¹²⁵⁶ However, media has not developed a policy of running regular programs of educating and informing public on corruption and methods of curbing it. Hence there does not seem to have an impact on corruption reduction.¹²⁵⁷

11.3.3 Inform public on governance issues

Score 50%

Scoring Question To what extent is the media active and successful in informing the public on the activities of the government and other governance actors?

Media in Pakistan is in the process of evolving itself into a strong force.¹²⁵⁸ Prior to liberalization of media in 2002, state had monopoly over news in form of state-run TV channel. Private radio stations cannot produce their own news programs, and have to relay news bulletins from the state-owned Pakistan Broadcasting Corporation (PBC).

1252 Marco Mezzera and Safdar Sial, October 2010, Media and Governance in Pakistan:

A controversial yet essential relationship, Initiative for Peacebuilding, IFP Democratization and Transitional Justice Cluster, Country case study: Pakistan, <http://www.initiativeforpeacebuilding.eu/pdf/pakistanOct.pdf>

1253 Committee to protect Journalists (CJP), Tax story shows investigative reporting alive in Pakistan, By Bob Dietz/CPJ Asia Program Coordinator, <http://www.cpj.org/blog/2013/04/tax-story-shows-investigative-reporting-alive-in-p.php>; Corruption in Pakistan, role of media, http://en.wikipedia.org/wiki/Corruption_in_Pakistan

1254 <http://www.zemtv.com/2013/07/21/ab-kiya-hoga-corruption-creates-a-new-record-every-year-in-pakistan-21st-july-2013/>; <http://www.zemtv.com/2013/06/06/aaj-kamran-khan-ke-saathbari-corruption-ki-kahanion-ki-daba-dia-gaya-6th-june-2013/>

1255 <http://www.siasat.pk/forum/showthread.php?179261-Apna-Apna-Gareban-27th-April-2013-Hamid-Mir-Media-Corruption>
1256 Interview of Mr. Ali Abid Tehami Group Editor and Advisor Jang Group, Pakistan on 31/8/2012; Talat Hussain "Knocked Out" Corrupt PPP Senator Saeed Ghani; <http://www.zemtv.com/2012/11/07/talat-hussain-knocked-out-corrupt-ppp-senator-saeed-ghani/>

1257 Interview of Mr. Ali Group Editor and Advisor Jang Group, Pakistan on 31/8/2012

1258 Shahid Abbasi, July 28, 2012, The News Tribe

Similarly, cable and satellite channels could not broadcast 'live' news, but since 2008, a few seconds delay is authorized.¹²⁵⁹

However, now with twenty news channels, there is a general perception that media is very active in presenting day to day information¹²⁶⁰ to the public through their news reports both, in print and electronic. But the severe competition has created homogenization of the news content, as channels tend to replicate the news broadcasts of their competitors without independent verification. A Project Report on Pakistan states that some electronic media anchors depart from objectivity and balanced reporting.¹²⁶¹

1259 Infoasaid, 2012, Pakistan Media and Telecoms Landscape Guide, http://www.infoasaid.org/sites/infoasaid.org/files/pdf/pakistan_guide_update_final.pdf;

1260 Huma Yusuf, 2013, Mapping Digital Media: Pakistan, A Report by the Open Society Foundations. <http://www.opensocietyfoundations.org/sites/default/files/mapping-digital-media-pakistan-20130703.pdf>

1261 Moazma Naseer, Kalsoom Katich and Sadaf Ejaz." Project Report on Role of Media in Pakistan". International Islamic University, Islamabad, April 29, 2010, p-22

PILLAR 12

Civil Society

Pillar 12: Civil Society

SUMMARY

Civil Society is an emerging entity in Pakistan. There are more than 30,000 CSOs in Pakistan covering almost all social and political areas. In 2009, there were 100,000 registered and non-registered CSOs in Pakistan including many inactive CSOs that remain on the books due to weak monitoring by registration authorities.¹²⁶² Since the independence of the country, civil society in Pakistan has evolved¹²⁶³ through severe constraints and bans¹²⁶⁴ during four military coups and gradual freedom of functioning under civilian governments. Women played a key role in civil society in the early years of Pakistan's independence.¹²⁶⁵

Pakistan has a favourable legal framework towards civil society, wherein any Association, Society, Union or Group can be formed and registered with the Government as a Civil Society Organization (CSO).¹²⁶⁶ CSOs are banned if found to work against the sovereignty or integrity of Pakistan, public order or morality.

The government generally supports CSOs as long as it works for social development. However, friction between the state and CSOs can be seen due to either geographical sensitivity of the region or social/ political sensitivity of an issue.

1262 USAID, 2011, the 2011 CSO Sustainability Index for Pakistan, Developed by United States Agency for International Development.

1263 Over 200 CSO were established in the NWFP and Balochistan, During the late 1970s, to help settle the 3.5 million refugees fleeing civil war in Afghanistan. There also was increase in funding from the government, international development partners, and the emergence of CSO coalitions. The government support during the 1990s could be seen by establishment of semiautonomous grant-making foundations, such as the Pakistan Poverty Alleviation Fund, the Sindh Education Foundation and the Social Action Program to improve social service delivery including the rural support programs.

1264 The United Front for Women's Rights, the first NGO advocating women's rights exclusively, was banned under martial law.

1265 The All Pakistan Women's Association (APWA) in 1948 and the United Front for Women's Rights and the Pakistan Family Planning Association 1953 are few of the examples.

1266 Ibid; Under the Voluntary Social Welfare Agencies Registration and Control Ordinance of 1961; the Societies Registration Act of 1860; the Companies' Ordinance of 1984; or the Trust Act of 1882.

Also the government has not been able to protect aid workers who have been a target of violent attacks. Consequently, Pakistan has been ranked as the second-most dangerous place for aid workers in 2012.¹²⁶⁷ Major cause is the misconception about humanitarian and aid workers who are often propagated by extremist faction as followers of hidden western agenda.

In Pakistan, CSOs still do not have the status of, nor are seen as a watchdog entities. Some CSO's perform as watchdogs but officially have no role in advising governments and can only put forth recommendations and proposals for improvement in governance, transparency and accountability.

CSOs are involved in fight against corruption, but only at individual level. The civil society needs to come together and successfully regulate themselves with regards internal management structures, transparent decision making, and democratic governance. They should disseminate more information about their activities and funding arrangements to liberate themselves of the allegations of hidden agendas and raise credibility in the eyes of society at large.

Table 14
Percentage Scores of Indicators
36.1/100

Dimension	Indictors	Law	Practice
Capacity 50.0/100	Resources	75	50
	Independence	50	25
Governance 33.3/100	Transparency	-	25
	Accountability	-	25
	Integrity Mechanisms	-	50
Role 25.0/100	Hold Government Accountable	25	
	Policy Reform	25	

Structure and Organization

The number of Non-government organizations (NGOs), Non-profit Organizations (NPO's) and Private Volunteers Organizations (PVOs) in Pakistan has grown considerably. There are 100,000 registered and non-registered CSOs, including NGOs, trade unions, labor unions, Community Based Organizations (CBOs), Faith-Based Organizations (FBOs), coalitions, professional associations, citizen groups and voluntary organizations varying in size, scope, and their effectiveness. Many inactive CSOs remain on the books due to weak monitoring by registration authorities.¹²⁶⁸

¹²⁶⁷ Jenny Lei Ravelo on 03 January 2013, The most dangerous place for aid workers, DEVEX, <https://www.devex.com/en/news/the-most-dangerous-place-for-aid-workers/80051> ; according to research by Humanitarian Outcomes. The data hasn't been verified yet, the organization says, but it is available online and is expected to find its way into an annual report to be published later this year.

¹²⁶⁸ USAID, 2011, The 2011 CSO Sustainability Index for Pakistan, Developed by United States Agency for International Development.

Nearly 300,000 employees and 200,000 volunteers work for 45,000 citizen organizations on full time and/ or part time basis.¹²⁶⁹ The CSOs are independent of the government and are meant to represent the will of the people.¹²⁷⁰

In a comprehensive study on CSOs in Pakistan conducted in 2002, 46 % of concentration of CSOs was seen in education, 18 % in civil rights and advocacy, 8% provided social services, 6% in the health sector and 5% reported culture and recreation as their main activity.¹²⁷¹ There are numerous directories of NGOs for Pakistan. Some of the directories are Dmoz, Pakistan,¹²⁷² Pakistan Government National NGO's database; Pakistan Centre for Philanthropy; Watan Dost: Hassan Abbas' blog and Devdir.org. These directories have also categorized the NGOs by their subject of activities. Besides these directories World Bank, Aga Khan NGO Resource Centre and other have also given lists of various NGO's in Pakistan.¹²⁷³

12.1 Capacity

12.1.1 Resources (Law)

Score 75%

Scoring Question To what extent does the legal framework provide an environment conducive to civil society?

The right of free association is guaranteed by the Constitution of Pakistan.¹²⁷⁴ CSOs including NGOs and various non- profit organizations with a wide range of purposes¹²⁷⁵ can be registered under various laws.¹²⁷⁶ Every citizen or a group of citizens has the right to form a non-profit association or a society and register it under the Societies Registration Act, 1860 and/ or Non Profit Public Benefit (Governance and Support) Act, 2003.

There are a number of laws that regulate civil society environment in Pakistan. Though it is not mandatory for a CSO to get itself registered to perform charitable, development or welfare activities. However, any foreign NGO or one in receipt of government funding is required to be registered compulsorily, with the Economic Affairs Division and Central Board of Revenue respectively. The registration procedure for the CSOs is quite straight

1269 International Center for Not-for-Profit Law (ICNL), 2012, NGO Law Monitor: Pakistan, <http://www.icnl.org/research/monitor/pakistan.pdf> www.civicus.org/new/media/pakistan.pdf

1270 USAID . 14 Jan 2013 " 2011 CSO Sustainability Index For Pakistan" www.usaid.gov/pakistan/civil-society-sustainability

1271 Aisha Ghaus-Pasha and Muhammad Asif Iqbal.2003,"Defining the Nonprofit Sector: Pakistan." Working Papers of the Johns Hopkins Comparative Nonprofit Sector Project, no. 42. Baltimore: The Johns Hopkins Center for Civil Society Studies.

1272 www.dmoz.org/ > Regional > Asia

1273 en.wikipedia.org/wiki/List_of_non-governmental_organizations_in_Pakistan/

1274 Articles 17 and 18, Constitution of Pakistan, 1973

1275 The Pakistan Centre for Philanthropy(PCP), 2012, Guide Book on Civil Society Organisations (CSOs) Registration Laws, <http://www.pcp.org.pk/documents/GBCSOreg.pdf>

1276 such as The Societies Registration Act, 1860, The Cooperative Society Act, 1925, The Companies Ordinance, 1984 (section 42), Trade Organizations Ordinance, 2007, Charitable Endowments Act, 1923, the Trust Act, 1882, Mussalman Waqf Act, 1923 and Non-Profit Public Benefit Organizations (Governance and Support) Act, 2003

forward, with a few regional variations such as CSOs in Sindh are not required to renew their registration whereas the same is a requirement in other provinces.¹²⁷⁷ Every law has its own set of rules and regulations that need to be followed at the time of registration.¹²⁷⁸ Similarly, the authority and grounds to suspend deregister or dissolve the CSOs and appeals against such orders are described in the respective laws. CSOs are allowed by law to be deregistered by the department that registers the Societies. Appeals against rejected registrations are required to be made to the same department. If a CSO fails in getting its registration or renewal, the law also allows the CSOs to approach the court for redress. According to the figures, majority i.e. 65.4% of NGOs are registered under the Societies Registration Act whereas approximately 38% of NGOs is not registered under any law.¹²⁷⁹

The tax regime for CSOs in Pakistan is incorporated in the Income Tax Ordinance (ITO), 2001 and Income Tax Rules (ITR), 2002 and is generally favourable. Tax exemptions and fiscal benefits are available to all CSOs including foreign NGOs, particularly those involved in activities beneficial to the society as a whole. Usually, a CSO can avail tax exemption after applying for the status of a non-profit organization (NPO) from the income tax commissioner or from the Federal Board of Revenue (FBR). Procedures for availing exemptions vary according to the nature of benefits and concessions. The Commissioner has ample powers to modify or relax conditions required for exemption on reasonable grounds. All tax exemptions have a specified validity period and have to be renewed after expiry of the same.¹²⁸⁰ CSOs in Pakistan are generally allowed to earn income and compete for¹²⁸¹ government contracts. However, no exemption is granted for business activities, income from property and capital gains, unless specifically applied for. To avoid hassle of exemption procedures, small CSOs get certified by CSO Certification System established by the Pakistan Centre for Philanthropy (PCP) in 2002-03, authorized by the Revenue Division of the Government of Pakistan in this behalf, and receive tax benefits.¹²⁸² CSOs operating in under developed Federally Administered Tribal Areas (FATA) are automatically declared tax-exempt.¹²⁸³

There are no legal barriers that restrict the expressive activities of CSOs. They are allowed to criticize or publish critical material against any political or social issue subject to certain reasonable restrictions in the interest of religion, public order, and friendly relations with foreign states, security and/or defence of the state, incitement to an offence, decency and morality. There have been efforts by the government to bring the CSOs under its control and monitoring.¹²⁸⁴ For instance an NGO bill was drafted in 1996 to bring the non-profit sector directly under state's control and regulation.¹²⁸⁵ In August 2013, The Economic

1277 USAID, 2011, The 2011 CSO Sustainability Index for Pakistan, Developed by United States Agency for International Development.

1278 The Pakistan Centre for Philanthropy(PCP), 2012, Guide Book on Civil Society Organisations (CSOs) Registration://www.pcp.org.pk/documents/GBCSOreg.pdf

1279 International Center for Not-for-Profit Law (ICNL)2012, NGO Law Monitor, Pakistan, http://www.europarl.europa.eu/meetdocs/2009_2014/documents/droi/dv/812_ngomonitor_/812_ngomonitor_en.pdf; NGO Regulation Network, Pakistan, the international programme of the charity commission, http://www.ngoregnet.org/country_information_by_region/Asia_and_Oceania/pakistan_countrypage.asp

1280 The Pakistan Centre for Philanthropy(PCP), 2012, Guide Book on Civil Society Organisations (CSOs) Registration;

1281 Clause 58 of II Schedule of ITO 2001.

1282 The Pakistan Centre for Philanthropy(PCP), 2012, Guide Book on Not for Profit Organizations(NPOs)Tax Exemption Regime,<http://pcp.org.pk/documents/GBtaxexe.pdf>

1283 USAID, 2011, The 2011 CSO Sustainability Index for Pakistan, Developed by United States Agency for International Development.

1284 Art 19, Constitution of Pakistan, 1973

1285 Aisha Ghaus-Pasha and Muhammad Asif Iqbal.2003,"Defining the Nonprofit Sector: Pakistan." Working Papers of the Johns Hopkins Comparative Nonprofit Sector Project, no. 42. Baltimore: The Johns Hopkins Center for Civil Society Studies.

Coordination Committee (ECC) of the Cabinet has constituted a high level committee to review the regulatory framework and existing registration requirements for NGOs working in Pakistan¹²⁸⁶

12.1.2 Resources (Practice)

Score 50%

Scoring Question To what extent do CSOs have adequate financial and human resources to function and operate effectively?

The majority of CSOs predominantly depend on either local philanthropic contributions or foreign donor funding. According to one study,¹²⁸⁷ 87 percent of CSO funding in Pakistan came from private indigenous sources. Only 7% of contributions from government support, grants and contracts while 6% came from private foreign philanthropy from foundations, corporate sources and individuals.

Indigenous philanthropy is the backbone for civil society in Pakistan is contributed approximately \$1.7 billion to civil society in 2009 which is equivalent of 1 percent of the nation's GDP. It has ranked as 34th on the Charities Aid Foundation's World Giving Index in 2011, as compared to 142nd in 2010. The rise may be attributed to the floods and other natural disasters.¹²⁸⁸

A considerable number of large organizations such as Ansar Burney Welfare Trust, Selani Welfare International Trust and Alamgir Welfare Trust in Sindh and Punjab, receive charitable contributions in the form of zakat and other giving motivated by religious values for welfare services, such as food, shelter, health and education. However, CSOs in KPK and Baluchistan, only the religious organizations receive such local philanthropy, while others carry development activities by financial support of international donor organizations.¹²⁸⁹

Some CSOs are community-based and work on local non-monetary resources, including volunteer time, supplies and land. For instance, a school for girls in a village was established by a Karachi based CSO, the Fishermen's Association for Community Empowerment (FACE), using local resources from local philanthropists, parents, teachers and the Union Council.¹²⁹⁰ There are many examples of CSOs that have engaged persons as volunteers utilizing their services during emergencies such as the 2011 floods or earlier earthquakes in Pakistan.¹²⁹¹

1286 International Center for Not-for-Profit Law (ICNL)2012, NGO Law Monitor, Pakistan http://www.europarl.europa.eu/meet/docs/2009_2014/documents/droi/dv/812_ngomonitor_/812_ngomonitor_en.pdf

1287 Aisha Ghaus-Pasha and Muhammad Asif Iqbal.2003,"Defining the Nonprofit Sector: Pakistan." Working Papers of the Johns Hopkins Comparative Nonprofit Sector Project, no. 42. Baltimore: The Johns Hopkins Center for Civil Society Studies.

1288 USAID, 2011, The 2011 CSO Sustainability Index for Pakistan, Developed by United States Agency for International Development.

1289 USAID, 2011, The 2011 CSO Sustainability Index for Pakistan, Developed by United States Agency for International Development.

1291 ibid

Several international organizations assist local CSOs to help them serve affected communities quickly and efficiently during natural calamities.¹²⁹² Examples include Muslim Aid Serving Humanity,¹²⁹³ an international organization that helped a local organization in health intervention in Sanghar District in Sindh province. Similarly, Hidaya Foundation,¹²⁹⁴ Telenor Pakistan¹²⁹⁵ and National Commission for Human Development (NCHD) worked together during Pakistan's 2011 floods. A very small number of CSOs compete for and earn income from public contracts,¹²⁹⁶ and few augment their income through investments of their endowment fund.¹²⁹⁷

CSOs employ permanent staff paid from donor funding. According to a study done in 2002,¹²⁹⁸ CSOs employ six to nine employees on average and over 265,000 people were employed in CSOs in Pakistan which approximately equals 2% of non-agricultural. Staff retention is a major challenge and many CSOs particularly in Rural Support Programs (RSPs), use participatory community approach.

Civil institutions in Pakistan are still not fully matured, developed and well-organized, thus often failing to achieve their objectives.¹²⁹⁹ Large CSOs usually funded by international donors are well equipped and have full institutional capacity and can focus on improving the capabilities of local small NGOs. The partnership and mutual growth can increase the success rate of the philanthropic efforts along with the use of resource mobilization techniques such as social media drives and fund raising events.

12.1.3 Independence (Law)

Score 50 %

Scoring Question To what extent are there legal safeguards to prevent unwarranted external interference in the activities of CSOs?

In Pakistan, citizens are allowed through their constitutional right to form associations, unions and groups irrespective of their religion, politics, and ethnic backgrounds and to function independently. The interference in the activities of a CSO by government is not allowed by law unless any activity is found to have violated the Constitution. Generally the state does not interfere in the activities of CSOs unless a CSO is working against the sovereignty or integrity of Pakistan, public order or morality. In such a case the Registration Authority holds the right to take action against the CSO and ban it and may refer the matter to the Court whose decisions are final.¹³⁰⁰

1292 UNICEF contributions: [www.unicef.org/pakistan/Overview-Updated-September-2007-1_\(2\).pdf](http://www.unicef.org/pakistan/Overview-Updated-September-2007-1_(2).pdf)

1293 Muslim Aid, Serving Humanity: Health intervention in Sanghar, Sindh, www.muslimaid.org/

1294 Hidaya Foundation, 2011. www.hidaya.org/

1295 Telenor Pakistan.2011. www.telenor.org/

1296 USAID, 2011, The 2011 CSO Sustainability Index for Pakistan, Developed by United States Agency for International Development.

1297 National Commission for Human Development, Pakistan. www.nchd.org.pk/

1298 Aisha Ghaus-Pasha and Muhammad Asif Iqbal.2003,"Defining the Nonprofit Sector: Pakistan." Working Papers of the Johns Hopkins Comparative Nonprofit Sector Project, no. 42. Baltimore: The Johns Hopkins Center for Civil Society Studies.

1299 Sania Nisar, "Road to Anti-corruption reforms, in Beautiful Pakistan". Dec 19, 2009

1300 Article 17 Constitution of Pakistan 1973

Government officials can become member of a Non Profit Organizations (NPO) and hold honorary position on its Board. However, all government officials are barred from holding any office of profit in the private sector during their services with government. State¹³⁰¹ officials are not mandated by any law to attend CSOs meetings. CSOs like any other entity have a right of privacy which is constitutionally guaranteed, and no state agency can violate the same without legal justification.¹³⁰²

Although there are at least 18 laws to regulate CSOs dealing with their registration, financing, accountability, internal governance and relations with the state. All laws handle CSOs differently e.g. even the size of a CSO varies under various laws and so do the definitions of “charitable purposes” and “non-profit organization”. Consequently, a large proportion of CSOs is not registered under any law and even for the registered ones there is no monitoring and evaluation mechanism under the regulatory system. Moreover, a large number of organizations were found to exist on paper only in an audit of organizations done in Punjab and Sindh, resulting in cancellation of most of the organizations.¹³⁰³ Allegations of dubious and unauthorized activities have also been levelled against many CSOs.¹³⁰⁴ To address this issue, an NPO certification regime for tax exemption and systems evaluation was devised in 2003, which certifies a CSO on certain parameters and thus provides a database for credible organizations.¹³⁰⁵

12.1.4 Independence (Practice)

Score 25 %

Scoring Question To what extent can civil society exist and function without undue external interference?

There is hardly any coordination and relationship amongst the various civil groups, NGO's, NPO's and associations, in Pakistan. Each group acts independently following their own objectives while the entire civil society has one common agenda of uplifting the social status of common people.¹³⁰⁶

Government seems to be supportive towards CSOs in Pakistan and rarely does it interfere in their work nor require financial disclosures. It has also provided special fiscal incentives and support in programs of social development like the Social Action Program and the Family Planning Program.¹³⁰⁷

1301 Article 209 and 216 Constitution of Pakistan 1973

1302 Article 14(1) Constitution of Pakistan 1973

1303 Zafar H. Ismail, The Legal Framework of the Nonprofit Sector in Pakistan, <http://www.pide.org.pk/pdf/psde%2018AGM/The%20Legal%20Framework%20of%20The%20Nonprofit%20Sector.pdf>

1304 DAWN.com, July 26, 2013, Subh-e-Nau banned for dubious activities: PTF, <http://dawn.com/news/1032099/subh-e-na-u-banned-for-dubious-activities-ptf>

1305 Pakistan Centre for Philanthropy(PCP); <http://pcp.org.pk/content.php?cid=17>; The Pakistan Centre for Philanthropy(PCP), 2012, Guide Book on Not for Profit Organizations(NPOs)Tax Exemption Regime, <http://pcp.org.pk/documents/GBtaxexe.pdf>

1306 Ifran Mufti. “Struggle of civil society organizations in Pakistan for Pro-People legislation No. 7”, PLA Notes 43:23-25. planotes.org/documents/plan_04-307.pdf.

1307 Nikhat Sattar. “Has Civil Society Failed in Pakistan?” Social Policy and Development Centre (SPDC), Working paper No. 6, 2011

However, friction between the state and CSOs can be seen due to either geographical sensitivity of the region or social/ political sensitivity of an issue.¹³⁰⁸ Government accuses CSOs' of being involved in "anti-state" activities" and considers them a threat for state^{rule}. Intelligence agencies too are distrustful and hostile towards the CSOs and consider them a security threat, particularly, the foreign-funded organizations which are beyond the internal regulatory control due to their financial autonomy.¹³¹⁰ Also, CSOs working in the conflict zones are under constant surveillance by security agencies and are required to submit their complete bio data, project plan, funding sources, foreign interactions and NOCs from the relevant governments.¹³¹¹

Off and on measures, such as laws¹³¹² allowing state intervention¹³¹³ and bans against CSOs, have been taken to curtail their advocacy role.¹³¹⁴ A petition in 2012 was moved in the Supreme Court accusing all the NGOs for lawlessness in Baluchistan and seeking an immediate ban and audits of their accounts and their agenda.¹³¹⁵

At times, there are threats to the survival of workers carrying out their jobs. Particularly, in conflict ridden regions such as Baluchistan and Khyber Pakhtunkhwa, CSOs find it very difficult to work due to internal and external hostile environments, interference, threats and attacks from militant and extremist factions.¹³¹⁶ Origin of hostility is said to be the "Militants' fear that NGO or health workers could be spies, may be spreading into other realms".¹³¹⁷ Consequently, the risks have been most severe for men and women working for promotion of education and rights of women.¹³¹⁸ Pakistan has been ranked as the second-most dangerous place for aid workers in 2012.¹³¹⁹

1308 Such as issues of political freedom, nuclear disarmament and matters of human rights, viz., honor killings, violence against women, women empowerment, freedom of press, blasphemy laws, corruption and accountability

1309 A foreign NGO has also been accused of mapping flood devastated areas using Geographic Information System (GIS) despite having been declared as a 'security risk' by National Disaster Management Authority (NDMA), published in PAKISTAN Today, Friday, 23 Nov 2012, Unauthorised operations of NGOs in Pakistan, <http://www.pakistantoday.com.pk/2012/11/23/comment/editors-mail/unauthorised-operations-of-ngos-in-pakistan/>

1310 Aisha Ghaus-Pasha and Muhammad Asif Iqbal.2003,"Defining the Nonprofit Sector: Pakistan." Working Papers of the Johns Hopkins Comparative Nonprofit Sector Project, no. 42. Baltimore: The Johns Hopkins Center for Civil Society Studies.

1311 USAID, 2011, The 2011 CSO Sustainability Index for Pakistan, Developed by United States Agency for International Development.

1312 In 1996, when the then government proposed a bill called the Social Welfare Agencies (Registration & Regulation) Act, legitimizing extraordinary government interventions in CSO affairs and curtailing advocacy role of CSOs, but the Bill was not made law.

1313 In 1998-99, 2500 CSOs were deregistered for staging protests against the nuclear tests conducted in May 1998 and against a proposed religious legislation (Shari'at Bill), Rabia Baig and Adnan Sattar 2001, Civil Society in Pakistan, in: CIVICUS Index on Civil Society Occasional Paper Series, 1,11, NGO Resource Centre, Aga Khan Foundation, Karachi.

1314 Rabia Baig and Adnan Sattar 2001, Civil Society in Pakistan, in: CIVICUS Index on Civil Society Occasional Paper Series, 1,11, NGO Resource Centre, Aga Khan Foundation, Karachi.

1315 The Express Tribune, December 4th, 2012. Foreign hands: Petitioner asks SC to ban NGOs, <http://tribune.com.pk/story/474697/foreign-hands-petitioner-asks-sc-to-ban-ngos/>

1316 International Center for Not-for-Profit Law (ICNL)2012, NGO Law Monitor; Pakistan http://www.europarl.europa.eu/meetdocs/2009_2014/documents/droi/dv/812_ngomonitor_/812_ngomonitor_en.pdf;

1317 IRIN Humanitarian News and Analysis, 2013, Growing risks for aid workers in Pakistan, <http://www.irinnews.org/report/97186/growing-risks-for-aid-workers-in-pakistan>

1318 Human Rights Commission of Pakistan – HRCP, 2013, State of Human Rights in 2012, <http://hrcp-web.org/hrcpweb/wp-content/pdf/AR2012.pdf>

1319 Jenny Lei Ravelo on 03 January 2013, The most dangerous place for aid workers, DEVEX, <https://www.devex.com/en/news/the-most-dangerous-place-for-aid-workers/80051> ; according to research by Humanitarian Outcomes. The data has not been verified yet, the organization says, but it is available online and is expected to find its way into an annual report to be published later this year.

Increase in incidents of violence such as kidnapping, abduction, torture and assassination of CSO workers has made protection of CSO members and staff a serious issue in Pakistan,¹³²⁰ and allegedly the state agencies fail to do anything. As a result, the foreign organizations suspend their campaigns and projects. Such as the International Committee of the Red Cross (ICRC) has suspended its project,¹³²¹ the UN Children's Fund (UNICEF) and the World Health Organization (WHO) have suspended their anti-polio vaccination health campaigns.¹³²²

According to reports, Pakistani agencies have cracked down on groups involved in the kidnapping and killing of aid workers, arrested two out of eight suspected al-Qaeda operatives whereas rest are in the hiding. Quetta authorities too have arrested a number of suspects from four groups involved in abductions of aid workers for ransom.¹³²³

NGOs in a few instances privately engage the police for their protection. As far as other government efforts are concerned, the government has restricted foreign-national aid workers from the most dangerous areas since 2008 and has also restricted employment of female aid workers in the troubled areas, for their own protection. After the violence against aid workers in 2012, the government has issued strict warnings to its security agencies to ensure safety and has made it mandatory to provide armed escort to foreign aid workers. This has increased the risk for national staff.¹³²⁴

In Pakistan, CSOs, NGOs, humanitarian and aid workers are often seen as followers of western ideology, alien to native culture and their work as western agenda. Polio immunization campaign, for instance is seen as an effort to make children sterile and reduce Muslim population, thereby exposing the aid workers to violent attacks.¹³²⁵ Unfortunately, there is no comprehensive state mechanism to provide protection to those trying to alleviate the sufferings of the deprived sections of the society. Rather, the efforts by the government are impeding and restricting humanitarian efforts.

1320 In 2013, Several NGO workers in a district in Pakistan's Khyber Pakhtunkhwa province were killed in an ambush on New Year's Day, by Jenny Lei Ravelo *ibid.*; 2. In October 2012, Malala Yousafzai, a girl's right to education campaigner was shot by Taliban in Swat valley while going home from school. Suspects still not traced. In January 2013, four workers of HANDS were kidnapped from the outskirts of Karachi. By Amir Murtaza, PAKISTAN: Violence against aid workers goes Unabated, Asian Human Rights Commission (ARC), <http://www.humanrights.asia/opinions/columns/AHRC-ETC-008-2013>; 3. In December 2011, six employees of the Balochistan Rural Support Programme (BRSP) were abducted from Pishin district for ransom. Two employees were killed and four released in August 2012, after receiving the ransom amount, which was collected by the families of the abducted and allegedly, the state agencies failed to do anything. As per the Human Rights Commission of Pakistan – HRCP, 2013, State of Human Rights in 2012, <http://hrcp-web.org/hrcpweb/wp-content/pdf/AR2012.pdf>; 4. In December 2012, six polio health workers, including lady health workers were shot dead and various injured in violent attacks in Karachi. IRIN Asia, PESHAWAR, 7 January 2013 (IRIN), | Growing risks for aid workers in Pakistan, <http://www.irinnews.org/report/97186/growing-risks-for-aid-workers-in-pakistan>; 5. In 2012, Dr. Khalil Rasjed Dale, a British Muslim health aid worker of the International Committee of the Red Cross (ICRC), was kidnapped and murdered in Quetta when demand of ransom was not met. Maaz Khan (AFP), Apr 29, 2012, UK aid worker kidnapped in Pakistan beheaded, Google, <http://www.google.com/hostednews/afp/article/ALeqM5iLCV8PwcP4uJwc-Anj-jpswaOBxw?docid=CNG.babfefb58a04bf7ad1203dbc54c1f351.a01>.

1321 Zahir Shah, 2012-05-10, Red Cross suspends operations in Peshawar, Karachi, Central Asia Online, http://centralasiaonline.com/en_GB/articles/caii/newsbriefs/2012/05/10/newsbrief-10

1322 IRIN Asia, PESHAWAR, 7 January 2013 (IRIN), | Growing risks for aid workers in Pakistan, <http://www.irinnews.org/report/97186/growing-risks-for-aid-workers-in-pakistan>

1323 Zia Ur Rehman, 2012-05-18, Taliban, criminals increase attacks on aid workers: Government moves to protect foreign aid workers, Central Asia Online, http://centralasiaonline.com/en_GB/articles/caii/features/pakistan/main/2012/05/18/feature-01

1324 Humanitarian Outcomes, Aid Worker Security Report 2012, <http://www.humanitarianoutcomes.org/sites/default/files/resources/AidWorkerSecurityReport20126.pdf>

1325 IRIN Humanitarian News and Analysis, 2013, Growing risks for aid workers in Pakistan, <http://www.irinnews.org/report/97186/growing-risks-for-aid-workers-in-pakistan>

12.2.1 Transparency (Practice)

Score 50%

Scoring Question To what extent is there transparency in CSOs?

CSOs are required to operate according to the law under which they are registered. Except for Trusts,¹³²⁶ all other types of CSOs are required to maintain their accounts, submit periodic audit reports and in some cases annual activities reports and keep the registration authorities informed of their activities.¹³²⁷ The laws may vary in their level of stringency, e.g. the Companies Ordinance and the Voluntary Social Welfare Agencies Ordinance require stricter financial auditing and reporting, whereas other laws just provide guidelines for the same. Small CSOs particularly in rural areas do not follow the regulations and lack financial transparency. Only a few CSOs make an effort to issue annual financial reports.¹³²⁸ Generally, CSOs are not required to make information public on their activities. However, as they need assistance and donations in appreciation of their good work, some organizations make information regarding their work available to the public through their websites. Many CSOs also publish the names of members of their Board of Directors/ Governors through their websites.¹³²⁹ Some NGOs publish their annual report that largely gives information regarding their programs, projects, achievements, success stories, etc. as well as some information on the budget and funding sources.¹³³⁰

The registering authority is responsible enforcing compliance with the law, and monitoring the work of NGOs to promote transparency and good governance. However, lack of enough resources impedes this process. Moreover, the wide discretion of the registering authority leads to inconsistent enforcement eventually giving rise to corruption, and distrust. The diversity and leniency in terms of transparency in laws has contributed to poor public access to information and 65% of the Pakistani population perceives CSOs as just money making organizations¹³³¹

12.2.2 Accountability (Practice)

Score 25%

Scoring Question To what extent are CSOs answerable to their constituencies?

1326 Under The Trust Act, 1882. Trusts have to operate under the terms and conditions laid down in the Trust Deed.

1327 The Companies Ordinance, (TCO) 1984, and the Companies (General Provisions and Forms) Rules, 1985; The Voluntary Social Welfare Agencies (Registration & Control) Ordinance, 1961; The Societies Registration Act, 1860;

1328 USAID, 2011, The 2011 CSO Sustainability Index for Pakistan, Developed by United States Agency for International Development.

1329 Interview Mr. Ayyaz Gul Kyani with Researcher on 12/10/12

1330 Some CSOs like the Citizens Foundation, Pakistan Institute of Legislative Development and Transparency (PILDAT), Transparency International-Pakistan, Islamic Countries Society of Statistical Sciences (ISOSS), Aurat Foundation etc. publish their reports almost regularly.

1331 Gilani Research Foundation, 2010, Perceptions about NGOs; Only 33% are Satisfied: GILANI POLL/GALLUP PAKISTANhttp://www.gallup.com.pk/Polls/5-03-10.pdf

Foreign funding to CSO's and the lack of transparency and accountability of many of these organizations has given rise to doubts about them in the government and public circles. The opinion about these organizations is negative because many CSO's lack proper oversight and control over their financial, social, economic and cultural activities. The popular perception is that most of the CSO's are aid-dependent and donor-driven¹³³² and not answerable to the public or to the government. They are only accountable to their own members and members of their Boards of Directors/ Governors. However this form of control is not very effective because Board members may all belong to one family and do not include any one from outside.¹³³³ Some CSOs like Trusts, Unions etc. include members from outside the society for self-accountability.¹³³⁴ Community-based organizations do not have democratic participation as the usually are set up by individuals who are relatively better educated and make significant financial contributions and thus control the organization. Foreign funded larger NGOs usually are driven by foreign donors' priorities.¹³³⁵ Foreign donors do the monitoring and these reports are seldom disclosed to the general public. However, most donors emphasize the need to adopt participatory approach and to include communities in planning, implementation and monitoring processes. The Orangi Pilot Project (OPP) in a Karachi-settlement and Aga Khan Rural Support Programme (AKRSP) in the northern areas are successful examples of participatory development initiatives.¹³³⁶

Although many CSOs have defined missions & values and majority of CSOs have proper management structures with clearly defined roles and responsibilities. However, still a significant number of CSOs lack internal management structures, internal democracy, participatory decision making, mandatory reporting systems and democratic governance. The process of accountability is weak and only a couple of laws¹³³⁷ contain provisions regarding accountability to members, beneficiaries and the government such as the requirements for auditing accounts, allowing access to records, holding meetings, reporting to the government and penalty provision for noncompliance.

12.2.3 Integrity Mechanisms (Practice)

Score 50%

Scoring Question To what extent is the integrity of CSOs ensured in practice?

The hostility on part of the government in the 1990s and poor enforcement of the registration laws, generated a sense of vulnerability among CSOs and adopting a pro-active approach, one of the representative bodies of Pakistan's NGOs the Pakistan

1332 Nikhat Sattar. "Has Civil Society Failed in Pakistan?" Social Policy and Development Centre (SPDC), Working paper No. 6, 2011

1333 Interview of Mr. Waheed Yusouf, Sponsorship Manager, Plan Pakistan with Researcher on 12/10/2012

1334 Interview of Mr. Omar Sadik with Researcher on 18/10/12

1335 USAID, 2011, The 2011 CSO Sustainability Index for Pakistan, Developed by United States Agency for International Development.

1336 Rabia Baig and Adnan Sattar 2001, Civil Society in Pakistan, in: CIVICUS Index on Civil Society Occasional Paper Series, 1, 11, NGO Resource Centre, Aga Khan Foundation, Karachi.

1337 Companies Ordinance, 1984; The Voluntary Social Welfare Agencies (Registration and Control) (VSWA) Ordinance, 1961

NGO Forum (PNF), set up a committee to “evolve guidelines for accountability, transparency and good practices by the NGO community.”¹³³⁸ Consequently, in July 2000 a code of conduct¹³³⁹ was developed for adoption by the CSOs, which gave a self-regulatory framework to ensure transparency, accountability and internal democracy. The Civil Society Resource Centre (CSRC), formerly known as NGO Resource Centre (NGORC) held a series of citizen sector self-regulation and regulation workshops throughout the country discussing the concept, mechanisms and challenges for self-regulation.¹³⁴⁰ However, since the code is voluntary, there is neither an implementation mechanism nor is there any enforcement mechanism in case of breach of the same. In 2007, the government in collaboration with the PCP proposed a mandatory code of conduct on NGOs, which would allow NGO funding to be frozen in case of violation. The attempt was criticized as being confusing and also another attempt to control the CSOs. The document is still open for public debate.¹³⁴¹ Another method of self-regulation is the certification program developed by PCP in 2003, at the government’s request.¹³⁴² This Certification program postulates a mechanism/evaluation process to monitor and evaluate NGOs using “a professional, objective and standardized approach.” It is a process where CSOs are facilitated in developing and strengthening internal governance, financial management and Programme delivery that promote transparency, accountability and good governance. It is purely voluntary and enables the CSO to streamline information resources and management systems so that, on the one hand the CSOs are able to reflect reliability for donors and beneficiaries, and a well-functioning organization on the other.¹³⁴³ The certification process is meant to enhance NGO credibility with the public and the government and also rids the CSOs of the “bureaucratic discretion and arbitrariness”. Additionally, if an NGO does not pass their system, they are facilitated to build “organizational capacity” to meet the requirements. As per the directory of certified CSOs issued by PCP in 2010, only 181 CSOs had qualified for PCP certification.¹³⁴⁴

In practice, there is no comprehensive integrity system in place although some CSOs follow integrity principles; there is no way the CSOs can ensure the integrity of all its members/workers¹³⁴⁵. Proactive approach by the CSOs themselves is a positive change but there is still lack of consent and unity in the non-profit sector. With regards the PCP certification system, many CSOs resent at being judged by another CSO and criticize and challenge the PCP’s system alleging use of the certification mechanism to exclude certain NGOs.

1338 Sattar Adnan, Citizen Sector Self-Regulation, Building Credibility: NGORC Journal, October 2000, Vol 1, Issue 1

1339 Pakistan NGO Forum,, Code of Conduct for NGOs and CBOs, Updated September 6, 2013

1340 Rabia Baig and Adnan Sattar 2001, Civil Society in Pakistan, in: CIVICUS Index on Civil Society Occasional Paper Series, 1,11, NGO Resource Centre, Aga Khan Foundation, Karachi.

1341 Pakistan NGO Legal Regulations - Assessment and Strengthening, http://www.asp.org.pk/indepth/csos_governance_resources/2.pdf

1342 PCP was authorized as the first NPO Certification Agency in Pakistan vide notification no. 1116(1)/2003 dated December 18, 2003.

1343 Pakistan centre of philanthropy, <http://pcp.org.pk/content.php?cid=17>

1344 Pakistan Centre for Philanthropy, 2010, Gateway to Giving, Directory of 181 Certified Civil Society Organisations, G2G volume III, <http://www.pcp.org.pk/documents/G2GV3.pdf>

1345 Tariq Butt and Usman Manzoor of the Int'l News Jan 8th, 2013. “A close insdie look at the MinhajUI Quran of DrTahirUIQad irwww.thenews.com.pk/Today-News-13-20089-A-clsoe-inside-look-at-th

12.3 Role

12.3.1 Hold government accountable

Score 25%

Scoring Question To what extent is civil society active and successful in holding government accountable for its actions?

Since the independence of the country, civil society in Pakistan has evolved through various phases, from severe constraints and bans during four military coups to support and gradual freedom of functioning under civilian governments. It has fought against and ousted a dictatorial regime and got the judiciary restored despite severe opposition from the government. Lawyers Association and their peaceful lawyer movement played a key role in ensuring the independence of judiciary.¹³⁴⁶ Bills on women rights passed.¹³⁴⁷ With a well-developed advocacy capacity, CSOs have lobbied the government for improved legislation in the areas of women rights, child rights, Freedom of information, environment, child labor and civic education. For example, six CSOs in 2001 formed an 'Alliance against Sexual Harassment (AASHA)' and got the Protection from Harassment at the Workplace Act in 2010. Credit also goes to CSO coalitions for the passage of Prevention of Anti-Women Practices (Criminal Law Amendment) Bill 2008 and the Acid Control and Acid Crime Prevention Bill 2010 that were passed in 2011.¹³⁴⁸

The Human Rights Commission of Pakistan (HRCP) raised voice against and demanded an independent inquiry into the Lal Masjid operation, a 2007 government crackdown, which ended in a bloody eight-day siege, on the controversial pro-Taliban mosque in Islamabad, killing at least 58 Pakistani troops and seminary students.¹³⁴⁹ The same Organization has severely been condemning drone attacks in Pakistan,¹³⁵⁰ and also has moved the Supreme Court of Pakistan to review an order disposing of a petition filed in 2007, for recovery of a large number of victims of enforced disappearance.¹³⁵¹

Civil society organizations have also been active in drive against corruption and was an active partner during the formulation of the National Anti-Corruption Strategy Project.¹³⁵²

1346 G. Shabbir Cheema, Engaging Civil Society to Promote Democratic Local Governance: Emerging Trends and Policy Implications in Asia, WORKING PAPER NO 7, Copyright © ICLD 2011; Swedish International Centre for Local Democracy (ICLD), http://www.icld.se/eng/pdf/icld_wp7_printerfriendly.pdf

1347 Fayyaz Yaseen, 2013, Social Accountability in Pakistan: Challenges, Gaps, Opportunities and the Way Forward, Working Paper # 133, A publication of the Sustainable Development Policy Institute (SDPI). <http://psan.sdpi.org/contents/files/Social%20Accountability%20in%20Pakistan%20Challenges,%20Gaps,%20Opportunities,%20and%20the%20Way%20forward.pdf>

1348 USAID, 2011, The 2011 CSO Sustainability Index for Pakistan, Developed by United States Agency for International Development.

1349 Daily Times, Wednesday, July 11, 2007, 'Lal Masjid operation must be probed', http://www.dailytimes.com.pk/default.asp?page=2007%5C07%5C11%5Cstory_11-7-2007_pg7_45

1350 The Nation, April 04, 2013, HRCP condemns drone attacks, <http://www.nation.com.pk/pakistan-news-newspaper-daily-english-online/islamabad/04-Apr-2013/hrcp-condemns-drone-attacks>

1351 Daily Times, Friday, June 07, 2013, HRCP seeks review after SC disposes of missing persons' case, http://www.dailytimes.com.pk/default.asp?page=2013%5C06%5C07%5Cstory_7-6-2013_pg7_19

1352 National Accountability Bureau, 2002, National Anti-corruption Strategy(NACS), <http://www.nab.gov.pk/Downloads/Doc/NACS.pdf>

Transparency International–Pakistan has been one of the major CSOs actively involved in fight against corruption. It conducts surveys, publishes annual reports and has initiated many anti-corruption programmes in collaboration with local and international organizations, such as in 2010, it entered into a 5 year coalition with the U.S. Agency for International Development (USAID) for reporting corruption by establishing the "Anti-Fraud Hotline", and in 2011, TIP took up monitoring of police departments in collaboration with Rural Development Organization (RDO) and the District Police Department.¹³⁵³

A few CSOs drive anti-corruption advocacy campaigns through workshops, seminars and other events. Ansar Burney Trust International launched an anti-corruption campaign in 2011.¹³⁵⁴ UN Global Compact Local Network (GCLN) in collaboration with Employers' Federation of Pakistan (EFP) and Lions Clubs International held a walk and a seminar, on behalf of the business community.¹³⁵⁵ In 2011, a group of civil society activists launched a countrywide campaign against corruption and observed a token hunger strike.¹³⁵⁶ In March 2013, a Seminar was held by an NPO the Sustainable Development Policy Institute (SDPI), on Anti-Corruption Strategy, Micro Level Governance and National Level Accountability Framework.¹³⁵⁷ A Society like the Centre for Civic Education of Pakistan (CCEP) has collected thousands of signatures in the past for an amendment in anti-corruption law, conducted advocacy campaigns and lobbied with legislators.¹³⁵⁸ Ipaidbribe.pk is another unique CSO fighting corruption in Pakistan. It is a website that encourages citizens to report bribe incidents fraud cases in Pakistan and publishes statistical details of corporate and political corruption.¹³⁵⁹

12.3.2 Policy reform

Score 25%

Scoring Question To what extent is civil society actively engaged in policy reform initiatives on anti-corruption?

In general, civil society contributes towards anti- corruption policy, fight corruption and engage the government in policy reforms. The civil society in Pakistan is still in its development phase.¹³⁶⁰

1353 <https://www.anti-fraudhotline.com/>; Transparency International-Pakistan, The quarterly newsletter of Transparency International-Pakistan, October - December 2011, Volume: XX,

1354 Pakistan Today, Monday, 22 Aug 2011, Burney to also campaign against corruption, <http://www.pakistantoday.com.pk/2011/08/22/news/national/burney-to-also-campaign-against-corruption/>

1355 UN Global Compact Local Network (GCLN),2012, Business Walk & Talk against Corruption in Pakistan, Press Release, [http://www.ungcpakistannetwork.com/pdf/PressRelease/Press%20Release%20GCPL%20\(1\).pdf](http://www.ungcpakistannetwork.com/pdf/PressRelease/Press%20Release%20GCPL%20(1).pdf)

1356 Civil society group launches anti-corruption drive today, DAWN.COM, 2011-09, <http://beta.dawn.com/news/659561/civil-society-group-launches-anti-corruption-drive-today>

1357 Sustainable Development Policy Institute(SDPI), March 2013, Anti-Corruption Strategy: A Civil Society Perspective (Seminar),http://www.sdpi.org/policy_outreach/event_details271-2013.html

1358 Centre for Civic Education, Pakistan. GPO Box 1123, Islamic.contact@civiceducation.org

1359 <http://www.ipaidbribe.pk/bribe/aboutus>

1360 Nikhat Sattar. "Has Civil Society Failed in Pakistan?" Social Policy and Development Centre (SPDC), Working paper No. 6, 2011

A few CSOs take up the monitoring through research route to highlight need for reforms and play an important role in fighting corruption, e.g. Transparency International Pakistan makes recommendations to the government on policy framework and points out cases where the government has not followed proper procedures.¹³⁶¹ The Free and Fair Election Network (FAFEN), is a coalition of 30 non-governmental organizations which is involved in election and governance and implements robust programmes in-between elections related to monitoring parliamentary affairs etc. and promotes active citizenry through on-going civic education activities in 200 National Assembly constituencies in 121 districts and seven tribal agencies in Pakistan.¹³⁶² PILDAT is another independent and a non-partisan NGO focusing on democracy, governance and public policy. One of its major contributions is carrying out periodic performance review of Parliament and Provincial Assemblies and undertaking research on Electoral Reforms among other issues.¹³⁶³

Governance Institutes Network International (GINI) is a multi-discipline Research Organization which stimulates analyze, catalyze discussion, create awareness and inspire action amongst the change agents in processes of politically owned institutional revival that address the governance crisis. It is dedicated to curb corruption from public institutions as well as in civil society through research of exploring root causes of corruption from them.¹³⁶⁴

Pakistan's civil society leaders have produced some slogans and placed posters on bill boards around major cities of Pakistan against corruption and also put forward policy reforms for anti-corruption.¹³⁶⁵

Individual citizens, groups, societies and unions have been exposing corruption in Pakistan and imploring the government to carry out meaningful reforms. Until now, it has not had any significant impact.¹³⁶⁶

¹³⁶¹ Transparency International Pakistan. www.transparency.org.pk/

¹³⁶² <http://www.fafen.org/site/v6/about-fafen>

¹³⁶³ <http://www.pildat.org/about.asp>

¹³⁶⁴ <http://giniweb.net/index.htm>

¹³⁶⁵ , "Road to Anti-corruption reforms, in Beautiful Pakistan". Dec 19, 2009. Some faith-driven group like Jamiyat-e-Islami, Pakistan during early period of the past government posted slogans against corruption. These slogans were quite visible for some time but later removed by some government agencies.

¹³⁶⁶ , "Road to anti-corruption reforms, in Beautiful Pakistan". Dec 19, 2009

PILLAR 13

Business

Pillar 13: Business

SUMMARY

There are extensive and comprehensive rules for regulating of all types of businesses in Pakistan. The Securities and Exchange Commission is the main regulatory authority for the corporate sector, which is bringing major reforms in the corporate regulatory framework, like formulation of the Code of Corporate Governance (CCG) 2012, business Code of Conduct, CCG Rules for public sector organizations and establishment of Fraud investigation Unit. Its Company Law Division ensures facilitation, monitoring and compliance of laws and regulations.

The provisions relating to accountability, transparency and integrity are incorporated in all business laws and regulations, but with exponential expansion of markets, there is a need for well-defined mechanisms for the business sector. Similarly, the organizations are well aware of business ethics and integrity measures, but are reluctant to follow them voluntarily.

Doing business is not easy in Pakistan, and corruption has been identified as the most problematic factor for businesses in Pakistan, yet the business sector does not seem to have anticorruption initiatives on their agenda.

Scores in the following table show the current status of corruption in Businesses in Pakistan.

Table 15:
Percentage Scores of Indicators
43.1/100

Dimension	Indictors	Law	Practice
Capacity 50.0/100	Resources	75	50
	Independence	50	25
Governance 54.2/100	Transparency	75	50
	Accountability	75	25
	Integrity Mechanisms	75	25
Role 25.0/100	Anti-Corruption Policy Engagement	25	
	Support for/Engagement with Civil Society	25	

Organization and Structure

There are five major types of business structures in Pakistan, viz. sole proprietorship, registered/unregistered partnerships, companies, non-profit associations trust, etc. and cooperative societies. Companies are established and regulated under Companies Ordinance, 1984 and the Securities and Exchange Commission of Pakistan (SECP) Act 1997. Partnerships (registered) and statutory corporations are regulated by their own relevant laws. The most easy and most popular form of doing business in Pakistan is the sole proprietorship, as it requires minimal of formalities. The concept of limited liability through incorporation of a business is attractive, but the stringent legal requirements, bureaucratic formalities and tax regimes are tedious for business community.

13.1 Capacity

13.1.1 Resources (Law)

Score 75%

Scoring Question To what extent does the legal framework offer an enabling environment for the formation and operations of individual businesses?

There are no legal documentation or registration requirements for the sole proprietorships and unregistered partnerships, nor do they need a prior approval from any government department. Similarly, dissolution of business in these two forms does not require any legal formality and sole owners or partners can be sued in personal capacity in case of any liability. However, these business organizations need to be registered with the tax authorities, and pay taxes as individual and association of persons.¹³⁶⁷ For unregistered firms, income tax is levied on the firm's income and the partners are not liable to pay tax on the shares of profit received from the unregistered firm(s).¹³⁶⁸

These business structures, being unregistered, do not have to comply with the complicated 76 Provincial and Federal labour laws.¹³⁶⁹ Though, a business license may be required to operate certain types of businesses, like a restaurant.¹³⁷⁰

Registered partnerships/firms and Companies¹³⁷¹ are regulated by the Partnership Act, 1932 and the Companies Ordinance, 1984, respectively.

Starting a partnership requires submission of documentation pertaining to the details regarding the firm, nature of business and the partners by post or delivering to the Registrar of firms of the relevant area, with the prescribed fee. On satisfaction, the firm is entered in the Register of firms.¹³⁷² All the rights, duties, liabilities, and dissolution grounds/procedures are clearly defined under the partnership laws. Partners of a registered firm are subject to double taxation, one in their personal capacity and the other on firm's income.¹³⁷³ Subject to some exceptions, partnerships of more than twenty persons has to be registered as a company.¹³⁷⁴

1367 Income Tax Ordinance, 2001, <http://download1.fbr.gov.pk/Docs/201191210938447ITOrdinanceUpdated2011.pdf>

1368 Doing Business in Pakistan, http://www.kmincorp.com/km/index2.php?option=com_content&do_pdf=1&id=19

1369 Small and Medium Enterprise Development Authority of Pakistan (SMEDA), 2002, Seed Working Paper No. 29, Series on Conducive Policy Environment for Small Enterprise Employment, Creating a Conducive Policy Environment for Micro, Small and Medium-Sized Enterprises in Pakistan,

1370 The Pakistan Hotels and Restaurants Act, 1976, Act LXXXI of 1976

1371 Major forms of companies that exist are: single member company; public/private companies can be have limited liability, unlimited liability or limited by guarantee.

1372 CHAPTER – VII, Registration of Firms, Partnership Act, 1932.

1373 Doing Business in Pakistan, http://www.kmincorp.com/km/index2.php?option=com_content&do_pdf=1&id=19

1374 Section 14, Companies Ordinance, 1984.

The regulatory authority for the companies in Pakistan is the Securities Exchange Commission of Pakistan (SECP),¹³⁷⁵ which became operational in January 1999, and amongst other functions, is mandated with regulation and oversight of the corporate sector.¹³⁷⁶ A single individual or a group of individuals can start a business and call it a company when it has been registered after complying with all the legal formalities and reporting requirements.

The SECP has a Company Law Division (CLD) comprising of two departments viz., Corporatization and Compliance Department (CCD) and the Enforcement Department. Together they are responsible for administration of the Companies Ordinance 1984. Its primary functions include registration of companies, regulating their statutory functions, winding up procedures and monitoring of corporate compliance through examination of statutory returns and accounts.¹³⁷⁷ Non-compliance of the formalities invites heavy penalties.¹³⁷⁸

Winding up of companies is always carried out under the control of the High Courts, whether the case is one of voluntary winding or that of compulsory winding up.¹³⁷⁹ Liquidation of regulated institutions, such as banking companies or insurance companies, is carried out by their regulating authorities, for instance, it is initiated by the State Bank of Pakistan in the case of banking companies, the Security & Exchange Commission of Pakistan in case of the insurance companies. A cooperative society (under the Co-operative Societies Act, 1925) is also formed for commercially viable activity.¹³⁸⁰

Joint ventures and franchise are also allowed under the law, but both these forms are not regulated by any particular law. Joint Ventures can either be incorporated or can operate as a partnership and are governed by contract, Partnership or corporate laws.¹³⁸¹ For Federal Income Tax purposes, a joint venture is treated as a partnership. Franchising is dealt with as a contractual license under the contract laws, and there is no set criterion for the kind of agreement, which varies according to the nature of the franchise.¹³⁸²

There also exist statutory corporations, which are formed under specific Central or a Provincial statute. The legal status, purpose, functions, powers, management and winding up of any such statutory corporation is governed by its enabling statute.¹³⁸³

1375 I" The Securities and Exchange Commission of Pakistan (SECP) was set up in pursuance of the Securities and Exchange Commission of Pakistan Act, 1997.

1376 I" State Life Insurance Corporation" established under Article 11 of the Life Insurance (Nationalization) Order, 1972 (P.O. 10 of 1972); Pakistan

1377 http://www.secp.gov.pk/CLD/cld_reg_index.asp

1378 Companies Ordinance, 1984.

1379 Section 297., Modes of winding up, Companies Ordinance, 1984.

1380 Small and Medium Enterprise Development Authority of Pakistan (SMEDA), 2002, Seed Working Paper No. 29, Series on Conducive Policy Environment for Small Enterprise Employment, Creating a Conducive Policy Environment for Micro, Small and Medium-Sized Enterprises in Pakistan,

1381 Contract Act, 1872, partnership Act 1932, Companies Ordinance, 1984.

1382 Doing Business in Pakistan: 2011 Country Commercial Guide for U.S. http://export.gov/pakistan/static/CCG%202011%20Final_Latest_eg_pk_033647.pdf

1383 I" State Life Insurance Corporation" established under Article 11 of the Life Insurance (Nationalization) Order, 1972 (P.O. 10 of 1972);

Pakistan is a member of Berne Convention 1886, Universal Copyright Convention 1948 and the Trade Related Intellectual Property Rights (TRIPS) Agreement 1994 under the World Trade Organization (WTO). Intellectual Property i.e. trademark, patent, industrial design, layout-design (topographies) of integrated circuits, copyright and related rights and all other ancillary rights in Pakistan are protected under various laws.¹³⁸⁴ The intellectual property laws were mainstreamed in 2005, with the formation of the Intellectual Property Organization of Pakistan (IPO).¹³⁸⁵ The Intellectual Property Organization of Pakistan Act, 2012 was also passed which provides for a funding structure for the IPO, vests it with enforcement authority and also provides for the establishment of specialized IP “Tribunals”, with trained Judges, for adjudicating upon IP disputes.¹³⁸⁶ Pakistan Customs was activated to keep a strict check on import and export of pirated optical discs etc. and the Federal Investigation Agency (FIA) was entrusted with the mandated to eliminate piracy by including the Copyrights Ordinance 1962 (as amended in 2000) in the FIA Act, 1974.¹³⁸⁷ Any copyright infringement is a cognizable and a non-bailable offence and FIA has vast powers in this regard.¹³⁸⁸ Violations of patents and trademark rights too entail penalties under the relevant laws.

13.1.2 Resource (Practice)

Score 50%

Scoring Question To what extent are individuals businesses able in practice to form and operate effectively?

Most small and medium enterprises SMEs i.e. 72% of the businesses in Pakistan operate as a sole proprietorship, 9% unregistered partnerships, 12% in form of registered firms and only 6% are incorporated businesses. For small businesses, sole proprietorships and unregistered partnerships are more favoured, since both are often easier and less costly to set up, with few legal formalities, no requirement for legal documentation and they enjoy tax concessions.

According to the SECP’s annual report, only 2% of all businesses are registered as corporate entities in Pakistan, mainly due to the tax structure, and higher rates of tax.¹³⁸⁹ Also, incorporation of a business under the Companies Ordinance, 1984, is a tedious process

1384 (The Trade Marks Ordinance, 2001 (XIX of 2001); The Copyright Ordinance, 1962 (XXXIV of 1962); The Patents Ordinance, 2000 (LXI of 2000); The Registered Designs Ordinance, 2000 (XLV of 2000); The Registered Layout-Designs of Integrated Circuits Ordinance, 2000 (XLIX of 2000); Sections 478, 479, 480, 481, 482, 483, 485, 486, 487, 488 and 489 of Pakistan Penal Code (XLV of 1860); The Trade Mark Ordinance, 2001; Trade Mark Rules, 2004; The Copyright Ordinance, 1962 (as amended in 2000) & The Copyright Rules, 1967 (as amended in 2000); The Patent Ordinance, 2000 & the Patent Rules, 2003

1385 Intellectual Property Organisation(IPO), Pakistan Ordinance No. XXI, December 2005 replaced by the Intellectual Property Organization of Pakistan Act, 2012

1386 sections 13 & 16, The Intellectual Property Organization of Pakistan Act, 2012,

1387 Introduction to IPO Pakistan, <http://ipo.gov.pk/Contents/AboutIPO.aspx>

1388 Section 74, Copyrights Ordinance 1962 (as amended in 2000).

1389 Annual Report 2012, the Securities and Exchange Commission of Pakistan (SECP). <http://www.secp.gov.pk/annualreport/2012/Annual-Report-2012.pdf>

which requires companies to document all business details, activities, and to maintain a system of accounts, with a third-party audit each year.¹³⁹⁰

The fast track registration services have made it possible for the companies to be registered within four hours and almost 4,000, companies were registered during 2012. As of June, 2012, total of 62,252 have been registered with the SECP, which include 56,335 private, 1,438 are single member companies, 2,237 public unlisted and 602 are public listed companies.¹³⁹¹

However, for the same year, the World Bank's report on Ease of Doing Business Ranking shows that Pakistan has slipped 3 positions down in 2013 and ranks at 107 out of 185 economies, as compared to 104th in 2012.¹³⁹² According to the same study, starting business in Pakistan takes 21 days, requires 10 procedures, and costs 9.9% of income per capita. In the global ranking on the ease of starting a business, Pakistan stands at 98 out of 185 economies. It takes 11 procedures and 222 days for a company, to get a construction permit. Getting electricity for doing business, also requires 207 days, and costs around 1,673.7% of income per capita. Registering a property in Pakistan takes 50 days and by doubling the capital value tax to 4% in 2011, it now costs about 7.6% of per capita income.¹³⁹³

Pakistan put in place a single reform in 2010, to simplify starting a business, by introducing an e-service registration system, allowing online registration for sales tax. But still, paying taxes is not easy for the companies in Pakistan and it ranks at 162 out of 185 countries, as a company has to spend 560 hours per year to for 47 tax payments.¹³⁹⁴ SECP has introduced the project "once online forever online" which requires mandatory online filing of statutory returns with effect from May 16, 2012,¹³⁹⁵ The system for enforcing contracts has improved in ranking from 156 to 155, but it still costs 23.8% of the claim including attorney's fee and court cost. There are 46 procedures from filing to final decision and it takes 976 days for a trial to complete.¹³⁹⁶

As far as monitoring and enforcement efforts are concerned, in 2012, the SECP processed 10 applications for investigation of affairs of the companies that were allegedly not being managed in accordance with the law. SECP also took punitive actions/ imposed fines against 1,822 cases of legal violations, disposed-off 1056 cases of dissolution of companies, of which 399 companies were wound up voluntarily and 657 companies were struck off from the register. During the same year, 50 complaints for Protection of Stakeholders' Interest were filed and 49 were disposed off. The SECP received 47 appeals under the Ordinance and 44 of these appeals were disposed-off.¹³⁹⁷

1390 Small and Medium Enterprise Development Authority of Pakistan (SMEDA), 2002, Seed Working Paper No. 29, Series on Conducive Policy Environment for Small Enterprise Employment, Creating a Conducive Policy Environment for Micro, Small and Medium-Sized Enterprises in Pakistan,

1391 Annual Report 2012, the Securities and Exchange Commission of Pakistan (SECP). <http://www.secp.gov.pk/annualreport/2012/Annual-Report-2012.pdf>

1392 World Bank. 2013. Doing Business 2013: Smarter Regulations for Small and Medium-Size Enterprises. Washington, DC: World Bank Group. DOI: 10.1596/978-0-8213-9615-5. License: Creative Commons Attribution CC BY 3.0

1393 World Bank. 2013. Doing Business 2013: Smarter Regulations for Small and Medium-Size Enterprises. Washington, DC: World Bank Group. DOI: 10.1596/978-0-8213-9615-5. License: Creative Commons Attribution CC BY 3.0

1394 *ibid*

1395 Annual Report 2012, the Securities and Exchange Commission of Pakistan (SECP). <http://www.secp.gov.pk/annualreport/2012/Annual-Report-2012.pdf>

1396 World Bank. 2013. Doing Business 2013: Smarter Regulations for Small and Medium-Size Enterprises. Washington, DC: World Bank Group. DOI: 10.1596/978-0-8213-9615-5. License: Creative Commons Attribution CC BY 3.0

1397 Annual Report 2012, the Securities and Exchange Commission of Pakistan (SECP). <http://www.secp.gov.pk/annualreport/2012/Annual-Report-2012.pdf>

According to the a press release dated 17th September,2013, the Enforcement Department of the SECP, as part of its mandate to safeguard the investors' interest, in July/August had initiated 73 show-cause proceedings against chief executives, directors and auditors for breaching statutory requirements related to issuance of auditors' reports, takeover regulations, holding and proceedings of annual general meeting, powers of directors, investment in associated companies and undertakings, reporting of facts, employees' provident funds, disclosure of directors' interests etc. 66 proceedings concluded with penalties or by issuance of warning to the identified defaulters.¹³⁹⁸

Protection of intellectual property is weak in Pakistan, as highlighted in World Economic Survey report, where Pakistan ranked at 109/148 countries with a low score of 2.9/7. Similarly, on the Intellectual Property Rights Index (IPRI). Pakistan ranks at 119 out of 131 countries, with a score of 4.1. Between 2009 to 2013, there has been a decrease of 1.2% in the score, mainly on account of reduction of 0.1 points in Physical Property Rights and Intellectual Property Rights.¹³⁹⁹ Legal remedies and penalties though are available for infringement of IPRs but the enforcement mechanism is not as strong.¹⁴⁰⁰

Book Piracy worsened in 2012 in Pakistan, and there are major markets for booksellers and wholesalers of pirated books in major cities of the country. Any book with a potential for sale is a target for these markets, which are highly organized and well-connected, and often manage to evade any enforcement action.¹⁴⁰¹

The situation is equally bleak in the business software sector. PC Software Piracy Rate as of 2011 was 86% and the Commercial Value of the Unlicensed Software was calculated as \$278 million. Unlicensed use of software by businesses causes significant losses each year to the software industry and in 2011 estimated loss was \$84 million.¹⁴⁰² Pakistan has been making efforts on IPR enforcement through raids, and arrests by various enforcement authorities, and between November 2009 to October 2010, 20 cases of IPR violations were filed and pirated material was confiscated. 41 arrests were made during the course of investigations, but only 2 individuals were charged and later on, acquitted.¹⁴⁰³ Hence, counterfeiting and piracy of books and optical disc particularly, are still serious issues.¹⁴⁰⁴

Between 1989-2003 Pakistan was on the Special 301 "Watch List", due to widespread piracy. In 2005, Pakistan became known as the world's leading producers of pirated optical discs and other copyrighted material and was placed in the "Priority Watch List" issued by the Office of the United States Trade Representative (USTR), for the period 2004-2005 and 2008-2009, and the situation was no different in 2012.

1398 Securities Exchange Commission of Pakistan, and Exchange Commission of Pakistan, SECP starts 73 show-cause proceedings against CEOs, directors and auditors, ISLAMABAD, September 17:http://www.secp.gov.pk/news/PDF/News_13/PR_Sept17_2013.pdf

1399 Study conducted by Francesco Di Lorenzo, 2012 Hernando de Soto Fellow, International Property Rights Index 2013 REPORT, A Project of the Property Rights Alliance, Published by: Americans for Tax Reform Foundation/Property Rights Alliance, <http://www.propertyrightsalliance.org/userfiles/2013%20International%20Property%20Rights%20Index-PRA.pdf>

1400 Doing Business in Pakistan: 2011 Country Commercial Guide for U.S., http://export.gov/pakistan/static/CCG%202011%20Final_Latest_eg_pk_033647.pdf

1401 Business Software Alliance (BSA), Shadow Market, 2011 BSA global software piracy study, Ninth edition, May 2012. http://globalstudy.bsa.org/2011/downloads/study_pdf/2011_BSA_Piracy_Study-Standard.pdf

1402 The Business Software Alliance BSA 2011, Competitive Advantage :The Economic Impact of Properly Licensed Software,http://portal.bsa.org/insead/assets/studies/2013softwarevaluestudy_en.pdf

1403 Doing Business in Pakistan: 2011 Country Commercial Guide for U.S., http://export.gov/pakistan/static/CCG%202011%20Final_Latest_eg_pk_033647.pdf

1404 The Office of the United States Trade Representative (USTR), 2012 Special 301 Report, <http://www.ustr.gov/sites/default/files/2012%20Special%20301%20Report.pdf>;

Subsequently, Pakistan was urged again to improve on its copyright and patent laws and provide for deterrent-level penalties for criminal IPR infringement.¹⁴⁰⁵ With promulgation of new IPO law and efforts by Government of Pakistan, the International Intellectual Property Alliance (IIPA), has recommended Pakistan to be on the 'Watch List' in 2013.¹⁴⁰⁶

13.1.3 Independence (law)

Score 50%

Scoring Question To what extent are there legal safeguards to prevent unwarranted external interferences in activities of private businesses?

During the course of setting up of a business, an enterprise has to comply with at least thirty regulatory procedures. They have to apply for a name, get registered, apply for income tax,¹⁴⁰⁷ register for sales tax,¹⁴⁰⁸ Professional Tax, registering with Employees Old-Age Benefits Institution (EOBI)¹⁴⁰⁹ and the Labor department.¹⁴¹⁰ There are other taxes as well such as, corporate income tax, taxable profit, Social security contributions, Pension contributions, Education cess, property tax, fuel tax, professional tax, vehicle tax, and stamp duty, tax on interest and Goods and sales tax (VAT).¹⁴¹¹

In case of delays and interference by the public officials, there are no specific remedies available to the business entities. Like any other citizen, they can approach for departmental complaints or go to the federal or provincial Ombudsmen. In case of corrupt practices by any government official or department, complaints can be filed with the Anti-Corruption Establishments (ACEs) at provincial level, and National Accountability Bureau (NAB) at provincial or central level. Civil and criminal courts too can be approached depending upon the nature of the grievance.

13.1.4 Independence (practice)

Score 25%

Scoring Question To what extent is the business sector free from unwarranted external interference in its work in practice?

1405 Doing Business in Pakistan: 2011 Country Commercial Guide for U.S., http://export.gov/pakistan/static/CCG%202011%20Final_Latest_eg_pk_033647.pdf

1406 The Office of the United States Trade Representative (USTR), 2012 Special 301 Report, <http://www.ustr.gov/sites/default/files/2012%20Special%20301%20Report.pdf>; Pakistan International Intellectual Property Alliance (IIPA), 2013 special 301 Report On Copyright Protection And Enforcement.

1407 Submit form to the Central Registration Office (CRO) under the Income Tax Ordinance 2001.

1408 Sections 14, 15 and 16 of the Sales Tax Act 1990 and Sales Tax Rules 2006, the company has to register for sales tax by submitting the application on Form STR-1 at any tax facilitation counter at the nearest Regional Tax Office (RTO).

1409 According to the Amendment in EOBI Act 1976, with the effect from July 2008, every industry or a commercial establishment with 5 or more employees has to be registered with the federal Employees Old Age Benefits Institution.

1410 For instance, Pakistan Shops and Establishment Ordinance 1969 requires every business other than a one man shop to be registered with the Deputy Chief Inspector of the Labor Department in each district.

1411 World Bank. 2013. Doing Business 2013: Smarter Regulations for Small and Medium-Size Enterprises. Washington, DC: World Bank Group. DOI: 10.1596/978-0-8213-9615-5. License: Creative Commons Attribution CC BY 3.0

According to the World Economic Forum Global Competitiveness Report (WEF GCR) 2013-2014, companies have identified corruption as the most problematic factor for doing business in the country.¹⁴¹² Land administration is perceived as the second most corrupt institution. Corruption is also common in the licensing and registration processes.¹⁴¹³

The tax regime in Pakistan is complex and time-consuming particularly the foreign investors complain of facing a complex set of taxes and control measures. The administrative discretion in assessing taxes gives rise to inefficiency and corruption.¹⁴¹⁴ In a study conducted on SMEs in Pakistan, tax over-regulation, complexity of the tax regime, governmental over-regulation, corruption and labor department/laws were identified as the most irritant factors that cause frustration in the business community.¹⁴¹⁵ Pakistan has been trying to simplify starting a business, for instance, by introducing an e-service registration system, allowing online registration for sales tax. The Sales Tax General Order No. 4/2007 also introduced an electronic filing of the sales tax returns and from July 1st 2008, electronic filing has been made mandatory for all categories of taxpayers.¹⁴¹⁶

Public officials also enjoy a high level of discretionary power in interpreting laws regarding their implementation and favour well-connected companies and individuals when deciding on policies and contracts. Corruption in taxation affects companies involved in import-export activities.¹⁴¹⁷

The business community does not confide in the Pakistani legal system as well and considers it inefficient and majority of the businesses would rather not go into litigation as per a study.¹⁴¹⁸

13.2 Governance

13.2.1 Transparency (Law)

Score 75%

Scoring Question To what extent are these provisions to ensure transparency in the activities of the business sector?

1412 World Economic Forum 2013, The Global Competitiveness Report 2013–2014, http://www3.weforum.org/docs/WEF_GlobalCompetitivenessReport_2013-14.pdf

1413 Transparency International Pakistan National Corruption Perception Survey 2011.

1414 Business Anti-Corruption Portal, Pakistan Country Profile, <http://www.business-anti-corruption.com/country-profiles/south-asia/pakistan/general-information.aspx>

1415 Osama Siddique, 2007, Simplification And Promotion of Laws And Procedures for Corporatization of Small & Medium Enterprises, Review of the Legal and Regulatory Framework for Corporatization of Smash, A Study conducted for the Ministry of Industries and Production, Government of Pakistan and the Securities & Exchange Commission of Pakistan

1416 World Bank. 2013. Doing Business 2013: Smarter Regulations for Small and Medium-Size Enterprises. Washington, DC: World Bank Group. DOI: 10.1596/978-0-8213-9615-5. License: Creative Commons Attribution CC BY 3.0

1417 Business Anti-Corruption Portal, Pakistan Country Profile, <http://www.business-anti-corruption.com/country-profiles/south-asia/pakistan/general-information.aspx>

1418 Osama Siddique, 2007, Simplification And Promotion of Laws And Procedures for Corporatization of Small & Medium Enterprises, Review of the Legal and Regulatory Framework for Corporatization of Smash, A Study conducted for the Ministry of Industries and Production, Government of Pakistan and the Securities & Exchange Commission of Pakistan

The Public Limited Companies and multi-national and the large local companies operating in Pakistan have to maintain financial auditing records as per international auditing and financial practices. The directors of a private limited company are required to appoint the first auditor of the company within sixty days from the date of its incorporation and thereafter in each Annual General Meeting of the Company. The Companies Ordinance (1984) also contains provisions relating to qualifications, powers and appointment/removal, of auditors.¹⁴¹⁹ Non-compliance of the aforesaid entail action by SECP and penalties in form of fine.¹⁴²⁰ An audit under the Ordinance is conducted in accordance with the provisions of auditing standards as applicable in Pakistan.¹⁴²¹ It is the duty of the auditors to provide a fair and true report of the company's financial status and accounts, to the members of the company.¹⁴²²

The Securities and Exchange Commission of Pakistan has the authority for registration of companies, regulating their statutory functions and monitoring of corporate compliance under Companies Ordinance, 1984.¹⁴²³ The Securities and Exchange Commission of Pakistan and its Registrars are required to maintain the audit records of the companies and to provide, on demand such records to the shareholders, and to the public in the case of public limited companies.¹⁴²⁴ Institute of Chartered Accountants of Pakistan (ICAP) regulates the audit profession in Pakistan.

Auditors must be members of ICAP. The private companies, having paid up capital of less than \$0.07 million may appoint auditors who are not members of the ICAP. The auditors of a listed company must also possess a satisfactory quality control rating from the ICAP.¹⁴²⁵

To ensure independence, an auditor cannot be a director, officer of the company, be an employee or partner of a director or officer, or a person who is indebted to the company. The firm of external auditors appointed for auditing a listed company, any partner thereof and their spouse or minor children are prohibited to hold, shares in the listed company or any of its associated companies or undertakings. Any person who has been found guilty of professional misconduct can also not be an auditor of a listed company.¹⁴²⁶

Listed company can only appoint a firm of auditors as external auditors which has been given a satisfactory rating under the Quality Control Review program of the Institute of Chartered Accountants of Pakistan, and also complies with International Federation of Accountants' (IFAC) Guidelines on Code of Ethics, as adopted by the Institute of Chartered Accountants of Pakistan.¹⁴²⁷

1419 Section 252- 255., the Companies Ordinance, 1984

1420 Section 259-260, ibid

1421 Securities And Exchange Commission Of Pakistan, A Guide for Appointment of Statutory Auditors and Ancillary Matters, Published by Registration Department, http://www.secp.gov.pk/Guides/auditors_guide.pdf

1422 Section 255, the Companies Ordinance, 1984

1423 SECP Ordinance, 1969 and Companies Ordinance, 1984. Available at www.secp.gov.pk/corporatelaws/pdf/Comp_Ord1984.pdf

1424 Chapter 2(10), Chapter 3(A & B) of SECP, Directors and Secretaries Guide.www.secp.gov.pk/.../Directors%20and%20Secretaries%20Guidenov2

1425 Section 254, Companies Ordinance, 1984.

1426 Securities And Exchange Commission Of Pakistan, A Guide for Appointment of Statutory Auditors and Ancillary Matters, Published by Registration Department, http://www.secp.gov.pk/Guides/auditors_guide.pdf

1427 ibid

The auditor is required to make a report on the financial statements, books of account, every balance sheet, profit and loss account, income and expenditure account of the company. The auditors' report is read before the company in the general meeting. This report has to remain open for inspection by any member of the company.¹⁴²⁸

The State Bank of Pakistan is fully authorized under various legislations, to systematically monitor the performance of every banking company to ensure its compliance with the statutory criteria, and banking rules & regulations.¹⁴²⁹

In order to ensure safe and sound working of the banking institutions, law provides the State Bank with an off-site monitoring and on-site periodic inspections of the banking system. The frequency of inspections depends upon the supervisory ratings, surveillance and financial monitoring results, and other appropriate indicators of soundness of each bank and non-bank financial institution.¹⁴³⁰

13.2.2 Transparency (Practice)

Score 50%

Scoring Question To what extent is there transparency in the business sector in practice?

At the time of its registration with the SECP, documents pertaining to the identification of the location of the office, particulars of directors, secretary, chief accountant, auditors, and others along with subscribed Memorandum and Articles of Associations have to be submitted.¹⁴³¹ Companies are bound by law to file Statutory returns with the Registrar of companies, immediately after incorporation of company and then periodically (annual, half yearly, quarterly). Statutory returns are all the Forms/returns or documents that contain information and details about any company, its directors, officers, business etc.¹⁴³²

The returns/forms filed by the Company become part of the Company's record, maintained by the registrar concerned, who is authorized to permit any member of the public, to inspect or obtain copy of documents on payment of the prescribed fee. The record is open for inspection by all the stakeholders e.g., banks, vendors, investors, suppliers, importers, exporters, creditors, etc. Who can make well informed investment decisions with the updated state of affairs of the Company?¹⁴³³

¹⁴²⁸ sections 255 & 256 Companies Ordinance, 1984.

¹⁴²⁹ the Banking Companies Ordinance, 1962; the State Bank of Pakistan Act, 1956; the Bank's Nationalization Act, 1974; The Financial Institutions (Recovery of finances) Ordinance, 2001; Companies Ordinance, 1984 and Statutory Regulatory Orders (SROs)

¹⁴³⁰ State Bank of Pakistan, Banking Sector Supervision in Pakistan, <http://www.sbp.org.pk/about/ordinance/supervision.htm>

¹⁴³¹ Securities And Exchange Commission Of Pakistan(SECP), Promoters' Guide, Formation And Incorporation Of Companies Under The Companies Ordinance 1984, <http://secp.gov.pk/Guides/PromotersGuideEnglish-new.pdf>

¹⁴³² Securities And Exchange Commission Of Pakistan (SECP), Guide On 'Filing Of Statutory Returns', Published by Registration Department, <http://www.secp.gov.pk/Guides/FilingofStatutoryReturnsnov29.pdf>

¹⁴³³ Regulation 18 and 19 of the Companies (Registration Offices) Regulations, 2003, (the Regulations) read with sub- section 6 of section 466 of the Ordinance

Information of businesses that are not registered with SECP but are the members of Chambers of Commerce and Industries or other professional bodies is available from their respective chambers.¹⁴³⁴

Most of the companies do not have third party verification except those companies which are International Organization of Standards (ISO) 9001 certified. Many companies are now ISO certified. Their annual reports are available from their offices and their websites.¹⁴³⁵

Pakistan's corporate regulatory framework provides for quite stringent audit laws and compliance mechanism. The Enforcement Department of the SECP is entrusted with the responsibility to ensure that companies listed on domestic stock exchanges, private companies having paid-up capital of Rs. 7.5 million and above, public unlisted companies, and foreign companies and their statutory auditors comply with the applicable corporate laws/rules/regulations, financial reporting and auditing standards.¹⁴³⁶

According to the SECP's annual report, 2012, during the year under review, SECP's Enforcement Department examined the audited financial statements of 837 companies, and 709 companies were advised/ directed to provide explanations with regard to various issues observed during the examination/review. Cases were initiated against 501 companies, 431 cases were concluded, 106 companies were warned on audited accounts and in 15 cases onsite investigations and inspections were initiated.¹⁴³⁷

Out of the initiated cases, the department took penal actions against the statutory auditors of 65 companies, who failed to act in conformity with the statutory framework and reports issued by them either contained false statements or failed to bring out material facts about the affairs of companies. Fines were imposed on auditors along with the advice to discharge their responsibilities with professionalism and due care, and to give an objective and an independent opinion on financial statements in future. The details of these actions were also notified to the Institute of Chartered Accountants of Pakistan.¹⁴³⁸

The department also took action against auditors of two listed companies, who were not qualified for appointment as per the requirements of the Code of Corporate Governance (CCG).¹⁴³⁹

48 cases of non-compliance with the provisions of the Ordinance were also concluded against the auditors of private, listed and unlisted companies. 41 cases ended in penalties, whereas 6 cases concluded with warnings. Actions were also initiated against directors and officers of 14 companies, who failed to prepare and attach consolidated financial statements with their annual audited financial statements as required under the Ordinance. 52 proceedings were instituted for filing incomplete annual audited accounts; penalties were imposed in 30 cases while warnings were issued in 22 proceedings. Similarly action

1434 Federal and District Chambers of Commerce and Industries. List of Chambers are available at www.swisspak.com/.../pakistan/list_of_member_bodies_chambers_of_commer...

1435 <http://www.urduky.com/pakistan-2/list-of-companies-in-pakistan.html/>

1436 Annual Report 2012, the Securities and Exchange Commission of Pakistan (SECP). <http://www.secp.gov.pk/annualreport/2012/Annual-Report-2012.pdf>

1437 Ibid.

1438 Ibid.

1439 Ibid.,

against on-filing of annual audited accounts with the registrar of companies, against 65 unlisted companies was taken, wherein, penalty was imposed in 52 cases and in 13 of those cases strict warnings for future compliance have been issued.¹⁴⁴⁰

As far as corporate social responsibility (CSR) is concerned, its concept is still in its infancy in Pakistan.¹⁴⁴¹ The SECP issued the Companies (Corporate Social Responsibility) General Order in 2009, applicable to all public companies. According to the said order, every company is required to disclose, descriptive and monetary aspects of its CSR activities in the directors' report to the shareholders. But the companies were given discretion in choosing the content and format of CSR report, which created a perception of it, being a public relation tool, rather than an accountability measure.¹⁴⁴²

To further strengthen the CSR practices, 'Corporate Social Responsibility Voluntary Guidelines, 2012', for public companies have recently been introduced by SECP, which are meant to streamline their reporting requirements and CSR activities' accountability. The said guidelines have been placed on SECP's website and have also been circulated among all stock exchanges,, ICMAP and ICAP, prominent public companies engaged in the CSR activities, Pakistan Centre for Philanthropy and Pakistan Poverty Alleviation Fund, for consultation with external stakeholders and general public.¹⁴⁴³

There are no separate reporting systems or regulations in place that require reporting specifically on countering corruption. However, the Corporate code of Governance, now requires the directors shall give due consideration to auditors' recommendations regarding activities characterized by fraud, corruption and abuse of power and management's response thereto.¹⁴⁴⁴ According to a study done on defence companies around the world, Pakistan has been placed in the category of countries, which though are aware of ethics and compliance, and do publish annual reports that state their standpoint against corruption, but majority either publishes little or no information on the systems and procedures that they have in place to prevent corruption.¹⁴⁴⁵ However, there are certain large companies that are involved in CSR and anti-corruption activities.¹⁴⁴⁶

13.2.3 Accountability (law)

Score

75%

Scoring Question

To what extent are there rules and laws governing oversight of the business sector and governing corporate governance of individual companies?

¹⁴⁴⁰ *ibid.*

¹⁴⁴¹ Economy Age, We Need National Agenda on Corporate Social Responsibility: Chairman SECP, By Ali Ahmad • Friday, Apr 26, 2013, <http://www.economyage.com/2013/04/we-need-national-agenda-on-corporate-social-responsibility-chairman-secp/>

¹⁴⁴² Securities and Exchange Commission of Pakistan Press Release, SECP Gives Nod to CSR Guideline, http://www.secp.gov.pk/news/PDF/News_12/PR_May21_2012.pdf

¹⁴⁴³ Annual Report 2012, the Securities and Exchange Commission of Pakistan (SECP). <http://www.secp.gov.pk/annualreport/2012/Annual-Report-2012.pdf>

¹⁴⁴⁴ Section 35 clause xxix (h), Code of Corporate Governance, 2012, http://www.secp.gov.pk/CG/CodeOfCorporateGovernance_2012.pdf

¹⁴⁴⁵ transparency International UK Defence & Security Programme, Defence Companies Anti- Corruption Index 2012, <http://companies.defenceindex.org/sites/default/files/documents/CI-Report-Single-Hires.pdf>

¹⁴⁴⁶ Global Compact Network Pakistan, Case studies, Hinopak Motors Limited, Pakistan, <http://www.ungcpakistanetwork.com/hinopak-case-study.html>

The Securities and Exchange Commission of Pakistan (SECP) is the principal regulator of securities markets, non-banking and non-listed companies. Since its establishment, SECP has initiated a number of reforms aimed at creating transparency and accountability in the corporate and financial sectors. It has worked to improve corporate governance policies, and frameworks in Pakistan.¹⁴⁴⁷ The most important reform was the framing and implementation of the Code of Corporate Governance in 2002.¹⁴¹⁸ Later on, as part of the reforms, after extensive consultation with a wide range of stakeholders, and in light of the amendments as suggested by the Pakistan Institute of Corporate Governance (PICG) Task Force,¹⁴⁴⁹ SECP, revised the 2002 version and has now placed the revised code of Corporate Governance 2012 on its website.¹⁴⁵⁰ The Code has been made a part of the listing regulations of all major stock exchanges in Pakistan, and all listed companies are required to comply with it and give a statement of compliance in their annual reports.¹⁴⁵¹ The State Bank of Pakistan through its Prudential Regulations has directed all listed and non-listed commercial banks and Development Finance Institutions (DFIs) to comply with the Code.¹⁴⁵²

As per the revised code, the same person cannot be the chairman of the board of directors and the CEO. All the stock exchanges will be regulating and ensure implementation of the code by the listed companies. More strict conditions, for being a member of the board for a company have also been incorporated in the code such as, boards have to consist of at least one and preferably one third of the total members of the board as independent directors. Code also bars inclusion of a company's director in the internal audit team. The duties of the board regarding disclosure have also been revised to bring in line with the international standards, and include reporting on governance, risk management and compliance issues, report on CSR activities, ensure compliance of financial reporting requirements and whistle-blower protection mechanism. The annual report is now required to contain the names of the non-executive, executive and independent director(s) and details of the aggregate remuneration. Of executive and non-executive directors. Code also requires immediate dissemination of material information to the stock exchange and the Commission. Since the Code 2012 has been incorporated in the listing regulations of the stock exchanges, hence penalties for noncompliance too will be applicable as specified therein.¹⁴⁵³

Through its directives, the SECP also directs the listed companies to circulate their quarterly accounts in addition to half-yearly and annual accounts and in case of difficulties in circulation, get them published in two daily leading newspapers (one English, one Urdu).¹⁴⁵⁴ Directors of the listed companies also have to include summarized statements of key operating and financial data of last six years in the directors' report.¹⁴⁵⁵ Further, the SECP has mandated the maintenance of functional websites and placement of financial as well as non-financial, material information thereon.¹⁴⁵⁶

1447 SEC-UNDP Project on Corporate Governane, 2003,Project Report, http://www.secp.gov.pk/IACCD/pub_iaccd/ProjectReport.pdf

1448 International Finance Corporation (IFC), Securities and Exchange Commission of Pakistan (SECP), and Pakistan Institute of Corporate Governance (PICG), 2007, A survey on corporate governance practices in Pakistan 2007, <http://www.picg.org.pk/admin/upload-report/Survey.pdf>

1449 <http://www.picg.org.pk/about.php>

1450 Code of Corporate Governance, 2012, http://www.secp.gov.pk/CG/CodeOfCorporateGovernance_2012.pdf

1451 *ibid*

1452 the State Bank of Pakistan Prudential Regulations19 (G1–G3), <http://www.sbp.org.pk/publications/prudential/PRs-Corporate.pdf>

1453 http://www.secp.gov.pk/CG/CodeOfCorporateGovernance_2012.pdf

1454 *ibid*

1455 The Corporate and Financial Reporting Framework of the Code 2012 (clause (xvi)(c))

1456 SECP vide SRO no. 25(I)/2012 dated 16.01.2012 as per the Code of Conduct,2012

Though, the Code 2012 is part of the listing regulations of the stock exchanges and is meant for listed companies. However, all companies private, listed or unlisted must ensure compliance with all such provisions under the relevant international financial reporting standards. Private/unlisted companies are not required to furnish Statement of Compliance with the Code, unless they voluntarily adopt the Code 2012.¹⁴⁵⁷

Partnerships as such do not have a separate code of conduct but, there are provisions in the partnership laws regarding code of conduct of the business, their relationships with each other and third parties.¹⁴⁵⁸ The register of firms, all statements, notices filed under the Partnership Act is open to inspection by any person on payment of prescribed fees.¹⁴⁵⁹ Penalties for furnishing false particulars are also mentioned.¹⁴⁶⁰

13.2.4 Accountability (practice)

Score 25%

Scoring Question To what extent is there effective corporate governance in companies in practice?

Most listed and non-listed Companies and financial sector institutions of Pakistan, are well aware of the Code of Corporate Governance, and comply with the CG and submit compliance statement. However, these companies comply simply to follow rules. None of the companies have their own Code, neither are they keen on adopting the OECG principles of governance, since it's not a mandatory requirement.¹⁴⁶¹

Most of the companies comply with the CG requirements of board composition and duties, such as majority of the organizations have more than seven directors and also have separate persons for the of positions of CEO and chairman. As per the Code's requirement, the board of directors is the centre of control in most organizations and its functions include appointment and dismissal of the chief executive, setting corporate strategy, appointment and removal of the chairman of the board approving risk management policy, reviewing annual reports and creating disclosure policies. Complying with controls and transparency requirements, majority have an internal auditor/audit department as well as an external auditor, most comply with International Accounting Standard (IAS)/International Financial Reporting Standard (IFRS), but majority of the companies do not have a whistle-blowing policy in place, neither use of insider information is investigated by the internal auditor, audit committee, or the external auditor. Most of the companies have a website and make their annual reports available on their website, but many are also apprehensive about sharing their commercially sensitive information.¹⁴⁶²

1457 ibid

1458 Partnership Act, 1932.

1459 Section 66, ibid.

1460 Section 70, ibid

1461 International Finance Corporation (IFC), Securities and Exchange Commission of Pakistan (SECP), and Pakistan Institute of Corporate Governance (PICG), 2007, A survey on corporate governance practices in Pakistan 2007, <http://www.picg.org.pk/admin/upload-report/Survey.pdf>

1462 ibid

There have been non-compliance issues too, such as many companies do not change their external auditors every five years, and question its rationale. Moreover, most companies comply only with the mandatory requirements, and show reluctance in complying with voluntary provisions, such as companies do not want to include information relating to, their articles of association, and remuneration of the board as individuals, sales or market share etc. in annual reports.¹⁴⁶³

SECP has been active in regulating the governance regulations, for example, in 2012, directors of 14 companies were proceeded against for misuse of power, 5 for failure to comply with disclosure of interest, 3 companies were proceeded against for failure to communicate the decision to issue right share to the SECP and to the stock exchanges, 10 for non-circulation of information on increase in chief executive's remuneration in the directors' report, 14 directors for failure to authenticate balance sheets, 52 proceedings were initiated for improper issue and circulation of balance sheet or profit-and-loss account, 24 proceedings were concluded against the companies for failure to file quarterly accounts within the prescribed time. All the cases concluded either with penalties or stern warnings with directions for future compliance. Also, winding up proceedings were initiated against 2 companies for failure to hold the annual general meeting, which ended in issuance of winding up order. Strict monitoring by SECP is paying off, for instance, compliance level for Circulation of Quarterly Accounts has reached 82% of the total listed companies. Investors' grievances are on the priority list of the SECP, and are dealt in a timely manner. In 2012, it received and dealt with 385 complaints on delay/non-transfer of shares, non-receipt of annual and interim accounts, issuance of duplicate shares and non-receipt and non-encashment of dividend warrants, non-holding of AGM etc.

Pakistan has moved up three positions in the World Economic Forum Global Competitiveness ranking of Efficacy of corporate boards and perception of corporate governance by investors and boards of directors. In 2008, Pakistan ranked at 126/ 134 countries with a score of 3.5/7, whereas in 2012-2013 ranking, it has scored 4.0 and ranks at 123/148 countries.¹⁴⁶⁴ The reasons for low scores over the years probably are the lack of awareness and know-how about CG on part of the companies. Lack of qualified staff for CG implementation is yet another barrier, which leads to half-hearted compliance by the companies, without appreciating its significant benefits.¹⁴⁶⁵

13.2.5 Integrity mechanisms (law)

Score	75%
Scoring Question	To what extent are there mechanisms in place to ensure integrity of all those acting in the sector?

¹⁴⁶³ *ibid.*

¹⁴⁶⁴ World Economic Forum 2013, The Global Competitiveness Report 2013–2014, http://www3.weforum.org/docs/WEF_GlobalCompetitivenessReport_2013-14.pdf

¹⁴⁶⁵ International Finance Corporation (IFC), Securities and Exchange Commission of Pakistan (SECP), and Pakistan Institute of Corporate Governance (PICG), 2007, A survey on corporate governance practices in Pakistan 2007, <http://www.picg.org.pk/admin/upload-report/Survey.pdf>

There is no separate code of conduct for businesses in Pakistan that specifically or comprehensively deals with bribery or corruption. However, many relevant provisions exist under various laws exist that for the time being; regulate the integrity of the business/corporate world.

For instance, the Companies Ordinance, 1984 along with the Code of Corporate Governance contains provisions that deal with unethical business practices, such as insider trading, fraudulent and negligent activities. Under the Companies Ordinance, the SECP has powers to appoint inspectors to investigate the affairs of a company if the business of the company is being conducted with intent to defraud its creditors, members or any other person or for a fraudulent or unlawful purpose, or in a manner oppressive of any of its members or that the company was formed for any fraudulent or unlawful purpose, or if the management of the company is guilty of misfeasance, fraud, breach of trust, or if the company is not being managed in accordance with sound business principles or prudent commercial practices.¹⁴⁶⁶

The Commission can apply to court for appropriate action on inspector's report. The court, accordingly, can either remove the directors/chief executive and can also order requisite changes in the management.¹⁴⁶⁷ Court can also order compulsory winding up of the company,¹⁴⁶⁸ if it is run and managed by persons who fail to maintain proper and true accounts, or commit fraud, misfeasance or malfeasance in relation to the company. If in the course of the winding up of a company it appears that any business of the company has been carried on with intent to defraud creditors of the company or any other person, or for any fraudulent purpose, the Court may assign personal liability.¹⁴⁶⁹ Penalty of imprisonment and fine for falsification of books have also been described under the law.¹⁴⁷⁰ Court can penalize any director, chief executive, managing agent, manager, auditor or other officer of a company for any fraudulent practice.¹⁴⁷¹ Ruling out conflict of interest, law requires any director or any officer of a company, who is directly or indirectly interested in any contract or arrangement entered into, on behalf of the company, to disclose the nature of his concern or interest.¹⁴⁷²

As per provisions of the Code, the board of directors is to exercise powers and carry out fiduciary duties with independence and a sense of objective judgment, in the interests of their company.¹⁴⁷³ To protect shareholders', creditors' and investors' interests, the Code has provisions that make it a Board's responsibility to take decisions on internal audit reports, including cases of corruption, fraud, bribery, or irregularities of a material nature. Similarly, the details of all related party transactions have to be first scrutinized by the Audit Committee of the company and upon recommendations of the Audit Committee the same shall be placed before the board for review and approval.¹⁴⁷⁴

1466 Section 265 Companies Ordinance, 1984.

1467 Section 271 *ibid.*

1468 Section 305 *ibid.*

1469 Section 413 *ibid.*

1470 Section 417 *ibid.*

1471 Section 415-420 *ibid.*

1472 Section 214 *ibid.*

1473 Section 35, clauses iv, Code of Corporate Governance, 2012, http://www.secp.gov.pk/CG/CodeOfCorporateGovernance_2012.pdf

1474 Section 35, clauses ix & x, Code of Corporate Governance, 2012, http://www.secp.gov.pk/CG/CodeOfCorporateGovernance_2012.pdf

To promote integrity, the boards have also been mandated to devise and implement a Code of Conduct defining therein acceptable and unacceptable behaviours for the board, senior management and all other employees. Such Code of Conduct has to be disseminated throughout the company and also to be put on the company's website. The board is also bound to put in place adequate systems and controls for identification and redress of complaints arising from unethical practices.¹⁴⁷⁵

In order to facilitate companies in developing an integrity mechanism, the listed companies are required to arrange orientation and training courses for their directors that acquaint them with their duties and responsibilities. It is now mandatory for directors of listed companies to attain certification under any director training program (DTP), offered by any SECP approved institution, which has 'importance of integrity and ethical obligations in exercising business decisions' as part of its course module.¹⁴⁷⁶

Another significant legal reform undertaken by SECP has been the inclusion of, framing whistle-blowing policy and whistle blower protection mechanism, in the list of the duties/responsibilities of the board of directors.¹⁴⁷⁷

Recently, The Securities and Exchange Commission of Pakistan (SECP) has also formulated the Public Sector Companies (Corporate Governance) Rules, 2013 in order to improve the governance framework of Public Sector Companies (PSCs). The rules lay down specific requirements with regard to creation of audit committee of the BoDs, internal and external audit for all PSCs, separates the position of the chairman and CEO, introduce the concept of performance evaluation of the BoDs, the chairman and the chief executive. There also are specific requirements of financial reporting, adoption of International Financial Reporting Standards (IFRS) and the directors' report to the members disclosing all company matters. Annual report, with annual financial statements, has also to be placed on the PSC's website.¹⁴⁷⁸

Public procurement contracts of goods, services and works in the public sector are regulated by the Public Procurement Regulatory Authority under the PPRA Ordinance, 2002. Integrity Pacts between the procuring agency and the suppliers or contractors are mandatory for all procurement contracts exceeding \$ 0.09 million.¹⁴⁷⁹

For private and family owned enterprises, SECP is working on a voluntary code to promote a culture of responsibility, ethics and sound management. For greater transparency, the Commission is also considering formation of an Audit Oversight Board for the independent supervision of the auditing profession.¹⁷⁸⁰

1475 Section 35, clause v(a) & (b),, *ibid.*

1476 Clause x & Annexure C, *ibid.*

1477 Section 35, Clause v(c) & ix, *ibid.*

1478 the Public Sector Companies (Corporate Governance) Rules, 2013, http://www.secp.gov.pk/CG/SRO_180_PublicSectorCompanies_CGRules_2013.pdf

1479 RULE 7, Public Procurement Rules, 2004. <http://www.ppra.org.pk/Rules.asp>

1480 Annual Report 2012, the Securities and Exchange Commission of Pakistan (SECP). <http://www.secp.gov.pk/annualreport/2012/Annual-Report-2012.pdf>

To promote healthy competitive business environment by restricting undue concentration of economic power, monopoly, restrictive trade practices and to protect consumers from anti-competitive practices, a new Competition Commission under the Competition Ordinance, 2007 was set up. The ordinance was later on replaced by the Competition Act No. XIX of 2010.

Other than the corporate legal framework, there exists a specific anticorruption agency, the National Accountability Bureau (NAB), which has wide jurisdictions in case of any act, that comes within the ambit of corrupt practices as defined by the NAB law. According to the law, any company or a body corporate, Chairman, Chief Executive, Managing Director, elected Directors, guarantors of the company, any firm, partnership or sole proprietorship, the partners, proprietor is said to commit the offence of corruption if he accepts any gift, gratification as a motive or reward for doing his official duty, or if he dishonestly or fraudulently misappropriates any property entrusted to him or under his control. Punishment for corruption under the law is up to 14 years of rigorous imprisonment.¹⁴⁸¹

13.2.6 Integrity Mechanisms (Practice)

Score 25%

Scoring Question To what extent is the integrity of those working in the business sector ensured in practice?

According to a study held in 2007, responsibility for developing corporate governance policies and compliance issues in 73% of the companies and financial institutions in Pakistan were carried out by the board of directors (BoD). 11% assigned the duties to the Company Secretary, 6% to CEO/MD, 5% had no one in particular, in 2% it was the chairman of the BoD, 2%, had corporate governance committee of the BoD, and only 1% of the companies had a compliance officer.¹⁴⁸²

In case of non-compliances with the code of conduct, the Company Law Division of the SECP has been entrusted with safeguarding the shareholders' interests and promoting good corporate governance. For instance, 10 applications for investigation of affairs of the companies that were allegedly not being managed in accordance with the law were processed in 2012. With regards protection of stakeholders' interest, the SECP received 50 complaints from different stakeholders, and 49 of these complaints were disposed off with appropriate action. The Enforcement Department of the SECP, in the year 2012, took action against 35 directors of companies and trustees of provident fund trusts, for committing irregularities in employees' provident funds. 25 of those cases concluded with penalties and 11 with strict warnings along with directions of future compliance. Directions were also given to repay the contribution due with accrued mark-up. Onsite inspection of books, records and papers of 10 companies was ordered, for unlawful inter-corporate financing, on account of misstatements in the accounts, for sale of assets on loss and large inventory write-offs.¹⁴⁸³

¹⁴⁸¹ The National Accountability Ordinance, No. XVIII OF 1999, <http://www.nab.gov.pk/Downloads/nao.asp#7-4>

¹⁴⁸² International Finance Corporation (IFC), Securities and Exchange Commission of Pakistan (SECP), and Pakistan Institute of Corporate Governance (PICG), 2007, A survey on corporate governance practices in Pakistan 2007, <http://www.picg.org.pk/admin/upload-report/Survey.pdf>

¹⁴⁸³ Annual Report 2012, the Securities and Exchange Commission of Pakistan (SECP). <http://www.secp.gov.pk/annualreport/2012/Annual-Report-2012.pdf>

Investigation into affairs of 5 companies was also initiated on allegations of not managing the affairs of the company according to the sound business practices. depriving members of reasonable return and on-provision of statutory information with respect to its affairs. Penalties and warnings were issued in 32 cases for unauthorized inter-corporate financing, in 29 cases for misstatements in the statutory documents and in 8 cases of non-disclosure of Interest by directors.¹⁴⁸⁴

SECP also has filed criminal complaint and has initiated winding up proceedings against companies for being involved in malpractices such raising illegal deposits from the general public,¹⁴⁸⁵ for fraud and corruption under the Pakistan Penal Code, 1860,¹⁴⁸⁶ for being involved in unfair trade practices and not keeping high standards of integrity.¹⁴⁸⁷

The SECP encourages the stakeholders to blow the whistle on violations/contravention of law by the management, of any company is observed. For the purpose, SECP has established a fraud Investigation Unit (FIU) for deterring and combating financial crimes in the corporate sector. Complaints can be lodged online on SECP's website or by post.¹⁴⁸⁸

National Accountability Bureau (NAB) too has taken action against companies involved in defrauding investors,¹⁴⁸⁹ black marketing,¹⁴⁹⁰ tax fraud/evasion etc.¹⁴⁹¹

Many multinational companies, financial institutions and banks have their own codes of conduct, which can be found on their websites. Most of the codes, strictly prohibit employees to engage in insider trading, benefitting from sharing inside information, breach of confidential material, falsification of documents; parallel banking, anti-competition activities, money laundering, bribery, taking gifts, kick-backs etc. Violation of any of the clauses by any employee, may lead to disciplinary proceedings culminating in punishment, reprimand, demotion or dismissal, depending upon merit of the case.¹⁴⁹²

1484 ibid

1485 Forex pk, Winding up proceedings against Natover initiated SECP informs Senate panel, Wednesday, 12 October 2011, <http://finance.kalpoint.com/highlights/business-news/winding-up-proceedings-against-natover-initiated-secp-informs-senate-panel.html> ; Business Observer. Com, Wednesday, November 17, 2010, SECP puts fraudulent company BIZNAS. Come out of business, <http://business-observer.blogspot.com/2010/11/secp-puts-fraudulent-company-biznas-com.html>

1486 SECP Takes Brokerage House To Court For Fraud, 2011, http://www.secp.gov.pk/news/PDF/News_11/PR-Aug22-2011.pdf

1487 2013 C L D 211, Securities and Exchange Commission of Pakistan <http://imranghazi.com/mtba/downloads/News/2012/Email%20-%2069-2013%20CLD%20Case%20211-13%20PEARL%20CAPITAL%20MANAGEMENT.pdf>

1488 Protection, <http://www.secp.gov.pk/Services/protection.asp>

1489 The Frontier Post, Rs2.5b fraud: NAB conducting raids to arrest main accused Posted on 2013-07-31 04:25:47, <http://www.thefrontierpost.com/article/30521/>

1490 The Express Tribune, August 7th, 2013. Watchdog's action: NAB uncovers major urea sale fraud, <http://tribune.com.pk/story/587545/watchdogs-action-nab-uncovers-major-urea-sale-fraud/>

1491 Business Recorder, Sunday, 28 July 2013, Probe into mega tax fraud cases: FBR helping NAB and other agencies, Shoaib-ur-Rehman Siddiqui, <http://www.brecorder.com/pakistan/general-news/129354-probe-into-mega-tax-fraud-cases-fbr-helping-nab-and-other-agencies.html>

1492 The Pakistan Credit Rating Agency Limited, PACRA Code of Conduct, http://www.pacra.com.pk/pages/best_practices/best_practices.php; Advans Micro Finance Bank, Code of Ethics, <http://www.advanspakistan.com/index.php?id=1119>; Allied Bank, <https://www.abl.com/investor-relations/ethics-and-business-practices/>; Bank AL Habib Limited, Code Of Conduct, <https://www.bankalhabib.com/about-us/code-of-conduct.php>; The Pakistan Microfinance Network (PMN), voluntary Code of Conduct for Consumer Protection, http://smartcampaign.org/storage/documents/Tools_and_Resources/101027_Smart_Note_PMN_FINAL.pdf

Many companies have been blacklisted, e.g., Public Procurement Regulatory Authority has blacklisted many firms for being involved in corrupt behaviour such as provision of bogus /fake documents and fraud etc.¹⁴⁹³ The Federal Board of Revenue (FBR) has also blacklisted 60 companies for filing fraudulent and bogus refund claims and input adjustments of sales tax.¹⁴⁹⁴ The Competition Commission of Pakistan too has been regulating the business environment, through penalizing violations of the Competition Act.¹⁴⁹⁵ In August 2012, the Competition Commission of Pakistan (CCP) imposed a total fine of approx. \$7.29 million, for collusive behaviour¹⁴⁹⁶ on 28 banks.¹⁴⁹⁷ CCP, in March, 2013, has issued show cause notices to 4 Electric Supply Companies for abuse of dominance and collusion¹⁴⁹⁸ in the procurement of various categories of auto/power transformers.¹⁴⁹⁹ In January 2013, the CCP has imposed a total penalty of \$0.04 million on five local courier service providers for deceptive marketing practices.¹⁵⁰⁰

13.3 Role

13.3.1 Anti-Corruption Policy Engagement

Score 25%

Scoring Question To what extent is the business sector active in engaging the domestic government on anti-corruption in practice?

Corruption is the most problematic factor for business sector in Pakistan and in the WEF GCR 2013 ranking, Pakistan ranks low, as undocumented extra payments or bribes while carrying on imports and exports business, public utilities, annual tax payments, awarding of public contracts and licenses and obtaining favorable judicial decisions are very common¹⁵⁰¹ in Pakistan. More than 60 per cent of the business executives in Pakistan are solicited for bribe payments by registry and permit offices, custom and tax revenue authorities, the judiciary, the police, or providers of basic services.¹⁵⁰²

1493 <http://www.ppra.org.pk/pakblack.asp>

1494 Dawn.com, 60 firms blacklisted for filing fake claims, Parvaiz Ishfaq Rana, Published 2013-04-09 05:21:22, <http://beta.dawn.com/news/801279/60-firms-blacklisted-for-filing-fake-claims>

1495 Official website of The Competition Commission of Pakistan (CCP), http://www.cc.gov.pk/index.php?option=com_content&view=article&id=168&Itemid=106

1496 Prohibited by Section 4 of the Competition Act, 2010

1497 CCP Imposes PKR 770 Million Fine On 1-Link (Guarantee) Limited And Its Member Banks For Imposing Uniform Customer Charges For Off-Us Atm Cash Withdrawal Transactions, July 2, 2012 http://www.cc.gov.pk/index.php?option=com_content&view=article&id=249&Itemid=151

1498 Section 3 and Section 4 of the Competition Act, 2010

1499 Alleged Abuse Of Dominance, Collusion: CCP Show Cause Notices To Ntdc,3 Discos, http://www.cc.gov.pk/index.php?option=com_content&view=article&id=297&Itemid=15118 March 2013

1500 Section 10 of the Competition Act, 2010 ;

CCP imposed Rs. 4.5m penalty on 5 local courier service providers,, 02 JANUARY 2013, http://www.cc.gov.pk/index.php?option=com_content&view=article&id=275&Itemid=151,

1501 World Economic Forum 2013, The Global Competitiveness Report 2013–2014, http://www3.weforum.org/docs/WEF_GlobalCompetitivenessReport_2013-14.pdf

1502 Transparency International 2009, Global Corruption Report 2009 Corruption and the Private Sector

But anticorruption does not seem to be on the priority list of the business sector. The regulatory authorities like SECP or PPRA are working towards reforms for corruption within the business sector, but very few and scattered efforts on behalf of the business sector, come to limelight regarding the prevalent corruption situation in the country. Leader of the business community, off and on raise voice against corruption and irregularities¹⁵⁰³ in the bureaucracy, for example, while rejecting the taxation measures announced by the government including the imposition of new taxes on business sector in 2011, all the Chambers of Commerce, in a joint declaration, demanded across the board anti-corruption initiatives by the government, to reduce tax leakages.¹⁵⁰⁴ The Pakistan National Committee of the International Chamber of Commerce (PNC-ICC) interacted with Transparency International, the National Accountability Bureau (NAB) and the Board of Investment (BoI) to recommend to the Government of Pakistan anti-corruption legislation as envisaged by the OECD Convention and the UN Convention on Anti-Corruption.¹⁵⁰⁵ Chambers of Commerce has also been asking for regulatory reforms to reduce corruption in Pakistan.¹⁵⁰⁶

Other anti-corruption initiative by the business sector in Pakistan is subscription to the UN Global Compact. Global Compact was introduced to Pakistan in May 2013,¹⁵⁰⁷ and Global Compact Pakistan Local Network was formed on December 2005 with 50 members voluntarily subscribing to Global Compact Principles.¹⁵⁰⁸ Now almost 136 companies have subscribed to UNGC.¹⁵⁰⁹ But 55 of the companies were delisted from the Global Compact in 2010 for their failure to file an annual Environmental, Social And Corporate Governance Report ESG and 37 of these were from Pakistan.¹⁵¹⁰

13.3.2 Support for / engagement with civil society

Score 25%

Scoring Question To what extent does the business sector engaged with/provides support to civil society initiative seeking to combat corruption?

Companies, Associations and Chambers of Commerce and Industries do indulge in anticorruption efforts, but the efforts have yet to reach a significant mark. Organizations such as The Centre for International Private Enterprise (CIPE), established its Pakistan

1503 Business Recorder, Massive corruption, abuse of position and irregularities at FOCl disclosed: President, Prime Minister and Supreme Court urged to take notice, September 19, 2012, <http://www.brecorder.com/business-a-economy/189/1238336/>

1504 Daily Times, Wednesday, March 16, 2011, All Chambers Of Commerce Reject Govt Taxation Measures, http://www.dailytimes.com.pk/default.asp?page=2011%5C03%5C16%5Cstory_16-3-2011_pg5_16

1505 the International Chamber of Commerce Pakistan, <http://www.iccpakistan.com.pk/About%20ICC%20Pakistan.html>

1506 Corruption in Pakistan Bureaucracy, March 6, 2011, <http://www.lawsofpakistan.com/corruption-in-pakistan-bureaucracy/>

1507 Global Compact Introduced to Pakistan 2003-05-16, http://www.unglobalcompact.org/NewsAndEvents/news_archives/2003_05_16.html

1508 Global Compact Pakistan Local Network, <http://www.ungcpakistannetwork.com/abt-pakistan-In.html>

1509 List, <http://www.ungcpakistannetwork.com/gc-mem-frm-pakistan.html>

1510 Steve Johnson, Companies fail UN's Global Compact, February 14, 2010 9:32 am, <http://www.ft.com/cms/s/0/8b19f9ee-1806-11df-91d2-00144feab49a.html#axzz2fZVHZLLS>; Business Recorder, March 16,2010, 37 Pakistani firms de-listed by UNGC for failure to fight corruption: TIP chief to present paper in seminar today by Iqbal Mirza, March 16,2010 <http://www.transparency.org.pk/news/newsdetail.php?nid=106>

office in 2006,¹⁵¹¹ and since then have been active in launching anticorruption drives in collaboration with the business sector. For instance, in 2012, Islamabad Chamber of Commerce & Industry with the support of CIPE, completed the project “Addressing the Institutional Causes of Corruption” to improve the business environment in Pakistan by reducing corruption through regulatory reforms. CIPE Pakistan also funded an online survey, conducted by the Islamabad Chamber of Commerce and Industry (ICCI), on corruption and challenges faced by young entrepreneurs, in their interaction with public sector officials.¹⁵¹²

A roundtable conference titled “Role of Private Sector in Combating Corruption” was organized in 2012, by Islamabad Chamber of Commerce & Industry (ICCI), Centre for International Private Enterprises (CIPE).¹⁵¹³

Business community members and NGOs and academia participated in a Seminar and National Walk organized by the UN Global Compact Local Network (GCLN), in March 2012. The object of this endeavour was to convey the desire of business to combat corruption and to integrate and promote the principles of UN Global Compact which require that “Business should work against corruption in all forms including extortion and bribery.”¹⁵¹⁴

17 civil society organizations have endorsed and support the G20’s Anti-Corruption Action Plan, that was announced at the November 2010 Seoul Summit.¹⁵¹⁵

Transparency International Pakistan, a major civil society organization in Pakistan, has been working for corruption free business environment and one of its major contributions is introduction of Transparency International’s Integrity Pact in public procurement.¹⁵¹⁶ Many public sector organizations like Pakistan International Airlines (PIA) in 2010,¹⁵¹⁷ Pakistan Telecommunication Authority (PTA) in 2012,¹⁵¹⁸ Oil and Gas Development Company Limited (OGDCL) in 2013,¹⁵¹⁹ Federal Board of Revenue (FBR) and National Database & Registration Authority (NADRA) in 2013¹⁵²⁰, have signed MoUs with TI Pakistan, to benefit from TIP’s expertise and ensure greater transparency in procurement and tender procedures in accordance with PPRA rules and international standards. Although Public Procurement Regulatory Authority (PPRA), does not acknowledge these pacts, and according to it any “Public sector organizations entering into MOUE entailing line clearance function do so at their own risk and cost.”¹⁵²¹

1511 The Center for International Private Enterprise (CIPE), <http://www.cipepk.org/about-us/>

1512 The Center for International Private Enterprise (CIPE), Launch of Survey on reducing Corruption in Pakistan, Thu, Jul 19, 2012, <http://www.cipepk.org/launch-of-survey-on-reducing-corruption-in-pakistan/>

1513 Official News.pk, October 25, 2012, Islamabad Chamber of Commerce and Industry organise conference on Role of Private Sector in combating Corruption, <http://www.officialnews.pk/chambers-of-commerce/31543/islamabad-chamber-of-commerce-and-industry-organise-conference-on-role-of-private-sector-in-combating-corruption/>

1514 UN Global Compact Local Network (GCLN), 2012, Business Walk & Talk against Corruption in Pakistan, Press Release, [http://www.ungcpakistannetwork.com/pdf/PressRelease/Press%20Release%20GCPL%20\(1\).pdf](http://www.ungcpakistannetwork.com/pdf/PressRelease/Press%20Release%20GCPL%20(1).pdf)

1515 Joint Civil Society Submission to G20 anti-corruption WG_2508, http://www.boell.org/downloads/Joint_Civil_Society_Submission_to_G20_anti-corruption.pdf

1516 Business Anti-Corruption Portal, Pakistan Country Profile (Part 14), October 23, 2010, <http://www.transparency.org.pk/news/newsdetail.php?nid=1031>

1517 Ibid.

1518 Pakzindabad, 3G Auction: PTA, TIP Sign MoU For Transparent Bidding, By Ghulam Sarwar - Saturday, Dec 15, 2012, <http://pakzindabad.com/2012/12/15/3g-auction-pta-tip-sign-mou-for-transparent-bidding/>

1519 Business Recorder | April 04, 2013, OGDCL, TI Pakistan Sign MoU for Implementation of 'Integrity Pact', <http://www.accesmylibrary.com/article-1G1-325065653/ogdcl-ti-pakistan-sign.html>,

1520 Business Recorder, Implementation of "Integrity Pact": FBR and Nadra to sign MoU with TI Pakistan, March 25, 2013 Iqbal Mirza, <http://www.brecorder.com/fuel-a-energy/193/1167194/>

1521 Frequently Asked Questions, PPRA, <http://www.ppra.org.pk/>

VII. CONCLUSION

VII. CONCLUSION

The preceding pillars demonstrate strengths and weaknesses within each institution in overall's National Integrity System.

The specialized watchdog agencies (Electoral Management Body, Ombudsman, Supreme Audit Institution and Anti-Corruption Agencies) are relatively strong as compared to other pillars, specifically in terms of capacity, although they are not performing their anti-corruption role as well, as would be expected from them. On the other hand, the situation is rather worrying for the non-state pillars, in particular for political parties and the civil society which have significant deficiencies in their systems of checks and balances.

NIS Pillars: Key Strengths and Weaknesses

LEGISLATURE

Strengths

- Strong Legal framework with detailed laws and provisions.
- Parliamentary Accounts Committee is playing a relatively strong role in investigating the irregularities in the activities of the executive as well as that of the parliamentarians.

Weaknesses

- The assets of the legislators are made public every year by the ECP but such declarations hold no credibility in the absence of a verification system.
- Legislative oversight of the Executive is not as effective
- Irregular publications of committee reports
- Training of members of legislatures to understand the demands of their legislative and constituency issues is limited.

Recommendation

- Legislature should develop comprehensive standards for reporting to the parliament
- Legislature should have a proper infrastructural setup, fully equipped with up-to-date technological tools, for training of legislators, so as to enable them to understand better the parliamentary procedures, drafting of motions, constituency management and defining the scope of MNA activities.
- The Parliament must legislate a law whereby all Committees publish their annual reports regularly.

EXECUTIVE

Strengths

- Ample resources to carry out their duties
- Executive was requested to pass a law for the protection of the whistle-blowers and it has successfully been passed in one region of the state.

Weaknesses

- The Executive branch is very low on governance and role. There is no specific code of conduct
- Violations with regards to the allocation of the funds are often made by Cabinet Division because of incompetence, misuse of powers and conflicts of interest.
- Many legislators do not declare their assets for audit and verification despite the orders from the Election Commission.

Recommendations

- There is a need to develop concise laws and a comprehensive code of conduct for strengthening accountability, transparency and integrity of the executive actions. In this regard either Parliament legislate laws or The Executive must develop its own code of conduct.

JUDICIARY

Strengths

- Judicial reforms are in place
- Public generally has access to information on judicial activities
- The Superior Judiciary has been quite active in legislative and executive oversight

Weaknesses

- Huge backlog and shortage of human resource
- There is no law on conflicts of interest for the judiciary.
- The salaries of judges especially of the lower courts are not compatible with the cost of living

Recommendation

- Judicial Council should develop laws on conflict of Interest and a uniform judicial code of conduct for the subordinate judicial officers.
- there must be a raise in the salaries particularly that of the subordinate judiciary and the court staff in order to bring down the incidences of corruption.

PUBLIC SECTOR

Strengths

- Ample financial resources

Weaknesses

- Lack of integrity and accountability mechanism
- Undue external influence, particularly by the government and politicians
- Public sector has no role whatsoever in educating the public and creating awareness regarding anti-corruption activities.
- There is weak implementation of procurement laws.

Recommendation

- Government and civil society need to work together to strengthen the Public Sector to take strong steps in reducing corruption.
- SAI must take effective measures to implement procurement laws.
- There needs to build an oversight mechanism along with whistle blowing policies for effective compliance of Code of conduct and integrity system.

LAW ENFORCEMENT AGENCIES

Strengths

- There are comprehensive laws to ensure independence of federal or provisional law enforcement agencies in Pakistan.
- The National Highways and Motorways Police (NHMP) can said to be 'insulated' from political influence. The NHMP is a role model for other law enforcement agencies.

Weaknesses

- Poor infrastructure and work environment
- Lack of latest equipment and technical training
- Integrity and accountability are very low in practice.
- Heavy political and feudal influence.
- Witnesses do not come forward due to fear

Recommendation

- Law enforcement agencies especially police requires serious and major reforms to reshape the infrastructure to meet the needs of the evolving world.
- The existing setup of police in the country needs to be adequately equipped with the right resources such as training, weapons and infrastructure and has standardized forensic laboratories with data-bases linkages across the country.
- The LEA should take initiatives in following integrity practices and should be made accountable for its actions

- The Law Enforcement Agencies must take integrity and disciplinary mechanisms seriously. Police must also follow the lines of the National Highways and Motorways Police (NHMP) in its performance and must take steps to de politicize itself for making its role effective. Government must enhance salaries, provide adequate training facilities, follow the policy of merit based recruitments and provide modern equipments as a part of the reforms.
- LEA should encourage people to report crimes and implement the witness protection programs.

ELECTORAL MANAGEMENT BODY

Strengths

- Well-structured setup of conducting elections.
- Information related to voting list, polling station is easily accessible to everyone.
- ECP enjoys independence under the constitution and asserts itself on political parties as well the government

Weaknesses

- There is no mechanism to ensure the integrity of the Election Commission and its members.
- Though the physical infrastructure of the ECP is well-developed, there is need for more human resource during the elections
- Lack of monitoring of the commission officers during polling
No system in place to regulate campaign finance

Recommendation

- Election Commission has code of conduct for political parties, it should have one for itself.
- Develop a system of close monitoring of the commission officials.
- The ECP must also clearly play its role in monitoring and regulating campaign finance, and take strict actions against any violations during polling.

OMBUDSMAN

Strengths

- Independent both in law and practice and completely immune to political intervention and influence.
- Well equipped with the resources.

Weaknesses

- There is no regulation to enforce Ombudsman's staff to undergo training courses on the integrity issues.
- There is no special program with Ombudsmen or the government to make Ombudsmen's services known to public.

Recommendations

- The institution of Ombudsmen can prove to be a very vital measure against corruption in public departments. Government must strengthen Ombudsmen so that they have authority to take action on complaints against public officials.
- Ombudsmen must publish annual reports regularly to highlight corruption trends in various departments.

SUPREME AUDIT INSTITUTION

Strengths

- AGP has recently taken up the task of updating the auditing techniques and adopting IT methods.
- AGP has emphasized training, research and publication tools and improving the auditing procedures.
- AGP has the authority to inspect any office accounts and officers are required to provide all information, papers and documents on demand under Article No 14 of the Auditor General Ordinance, 2001.

Weaknesses

- In practice quality control system is not strictly followed and auditors become soft in auditing.
- Although it had been proposed that the President should appoint an independent auditor to ensure the independence of the audit, the audit of SAI is done by an SAI subordinate office and as such cannot be termed independent.

Recommendation

- Legislature should pass law for appointment of an independent and third party auditor for SAI.
- SAI must ensure implementation and compliance of internal mechanism of integrity.
- The SAI must also have some sanctioning authority in case the audited bodies misbehave or when departments refuse to get audited.

ANTI-CORRUPTION AGENCIES

Strengths

- Provision for witness protection in the National Accountability Ordinance, 1999

Weaknesses

- There are no citizen oversight committees to watch over any of the ACA's actions, but there have been demands from the public for establishing such bodies.
- Lack of professional training of the employees for investigations.
- Irregular annual report publications
- No whistle blower protection mechanism
- No information on violations of code of conduct, if any

Recommendation

- Government should constitute a citizen oversight body for ACAs
- There is a need for a completely autonomous and an independent anti-corruption Agency. However, the Government should strengthen ACA and build capacity of its employees, professional expertise and specialized training particularly at investigation level.
- All ACAs need to publish its monitoring and inspection reports and to make it available to the general public.
- The ACAs must include awareness programs against corruption in their agenda, and must engage with the civil society particularly the youth and the media to create awareness against corruption.
- The ACAs must develop Whistle blower protection mechanism and encourage the public to report corruption.
- The employees of the ACAs need to follow its code of conduct and deal strictly with violations thereof.

POLITICAL PARTIES

Strengths

- Strong legal provisions, ease of registration and independence from undue external interference.
- If a political party does not follow or advocate any one of the elements of basic principles laid down in Political Parties Act, then the ECP may ban a political party.

Weaknesses

- There are no rules and regulations where state could prevent any group(s) from interfering in another party's activities. Party itself is responsible for it.
- Political Parties lack transparency in their affairs
- Weakness in internal democratic governance.

Recommendation

- Election Commission has a code of conduct for internal democratic governance of Political Parties, but it needs to strictly implement it.
- The people of the constituencies must force the political parties to adopt Internal democratic governance system and conduct internal party elections.
- The political parties must have independent audits
- They must also share their funding resources, financial spending and audit reports via the internet or otherwise, for public scrutiny.

MEDIA

Strengths

- Good legal provisions on enterprising, registration of media entities, independence and ownership transparency.

Weaknesses

- Dangerous environment for the media persons
- Transparency laws for media do not exist. In general there is no legal provision or media's code of ethics regarding accountability, transparency and governance in its working management or in its reporting system.
- Weakness in terms of exposing cases of corruption and informing the public on governance issues.

Recommendations

- The diverse and vibrant media in Pakistan needs to be free from pressures by the state, the militants and religious groups. State must ensure justice in cases of violent attacks against the journalists.
- Media must follow "Freedom of Information" laws in their true spirit.
- Quality of journalism needs improvement in terms of qualification and training according to specific media type, and day to day reporting,
- Media should indulge more into investigative reporting of important issues and also focus on running regular anti-corruption programs aiming at educating and informing public on corruption and methods of curbing it.
- Media must have code of ethics for its members. PEMRA must prepare one for Media.

CIVIL SOCIETY

Strengths

- Good legal provisions on resources and independence.
- There are no laws prohibiting CSOs from working for advocacy or criticize Government officials or politicians under the Constitution of Pakistan.

Weaknesses

- Weak integrity and accountability mechanisms.
- Weak role in holding government accountable for their actions and weakness in contribution towards reform planning for the society.
- Civil society in Pakistan has a strong role in development of human and women's rights, and health and education issues, but it lacks public trust and consequently is a victim of violence, threats and brutal attacks, mostly by militants.

Recommendation

- Government should promulgate some rules for monitoring the integrity of the civil society and make CSOs accountable to the public and a regularity authority with whom these are registered.
- The state must provide safe passage to the CSOs in conflict ridden areas for running their rightful activities.
- There is a need for comprehensive laws, code of conduct and monitoring system of their activities and resources. However as a short term measure, they should disseminate more information about their activities and funding arrangements to liberate themselves of the allegations of hidden agendas and raise credibility in the eyes of society at large.
- As far as anti-corruption efforts are concerned, the civil society can have a significant impact provided it organizes, asserts and collaborates with the government, national and international anti-corruption organizations to exert organized pressure.

BUSINESS

Strengths

- Good legal provisions on resources, accountability and governance.
- Increasing corruption in government, executive and business sector has been in public discussion in Pakistan for some decades now.

Weaknesses

- The business sector suffers from undue burden of the Executive's discretionary powers.
- There is no credible regulatory body that monitors the activities of business and takes serious measures against corruption and fraud Failure to participate with civil society in promoting awareness for an anti-corruption policy.

Recommendation

- The State should form a credible regulatory body that monitors the activities and takes serious measures against corruption and fraud present in business .
- The business sector, to rid itself of undue burden of executive's discretionary powers, instead of giving in, must report high handedness and corrupt acts of public officials.
- The business sector must have anticorruption initiatives on their agenda and sponsor anticorruption campaigns in collaboration with the civil society and the government.

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Appendix

INTERVIEWEES

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