

Citizens' Group on Electoral Process - CGEP

Election to the National and
Provincial Assemblies in Pakistan - 2008

Score Card on Pre-poll Fairness

Part 1: December 2006 – December 2007

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Executive Summary

The Citizens Group on Electoral Process CGEP has termed the pre-electoral process leading up to General Election 2008 to be **highly unfair**. In a CGEP Pre-Election Assessment Report with a Score Card on Pre-Poll Fairness, the Group, which has been meeting since December 2006 under the auspices of PILDAT, has carried out a systematic and continuous review of the Pre-poll electoral process spanning over a period of around 13 months starting from December 2006 up to December 31, 2007.

“A careful assessment of the entire period of the Pre-poll election process leaves no doubt that the process had been highly unfair. The prospects for the fairness of remaining phases of the electoral process appear to be very slim. In fact, after such a thoroughly unfair pre-poll process, the need for any manipulation in the polling-day process and post-election process should be drastically reduced,” the CGEP pre-poll fairness assessment report concludes. However, the report warns that in case the popularity of the former ruling parties takes a hit in the remaining days, as apparently is the case due to the recent assassination of Mohtarma Benazir Bhutto, one of the worst wheat crisis in the country and the worst electricity outages on a daily basis, the compulsions for manipulation and rigging of the remaining phases of election will increase and one may witness desperate acts to get the desired election results.

Assault on the Judiciary; the first in March 2007 and the second in November 2007, was perceived by the Citizens Group to be primarily to influence the electoral process and to create conditions for achieving the desired results. Curbs on the private media seemed to have been placed with the same intention. The Chief Election Commissioner (CEC) was appointed in the sole discretion of the President without any consultation and consensus by the opposition parties. Two vacancies in the 4-member Election Commission were kept vacant while the Election Commission took the most important decisions relating to the Presidential Election and the coming General Election. Officials in the Election Commission Secretariat were given arbitrary extensions in service beyond their due date of retirement. Local Government Election in 2005 was heavily rigged and such *Nazims* were put in place who could support the PML-Q candidates at the time of the General Election. The selection of the members of the Caretaker Government further strongly reinforced the suspicions about the fairness of electoral process. Almost 80 % of the Cabinets are either members of the former ruling parties or are their known and committed supporters. The remaining persons are so ineffective that their presence in the caretaker government is hardly of any consequence. Civil servants were massively transferred and favourites of the former ruling parties were placed in key positions just before the induction of the caretaker governments and announcement of the Election Schedule.

The Citizens Group includes prominent, non-partisan and generally respected national figures coming from diverse backgrounds such as Judiciary, Media, Academia, Law, Armed Forces, Civil Bureaucracy, Business and Citizens organisations and belonging to all regions of the country. Closely monitoring the pre-poll process since December 2006, the Group identified 9 parameters to assess the fairness of the pre-poll phase including Neutrality of Caretaker Governments in the Centre and Provinces; Neutrality of the Local Governments; Neutrality of the President and Governors; Neutrality of the State-owned Media; Freedom of Private Media from Government; Independence of the Judiciary; Effectiveness and Credibility of the Election

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Commission of Pakistan; Correctness, Completeness and Credibility of Electoral Rolls and Maintenance of Law and Order. The Group members evaluated the performance against each parameter and scored its performance. The individual scores were then aggregated to produce the collective Group score against each parameter.

The Citizens Group considered ***Independence of Judiciary*** and the ***Effectiveness / Credibility of the Election Commission*** as the two most important parameters to judge the fairness of the pre-poll election process. The next crucial ingredient, in the eyes of the CGEP, has been the ***Neutrality of the President and Governors*** followed by the ***Neutrality of the Caretaker Governments, Neutrality of Local Government, Freedom of Private Media, Maintenance of Law and Order, Credibility of Electoral Rolls*** and the, ***Neutrality of the State-owned Media***, in the order of importance assigned by the Citizens Group in terms of the importance of these parameters in the pre-poll process.

Judging the overall fairness of the pre-poll environment spanning over 12 months, the Citizens Group gave it a poor assessment, a score of 26 on a scale of 100. This indicates that the pre-poll election phase has been unfair to a large degree and the prospects of the entire electoral exercise to carry some credibility are extremely low. ***Neutrality of the President and Governors*** received the lowest score 14 on a scale of 100 - indicating that this is the most damaging factor for the credibility of the electoral process. ***Neutrality of the Local Governments*** and the ***Effectiveness / credibility of the Election Commission*** are the two parameters which have received the next lowest scores, 15 and 17 respectively on a scale of 100. Other parameters receiving some of the lowest scores are ***Neutrality of the Caretaker Governments (21)*** and the ***Independence of the Judiciary (22)***. In the order of scores received by each parameter, the ***Freedom of Private Media*** has received the score of 49 on a scale of 100. The Group believes that the recent restrictions imposed on November 3, 2007 through PEMRA laws, are still in force despite the lifting of emergency and it appears that the Government is specially going out to economically cripple some media houses. Acknowledging the fact that the electoral rolls suffer from many defects, the Group gives the score of 38 on a scale of 100 to the ***Credibility of Electoral Rolls***. This score may be the second highest in a relative sense but in no way is satisfactory. The score indicates that the Group feels that the Electoral Rolls are suspected of being incomplete, containing bogus votes and are not up-to-date.

The Pre-Poll Assessment Report argues that while there is near consensus in the world and in Pakistan on the need for a free and fair election in the country, there is no consensus on the definition of what constitutes a free and fair election. Another contentious contradiction is that unless an outrageous incident of rigging takes place on the polling-day, the results are more or less acceptable. The regime continues to insist that unless people come on the streets against the election results and there is widespread agitation, an otherwise flawed election will be acceptable. This is a very dangerous line of argument and not only amounts to an open invitation to miscreants and lawless elements in the society, but runs contradictory to the democratic principle and in violation of the people's right to express through election.

Looking ahead, the Citizens Group believes that even at this stage, the only way for holding a free fair and credible election is the reconstitution of the Caretaker Governments and the ECP through consensus of Political Parties & Civil Society. The Group contends that the future of democracy in Pakistan is linked to a free and fair election. Not only the coming election is a great test for the country, the post-election challenges will also put the leadership to extreme tests. Only a leadership with a strong mandate by the people of Pakistan can have the strength to deal with such apparently-insurmountable problems. The Constitution of Pakistan, though repeatedly mutilated by the successive military governments, still provides a strong basis to build a democratic order on in Pakistan. However, the Group warned that if the coming election turns out to be anything but completely free and fair, the challenges facing the country will compound and democracy, along with the future of the State, may face grave threats.

Introduction

Election to the 272 seats of the National Assembly and 577 seats of the four Provincial Assemblies (Balochistan, NWFP, Punjab and Sindh) in Pakistan has now been rescheduled from the earlier date of January 8, 2008 to February 18, 2008 except a few constituencies where election may be deferred due to the death of a candidate or some other compelling reason. The National Assembly will then elect the Chief Executive of the country called Prime Minister. Each Provincial Assembly will likewise elect its respective Chief Minister. Serious concerns have been expressed by various political leaders, citizens groups and political observers within the country and international observers and foreign governments about the prospects of Free and Fair Election in Pakistan. The Government of Pakistan and the parties forming the former ruling coalition have consistently maintained that the Election will be Free, Fair and Transparent. Fairness of elections in Pakistan has been generally disputed by the political parties. At times, international election observer missions have also expressed dissatisfaction about certain aspects of the past elections.

More than ever before in the history of the country, there is a great international interest in the election in Pakistan. The Governments of the United States and several European countries have openly and repeatedly called for Free and Fair election in Pakistan. Many of these governments have extended financial and technical assistance mostly to the Election Commission of Pakistan to organise Free and Fair Election.

Election 2008 is a landmark in Pakistan's journey towards full democracy because this is going to be the first election under a non-military government since 1997. Armed forces had staged a coup in October 1999 and removed the elected government of Prime Minister Nawaz Sharif. General Pervez Musharraf, the then Chief of Army Staff and leader of the coup ruled the country under Martial Law for 3 years. He held election to the National Assembly and the four provincial assemblies in October 2002, while he was still the Army Chief cum President. These assemblies completed their 5-year term in November 2007 after which fresh election was announced. A number of events and developments took place between the Coup of October 1999 and the announcement of election 2008 which make the coming election no ordinary democratic event. The major events and developments are recapped below to set this report in proper context.

Pre-poll Electoral Process

The observation and monitoring of the coming election has, therefore, become a very important responsibility. Since Election is a long-term process and not just a polling-day event, it is important that the Process should be observed right from the beginning in order to get a wholesome and comprehensive view of the election. Since the possibility of manipulation and rigging of election is not limited to just the polling-day and major manipulations are now thought to occur well before the polling day, the Pre-poll phase of the election process has assumed greater importance. It is not a coincidence that various international institutions sent a number of pre-election assessment missions to Pakistan to study the environment and context in which election is going to take place. The National Democratic Institute (NDI) of the United States sent two pre-election observer missions; one in May and the other in November 2007. The International Republican Institute (IRI) also sent one such mission in November 2007. The European Union (EU) and the Commonwealth Secretariat London also sent Pre-election missions. Embassies of the US and several European countries also have been active in monitoring the election-related developments.

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Despite the interest and intense engagement of the foreign election observers, their knowledge about the complexities of local politics is generally less than complete. Security and travel restrictions impose extra limitations on their missions. Their stay in the country is also limited. It is, therefore, important that local citizens and their groups should be active and vigilant in observing and monitoring the long-term electoral process. It is in this context that Pakistan Institute of Legislative Development And Transparency - PILDAT facilitated the formation of a Citizens Group on Electoral Process - CGEP in December 2006. The Group consists of prominent, non-partisan and generally respected national figures (Full list of members can be seen in Appendix A) coming from diverse backgrounds such as Judiciary, Media, Academia, Law, Armed Forces, Civil Bureaucracy, Business and Citizens organisations and belonging to all regions of the country. The group started observing the electoral process since December 2006. Justice (Retired) Syed Wajih-ud-Din Ahmed, a former judge of the Supreme Court of Pakistan

who had declined to continue as a judge under Martial Law and thus sacrificed his career in 2002 was the elected Chairman of the CGEP. In October 2007, when he was made a candidate for the office of the President of Pakistan by the lawyers' organisations all over the country, he resigned as Chairman and member of the Group, as per the rules of business of the Group. The CGEP subsequently elected Justice (Retired) Saeed uz Zaman Siddiqui, former Chief Justice of Pakistan, as Chairman of the Group. Justice Siddiqui had also declined to take fresh oath of his office on a Provisional Constitutional Order (PCO) promulgated by the Chief of Army Staff and was retired by the Military Chief in 2000. Besides being observer of the process, the Group has continuously communicated with the Political Parties, the Election Commission and the Government of Pakistan. The Group also approached the Supreme Court of Pakistan when preliminary electoral rolls were made public by the Election Commission and around 20 million estimated voters were found missing. As a party to the petition which was originally filed by Mohtarma Benazir Bhutto, Chairperson of the Pakistan Peoples Party (PPP), the CGEP and the PILDAT through its counsel Mr. Shahid Hamid (who being a member of CGEP pleaded without any professional fee) successfully got the direction of the Supreme Court to the Election Commission to ensure that the missing voters are included in the electoral rolls. The Group has been assisted with the research and administrative support by PILDAT which also acts as the Group secretariat. The group met at least once a month during the past 14 months to review the electoral process and issue / record its observations.

Score Card on the Pre-Poll Fairness

This report sums up the key findings and conclusions of the Group about the pre-poll phase of the election since December 28, 2006 to December 31, 2007. The Group has identified 9 key issues relating to the Pre-poll phase of the elections to develop a score card for the fairness of this phase and to assess the prospects of a Free and Fair Election on February 18, 2008. Originally when the polling date was January 8, 2008, this report would have been the only report issued by the Group for the Pre-poll phase but as the polling date has been put off to February 18, it has been decided to release this report as Part 1 of the Pre-poll phase. Another report, covering the period up to a week

before the Polling day may be issued as Part 2.

The report briefly explains 9 key issues and how the Group assessed the fairness of the electoral process through them. A score card presented in Figure 1 indicates how the Group graded various aspects of the pre-poll electoral process. The section on conclusion carries the Group's assessment of the fairness of the Pre-poll Electoral Process.

Key Events and Developments as run up to the Election

- 1. October 12, 1999:** The Armed Forces take over the Government and the Chief of Army Staff General Pervez Musharraf takes over the reins of the country as the "Chief Executive." The Constitution of the country is suspended and the affairs of the state are run under a Provisional Constitutional Order (PCO) promulgated by General Pervez Musharraf.
- 2. January 25, 2000:** General Musharraf asks judges of the Supreme Court and High Courts to take a fresh oath of their office on the PCO to ensure their allegiance to the new set-up. Six (6) of the Thirteen (13) judges of the Supreme Court decline to take fresh oath and are retired. The Chief Justice is not allowed to proceed to his office till a new Chief Justice takes oath.
- 3. April 6, 2000:** The ousted Prime Minister Nawaz Sharif is convicted by a special court for attempting to hijack the plane carrying Gen. Pervez Musharraf from Colombo, Sri Lanka to Karachi on October 12, 1999.
- 4. May 12, 2000:** The Supreme Court rules that General Musharraf's take over of the Government was justified under the law of necessity. The Court allows Gen. Musharraf to amend the Constitution of Pakistan to the extent necessary without tempering with the fundamentals of the basic law. The General is given 3 years to hold election and transfer power.
- 5. December 9, 2000:** The imprisoned former Prime Minister Nawaz Sharif and his extended family is allowed to proceed to Saudi Arabia and President grants pardon to him in the cases in which he is convicted. A deal is agreed between Mr. Nawaz Sharif and Gen. Pervez Musharraf through the mediation of Saudi King / Crown Prince. The Government claims Mr. Nawaz Sharif has accepted to stay in exile for 10 years.

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- Mr. Nawaz Sharif and family deny but full details are not disclosed.
6. **March 23, 2001:** A large number of leaders break away from Pakistan Muslim League Nawaz (PML-N) headed by Mr. Nawaz Sharif and form Pakistan Muslim League (Quaid-e-Azam) under the leadership of Mian Azhar and Chaudhary Shujaat Hussain with the reported and widely-believed active encouragement and support by the Government of Gen. Pervez Musharraf. In his book "In the Line of Fire,"¹ Gen. Pervez Musharraf says the PML-Q was created at his behest and with the assistance of his principal secretary Tariq Aziz ahead of Election 2002.
 7. **June 20, 2001:** Gen. Musharraf eases out the elected President and takes over as President of the Country as well.
 8. **April 30, 2002:** Gen Musharraf gets endorsement of his election as President in a referendum. The referendum is generally believed to be heavily rigged and manipulated. Later, he admits to "excesses" taken place in the referendum and the "wrong decision of [holding] the referendum..."²
 9. **August 21, 2002:** President and Chief Executive Gen. Pervez Musharraf issues the Legal Framework Order 2002 interjecting many amendments to the 1973 Constitution, particularly the restoration of Article 58 (2-B) to dismiss the government and setting up of the National Security Council.
 10. **October 10, 2002:** Election to the National and 4 Provincial Assemblies are held. State intelligence agencies are reportedly heavily involved in ensuring victory for pro-Musharraf parties. The PML-Q emerges as the largest single party though short of absolute majority.
 11. **November 21, 2002:** PML-Q wins election of the Prime Minister and Mir Zafarullah Jamali forms a coalition government at the centre.
 12. **December 31, 2002:** The immunity to defect from the party on whose ticket the MNAs and MPAs were elected ended as Article 63-A of the Constitution which prohibits defection comes into effect.
 13. **March 12, 2003:** The remaining suspended articles of the Constitution relating to the Senate are revived with the swearing-in of the new Senate. The Constitution, therefore, stands fully revived.
 14. **December 24, 2003:** Gen. Musharraf, in a nationally televised speech, and under an understanding with Opposition Parties undertakes to retire as the Chief of Army Staff latest by December 31, 2004.
 15. **December 29, 2003:** The National Assembly passes the 17th Constitutional Amendment, in essence, legitimising the Legal Framework Order 2002 with some amendments.
 16. **January 1, 2004:** General Pervez Musharraf gets vote of confidence from the Parliament and the four Provincial Assemblies on the basis of the aggregate votes.
 17. **December 30, 2004:** Gen. Musharraf announces that he will not retire as the Chief of Army Staff; decides to keep both the offices (President and COAS till 2007) and gets a legislation passed from the Parliament which allows him to keep the two offices up to November 15, 2007.
 18. **March 9, 2007:** Gen Musharraf files a reference for the disqualification of the Chief Justice of Pakistan. He also makes the Chief Justice dysfunctional, sends on forced leave and Police manhandles him when he attempts to walk to the court for appearing in his case. A lawyers' movement starts to get the Chief Justice reinstated. The movement gains momentum and people and political parties also join the street demonstrations and sit-ins in front of the Supreme Court building.
 19. **July 20, 2007:** A full Supreme Court consisting of 13 judges reinstates the Chief Justice by 10 to 3 majority judgment and dismisses the reference filed by the President.
 20. **August 23, 2007:** Supreme Court rules that the former Prime Minister Nawaz Sharif and his family have full rights to return to Pakistan and stay here.
 21. **September 10, 2007:** Mr. Nawaz Sharif returns to Pakistan; is detained and manhandled at Islamabad Airport and deported to Saudi Arabia after a few hours of his arrival.
 22. **September 27, 2007:** Gen. Pervez Musharraf files his Nomination Papers as a candidate for the new 5-year term of the President while he still holds the office of the Chief of army Staff.
 23. **September 28, 2007:** The Supreme Court dismisses on technical grounds petitions against Gen Pervez

1. Musarraf, Pervez. 2006. *In the Line of Fire*. Simon and Schuster, London. Page 166-167

2. *Ibid*. Page 168

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- Musharraf holding two offices, giving a legal boost to the Gen. Musharraf to contest the election for the second term in uniform.
24. **October 2, 2007.** New petitions filed with the Supreme Court challenging the qualification of Gen. Musharraf as a Presidential candidate.
 25. **October 2, 2007:** All legislators belonging to the Opposition parties except PPP resign from National Assembly and 4 provincial assemblies as a protest against the candidature of Gen. Musharraf for Presidency while he is a sitting Chief of Army Staff. The JUI-F legislators in NWFP withhold their resignations.
 26. **October 5, 2007:** The Supreme Court refuses to suspend the Presidential Election process but asks the Election Commission not to initiate formal notification of the winner of the Presidential election unless Supreme Court adjudicates on the petition challenging Gen. Musharraf's candidature. The Court continues to hear the case.
 27. **October 6, 2007:** Presidential Election is held despite the walk-out of the PPP legislators and resignations of other Opposition legislators. According to unofficial results Gen. Musharraf wins Presidency with 57 % votes.
 28. **October 18, 2007:** Mohtarma Benazir Bhutto, Chairperson of the PPP, returns to Pakistan after a self-imposed exile of about 8 years. Bomb blast in her homecoming rally kill over 125 people.
 29. **November 3, 2007:** Gen. Musharraf suspends the Constitution of Pakistan, proclaims a "State of Emergency," promulgates a new Provisional Constitution Order (PCO 2007), asks judges of the Supreme Court and High Courts to take a fresh oath of office, orders country-wide arrests of potential dissidents, mostly lawyers and political leaders; shuts down the transmission of private TV Channels. A 7-member Supreme Court bench hurriedly convenes and declares Gen. Musharraf's actions unconstitutional and unlawful. Chief Justice and members of the bench hearing the case of qualification of Gen. Musharraf as a Presidential candidate are forcibly removed from the Court premises and confined to their residences. Country-wide protests start and so does the government crackdown on potential protesters. Gen. Musharraf appoints a new Chief Justice of the Supreme Court and inducts mass scale new judges. 13 out of 17 Supreme Court Judges and overall about 60 judges of the Supreme and High Courts refuse to take fresh oath in defiance of Gen. Musharraf's orders. The Government announces their removal.
 30. **November 11, 2007:** Gen Musharraf announces that the National and Provincial assemblies will complete their terms on 15 and 20 November 2007 respectively and the fresh election will take place within 60 days of their completion of the term.
 31. **November 15, 2007:** National Assembly completes its term and President appoints Mr. Mohammedmian Soomro, the Senate Chairman elected on a PML-Q ticket, as the Caretaker Prime Minister.
 32. **November 20, 2007:** Provincial Assemblies of Balochistan, Punjab and Sindh deemed to have completed their terms and Caretaker Chief Ministers and their cabinets appointed by the President.
 33. **November 20, 2007:** The Election Commission announces the Election Schedule, fixing January 8, 2008 as the Polling date.
 34. **November 22, 2007:** A 10-member bench of the new Supreme Court dismissed the last pending challenge to General Pervez Musharraf's election as President clearing the final obstacle to his becoming civilian President.
 35. **November 23, 2007:** A 7-member bench of the new Supreme Court held that the proclamation of Emergency by General Pervez Musharraf was valid and he also had the powers to amend the Constitution in the absence of the Parliament. Another bench of the Supreme Court which had dismissed the last petition seeking to disqualify General Musharraf as a candidate for the Presidential election a day earlier, issues a short order certifying the October 6 presidential election of General Pervez Musharraf but says he should take the oath of the office only after quitting the post of the Chief of Army Staff. Vacating the stay against the Election Commission of Pakistan from notifying the results of the presidential election, the 10-member SC bench directs the Commission as well as the federal government to take steps by December 1 for the final announcement of the results of the election and issue a public notification. The court holds that General Musharraf was qualified for and did not suffer from any disqualification under the Constitution for the

presidential election 2007. "The view taken by the Chief Election Commissioner is unexceptionable," the verdict says.

36. **November 25, 2007:** Mr. Nawaz Sharif, leader of the PML-N, returns to Pakistan and is not stopped by the Government.
37. **November 28, 2007:** Gen. Pervez Musharraf retires from the Army and hands over the command of the Army to the new Chief of Army Staff (COAS), Gen. Ashfaq Parvez Kayani.
38. **November 29, 2007:** Gen. (Retd.) Musharraf takes oath as the President of Pakistan for a new term.
39. **December 14, 2007:** Gen. (Retd) Pervez Musharraf, through ordinances, introduces six more amendments in the Constitution a day before the lifting of the emergency, revocation of the Provisional Constitution Order (PCO) and restoration of the Constitution. Attorney General announces that an amendment in Article 44 (2) allows the incumbent President to seek re-election for a fresh term of five years, notwithstanding any bar in the Constitution.
40. **December 15, 2007:** Gen. (Retd) Pervez Musharraf lifts the emergency, repeals the Provisional Constitution Order (PCO) and revives the 1973 Constitution after effecting amendments through presidential decrees. Chief Justices and judges of the Supreme Court, High Courts and Federal Shariat Courts take the oath again shortly after the order officially called the Revocation of Proclamation of Emergency Order 2007 which is notified by the Cabinet Division. The order provides a blanket cover to Musharraf against any challenges to his re-election, proclamation of emergency order of Nov 3, introduction of the PCO and all actions taken from Nov 3 to Dec 15. The move is aimed at validating all actions taken under the PCO, particularly the reshuffle in the superior judiciary, and amendments made to the Constitution through presidential decrees.

Parameters to Assess the Fairness of Pre-poll Electoral Process

1. Neutrality of Caretaker Governments in the Centre and Provinces

The Constitution of Pakistan as amended by General

Musharraf through Legal Framework Order 2002 provides for the appointment of Caretaker Governments at the Centre and in the Provinces during the period of election. These governments are appointed by the President of Pakistan in his discretion. Although the idea of caretaker government implies a neutral non-partisan government as otherwise there is no need to replace a sitting government with a caretaker government, the Constitution does not expressly call for a "neutral" or "non-partisan" care-taker government. The Constitution bars the caretaker Prime Minister and the caretaker Chief Ministers from contesting election but there is no such bar on caretaker ministers at the Centre and the Provinces. The Citizens Group considers the neutrality of the Caretaker governments of critical importance in ensuring Free and Fair Election. The Caretaker Governments appointed by Gen. Pervez Musharraf for the election to be held on January 8, 2008 (now on February 18, 2008) are not neutral. The Caretaker Prime Minister is the sitting Chairman of the Senate, a position to which he was nominated by the former ruling party PML-Q. He has never resigned from that party, although he enjoys respect and has not been a controversial figure as a Chairman of the Senate of Pakistan. Several Ministers in the Centre and the Provinces are senior officials of the former ruling parties. For example, Mr. Nisar Memon, the Minister for Information and Broadcasting in the Federal Caretaker Government is the Additional Secretary General of the PML-Q and Dr. Muhammad Amjad, the Minister for Inter-Provincial Coordination in the Federal Caretaker Cabinet is President of PML-Q Islamabad city. Ms. Roshan Khurshid Bharucha, a minister in the Balochistan Provincial Caretaker Cabinet is not only a former PML-Q Senator and member but also a candidate in the coming election. Similarly, all the five caretaker cabinets predominantly consist of PML-Q members, officials or loyalists. These kinds of heavily partisan caretaker governments can not inspire confidence for free and fair election.

2. Neutrality of the Local Governments

The Local Governments election in 2005 was held on a non-party basis but there is no secret that a bulk of the

Nazims (equivalent to a Mayor) at the Union, Tehsil or Tauluka or Town and District or City District levels have their loyalties with the PML-Q and its allied parties, as was so openly claimed by the then ruling party soon after the 2005 election. Bulk of the polling staff such as Presiding Officers, Assistant Presiding Officers and Polling Officers come from the Local Government departments such as School teachers from the Education Department. The polling staff, therefore, are highly vulnerable to the Local Government Nazims. Most of the local resources such as the venues for meetings, vehicles, development funds, human resources are all controlled by the Local Government Nazims. The potential to misuse such resources for a favourite candidate is enormous. The reports pouring in from the districts, tehsils and below during the past many weeks indicate an alleged massive misuse of the local government resources and powers. A bulk of the complaints sent by the candidates to the Election Commission related to the local governments. Many political parties had demanded that the Nazims be made dysfunctional at least for the period of the election. If federal and provincial governments are replaced by caretaker governments during the election period, it may not be unfair to make the local government Nazims also dysfunctional. In its draft Model Code of Conduct released in June 2007, the Citizens Group had also suggested that the elected Local Governments be made dysfunctional much ahead of the election but this suggestion was not accepted. The partisanship of the local governments Nazims is, therefore, a major obstacle to free and fair election given the realities of Pakistani socio-political scene.

3. Neutrality of the President and Governors

Under the prevailing political system in Pakistan, neutrality of the President and provincial Governors is of paramount importance. The President is the appointing authority for the Caretaker governments in his sole personal discretion and the Caretaker governments, therefore, by tradition, look up to him for guidance and direction. Gen. (Retd.) Pervez Musharraf, in particular, had been a very powerful President as he was until recently the Chief of Army Staff as well. Moreover, the President has ensured his continuity for the next 5 years by getting himself

elected ahead of the Assemblies. A tilt by the President in any direction, therefore, can play a decisive role in tipping the balance in favour of a party. Voters in general, especially in the rural areas, tend to invest their vote in a candidate who is likely to have a good working relationship with the government if not a part of the government since most of their problems like jobs, transfers, intercession with local administration and police depend on a favourable attitude of the Government. With President firmly in the saddle, common people will tend to vote for a party favoured by him as that party will, in common perception, be the Government Party. President's support for a party also sends a very clear message to the functionaries of the Government at all levels that which side should they be supporting or at least have a soft corner for in the coming election. The President has never hidden his support and inclination for the PML-Q and its allies. As recently as December 17, 2007, General Musharraf has asked people in a public meeting in Vehari to vote for a party which has been supporting him; leaving no doubt that he was canvassing for the PML-Q. This was done against all norms, laws and rules right in the middle of the Election Schedule.

4. Neutrality of the State-owned Media

The state-owned Pakistan Television (PTV) has the vastest (nearly 100 %) coverage of the population especially in rural areas compared to the private satellite and cable channels which have a coverage of roughly 50 % of the population. The PTV has been extremely pro-government to the near exclusion of the opposition and those who may differ with the government policies. During the period of "emergency" the PTV went extremely anti-opposition parties. The situation has improved to some extent after the caretaker government took over the charge though there is a huge scope for improvement on this score.

5. Freedom of Private Media from Government

Freedom of private media had been a strong point of the Musharraf government during the pre-emergency phase and it will be unjust not to admire the remarkable tolerance shown by the Government towards scathing criticism and even ridiculing of the Government

ministers at times. The pendulum seems to have swung too far in the other direction since November 3, 2007 when initially all private channels including international news channels were pushed off air by asking cable operators to discontinue the cable transmission of those channels. Later, new PEMRA laws were introduced despite serious reservations by the media organisations. Channels were only allowed back on air after they signed a Government-drafted Code of Conduct. The PEMRA Laws, a huge cause of concern for media, still remain after the lifting of emergency and the most popular News channel “Geo News” still remains off air as of writing this report. Not only Geo News but other channels of the Geo network such as Geo Sports have also not been allowed back onto the air waves by the Government implying that the Government is specially going out to economically cripple some media houses.

6. Independence of the Judiciary

The record of General Musharraf in the context of Independence of Judiciary has not been so bad compared to some of the elected civilian governments in the past until March 9, 2007 when he unsuccessfully tried to remove the Chief Justice of Pakistan. Later, it touched new lows when he suspended the Constitution and deposed almost 60 judges of the Supreme and High Courts simply to forestall a feared judgment of the Supreme Court in which he may have been declared unqualified to be a Presidential candidate and thus his presidential ambitions could have been jeopardised by that decision. Currently, the Government scores almost zero on this count as it has displayed near zero respect for the independence of judiciary. The Citizens Group believes that without an independent judiciary, the atmosphere of fear and intimidation which was created by the removal of the Chief Justice and other judges can not be undone. The ill treatment meted out to the top judiciary in the country must have sent a strong signal to the remaining superior judiciary and the entire subordinate Judiciary whose members act as Returning and District Returning Officers that if such senior judges can be removed and humbled by the stroke of a pen, the junior Judiciary is of no consequence and can be

easily sorted out. The same signal may also have been passed to the Election Commission whose members come from High courts and Chief Election Commissioner is a former Judge.

7. Effectiveness and Credibility of the Election Commission of Pakistan

The Election Commission consists of a Chief Election Commissioner (CEC) and 4 members each representing a provincial High Court (PCO 2007 has added a federal High Court and thus the number of members is also increased to 5). The current Election Commission has only 2 members on the date of writing this report while the representatives from the other 3 High Courts (Sindh, NWFP and Islamabad) are not on the Commission. Legally the Election Commission may be competent to carry out its functions but the continued absence of two (and now 3) members out of a total 4 (now 5) members of the Commission raises a very serious question about the effectiveness of the institution. Another structural flaw which the Election Commission of Pakistan suffers is in the form of part-time availability of its members for the Election Commission since they are full time serving judges of the high courts with the regular work load at their respective High Courts. They normally sit in their respective High Courts and travel to the Head Office of the Election Commission for meetings or whenever their presence is warranted. This structural arrangement means that the CEC is the only full-time member of the Commission assisted, of course, by a Secretariat. This arrangement impairs the spirit of collective decision-making and should be addressed. The inability of the Election Commission to take notice of the President's public meetings after the announcement of the election schedule where he openly asked the voters to vote for the parties which supported him speaks volumes for the ineffective role of the CEC. The Election Commission also could not take any action against the *Nazims* of the local governments although the CEC admitted that a bulk of the complaints received by the Election Commission pertained to the alleged irregularities committed during the election campaign. There is a widespread and open violation of the Election Laws and the Code of Conduct

in the form of large hoardings, banners and posters put up by a large number of candidates but the Election Commission has not been able to take notice of such violations. Some political parties have placed large advertisements in the newspapers containing personal attacks and provoking provincial hatred in clear violation of the electoral laws and the Code of Conduct. The Election Commission, in general, fails to assert the powers and authority given to it by the Constitution and the laws and this has unfortunately created a widespread perception of ineffectiveness of the Election Commission. The current Chief Election Commissioner is a full time official with a term of 3 years guaranteed under the Constitution. The constitutional security of the term of the CEC is considered a measure of the independence of the Election Commission. The CEC can not be removed from office except in the manner prescribed for the removal of a judge and since, until recently, it required a very careful and thorough process for the removal of a judge from his office, the term of the CEC was also considered constitutionally protected. But since November 3, 2007 when the President of Pakistan / the Chief of Army Staff took the unconstitutional step of removing around 60 judges of the Supreme and High Courts with a single stroke of a pen without any whatsoever any due process of law, the uncertainty of the CEC's term has become obvious and this has likewise downgraded the independence of the Election Commission.

Since the CEC has been appointed by the President in his sole discretion without any consultative process with the opposition parties, the CEC has not enjoyed the degree of trust he should, given the delicate nature of his responsibility.

8. Correctness, Completeness and Credibility of Electoral Rolls

Correct, complete and updated electoral rolls (voters list) are a key pre-requisite of a fair election and a major milestone of the pre-poll process. The Chief Election Commissioner initiated the process of preparing fresh electoral rolls on April 15, 2006 at a cost of 1 Billion Rupees and opted to go for door-to-door enumeration instead of making use of the computerised and reasonably accurate database of 60 million potential

voters available with National Database and Registration Authority (NADRA). The Preliminary electoral rolls made public by mid-June 2007 indicated that total registered voters were a little over 52 Million. This was about 20 million less than the number of registered voters in 2002 and about 27 million less than what the estimated registered voters should have been in 2007 after population growth since 2002. While the Election Commission refused to entertain the objections of the political parties and the civil society on the obvious discrepancy in the number of registered voters, the matter was agitated at the Supreme Court which directed the Election Commission to add the "missing" voters to the 2007 Rolls after comparison with the 2002 Rolls irrespective of the fact that they processed Computerised National Identity Cards (CNICs) / National Identity Cards (NICs) or not. The Election Commission complied with the orders by adding 27 million voters to the list. It was rather unfortunate that Pakistan Peoples Party counsel pleaded for and the learned Supreme Court conceded to waiving the condition of processing a CNIC/NIC for registration as voter. This opened the floodgates of potentially bogus voters. The Election Commission consistently but un-understandably resisted the appeals to provide electoral rolls Compact Discs (CDs) to political parties and citizens and to place the list on the ECP website. Finally, the Supreme Court had to direct the ECP at the request of PILDAT/CGEP to provide CDs of the Electoral Rolls to anyone who asks for it and place the complete rolls on the ECP website. The process of addition of 27 million "missing" voters is rather shrouded in mystery and it is not clear how well the verification was carried out by the ECP. The integrity of the Electoral Rolls, therefore, to say the least, remains questionable.

9. Maintenance of Law and Order

It is important that law and order should be maintained throughout the electoral process so that various political parties and candidates should be able to run their election campaign in a free atmosphere and that voters should be able to participate in the election campaign without any coercion or threat. Unfortunately the current election campaign is proving to be the bloodiest in the history of the country. Military

action was in progress in a number of districts in NWFP through most of the election period. Ms. Benazir Bhutto's reception rally on October 18, 2007 in Karachi was attacked resulting in 176 persons' death while the top PPP Leadership including Ms. Bhutto herself narrowly escaped. Former Minister for Interior Aftab Sherpao also narrowly escaped but 56 persons died and over 100 injured in a bomb blast in Charsadda (NWFP) on the day of Eid ul Azha (December 21, 2007). The PPP's Liaqat Bagh public meeting on December 27, 2007 ended in the assassination of Ms. Benazir Bhutto and 21 of her supporters. The ensuing protests led to unprecedented destruction of property estimated to the tune of billions of rupees and at least 30 deaths. Mr. Nawaz Sharif's rally was also shot at on December 27 in Islamabad resulting in 6 deaths. Nine persons including Asfandyar Amirzeb, grandson of former ruler of Swat and a candidate for the NWFP Provincial Assembly died in a bomb attack after his election meeting on December 28 in Mingora, Swat. These are just some and a few of the instances of precarious law and order condition in the country during the election period. Since maintenance of law and order is primarily the responsibility of the Government, the major blame for the breakdown in the law and order is also assigned to the Government.

Methodology of the Score Card

The CGEP has identified 9 parameters to assess the fairness of the pre-poll phase. These parameters and the performance against each of them has been discussed in the preceding paragraphs. The Group members have evaluated the performance against each parameter and scored its performance. The individual scores were then aggregated to produce the collective Group score against each parameter. The Score Card reflecting the aggregate Group score is given in Figure 1. In order to develop the score card, the group has collectively and its members individually have also determined the relative importance or weightage of these parameters. This weightage is shown in Figure 2. The Overall score has been adjusted to reflect the weightage or relative importance of each parameter.

Key Points of the Score Card

Following are some of the key points of the Score Card:

1. The Group has considered **Independence of Judiciary** and the **Effectiveness / Credibility of the Election Commission**, the two most important parameters to judge the fairness of the pre-poll election process. Both have been given a weightage of 98 on a scale of 100 followed by the **Neutrality of the President and Governors** which has been given a weightage of 93.
2. The other parameters in the order of importance or weightage are **Neutrality of the Caretaker Governments** with a weightage of 88 followed by **Neutrality of Local Government** (87), **Freedom of Private Media** (82), **Maintenance of Law and Order** (81), and **Credibility of Electoral Rolls** at 79. Relatively least important was the **Neutrality of the State-owned Media** which is given a weightage of 69.
3. The Group feels that despite the recent restrictions imposed on November 3, 2007, some of which are still in force, the private media still enjoys some degree of freedom. This is why the **Freedom of Private Media** has received the highest score of 49 on a scale of 100.
4. Despite the fact that the electoral rolls suffer from many defects, the Group gives the second highest score to the **Credibility of Electoral Rolls**. This score of 38 on a scale of 100 may be the second highest in a relative sense but in no way is satisfactory. The score indicates that the Group feels that the Electoral Rolls are suspected of being incomplete, containing bogus votes and not up-to-date.
5. **Neutrality of the President and Governors** receives the lowest score 14 on a scale of 100 - indicating that this is the most damaging factor for the credibility of the Pre-poll electoral process.
6. **Neutrality of the Local Governments** and the **Effectiveness / credibility of the Election Commission** are the two parameters which have received the next lowest scores, 15 and 17

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respectively on a scale of 100.

7. Other parameters receiving some of the lowest scores are ***Neutrality of the Caretaker Governments*** (21) and the ***Independence of the Judiciary*** (22).
8. Overall the fairness of pre-poll Electoral Process has been judged quite poorly as it receives a score of 26 on a scale of 100. This indicates that the pre-poll election phase has been unfair to a large degree and the prospects of the entire electoral exercise to carry some credibility are extremely low.

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Figure 1: Score Card on Pre-Poll Fairness

No. Parameter	Score on a Scale of 100 (1=Min. i.e., the Worst; 100=Max. i.e., the Best)
1 Neutrality of Caretaker Governments	21
2 Neutrality of Local Governments	15
3 Neutrality of the President and Governors	14
4 Neutrality of the State-Owned Media	26
5 Freedom of Private Media	49
6 Independence of Judiciary	22
7 Effectiveness / Credibility of the Election Commission	17
8 Credibility of Electoral Rolls	38
9 Maintenance of Law and Order	33
Overall Score on Pre-Poll Fairness	26

Figure 2: Relative Importance (Weightage) of Parameters of Pre-Poll Fairness

No. Parameter	Relative Importance (Weightage) on a Scale of 100 (1=Least Important; 100=Most Important)
1 Neutrality of Caretaker Governments	88
2 Neutrality of Local Governments	87
3 Neutrality of the President and Governors	93
4 Neutrality of the State-Owned Media	69
5 Freedom of Private Media	82
6 Independence of Judiciary	97
7 Effectiveness / Credibility of the Election Commission	98
8 Credibility of Electoral Rolls	79
9 Maintenance of Law and Order	81

Conclusion and Prospects for the Remaining Phases of Election

A systematic and continuous review of the Pre-poll electoral process spanning over a period of around 13 months starting from December 2006 up to December 31, 2007 indicates that the entire pre-poll process had been **highly unfair**. Assault on the Judiciary; the first in March 2007 and the second in November 2007, was perceived to be primarily to influence the electoral process and to create conditions for achieving the desired results. Curbs on the private media seemed to have been placed with the same intention. These curbs have now been partly lifted but the threat remains and at least one News Channel which is among the most popular ones (Geo News) has not yet been allowed to transmit its telecast on the cable networks. The Chief Election Commissioner (CEC) was appointed in the sole discretion of the President without any consultation and consensus by the opposition parties. Two vacancies in the 4-member Election Commission were kept vacant while the Election Commission took the most important decisions relating to the Presidential Election and the coming General Election. Officials in the Election Commission Secretariat were given arbitrary extensions in service beyond their due date of retirement. Local Government Election in 2005 was heavily rigged and such *Nazims* were put in place who could support the PML-Q candidates at the time of the General Election. The selection of the members of the Caretaker Government further strongly reinforced the suspicions about the fairness of electoral process. Almost 80 % of the Cabinets are either members of the former ruling parties are their known and committed supporters. The remaining persons are so ineffective that their presence in the caretaker government is hardly of any consequence.

A careful assessment of the entire period of the Pre-poll election process leaves no doubt that the process had been highly unfair. The prospects for the fairness of remaining phases of the electoral process appear to be very slim. In fact, after such a thoroughly unfair pre-poll process, the need for any manipulation in the Polling-day process and post-election process should be drastically reduced. It is felt that in case the popularity of the former ruling parties takes a hit in the remaining days, as apparently is the case due to the recent assassination of Mohtarma Benazir

Bhutto, one of the worst wheat crisis in the country and the worst electricity outages on a daily basis ("Load Shedding"), the compulsions for manipulation and rigging of the remaining phases of election will increase and one may witness desperate acts to get the desired election results. Already, Gen. (Retd) Pervez Musharraf's suspension of the Constitution of Pakistan on November 3, 2007 has created one very compelling reason for Pervez Musharraf and his allies to get a comfortable majority in the next National Assembly so that the prospect of his trial under Article 6 of the Constitution may be averted and his unconstitutional acts on and after November 3 be condoned. The prospects for free and fair election, therefore, do not appear to be very good unless, of course, such a strong and popular wave of peoples' will sweeps the country that normal administrative measures to manipulate the election results are unable to withstand the public pressure

Future of Democracy

To a large extent, the future of democracy in Pakistan is linked to a free and fair election. However, only a free and fair election is not sufficient to usher in the long awaited democracy but a reasonable beginning can only be made through a free and fair election. Fortunately, the Constitution of Pakistan, though repeatedly mutilated by the successive military governments, still provides a strong basis to build a democratic order on in Pakistan. Not only the coming election is a great test for the country, the post-election challenges will also put the leadership to extreme tests. Huge Constitutional and political issues will need to be addressed in a measured approach. The new Government, under a close and watchful scrutiny of the citizens groups, will have to deal with the questions of the Independence of Judiciary which has been nearly destroyed by the unconstitutional acts of November 3, 2007, Amendments in the Constitution made unconstitutionally after the Martial Law of November 3; highly controversial Election of the President and the investigation of the recent assassination of Mohtarma Benazir Bhutto. Of course, the issues of insurgency in the FATA and Balochistan; the so-called War against Terrorism and its fallout will also need to be addressed along-with increasing inter-provincial stresses and rise of extremism and suicide attacks within Pakistan. Only a leadership with a strong mandate by the people of

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Pakistan can have the strength to deal with such apparently-insurmountable problems. Will the political and military leadership of the country have the maturity, vision and tolerance to deal with the most challenging agenda before them? Only the time will tell. But something which can be foretold without much effort is that if the coming election turns out to be anything but completely free and fair, the challenges facing the country will compound and democracy, along with the future of the State, may face grave threats.

Appendix A

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**Citizens Group on Electoral Process (CGEP)
List of Members**

(As on December 31, 2007; No. 2-24 in Alphabetical Order by the first name)

No.	Name
1.	Justice (Retd.) Saeed-uz-Zaman Siddiqui, Former Chief Justice of Pakistan, Chairman
2.	Arif Nizami, Mr.; Editor, The Nation
3.	Asad Durrani, Lt. General (Retd.); Former Director General, ISI / MI
4.	Aslam Kazi, Mr. ; CEO, Daily Kawish/KTN
5.	Ghazi Salahuddin, Mr.; Daily ' The News'
6.	Hameed Haroon, Mr.; CEO, Dawn Group of Newspapers
7.	Hasan-Askari Rizvi, Dr.; Political & Defence Analyst
8.	Ijaz Shafi Gilani, Dr; Chairman, Gallup Pakistan Ltd.
9.	Javed Jabbar, Mr.; Former Senator & Minister
10.	Kamran Khan, Mr.; Journalist & TV Show Host, Geo News
11.	Moinuddin Haider, Lt. Gen. (Retd.); Former Governor Sindh
12.	Mujib-ur-Rehman Shami, Mr.; Editor in Chief, Daily Pakistan
13.	Muneer A. Malik, Mr.; President, Supreme Court Bar Association
14.	Najam Sethi, Mr.; Editor Daily Times
15.	Nasira Iqbal, Justice (Retd.); Former Judge, Lahore High Court
16.	Omar Khan Afridi, Mr.; Former Chief Secretary NWFP
17.	Parvez Hassan, Dr.; Partner Hassan & Hassan Advocates
18.	Qazi Muhammad Jamil; Former President, Supreme Court Bar Association
19.	Rahimullah Yusufzai, Mr.; Executive Editor, The News, Peshawar
20.	Shafqat Mahmood, Mr.; Former Senator and Federal / Provincial Minister
21.	Shahid Hamid, Mr.; Former Governor Punjab
22.	Sikandar Hayat Jamali, Mr.; Former Chief Secretary, Balochistan
23.	Syed Talat Hussain, Mr.; Director News & Current Affairs, Aaj TV
24.	Tasneem Noorani, Mr.; Former Federal Secretary
25.	Ahmed Bilal Mehboob, Mr.; Executive Director, PILDAT
26.	Aasiya Riaz, Ms.; Joint Director, PILDAT

Appendix B

Overview of the International Election Observers Pre-Poll Assessments

A few international organizations undertook pre-election observer missions to Pakistan. A brief overview of these assessments is presented below:

i. The National Democratic Institute for International Affairs (NDI), USA

The National Democratic Institute for International Affairs (NDI) is a non-profit organization with its Head Office in Washington DC. The NDI is loosely affiliated with the Democratic Party and is currently headed by Ms. Madeleine K. Albright, the former US Secretary of State during President Clinton's first term as the President of the United States. The NDI organised international delegations to observe the national and provincial elections in 1988, 1990, 1993 and 1997. The NDI conducted two pre-election assessment missions to Pakistan. The first was held from May 13 to 17, 2007 and the other from October 16 to 21, 2007. Former Senator Tom Daschle, who is a member of the NDI Board and had led the second Pre-election assessment mission in October 2007, summed up the findings of the two missions while testifying before the US House Oversight and Reform Subcommittee on National Security and Foreign Affairs on December 20, 2007. He identified the following "critical issues" affecting the election in his testimony:

"

- a. The high-incidence of election-related violence
- b. The killing and abduction of journalists and political party workers
- c. The infringement of the rights of women to vote;
- d. The ban on political parties operating in the Federally Administered Tribal areas (FATA);
- e. The lack of regular consultation by the Election Commission with the political parties and civil society on election procedures and policies and;
- f. The inaccuracy of voters' list"

"In addition, both NDI's assessments identified a host of very serious and basic issues that, if not addressed, would adversely affect the election. Virtually nothing has been done since our first report to strengthen the prospects for free and fair elections....."

The full text of the statements issued at the end of the two missions and the Senator Daschle's testimony can be viewed at the NDI website (www.ndi.org)

ii. The International Republican Institute (IRI), USA

The International Republican Institute (IRI) is also a non-profit organisation with its Head Office in Washington DC. The IRI is loosely affiliated with the Republican Party and its board of directors is chaired by the US Senator John McCain and includes former Secretary of State Lawrence S. Eagleburger, former Presidential Envoy to Iraq, L. Paul Bremer, III and former National Security Advisor Brent Scowcroft. The IRI conducted pre and post election public opinion polls and exit poll during 2002 election. The IRI conducted a pre-election assessment missions to Pakistan in October-November 2007. The mission included Tom Garrett, IRI Regional Director for the Middle East and North Africa who gave a testimony to the US House Oversight and Reform Subcommittee on National Security and Foreign Affairs on December 20, 2007. The mission report identified the following issues affecting the election:

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- A. Continued Law and Order within Pakistan
- b. Vulnerability of reporters and cameramen in carrying out their professional duties.
- c. Capacity of the Election Commission of Pakistan to meet electoral needs in timely and objective manner.
- d. Accuracy of the official Voters' List
- e. Difficulties in Political parties and the ECP working together through regular meetings relating to the conduct of elections.
- f. Two long-standing vacancies of members in the Election Commission.
- g. Removal of private TV channels from the air waves in the wake of declaration of emergency.
- h. Political parties should come up with political programmes and platforms which motivate people to participate in election.
- i. Recommendations as to the value of translucent ballot boxes and or educational degrees required for candidacy can be postponed until there is a commitment by the government to a return to the path of democratic governance.
- j. It is difficult to envision credible elections as possible without the full reversal of those actions imposed by the state of emergency.

The full text of the statement issued at the end of the mission can be viewed at the IRI website (www.iri.org)



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