

Overall Score:

72 - Moderate

Legal Framework Score:

94 - Very Strong

Actual Implementation Score:

52 - Very Weak

Category I. Civil Society, Public Information and Media

I-1. ⁷⁹Civil Society Organizations

1. Are anti-corruption/good governance CSOs legally protected?

100

1a. In law, citizens have a right to form civil society organizations (CSOs) focused on anti-corruption or good governance.

YES | NO

References:

Constitution of 1973, articles 14 through 19

Voluntary Social Welfare Agencies (Registration and Control Ordinance) 1961

Societies Registration Act, 1860

Trusts Act 1882

Companies Ordinance 1984

YES: A YES score is earned when freedom to assemble into groups promoting good governance or anti-corruption is protected by law, regardless of political ideology, religion or objectives. Groups with a history of violence or terrorism (within last ten years) may be banned. Groups sympathetic to or related to banned groups must be allowed if they have no history of violence.

NO: A NO score is earned when any single non-violent group is legally prohibited from organizing to promote good governance or anti-corruption. These groups may include non-violent separatist groups, political parties or religious groups.

1b. In law, anti-corruption/good governance CSOs are free to accept funding from any foreign or domestic sources.

YES | NO

Comments:

The general perception is that most NGOs receive foreign funding directly and promote foreign agendas. Information on foreign funding is generally not made available either to the public or the state. According to a Civicus survey, only a quarter of survey respondents (civil society knowledge bearers) agreed that civil society organizations (CSOs) make information about their general activities publicly available, while only 10% agreed that financial accounts were disclosed.²¹ The study, quoting the Human Rights and Democratic Development in Pakistan Report, states, "With a few exceptions, CSOs do not have well-defined governance, transparency and accountability structures issues that are at the heart of public and government concerns about Pakistani CSOs."

As a general rule, the Asian Development Bank (ADB) tends to work directly with the governments of its developing member countries to provide support for NGO activities and those of other CSOs. Project proposals for ADB's consideration typically pass through the relevant public authorities. However, certain channels for funding NGO activities exist.

References:

<http://www.governancelink.org/IssueNo1Apr07/CSOaccountabilityinPakistan.pdf>.

<http://www.adb.org/NGOs/funding.asp>

YES: A YES score is earned if anti-corruption/good governance CSOs face no legal or regulatory restrictions to raise or accept funds from any foreign or domestic sources. A YES score may still be earned if funds from groups with a history of violence or terrorism (within last ten years) are banned.

NO: A NO score is earned if there any formal legal or regulatory bans on foreign or domestic funding sources for CSOs focused on anti-corruption or good governance.

1c. In law, anti-corruption/good governance CSOs are required to disclose their sources of funding.

YES | NO

Comments:

Leading NGOs publish their annual reports but largely give information regarding their programs, projects, achievements, success stories, etc. Generally, a page on the budget and funding resources is also included in the report but in such a way that it cannot be analyzed.

The general perception is that most NGOs receive foreign funding directly and promote foreign agendas. Information on foreign funding is generally not made available either to the public or the state. According to a Civicus survey, only a quarter of survey respondents (civil society knowledge bearers) agreed that civil society organizations (CSOs) make information about their general activities publicly available, while only 10% agreed that financial accounts were disclosed.²¹ The study, quoting the Human Rights and Democratic Development in Pakistan Report, states, "With a few exceptions, CSOs do not have well-defined governance, transparency and accountability structures issues that are at the heart of public and government concerns about Pakistani CSOs."

References:

<http://www.governancelink.org/IssueNo1Apr07/CSOaccountabilityinPakistan.pdf>.

YES: A YES score is earned if anti-corruption/good governance CSOs are required to publicly disclose their sources of funding.

NO: A NO score is earned if no such public disclosure requirement exists.

2. Are good governance/anti-corruption CSOs able to operate freely?

75

2a. In practice, the government does not create barriers to the organization of new anti-corruption/good governance CSOs.

100 | 75 | 50 | 25 | 0

References:

Riaz Ali Shah, advocate

Masoodur Rehman, advocate

100: CSOs focused on promoting good governance or anti-corruption can freely organize with little to no interaction with the government, other than voluntary registration.

75:

50: CSOs focused on promoting good governance or anti-corruption must go through formal steps to form, requiring interaction with the state such as licenses or registration. Formation is possible, though there is some burden on the CSO. Some unofficial barriers, such as harassment of minority groups, may occur.

25:

0: Other than pro-government groups, CSOs focused on promoting good governance or anti-corruption are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear.

2b. In practice, anti-corruption/good governance CSOs actively engage in the political and policymaking process.

100 | 75 | 50 | 25 | 0

Comments:

Civil society organizations are not involved in policymaking. They can make proposals and give suggestions to the government on a proposed policy, but they cannot actually influence any policy decision.

References:

Riaz Ali Shah, advocate

Masoodur Rehman, advocate

100: Civil society organizations focused on anti-corruption or good governance are an essential component of the political process. CSOs provide widely valued insights and have political power. Those CSOs play a leading role in shaping public opinion on political matters.

75:

50: Anti-corruption/good governance CSOs are active, but may not be relevant to political decisions or the policymaking process. Those CSOs are willing to articulate opinions on political matters, but have little access to decision makers. They have some influence over public opinion, but considerably less than political figures.

25:

0: Anti-corruption/good governance CSOs are effectively prohibited from engaging in the political process. Those CSOs are unwilling to take positions on political issues. They are not relevant to changes in public opinion.

2c. In practice, no anti-corruption/good governance CSOs have been shut down by the government for their work on corruption-related issues during the study period.

YES | NO

References:

Riaz Ali Shah, advocate

Masoodur Rehman, advocate

YES: A YES score is earned if there were no CSOs shut down by the government or forced to cease operations because of their work on corruption-related issues during the study period. YES is a positive score.

NO: A NO score is earned if any CSO has been effectively shut down by the government or forced to cease operations because of its work on corruption-related issues during the study period. The causal relationship between the cessation of operations and the CSO's work may not be explicit, however the burden of proof here is low. If it seems likely that the CSO was forced to cease operations due to its work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

3. Are civil society activists safe when working on corruption issues?

100

3a. In practice, in the past year, no civil society activists working on corruption issues have been imprisoned.

YES | NO

References:

Riaz Ali Shah, advocate

Masoodur Rehman, advocate

YES: A YES score is earned if there were no CSO activists imprisoned because of their work covering corruption. YES is a positive score.

NO: A NO score is earned if any activist was jailed in relation to work covering corruption. The causal relationship between the official charges and the person's work may not be explicit, however the burden of proof here is low. If it seems likely that the person was imprisoned due to his or her work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes. "Imprisoned" is defined here as detention by the government lasting more than 24 hours.

3b. In practice, in the past year, no civil society activists working on corruption issues have been physically harmed.

YES | NO

References:

Riaz Ali Shah, advocate

Massoudur Rehman, advocate

YES: A YES score is earned if there were no documented cases of CSO activists covering corruption being assaulted in the specific study period. A YES score can be earned if there was an attack but it was clearly unrelated to the activist's work. YES is a positive score.

NO: A NO score is earned if there were any documented cases during the study period of assault to an activist who covers corruption. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

3c. In practice, in the past year, no civil society activists working on corruption issues have been killed.

YES | NO

References:

Riaz Ali Shah, advocate

Masoodure Rehman, advocate

YES: A YES score is earned if there were no documented cases of CSO activists being killed because of their work covering corruption in the specific study period. YES is a positive score.

NO: A NO score is earned if there were any documented cases during the study period where a person was killed related to a corruption trial, scandal or investigation. The relationship between a mysterious death and an individual's history may not be clear, however the burden of proof here is low. If it is reasonable that a person was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

4. Can citizens organize into trade unions?

88

4a. In law, citizens have a right to organize into trade unions.

YES | NO

Comments:

Still, there are some restrictions in some government departments and corporations where workers cannot organize into a trade union. A ban also exists on student unions in colleges and universities.

References:

Constitution of 1973, article 17

YES: A YES score is earned when trade unions are allowed by law, regardless of political ideology, religion or objectives. Groups with a history of violence or terrorism (within last ten years) may be banned. Groups sympathetic to or related to banned groups must be allowed if they have no history of violence.

NO: A NO score is earned when any single non-violent trade union is legally prohibited by the government from organizing.

4b. In practice, citizens are able to organize into trade unions.

100 | 75 | 50 | 25 | 0

References:

Riaz Ali Shah, advocate

Masoodure Rehman, advocate

100: Trade unions are common and are an important part of the political process and political discourse. Trade union organizers have widely understood rights. Trade unions are free from intimidation or violence.

75:

50: Trade unions exist, but are not always relevant to politics or policy debates. Barriers to organizing trade unions exist, such as intimidation at work, or retribution firings. Trade union organizers have some rights, but these may not be commonly known, or are difficult to defend.

25:

0: Trade unions are rare. Significant barriers to organization exist, including direct violence. Rights of union organizers are not widely known, or are ineffective in protecting organizers.

I-2. Media

5. Are media and free speech protected?

100

5a. In law, freedom of the media is guaranteed.

YES | NO

Comments:

Pakistan government set to undo Musharraf media curbs, April 11, 2008

Islamabad (AFP) Pakistan's new government Friday moved to lift harsh restrictions on the media that were imposed by President Pervez Musharraf under a state of emergency in November, a minister said.

Information minister Sherry Rehman introduced a parliamentary bill proposing an end to curbs on live broadcasts and punishments for journalists ranging from heavy fines to imprisonment and confiscation of equipment.

Rehman, formerly the spokeswoman for slain opposition leader Benazir Bhutto, is part of the new government that took office last month after trouncing Musharraf's allies in elections.

The amendments will remove the entire apparatus of restrictions imposed on the press," Rehman told reporters outside the National Assembly, or lower house of parliament.

Under the laws introduced by Musharraf, reporters currently face jail terms as well as a \$5 million rupee (US\$63,000) fine for any live program or publication that "defames" him, the army or the government.

Images of terrorist activities, including the aftermaths of the rash of Islamist suicide bombings that have hit the country in the past year, were also banned.

Several private news channels were also taken off the air for several weeks under the state of emergency that Musharraf imposed on November 3 and then lifted on December 15.

Rehman, herself a former journalist, said that Musharraf's regime had imposed "silence" on the media instead of improving its own performance, adding: "We will do no such thing.

"We will put our own house in order and we will allow the press to broadcast not just live telecasts but all that they feel fit to broadcast," she said.

The minister added, however, that the media's freedom "naturally places a heavy responsibility on the members of the press itself" and suggested forming a press council made up of members of the media.

Before the elections, journalists across Pakistan held almost daily protests against the curbs.

References:

Pakistan Penal Code 1860, sections 499, 500, 501

Criminal Procedure Code 1863

Constitution of 1973, articles 16-19

Press Council of Pakistan Ordinance 2002

Pakistan Electronic Media Regulatory Authority (PEMRA) 2007 regulates electronic media

Ordinance No. XIII of the 2002 Ordinance to regulate broadcast media in Pakistan

YES: A YES score is earned if freedom of the press is guaranteed in law, including to all political parties, religions, and ideologies.

NO: A NO score is earned if any specific publication relating to government affairs is legally banned, or any general topic is prohibited from publication. Specific restrictions on media regarding privacy or slander are allowed, but not if these amount to legal censorship of a general topic, such as corruption or defense. A NO score is earned if non-government media is prohibited or restricted.

5b. In law, freedom of speech is guaranteed.

YES | NO

References:

Constitution of 1973, article 19

YES: A YES score is earned if freedom of individual speech is guaranteed in law, including to all political parties, religions, and ideologies.

NO: A NO score is earned if any individual speech is legally prohibited, regardless of topic. Specific exceptions for speech linked with a criminal act, such as a prohibition on death threats, are allowed. However, any non-specific prohibition earns a NO score.

6. Are citizens able to form print media entities?

63

6a. In practice, the government does not create barriers to form a print media entity.

100 | 75 | **50** | 25 | 0

Comments:

The Pakistan Electronic Media Regulatory Authority (PEMRA) issues licenses for forming an electronic media entity. A number of applications have been pending approval at PEMRA: For example, the license for GEO TV to set up an English news channel was granted after a lengthy wait in June.

Applications for the formation of print media entities are submitted to the deputy commissioner (or district coordination officer, as titled under Local Government Ordinance 2002), and the office, after properly vetting the application, grants or refuses the license. The procedure and requirements for forming a media entity are so complicated and difficult to meet that they do not encourage individuals or groups to form media entities. In majority of cases, the application is approved after fulfilling the requirements.

References:

Arbab Faridullah, journalist, lawyer, PHC, Peshawar. Aug. 4, 2008

Interview with Karim Mahsud, advocate, Peshawar High Court, Peshawar, Aug. 4, 2008

100: Print media entities can freely organize with little to no interaction with the government. This score may still be earned if groups or individuals with a history of political violence or terrorism (within last ten years) are banned from forming media entities.

75:

50: Formation of print media groups is possible, though there is some burden on the media group including overly complicated registration or licensing requirements. Some unofficial barriers, such as harassment of minority groups, may occur.

25:

0: Print media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear.

6b. In law, where a print media license is necessary, there is an appeal mechanism if a license is denied or revoked.

YES | NO

Comments:

If an electronic media outlet license is denied, an appeal can be made to the Pakistan Electronic Media Regulatory Authority (PEMRA). It decides on appeals within a reasonable time period. If a license for a print medium is denied, then the appeal is made to the concerned District Coordination Officer (DCO); they used to be made to the Deputy Commissioner of the district in which the publication is intended to be brought out). If the DCO denies the license, an appeal is made to the high court of the concerned province.

References:

Interviews with Arbab Faridullah and Karim Mahsud, advocates, Peshawar

YES: A YES score is earned if there is, in law or in accompanying regulations, a formal process to appeal a denied print media license, including through the courts. A YES score is also earned if no print license is necessary.

NO: A NO score is earned if there is no appeal process for print media licenses.

6c. In practice, where necessary, citizens can obtain a print media license within a reasonable time period.

100 | 75 | **50** | 25 | 0

Comments:

A print media license can be obtained within three months from the day of its submission to the concerned district administration. However, the granting of licenses may be delayed.

References:

Interview with Arbab Faridullah

Karaim Mahsud, advocate, PHC, Peshawar

100: Licenses are not required or licenses can be obtained within two months.

75:

50: Licensing is required and takes more than two months. Some groups may be delayed up to six months.

25:

0: Licensing takes close to or more than one year for most groups.

6d. In practice, where necessary, citizens can obtain a print media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Illegal graft or payment of a bribe to the concerned officials may expedite the license-issuance process. In most cases, the license is difficult to be obtained in a reasonable period of time without payment of a bribe. The amount of illegal graft, in cash or in kind, can vary according to the financial health of the license applicant(s).

References:

Interview with Arbab Faridullah, advocate and journalist

Interview with Karim Mahsud, advocate

100: Licenses are not required or can be obtained at minimal cost to the organization. Licenses can be obtained on-line or through the mail.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

7. Are citizens able to form broadcast (radio and TV) media entities?

63

7a. In practice, the government does not create barriers to form a broadcast (radio and TV) media entity.

100 | 75 | 50 | 25 | 0

Comments:

The government has been accused of creating barriers to gag the press and electronic media through its media watchdog, the Pakistan Electronic Media Regulatory Authority (PEMRA), which was established in 2007 through the PEMRA Ordinance. The ordinance gives the government unprecedented and sweeping powers to gag the media, close down a media organization, hold up issuing a license for an unreasonably long time or even deny a license to a media entity. The government's trying to pass new laws to strangle the free press are often condemned by media persons around the country. The media scene during the past year has not looked promising.

New legislation has been drafted for the formation of a Press Council, an Access to Information Ordinance, and a Press, Newspapers and Books Registration Act. On May 16, 2002, the minister of information, along with the Council of Pakistan Newspaper Editors and the All Pakistan Newspaper Society, released drafts of the legislation for comment and debate. Newspaper editors urged that the Press Council Ordinance, the Freedom of Information Act and the amended Registration of Printing Press and Publication Ordinance also be promulgated by the government.

References:

Arbab Faridullah, journalist and advocate

Karim Mahsud

100: Broadcast media entities can freely organize with little to no interaction with the government. Media groups have equal access to broadcast bandwidth through a reasonably fair distribution system. This score may still be earned if groups or individuals with a history of political violence or terrorism (within last ten years) are banned from forming media entities.

75:

50: Formation of broadcast media groups is possible, though there is some burden on the media group including overly complicated registration or licensing requirements. Some unofficial barriers, such as harassment of minority groups, may occur. Division of broadcast bandwidth is widely viewed to be somewhat unfair.

25:

0: Broadcast media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear. This score is appropriate if the division of broadcast bandwidth is widely viewed to be used as a political tool.

7b. In law, where a broadcast (radio and TV) media license is necessary, there is an appeal mechanism if a license is denied or revoked.

YES | NO

Comments:

For electronic media, the appeal for a denied or revoked license is made to the Pakistan Electronic Media Regulatory Authority (PEMRA). If a print media outlet license is denied or revoked, the appeal is filed with the district coordination officer (DCO) (formerly the deputy commissioner) of the district where the licence is required. If the DCO or PEMRA does not redress the appellant's grievances, the appeal goes to the high court of the concerned province.

YES: A YES score is earned if there is, in law or in accompanying regulations, a formal process to appeal a denied broadcast media license, including through the courts. A YES score is also earned if no broadcast license is necessary.

NO: A NO score is earned if there is no appeal process for broadcast media licenses.

7c. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license within a reasonable time period.

100 | 75 | **50** | 25 | 0

References:

Arbab Faridullah

Karim Mahsud

100: Licenses are not required or licenses can be obtained within two months.

75:

50: Licensing is required and takes more than two months. Some groups may be delayed up to six months.

25:

0: Licensing takes close to or more than one year for most groups.

7d. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license at a reasonable cost.

100 | 75 | **50** | 25 | 0

References:

Arbab Faridullah

Karim Mahsud

100: Licenses are not required or can be obtained at minimal cost to the organization. Licenses can be obtained on-line or through the mail.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

8. Can citizens freely use the Internet?

50

8a. In practice, the government does not prevent citizens from accessing content published on-line.

100 | 75 | 50 | 25 | 0

Comments:

In some cases, the government restricts access to certain Internet through its watchdog, the Pakistan Electronic Media Regulatory Authority (PEMRA), by creating firewalls that prevent users from accessing pornographic sites. Other Internet sites, such as those from India, cannot be accessed in a majority of cases.

The Constitution of Pakistan guarantees the freedom of expression and freedom of the press, subject to reasonable restrictions¹ that may be imposed by law. It is the judiciary's responsibility to determine the scope and parameters of the permissible freedoms and the extent of restrictions placed on their enjoyment. The judiciary can play a full and effective role only if it is free and independent of any and every form of control or influence.

References:

Arbab Faridullah

Karim Mahsud

100: The government does not prevent Internet users from accessing online content. While some forms of content may be illegal to download or own (such as child pornography), the government does not manipulate networks to prevent access to this information. This indicator addresses direct government intervention in the transfer of information, not indirect deterrents such as intimidation, surveillance or technical difficulties in countries with poor infrastructure.

75:

50: Internet users are prevented by the government from reaching online content in some cases. Government tactics may include firewalls preventing access to networks in other countries, or manipulating search engine results to exclude politically sensitive topics.

25:

0: Internet users are routinely prevented from accessing online content. Government restrictions are in place at all times for certain topics. Government tactics may include firewalls preventing access to networks in other countries, or manipulating search engine results to exclude politically sensitive topics.

8b. In practice, the government does not censor citizens creating content on-line.

100 | 75 | 50 | 25 | 0

Comments:

Citizens can create content online without any barriers, subject to reasonable restrictions as may be deemed fit by the government or its organ regulating the media or online content, including the Pakistan Electronic Media Regulatory Authority (PEMRA). However, certain content, such as blasphemous, defamatory or derogatory content, cannot be created or, if created, would be punishable by law.

Censorship pervades online content and journalism history in Pakistan. The blackest censorship period came during General Muhammad Zia-ul-Haq's 10-year military regime. Almost all journalists point out the press advice system as one of the most

insidious means of censorship. It specified that whoever contravenes any provision of this regulation shall be punished with rigorous imprisonment, which may extend to 10 years, and shall be liable to fine or stripes [lashes] not to exceed 25.” Prime Minister at the time Mian Muhammad Nawaz Shari used additional means to ensure press compliance, including intelligence operatives to infiltrate newsrooms and press unions. With so many spies doubling as reporters, and journalists moonlighting as government agents, trust became difficult for all.

References:

Arbab Faridullah

Karim Mahsud

100: The government never removes online information or disables servers due to their political content. All political speech is protected with limited exceptions, such as legitimate intellectual property restrictions; direct calls to violence; or pornography.

75:

50: In some cases, the government restricts political speech by its citizens on the Internet. This is accomplished either directly by controlling servers hosting restricted content, or indirectly through threats or intimidation against the persons posting political content.

25:

0: The government regularly restricts political speech by its citizens on the Internet. This is accomplished either directly by controlling servers hosting the restricted content, or indirectly through threats or intimidation against the persons posting political content.

9. Are the media able to report on corruption?

67

9a. In law, it is legal to report accurate news even if it damages the reputation of a public figure.

YES | NO

References:

The Press, Newspapers, News Agency and Book Registration Ordinance 2002

Pakistan Press Council Ordinance 2002

Defamation Ordinance 2002

Constitution of Pakistan 1973, article 19

YES: A YES score is earned if it is legal to report accurate information on public figures regardless of damage to their reputations. Public figures are defined broadly, including anyone in a position of responsibility in the government or civil service; any political leader; leaders of civil society groups including religious groups, trade unions, or NGOs; leaders or officers of large businesses. A YES score can still be earned if a reckless disregard for the truth (i.e. slander) is prohibited.

NO: A NO score is earned if privacy laws protect any public figures (as defined in the YES coding) from accurate information.

9b. In practice, the government or media owners/distribution groups do not encourage self-censorship of corruption-related stories.

100 | 75 | 50 | 25 | 0

Comments:

Pakistan Newspaper Employees' Confederation (APNEC). These groups have been actively involved in reviewing the government's draft of the Press Council of Pakistan Ordinance 2002 and the draft of the Press, Newspaper Agencies Registration Ordinance 2002. At the time, APNEC, PFUJ and all their affiliated unions and units rejected the proposed setting up of a press council and press regulatory laws that the government decided to introduce to regulate the press.

New legislation has been drafted for the formation of a Press Council, an Access to Information Ordinance, and a Press, Newspapers and Books Registration Act. On May 16, 2002, the Minister of Information, along with the Council of Pakistan Newspaper Editors and the All Pakistan Newspaper Society, released drafts for the legislation for comment and debate. Newspaper editors also urged that the Freedom of Information Act, Press Council Ordinance, and the amended Registration of Printing Press and Publication Ordinance be promulgated by the government.

References:

Arbab Faridullah

Karim Mahsud

100: The government, its proxies, or media ownership/distribution groups make no attempt to restrict media coverage of corruption-related issues through unofficial means.

75:

50: The government, its proxies, or media ownership/distribution groups make some attempts to restrict media coverage of corruption-related issues through unofficial means, such as restricting access by disfavored media outlets, or other short-term consequences. Violent reprisals against media outlets are rare.

25:

0: The government, its proxies, or media ownership/distribution groups actively use illegal methods to restrict reporting of corruption-related issues. This may include harassment, arrests, and threats. Journalists and publishers take a personal risk to report on corruption, and media outlets who commonly report on corruption face long-term consequences or violent reprisals.

9c. In practice, there is no prior government restraint (pre-publication censoring) on publishing corruption-related stories.

100 | 75 | **50** | 25 | 0

Comments:

Different media groups and journalists bodies have been looking with suspicion at the government drafts of the Press Council of Pakistan Ordinance 2002 and the Press, Newspaper Agencies Registration Ordinance. When developing corruption-related stories, journalists generally try to reach out to the people in question, who, in turn, use all coercive methods to make the story go into the dustbin. And government agencies and departments spring into action the moment they become aware of the likely publication of a corruption-related story, moving heaven and earth to stop its publication.

References:

Arbab Faridullah

Karim Mahsud

100: The government never prevents publication of controversial corruption-related materials.

75:

50: The government prevents publication of controversial corruption-related material in cases where there is a strong political incentive to suppress the information. This score is appropriate if in countries where illiteracy is high, the government may allow a free print press but censor broadcast media.

25:

0: The government regularly censors material prior to publication, especially politically sensitive or damaging corruption-related material. This score is appropriate even if the government restricts only politically damaging news while allowing favorable coverage.

10a. In law, print media companies are required to publicly disclose their ownership.

YES | NO

References:

Pakistan Press Council Ordinance 2002

Press, Newspapers, News Agencies and Book Registration Ordinance 2002

YES: A YES score is earned if print media companies are required by law to publicly disclose all owners of the company.

NO: A NO score is earned if there is no such requirement or if the requirement is optional, only partially applicable, or exempts certain types of entities or agents from being publicly disclosed.

10b. In law, broadcast (radio and TV) media companies are required to publicly disclose their ownership.

YES | NO

References:

Pakistan Electronic Media Regulatory Authority (PEMRA) Ordinance 2007

Pakistan Press Council Ordinance 2002

YES: A YES score is earned if broadcast media companies are required by law to publicly disclose all owners of the company.

NO: A NO score is earned if there is no such requirement or if the requirement is optional, only partially applicable, or exempts certain type of entities or agents from being publicly disclosed.

10c. In practice, journalists and editors adhere to strict, professional practices in their reporting.

100 | 75 | 50 | 25 | 0

Comments:

Journalists and editors infringe upon their own professional duties and don't necessarily adhere to strict professional practices. In most cities, journalists act as spokesman for individuals, departments or political parties, which calls into question their professional integrity. Also, crime reporters are derogatorily called police reporters, and they are mostly paid by the police. District journalists are also said to likely be taking bribes in cash and in kind from persons who want to highlight something in the press. Also, in Pakistan, media coverage of certain prevailing issues, like terrorism or the war on terrorism, can not be covered or highlighted properly or without any bias.

References:

Arbab Faridullah

Karim Mahsud

100: Editors and journalists at the major media outlets abide by a strict journalistic code of conduct and are unwilling to alter their coverage of a particular issue, event or person in exchange for money, gifts, or other favors or remuneration.

75:

50: Editors and journalists at the major media outlets generally avoid altering coverage in exchange for favors but some exceptions have been noted. Not all newsrooms abide by a formal journalistic code of conduct.

25:

0: Editors and journalists are widely known to sell" favorable or unfavorable coverage in exchange for money, gifts, or other remuneration. The major media outlets do not abide by any formal journalistic code of conduct.

10d. In practice, during the most recent election, political parties or independent candidates received fair media coverage.

100 | 75 | 50 | 25 | 0

Comments:

During the general election held on Feb. 18, 2008, the media, state-owned as well as private, played clear partisan roles when covering political parties and candidates during the campaign. State-owned Pakistan Television is alleged to have blacked out all political parties during its coverage except the Pakistan Muslim League, which is the king's party. However, some private TV channels and newspapers were objective and unbiased in their coverage.

References:

Arbab Faridullah

Karim Mahsud

100: All political parties and independent candidates have some access to media outlets. Individual media outlets may have biases, but on balance, the national media coverage reflects the interests of the electorate. Media groups generally act as disinterested parties in an election. In places where a government is popular with the public, opposition viewpoints can access the public via media outlets.

75:

50: Major popular media outlets have a persistent bias regarding some parties or independent candidates. Some major parties may be partially excluded from media coverage, or draw more negative coverage. Media sectors may have distinct biases, such as newspapers favoring one party, while radio favors another.

25:

0: The mass media, on balance, have clear preferences in election outcomes and coverage is driven to achieve these goals. Some major parties or independent candidates are excluded or consistently negatively portrayed by mass media. Dissenting political opinions are only found on fringe or elite media outlets, such as Web sites.

10e. In practice, political parties and candidates have equitable access to state-owned media outlets.

100 | 75 | 50 | 25 | 0

References:

Arbab Faridullah

Karim Mahsud

100: The government ensures that equal access and fair treatment of election contestants is provided by all state-owned media outlets, including all electronic and print media. This obligation extends to news reports, editorial comment, and all other content. All parties and candidates are offered consistent and equivalent rates for campaign advertising on state-owned media outlets.

75:

50: The government generally ensures equal access and fair treatment of all candidates and parties by state-owned media outlets but some exceptions exist. State-owned media may occasionally discriminate against particular parties or candidates

and advertising rates may be confusing or non-transparent.

25:

0: The government uses state-owned media to routinely discriminate against opposition candidates and parties. Advertising space may be denied to opposition candidates and parties or higher rates may be charged.

11. Are journalists safe when investigating corruption?

100

11a. In practice, in the past year, no journalists investigating corruption have been imprisoned.

YES | NO

References:

Arbab Faridullah

Karim Mahsud

YES: A YES score is earned if there were no journalists imprisoned related to work covering corruption during the study period. A YES score is positive.

NO: A NO score is earned if any journalist was jailed because of his/her work covering corruption during the study period. The causal relationship between the official charges and the journalist's work may not be explicit, however the burden of proof here is low. If it seems likely that the journalist was imprisoned due to his or her work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes. Imprisoned" is defined here as detention by the government lasting more than 24 hours.

11b. In practice, in the past year, no journalists investigating corruption have been physically harmed.

YES | NO

References:

Arbab Faridullah

Karim Mahsud

YES: A YES score is earned if there were no documented cases of journalists being assaulted during the specific study period for their work covering corruption issues. A YES score is positive.

NO: A NO score is earned if there were any documented cases of assault to a journalist covering corruption during the study period. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

11c. In practice, in the past year, no journalists investigating corruption have been killed.

YES | NO

References:
Arbab Faridullah

Karim Mahsud

YES: A YES score is earned if there were no documented cases of journalists being killed because of their work covering corruption-related issues during the study period. A YES score is positive.

NO: A NO score is earned if there were any documented cases where a journalist was killed in relation to his or her work covering corruption-related issues in the study period. The relationship between a mysterious death and an individual's work may not be clear, however the burden of proof here is low. If it is a reasonable guess that a person was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

72
I-3. Public Access to Information

12. Do citizens have a legal right of access to information?

100

12a. In law, citizens have a right of access to government information and basic government records.

YES | NO

Comments:
Freedom of Information Ord. 2002 repeal likely

By Akhtar Amin

Peshawar The federal government is going to repeal the Freedom of Information (FOI) Ordinance 2002 introduced by President Pervez Musharraf and has instead submitted an FOI 2008 Bill in the National Assembly to enact a national law with substantive improvements, Daily Times learned on Thursday. Sources said that FOI 2008 is a modified version of the Pakistan People's Party's (PPP) 2004 FOI Bill, which was initiated by Sherry Rehman in 2004 when her party was in opposition. The objective of the FOI 2004 was to repeal the FOI 2002, but the Pakistan Muslim League (PML) government did not consider it when enacting a national law, sources said.

After PPP was voted into power in the 2008 general election, Rehman became the federal minister for information and broadcasting. She again took up the matter and has proposed FOI 2008, which is expected to be tabled for discussion soon as a treasury bill in the National Assembly. The proposed FOI 2008 Bill draft comprises nine pages, which state that it is expedient to provide a law so that the people of Pakistan have access to public documents and records. In the proposed bill, it is stated that this act shall be called the Freedom of Information Act 2008 and shall extend to the whole of Pakistan. It states that the act shall come into force at once.

Under the bill, a requester can obtain information from public documents and records, but the bill does not include the records exempted under section 8 of this act, disclosure of which may infringe upon the right of privacy of any individual. Under section 19 of the bill, if the applicant is not given the information or a copy of a record declared public record within a given time frame, he may file a complaint with the Mohtasib, which, after hearing the applicant and the designated official, may direct the designated official to give the information to the applicant or may reject the complaint. In addition, all such applications shall be disposed of within 14 days of being filed.

The Ministry of Information and Broadcasting hurriedly convened a consultation with civil society organizations (CSOs) and media on FOI 2008 on May 15, 2008, but CSOs called this effort fruitless to a great extent, as strengths and weaknesses of the bill could not be debated in the consultation. Daily Times, Friday, July 25, 2008

References:
Freedom of Information Ordinance 2002

http://dailytimes.com.pk/default.asp?page=2008%5C07%5C25%5Cstory_25-7-2008_pg7_58

YES: A YES score is earned if there is a formal right to access government documents, including constitutional guarantees. Exceptions can be made for national security reasons or individual privacy, but they should be limited in scope. All other

government documents should be available upon a public request.

NO: A NO score is earned if there is no such right.

12b. In law, citizens have a right of appeal if access to a basic government record is denied.

YES | NO

Comments:

If access to official information is denied, the person denied access or someone else looking out for the public interest can use a writ to petition the high court to change the decision.

References:

Constitution of Pakistan 1973, article 199

Freedom of Information Ordinance 2002

YES: A YES score is earned if there is a formal process of appeal for rejected information requests. A YES score can still be earned if the appeals process involves redress through the courts rather than administrative appeal.

NO: A NO score is earned if there is no such formal process.

12c. In law, there is an established institutional mechanism through which citizens can request government records.

YES | NO

Comments:

Information can be accessed by approaching the Wafaqi Mohtasib, which, acting in the public interest, issues directions to the concerned department as necessary. The Archives and Information Department also keeps records and can be accessed.

References:

Freedom of Information Rules 2003, part 1

YES: A YES score is earned if there is a formal government mechanism/institution through which citizens can access government records available under freedom of information laws. This mechanism could be a government office (or offices within agencies or ministries) or an electronic request system.

NO: A NO score is earned if there is no such formal mechanism or institution.

13. Is the right of access to information effective?

45

13a. In practice, citizens receive responses to access to information requests within a reasonable time period.

100 | 75 | **50** | 25 | 0

References:

Interview with Riaz Ali Shah, advocate, PHC, Aug. 5, 2008, Peshawar

100: Records are available on-line, or records can be obtained within two weeks. Records are uniformly available; there are no delays for politically sensitive information. Legitimate exceptions are allowed for sensitive national security-related information.

75:

50: Records take around one to two months to obtain. Some additional delays may be experienced. Politically-sensitive information may be withheld without sufficient justification.

25:

0: Records take more than four months to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records. National security exemptions may be abused to avoid disclosure of government information.

13b. In practice, citizens can use the access to information mechanism at a reasonable cost.

100 | 75 | **50** | 25 | 0

References:

Riaz Ali Shah, advocate

Masoodur Rehman, advocate

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

13c. In practice, citizens can resolve appeals to access to information requests within a reasonable time period.

100 | 75 | **50** | 25 | 0

References:

Riaz Ali Shah, advocate

Masoodur Rehman, advocate

100: The agency/entity acts on appeals quickly. While some backlog is expected and inevitable, appeals are acknowledged promptly and cases move steadily towards resolution.

75:

50: The agency/entity acts on appeals quickly but with some exceptions. Some appeals may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity does not resolve appeals in a timely fashion quickly. Appeals may be unacknowledged for many months and simple issues may take more than three months to resolve.

13d. In practice, citizens can resolve appeals to information requests at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Riaz Ali Shah, advocate

Masoodur Rehman, advocate

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge an access to information determination.

75:

50: In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge an access to information determination.

25:

0: The prohibitive cost of utilizing the access to information appeals mechanism prevents middle class citizens from challenging access to information determinations.

13e. In practice, the government gives reasons for denying an information request.

100 | 75 | 50 | 25 | 0

Comments:

The reason most government officials are often reluctant to disclose information and records to citizens can be explained by the large number of laws, rules and regulations requiring secrecy of official information. However, disclosing information to the media is solely based on the concerned officer's goodwill. Generally, no reason is given when denying access to information.

For decades, the print and electronic media were under severe restrictions imposed by media- and information-related laws and by strict and arbitrary regulations coming from successive governments. Pakistan has approximately 10 media-related laws, only 2 of which have been debated on and passed by national parliament, making the rest of the laws non-representative. These non-representative laws instituted without consultation of the stakeholders are a major reason working conditions for journalists are tough in Pakistan. Slapped with charges ranging from blackmail to treason and hounded by police, government authorities, religious groups and various mafias, journalists find that media freedoms are difficult to exercise if they fall on the wrong side of organized interests.

References:

Riaz Ali Shah, advocate

Masoodur Rehman

100: The government always discloses to the requestor the specific, formal reasons for denying information requests.

75:

50: The government usually discloses reasons for denying an information request to the requestor, with some exceptions. The reasons may be vague or difficult to obtain.

25:

0: The government does not regularly give reasons for denying an information request to the requestor.

II-1. ⁶³Voting & Citizen Participation

14. Is there a legal framework guaranteeing the right to vote?

100

14a. In law, universal and equal adult suffrage is guaranteed to all citizens.

YES | NO

Comments:

A citizen who has attained the age of 18 years on the first day of January 2002 shall be eligible to vote.

References:

Manual of Elections Laws, Ishfaq Ali, Danial Law Publishers, Lahore

Conduct of General Elections Order 2002, article 7A

YES: A YES score is earned if the right to vote is guaranteed to all citizens of the country (basic age limitations are allowed). A YES score can still be earned if voting procedures are, in practice, inconvenient or unfair.

NO: A NO score is earned if suffrage is denied by law to any group of adult citizens for any reason. Citizen is defined broadly, to include all ethnicities, or anyone born in the country. A NO score is earned if homeless or impoverished people are legally prohibited from voting.

14b. In law, there is a legal framework requiring that elections be held at regular intervals.

YES | NO

Comments:

The duration of parliament is fixed under the Constitution of 1973: The National Assembly shall, unless sooner dissolved, continue for a term of five years from the day of its first meeting and shall stand dissolved at the expiration of its term.

According to the constitution, election of National Assembly and provincial assemblies is held after five years. The members of upper house of parliament (Senate) are elected for six years. Election for half of the total seats is held after every three years. But, in practice, elections have never been held at the proper time. Gen. Pervez Musharraf's regime dissolved the Senate, which is never disbanded under the constitution.

References:

Constitution of Pakistan 1973, articles 52, 224

Senate, article 59

Manual of Elections Laws, Ishfaq Ali

YES: A YES score is earned if there is a statutory or other framework enshrined in law that mandates elections at reasonable intervals.

NO: A NO score is earned if no such framework exists.

15. Can all citizens exercise their right to vote?

58

15a. In practice, all adult citizens can vote.

100 | 75 | 50 | 25 | 0

Comments:

Women in many districts across the country, especially in the tribal belt and the most conservative districts of northwestern Pakistan, were barred from going to polling stations on election day, Feb. 18, 2008. All local media reported the ban on women voters. TV channels also ran news and features to highlight the discrepancy between the law and the practice of voting in elections.

References:

Interview with Dr Mushtaq, July 25, 2008, Peshawar High Court Bar Room, Peshawar

Daily, The News International, Feb. 19, 2008

Daily Express, Feb. 19, 2008

100: Voting is open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers.

75:

50: Voting is often open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers, with some exceptions.

25:

0: Voting is not available to some demographics through some form of official or unofficial pressure. Voting may be too dangerous, expensive, or difficult for many people.

15b. In practice, ballots are secret or equivalently protected.

100 | 75 | 50 | 25 | 0

Comments:

Reports published in the local media after the Feb. 18, 2008, general election show that ballots were either snatched on their way to the polling stations or from the staff at the polling stations.

References:

Interview with Dr. Mushtaq, July 25, 2008, Peshawar High Court Bar Room, Peshawar

Daily, The News International, Feb. 19, 2008

Daily Times, Feb. 19, 2008

DAWN, Feb. 19, 2008

Daily Express, Feb. 19, 2008

Daily Aaj, Feb. 19, 2008

Daily Mashriq, Feb. 19, 2008

100: Ballots are secret, or there is a functional equivalent protection, in all cases.

75:

50: Ballots are secret, or there is a functional equivalent protection, in most cases. Some exceptions to this practice have occurred. Ballots may be subject to tampering during transport or counting.

25:

0: Ballot preferences are not secret. Ballots are routinely tampered with during transport and counting.

15c. In practice, elections are held according to a regular schedule.

100 | 75 | 50 | 25 | 0

Comments:

According to the constitution, elections to the National Assembly, Senate and the four provincial assemblies are held at regular intervals. The election to the National Assembly and provincial assemblies are held every five years. Half the members of the Senate are elected after three years on the basis of proportional representation by the respective provincial assembly. However, in practice, elections have never been held according to the schedule. In the 1990s, elections were held after two and three years. After 1999, when the elected government was dismissed by the army chief, elections were held in 2002. The last election was held in February 2008.

References:

Daily News International, Feb. 20, 2008

Interview with Dr. Mushtaq, July 25, 2008, Peshawar High Court Bar Room, Peshawar

100: Elections are always held according to a regular schedule, or there is a formal democratic process for calling a new election, with deadlines for mandatory elections.

75:

50: Elections are normally held according to a regular schedule, but there have been recent exceptions. The formal process for calling a new election may be flawed or abused.

25:

0: Elections are called arbitrarily by the government. There is no functioning schedule or deadline for new elections.

16. Are citizens able to participate equally in the political process?

40

16a. In law, all citizens have a right to form political parties.

YES | NO

References:

Constitution of Pakistan 1973, articles 15, 16, 17

Constitution of Pakistan 1973: Fundamental Rights, part II, chapter I

YES: A YES score is earned if citizens have the right to form political parties without interference from government. A YES score may still be earned if groups or individuals with a history of violence or terrorism (within last ten years) are banned from forming political parties. Non-discriminatory minimal criteria (e.g. minimum age) are also allowed.

NO: A NO score is earned if there are any legal or regulatory restrictions or prohibitions barring any types of political parties from being formed.

16b. In law, all citizens have a right to run for political office.

YES | **NO**

Comments:

A non-Muslim citizen of Pakistan cannot run for the office of prime minister. The president shall also be a Muslim under the constitution.

A person who has held the office of prime minister for two terms can not run for the office for a third time, under the Political Parties Order 2002.

References:

Constitution of Pakistan 1973, article 41

Political Parties Order 2002, section 5.

YES: A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) have the right under law to run for political office. A YES score may still be earned if individuals with a history of violence, terrorism, or criminality are banned from running for office.

NO: A NO score is earned if there are any legal restrictions barring certain individuals or groups from running for political office.

16c. In practice, all citizens are able to form political parties.

100 | 75 | 50 | **25** | 0

Comments:

In law, all citizens have the right to form and register a political party. But, in practice, forming and organizing a political party or a political group is not an easy task. It completely depends on the person's financial position and political status.

References:

Kaiser Khan, leader of the Mazdoor Kissan Party, July 25, 2008, Peshawar High Court, Peshawar

Interview with Dr Said Alam Mahsud, provincial leader of the Pakhtunkhwa Milli Awami Party (PkMAP), July 26, 2008, Peshawar University Campus, Peshawar

Constitution of Pakistan 1973, articles 15-18

Political Parties Order 2002, chapter-II, Formation of Political Parties, etc.

100: While there is no guarantee of electoral success, political parties can form freely without opposition.

75:

50: Some barriers to formation are present, such as burdensome registration requirements that may not be fairly applied. Some parties' political viewpoints may draw pressure from the government, such as surveillance or intimidation. Some political parties or organizations may have extra barriers to getting on a ballot.

25:

0: Some political parties are effectively barred from forming through some manner of official or unofficial pressure. This may include threats, arrest, or violence from competing parties or other groups.

16d. In practice, all citizens can run for political office.

100 | 75 | 50 | 25 | 0

Comments:

In law, the president and the prime minister must be Muslims.

In practice, not all citizens can run for a political office. Doing so is purely a finance matter, and not every citizen can afford to. Even running in a local election is a money matter, completely dependent on the individual's financial health.

References:

Interview with Mohammad Tariq Tariq, provincial coordinator, Bacha Khan Foundation, July 27, 2008, Peshawar,

100: While there is no guarantee of electoral success, anyone can run for office under transparent and equitable guidelines. There is a formal process for access to the ballot which is fairly applied. The costs of running a campaign are reasonable and do not deter candidates from entering a race.

75:

50: Some barriers exist to getting on the ballot and bureaucratic or regulatory requirements for doing so may be unfairly applied. The costs of running a political campaign are significant and result in dissuading some candidates from running for office. A system of party lists may discourage or prevent independent candidates from running for office.

25:

0: Citizens can effectively be barred from the ballot through government abuse of official rules and/or unofficial pressure. The costs of running a campaign are extremely high and result in most average citizens being unable to run an effective campaign for office.

16e. In practice, an opposition party is represented in the legislature.

100 | 75 | 50 | 25 | 0

Comments:

The opposition leader represents the opposition party in the legislature. In practice, however, there can be delays in nominating the opposition leader, as in the case in the Punjab Assembly after the general elections of Feb. 18, 2008.

References:

Interview with Mohammad Tariq Khan, provincial coordinator, Bacha Khan Foundation, July 27, 2008, Peshawar

Interview with Qaiser Khan, provincial leader, Mazdoor Kissan Party, Peshawar

100: The opposition party always has some influence on the proceedings of the legislature. The opposition party can introduce legislation or bring pending matters to a vote without the consent of the ruling party.

75:

50: The opposition party has influence on the proceeding of the legislature, but it is limited in scope. The opposition's ability to force votes or publicly debate certain topics may be limited.

25:

0: The opposition party has only token participation in the legislature's proceedings and cannot advance legislation or force a debate.

18. Is the election monitoring agency effective?

65

18a. In law, the agency or set of agencies/entities is protected from political interference.

YES | NO

References:

Election Commission Order 2002, section 2

Constitution of Pakistan 1973, article 213, clause 2F; article 177, clause 2

YES: A YES score is earned only if the agency or set of agencies/entities has some formal organizational independence from the bodies contesting in the election. A YES score is still earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the election monitoring agency or set of agencies/entities is legally tied to bodies contesting the election (i.e. an executive branch agency such as the Interior Ministry, or a committee of the legislature). A NO score is automatically earned if there is no domestic election monitoring agency.

18b. In practice, agency (or set of agencies/entities) appointments are made that support the independence of the agency.

100 | 75 | 50 | 25 | 0

References:

Interview with Mohammad Tariq Khan, provincial coordinator for education, Bacha Khan Foundation, Peshawar

Interview with Qaiser Khan, provincial leader of Mazdoor Kissan Party

100: Appointments to the agency or set of agencies/entities are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. However, individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

18c. In practice, the agency or set of agencies/entities has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The Election Commission does not have a full-time professional staff. When preparing the election rolls and at election time,

teachers, revenue officials, police and low-ranking officials of other government departments are given training to conduct the election process.

References:

Mohammad Tariq Khan, Bacha Khan Education Foundation, Peshawar

Kaiser Khan, leader of Mazdoor Kissan Party and worker of Awami National Party, Peshawar

100: The agency or set of agencies/entities has staff sufficient to fulfill its basic mandate.

75:

50: The agency or set of agencies/entities has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

25:

0: The agency or set of agencies/entities has no staff, or such a limited staff that is clearly unqualified to fulfill its mandate.

18d. In practice, the agency or set of agencies/entities makes timely, publicly available reports following an election cycle.

100 | 75 | 50 | 25 | 0

Comments:

Election results are announced soon after the ballots are counted at the individual polling stations. The polling officer immediately reports the result to the returning officer, and the district returning officers make unofficial results available to the public. Official results are announced by the Election Commission of Pakistan soon after the process is completed.

References:

Interview with Mohammad Tariq Khan, coordinator of education, Bacha Khan Foundation, July 27, 2008, Peshawar

Kaiser Khan, leader of the Mazdoor Kissan Party and worker of Awami National Party, Peshawar

100: Reports are released to the public on a predictable schedule, without exceptions.

75:

50: Reports are released, but may be delayed, difficult to access, or otherwise limited.

25:

0: The agency or set of agencies/entities makes no public reports, issues reports which are effectively secret, or issues reports of no value.

18e. In practice, when necessary, the agency or set of agencies/entities imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

In practice, candidates who violate election rules or conduct-of-general-election rules and conditions are seldom penalized. However, offenders guilty of major offenses are barred from running for office or are otherwise penalized.

References:

Mohammad Tariq Khan, Bacha Khan Foundation

Kaiser Khan, Mazdoor Kissan Party and Awami National Party

100: When rules violations are discovered, the agency or set of agencies/entities is aggressive in penalizing offenders and/or in cooperating with other agencies in penalizing offenders.

75:

50: The agency or set of agencies/entities enforces rules, but is limited in its effectiveness. The agency may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency or set of agencies/entities does not effectively penalize offenders and/or cooperate with other agencies in penalizing offenders. The agency may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

19. Are elections systems transparent and effective?

75

19a. In practice, there is a clear and transparent system of voter registration.

100 | 75 | 50 | 25 | 0

Comments:

The Election Commission of Pakistan (ECP) paid special attention to the constituency of Mohtarma Benazir Bhutto, chairperson of the PPP, and Senator Asif Ali Zardari. More than 250,000 voters were not included in the fresh voter lists in the Larkana district alone. Consider that during local elections, the number of registered voters in Larkana was 601,200, but the new voter lists contained 349,000 names, a difference of 251,000 voters. The reduction in the number of voters indicated that the government was indulging in pre-poll rigging to cause the PPP to lose in the ensuing general elections.

Why there is a huge decline in the number of voters in the current, draft computerized voter list? It is important to note that there were 71.86 million voters on the electoral rolls used in the 2002 general election, and that this number should have increased to around 82 million, based on a 2.7% per year voter population growth rate. The gap between currently registered voters and the number to which the voting population should have risen is an alarming 27 million, or 33%.

Display centers have so far received 7-10 complaints from voters, and only 12-17 registration forms have been submitted since the centers were opened.

The number of registered women voters has decreased a full 96% in FATA, 41% in Sindh, 37% in Punjab and 19% in the Islamabad Capital Territory. From PILDAT Analysis

The ECP has been saying that everyone possessing Computerized National Identity Cards (CNICs) has now completed the registration process. But not everyone, particularly those in rural areas, has been able to obtain this card for a variety of reasons, mainly related to cost and accessibility. Last year, the ECP permitted the use of both old National Identity Cards and the new computerized ones for registration purposes. Why can't the ECP allow the use of any of the multiple identifications cards currently available, such as drivers licenses and passports, as this would enable many more voters to register?

References:

Interview with Mohammad Tariq Khan, Bacha Khan Foundation, Peshawar

Kaiser Khan, political leader, Awami National Party, Mazdoor Kissan Party

<http://www.ppp.org.pk/elections/voterlists.html>

DailyTimes, June 19, 2007

PILDAT Analysis

100: There is a transparent system of voter registration that provides voters with sufficient time to understand their rights, check the accuracy of their registration, and ensure that errors are corrected before they vote.

75:

50: There is a transparent voter registration system that provides voters with sufficient time to understand their rights, check the accuracy of their registration, and ensure that errors are corrected before they vote but there are some problems. Voters may have not access to registration lists with sufficient time to correct errors before voting or registration lists may at times be inaccessible.

25:

0: The system of voter registration is incomplete or does not exist. Government may routinely falsify registration lists to affect voting patterns and limit access to the polls. Double voting and ghost" voting by non-existent voters is common.

19b. In law, election results can be contested through the judicial system.

YES | NO

References:

Representation of People Act 1976, section 52

YES: A YES score is earned if citizens or political parties can challenge allegedly fraudulent election results through the courts or other judicial mechanisms.

NO: A NO score is earned if there is no legal right for citizens or political parties to challenge allegedly fraudulent election results in the courts or other judicial mechanisms.

19c. In practice, election results can be effectively appealed through the judicial system.

100 | 75 | 50 | 25 | 0

Comments:

The Supreme Court today postponed voting in a constituency where popular politician Nawaz Sharif wants to contest a parliamentary seat, reviving his hopes of someday regaining the post of Pakistan's prime minister. The ruling represented the latest twist in what has become a debilitating power struggle between the two main parties nominally allied in the country's new ruling coalition.

Sharif, who leads the junior party in the coalition, had been disqualified Monday by a provincial court in the city of Lahore from contesting a by-election scheduled to take place Thursday. Holding a parliamentary seat is a prerequisite for becoming prime minister. From Pakistan Supreme Court steps in to Sharif's election dispute

The Election Commission of Pakistan appoints election tribunals to resolve disputes related to election results. The tribunals take up the cases as and when the dispute arises and decide it to the satisfaction of all parties to the dispute. The election tribunal's decisions can be appealed in the higher courts, and the Election Commission notifies the position accordingly.

References:

Manual of Elections Laws, by Ishfaq Ali, Danial Law Publishers, 2008, Lahore

Representation of People Act 1976, section 67 (3)

Kaiser Khan, leader of Mazdoor Kissan Party and Awami National Party

<http://articles.latimes.com/2008/jun/25/world/fg-pakistan26>

Pakistan Supreme Court steps in to Sharif's election dispute, Laura King, June 25, 2008

100: The electoral appeals mechanism takes cases from both candidates complaining of flaws in the electoral process as well as citizens bringing complaints related to denial of suffrage or registration errors. There is an expedited process for resolving such complaints to avoid delaying a timely announcement of electoral results.

75:

50: The electoral appeals mechanism takes complaints from both candidates and voters but may not always act on complaints promptly. The appeals mechanism may be abused at times by parties or candidates seeking to delay the announcement of electoral results.

25:

0: The electoral appeals mechanism rarely or never acts on complaints brought by candidates or citizens. Citizens may not be able to bring complaints related to denial of suffrage or voter registration errors.

19d. In practice, the military and security forces remain neutral during elections.

100 | 75 | **50** | 25 | 0

Comments:

The security forces are often seen by the majority of voters as favoring those political parties or candidates who enjoy the favor of the establishment. But, the agency or set of agencies can not totally influence the outcome of elections.

References:

Interview with Mohammad Tariq Khan, coordinator, Bacha Khan Education Foundation, Peshawar

Qaiser Khan, political leader, Peshawar

100: The military, military officers, and other security forces refrain from overtly supporting or opposing political candidates or commenting on elections. The military or security forces refrain from physically interfering with political campaigns, rallies, or voting.

75:

50: The military, military officers, and security forces may be known to unofficially support or oppose particular candidates or parties. The military or security forces generally refrain from the use of force to support or oppose particular candidates or parties but there are exceptions.

25:

0: The military or other security forces are an active and explicit player in politics and overly support or oppose particular candidates or parties. The military or security forces routinely exercise the use of force to support or oppose parties or candidates.

19e. In law, domestic and international election observers are allowed to monitor elections.

YES | NO

References:

Election Commission Order 2002, section 7(b), section 9(f)

YES: A YES score is earned if domestic and international election observers are allowed to monitor the electoral process.

NO: A NO score is earned if there are any legal or regulatory prohibitions on the monitoring of the electoral process by domestic or international election observers.

19f. In practice, election observers are able to effectively monitor elections.

100 | 75 | **50** | 25 | 0

Comments:

Election observers cannot visit a polling station on their own. They are mostly taken to selected polling stations, which does not give them a fair way of effectively monitoring the election.

References:

Interview with Mohammad Tariq

Interview with Qaiser Khan

100: Election observers have unfettered access to polling sites, counting stations, and voters themselves. The government does not interfere with the observers' activities.

75:

50: Election observers generally have access to polling sites, counting stations, and voters but encounter restrictions in certain areas. The government may impose burdensome regulatory or bureaucratic requirements on observers to discourage their involvement.

25:

0: Election observers' movements are significantly limited by the government and many polling and counting sites are restricted or barred from observers. The government imposes so many bureaucratic or regulatory burdens on the observers that their mission is rendered ineffective.

17. Is there an election monitoring agency or set of election monitoring agencies/entities?

100

17. In law, is there an election monitoring agency or set of election monitoring agencies/entities?

YES | NO

References:

The Election Commission of Pakistan

Constitution of Pakistan 1973, article 213

Election Commission Order 2002.

Chief Executive's Order No. 1 of 2002

Gazette of Pakistan, extraordinary part one, January 14, 2001

YES: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to ensure the integrity of the election process.

NO: A NO score is earned if no domestic agency or set of domestic agencies/entities exists that monitors elections. A NO score is earned if elections are only monitored by an agency informally, such as poll booth monitoring by the police, only by international observers, or only by NGOs. A NO score is earned if the domestic election agency or set of domestic agencies simply facilitates the process of voting but is not empowered to report violations or abuses.

80
II-3. Political Financing

20. Are there regulations governing the financing of political parties?

86

20a. In law, there are regulations governing private contributions to political parties.

YES | NO

References:

Political Parties Order 2002, article 13

Submission of Statement of Accounts. Political Parties Rules 2002, article 4

YES: A YES score is earned if there are any formal rules (by law or regulation) controlling private contributions to political parties, including prohibitions against foreign donations.

NO: A NO score is earned if there is no regulation of private contributions to political parties.

20b. In law, there are limits on individual donations to political parties.

YES | NO

Comments:

In law, there is no limit or ceiling on individual donations to political parties, which are bound submit a statement of accounts to the Election Commission, clearly mentioning the sources of the funds. Individual donations are shown in the accounts book but no specific limit is imposed on it.

References:

Political Parties Order 2002, article 13

YES: A YES score is earned if there are any limits in size on individual contributions to political parties. A YES score is also earned if individual contributions are prohibited.

NO: A NO score is earned if there are no limits on contributions from individuals. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

20c. In law, there are limits on corporate donations to political parties.

YES | NO

References:

Political Parties Order 2002, article 13, clause 1(b)

YES: A YES score is earned if there are any limits in size on corporate contributions to political parties. A YES score is earned if corporate contributions are prohibited.

NO: A NO score is earned if there are no limits on corporate contributions to political parties. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

20d. In law, there are limits on total political party expenditures.

YES | NO

References:

Political Parties Order 2002, article 13, clause 1(a)

YES: A YES score is earned if there are any limits in size on political party expenditures. A YES score is earned if all party expenditures are prohibited.

NO: A NO score is earned if there are no limits on political party expenditures. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

20e. In law, there are requirements for the disclosure of donations to political parties.

YES | NO

References:

Political Parties Order 2002, article 13, clause 2(b)

YES: A YES score is earned if there are any requirements mandating the disclosure of financial contributions to political parties.

NO: A NO score is earned if there are no requirements mandating the disclosure of contributions to political parties, existing regulations do not require a donor's name or amount given, or the regulations allow for anonymous donations.

20f. In law, there are requirements for the independent auditing of the finances and expenditures of political parties.

YES | NO

Comments:

The Political Parties Order 2002 contains rules of business for political parties.

Each political party is to submit statements of its accounts to the Election Commission of Pakistan (ECP) within 60 days from the close of each financial year. A consolidated statement of accounts of the party containing annual income and expenses, sources of funds, and assets and liabilities, duly audited by a chartered accountant, is submitted to the ECP. The statement of accounts of the party is required to be accompanied by a certificate signed by the party leader stating that the party received no funds from any source prohibited under Political Parties Order 2002 and that the statement contains an accurate financial position of the party. Political parties are required to submit statement of accounts in Form-I, free printed copies of which are available in the Election Commission Secretariat, Islamabad, and in the offices of the Provincial Election Commissioners, Punjab, Sindh, NWFP and Balochistan. From Article 13

A member of a political party shall be required to pay a membership fee as provided in the party's constitution and may, in addition, make voluntary contributions toward the party's funds. (2) Contributions made by members or supporters of any party shall be duly recorded by the political parties. From Article 6

(1) 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 60 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. From Chief Executive's Order No. 18

Every political party shall maintain its accounts in the manner set out in Form-I indicating its income and expenditures, sources of funds, assets and liabilities and shall, within 60 days from the close of each financial year (July-June), submit to the Election Commission a consolidated statement of accounts of the party audited by a Chartered Accountant, accompanied by a certificate, duly signed by the Party Leader to the effect that no funds from any source prohibited under the order were received by the party and that the statement contains an accurate financial position of the party. From Article 4

All financial transactions within a party shall be entered in the statement of accounts submitted under rule 4.

Where the Election Commission decides that the contributions or donations, as the case may be, accepted by the political parties are prohibited under clause (3) of article 6, it shall, subject to notice to the political party concerned and after giving an opportunity of being heard, direct the same to be confiscated in favor of the State to be deposited in Government Treasury or sub-Treasury in the following head of the account: 3000000-Deposits and Reserves-B-Not Bearing interest, 3500000-Departmental and Judicial Deposits, 3501000-Civil Deposits, 3501010-Deposits in connection with Elections. From Article 6

References:

Political Parties Rules 2002, article 13

Political Parties Order 2002, article 6

Political Parties Order 2002, Chief Executive's Order No. 18 of 2002, Gazette of Pakistan, Extraordinary Part One, June 28, 2002, article 1

Political Parties Rules 2002, Gazette of Pakistan, Extraordinary Part II, July 23, 2002: articles 4, 5, 6

YES: A YES score is earned if there is a legal or regulatory requirement for the independent auditing of party finances and expenditures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of political parties' finances and expenditures or if such requirements exist but allow for parties to self-audit.

20g. In law, there is an agency or entity that monitors the financing of political parties.

YES | NO

Comments:

The Election Commission of Pakistan monitors the financial affairs of political parties.

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 60 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. From Article 13

References:

Political Parties Rules 2002

Election Commission Order 2002, article 13

YES: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to monitor and enforce laws and regulations around the financing of political parties. A YES score is earned even if the agency/entity is ineffective in practice.

NO: A NO score is earned if there is no such agency or entity.

21. Are there regulations governing the financing of individual political candidates?

100

21a. In law, there are regulations governing private contributions to individual political candidates.

YES | NO

Comments:

The contribution made by members or supporters of any party shall be duly recorded by the political parties. From Article 6(2)

Any contribution or donation that is prohibited under this order shall be considered in favor of the State in the manner as may be prescribed. From Article 6(4)

For the purpose of this section, a contribution” or “donation” includes a contribution or donation made in cash, kind, stocks, hospitality, accommodation, transport, fuel and provision of other such facilities. From Manual of Elections Laws

References:

Political Parties Order 2002, articles 6(2) and 6(4)

Manual of Elections Laws, Ishfaq Ali, page 49.

YES: A YES score is earned if there are any formal rules (by law or regulation) controlling private contributions to individual political candidates, including prohibitions against foreign donations.

NO: A NO score is earned if there is no regulation of private contributions to individual political candidates.

21b. In law, there are limits on individual donations to political candidates.

YES | NO

Comments:

Private or individual donations to the political party shall be duly recorded in the accounts register. Donations made in contravention of the Political Parties Order 2002 shall be considered in favor of the state. Limit or ceiling on individual donations can be lowered or raised by the election commission under the relevant law.

References:

Political Parties Order 2002

Political Parties Rules 2002

YES: A YES score is earned if there are any limits in size on individual contributions to political candidates. A YES score is also earned if individual contributions are prohibited.

NO: A NO score is earned if there are no limits on contributions from individuals. A NO score is also earned if limits are applied by the government on opposition candidates in a discriminatory manner.

21c. In law, there are limits on corporate donations to individual political candidates.

YES | NO

References:

Political Parties Order 2002

YES: A YES score is earned if there are any limits in size on corporate contributions to individual political candidates. A YES score is earned if corporate contributions are prohibited.

NO: A NO score is earned if there are no limits on corporate contributions to individual political candidates. A NO score is also earned if limits are applied by the government on opposition candidates in a discriminatory manner.

21d. In law, there are requirements for the disclosure of donations to individual political candidates.

YES | NO

References:

Political Parties Orders 2002, article 13

YES: A YES score is earned if there are any requirements mandating the disclosure of financial contributions to individual political candidates.

NO: A NO score is earned if there are no requirements mandating the disclosure of contributions to individual political candidates, existing regulations do not require a donor's name or amount given, or the regulations allow for anonymous donations.

21e. In law, there are requirements for the independent auditing of the campaign finances of individual political candidates.

YES | NO

Comments:

Campaign finances are submitted to the election commission for audit and verification. But, in practice the finances violate the rules and no actual finances incurred on electoral or political campaign is submitted to the authority.

From Pakistan Legal Decisions (PLDs): Allegations in an election petition alleging that actions of returned candidates constitute corrupt and illegal practice are true. Specifically, the candidates exceeded the election-expenses limit, took assistance from someone in a service of Pakistan to further his election, provided transport to voters going to polling stations and indulged in bogus polling.

References:

Representation of the People Act 1976, Chapter VI: Election expenses

Pakistan Legal Decisions (official court documents) 1989, Supreme Court, page 760

YES: A YES score is earned if there is a legal or regulatory requirement for the independent auditing of an individual candidate's campaign finances and expenditures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of an individual candidate's campaign finances and expenditures or if such requirements exist but allow for candidates to self-audit.

21f. In law, there is an agency or entity that monitors the financing of individual political candidates' campaigns.

YES | NO

Comments:

The Election Commission of Pakistan monitors the financing of individual political candidates' campaigns.

References:

Election Commission Order 2002

YES: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to monitor and enforce laws and regulations around the financing of individual political candidates' campaigns. A YES score is earned even if the agency/entity is ineffective in practice.

NO: A NO score is earned if there is no such agency or entity.

22. Are the regulations governing the political financing of parties effective?

22a. In practice, the limits on individual donations to political parties are effective in regulating an individual's ability to financially support a political party.

100 | 75 | 50 | 25 | 0

Comments:

Jamilur Rehman, who was deputed at a polling station for polling duty on Feb 18, 2008, said that the rules and regulations regarding individuals' ability to finance a political party or campaign are not effective. Political parties' and individual candidates' election expenses are seldom checked, unless a returned candidate's expenses are challenged in the election tribunals appointed by the election commission. Background interviews and personal experiences also show that neither political parties nor candidates' finances are monitored or probed.

Donations to political parties are seldom made public by the parties' leadership. However, they submit a statement of accounts to the Election Commission of Pakistan on a regular basis. Media reports suggest that the actual assets and liabilities of political parties are never made public or declared in the statement of accounts. Background interviews with individual political party workers also pointed to the lack of transparency in the record of donations made to political parties.

References:

Jamilur Rehman, schoolteacher, district Karak, July 28, 2008

Interview with Kamal Jan, schoolteacher, district Karak, July 28, 2008

100: Existing limits represent the full extent to which an individual can directly or indirectly financially support a political party. Limits are reasonably low enough in the context of the total costs of running a campaign.

75:

50: Existing limits generally represent the full extent to which an individual can directly or indirectly financially support a political party. However, exceptions and loopholes exist through which individuals can indirectly support political parties above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular party; unregulated loans to parties (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The vast majority of individual contributions to a political party are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

22b. In practice, the limits on corporate donations to political parties are effective in regulating a company's ability to financially support a political party.

100 | 75 | 50 | 25 | 0

Comments:

This is true for corporate donations as for individual donations to financially support political parties. The sizes of donations are never made public or declared in the statements of accounts. And the political parties visibly spend huge amounts funding election campaigns and, in the majority of cases, as witnessed across the country, this spending is more than that set forth by the ECP under the election laws. Hence the assets, sources of funds and liabilities of political parties are held in question across the country.

References:

Jamilur Rehman

Kamal Jan

Dr. Said Alam Mahsud, political leader, Peshawar

100: Existing limits represent the full extent to which a company can directly or indirectly financially support a political party. Limits are reasonably low enough in the context of the total costs of running a campaign to be meaningful.

75:

50: Existing limits generally represent the full extent to which a company can directly or indirectly financially support a political party. However, exceptions and loopholes exist through which companies can indirectly support political parties above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular party; unregulated loans to parties (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of corporate contributions to political parties are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

22c. In practice, the limits on total party expenditures are effective in regulating a political party's ability to fund campaigns or politically-related activities.

100 | 75 | 50 | 25 | 0

Comments:

The ceiling set by the Election Commission of Pakistan (ECP) on total expenditures is mostly violated by the political parties when funding election campaigns and/or politically related activities. The political parties are supposed to submit a statement of expenditures on the election campaign within 60 days after the poll close, but, the statements do not mention the actual amount spent on the election campaign or political activities.

References:

Jamilur Rehman

Kamal Jan

Dr. Said Alam Mahsud

100: Existing limits represent the full extent to which political parties are able to finance their activities. Limits are reasonably low enough in the context of the total costs of running a party to be meaningful.

75:

50: Existing limits generally represent the full extent to which a political party can finance its activities. However, exceptions and loopholes exist through which parties can generate revenue or finance their activities beyond the scope of existing regulations. Such loopholes could include taking loans that are outside of the scope of regulations covering direct donations; links to revenue-generating business activities that are beyond the scope of electoral or campaign-related regulations; or accepting in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a party

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of expenditures are made outside of the formal limitation system. Limits are so high that they are meaningless in the context of the overall costs of running a party.

22d. In practice, when necessary, an agency or entity monitoring the financing of political parties independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

In practice, the Election Commission of Pakistan has never initiated independent investigations into the expenditures of political parties or election candidates. Some action is taken when a candidate brings to the election authorities an objection to an opponent's expenditures.

References:

Jamilur Rehman

Kamal Jan

Dr. Said Alam Mahsud

100: The agency or entity aggressively starts investigations into allegations of wrong doing with respect to the financing of political parties. The agency is fair in its application of this power.

75:

50: The agency or entity will start investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power.

25:

0: The agency or entity rarely investigates on its own, or the agency or entity is partisan in its application of this power.

22e. In practice, when necessary, an agency or entity monitoring the financing of political parties imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

Cases involving penalties placed on political parties for violating rules regulating political activity finances are never known to have been noticed by the Election Commission of Pakistan.

References:

Jamilur Rehman

Kamal Jan

Dr. Said Alam Mahsud

100: When rules violations are discovered, the agency or entity is aggressive in penalizing offenders.

75:

50: The agency or entity enforces rules, but is limited in its effectiveness. The agency or entity may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency or entity does not effectively penalize offenders. The agency or entity may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency or entity may be partisan in its application of power.

22f. In practice, contributions to political parties are audited.

100 | 75 | 50 | 25 | 0

Comments:

The political parties submit statements of accounts, including corporate or individual contributions and audited by a Chartered Accountant, to the election commission under the relevant law regulating the political parties. But interviews conducted with district-level leaders of political parties suggest that in practice, no such thing is or has ever been done.

References:

Dr. Said Alam Mahsud, political leader, Peshawar

100: Political party finances are regularly audited using generally accepted auditing practices. This includes the auditing of nominally independent financial organizations that act as financial extensions of the party.

75:

50: Political party finances (as defined) are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed contributions. Contributions to the political party may be sufficiently audited, but the auditing of nominally independent extensions of the party may not be.

25:

0: Party finances are not audited, or the audits performed have no value in tracking contributions. Audits may be performed by entities known to be partisan or biased in their practices.

23. Are the regulations governing the political financing of individual candidates effective?

25

23a. In practice, the limits on individual donations to political candidates are effective in regulating an individual's ability to financially support a particular candidate.

100 | 75 | 50 | 25 | 0

References:

Dr. Said Alam Mahsud

Jamilur Rehman

Kamal Jan

100: Existing limits represent the full extent to which an individual can directly or indirectly financially support a political candidate. Limits are reasonably low enough in the context of the total costs of running a campaign.

75:

50: Existing limits generally represent the full extent to which an individual can directly or indirectly financially support a particular candidate. However, exceptions and loopholes exist through which individuals can indirectly support particular political candidates above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular candidate; unregulated loans to candidates (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The vast majority of individual contributions to a particular political candidate are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

23b. In practice, the limits on corporate donations to individual candidates are effective in regulating a company's ability to financially support a candidate.

100 | 75 | 50 | 25 | 0

References:

Dr. Said Alam Mahsud

Jamilur Rehman

100: Existing limits represent the full extent to which a company can directly or indirectly financially support an individual candidate. Limits are reasonably low enough in the context of the total costs of running a campaign to be meaningful.

75:

50: Existing limits generally represent the full extent to which a company can directly or indirectly financially support an individual candidate. However, exceptions and loopholes exist through which companies can indirectly support individual candidates above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular candidate; unregulated loans to candidates (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of corporate contributions to individual candidates are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

23c. In practice, when necessary, an agency or entity monitoring the financing of individual candidates' campaigns independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

The Election Commission of Pakistan (ECP) regulates the political parties and holds elections. Under law, it can initiate proceedings against individual candidates or political parties contesting elections to monitor their spending on political campaigns or election rallies. In practice, all political parties and individual candidates spend more for campaign financing than the limits set by the ECP, but no effective action having been taken against candidates or political parties has ever been reported in the media.

References:

Dr. Said Alam Mahsud

Jamilur Rehman

Kamal Jan

100: The agency or entity aggressively starts investigations into allegations of wrong doing with respect to the financing of individual candidates' campaigns. The agency is fair in its application of this power.

75:

50: The agency or entity will start investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power.

25:

0: The agency or entity rarely investigates on its own, or the agency or entity is partisan in its application of this power.

23d. In practice, when necessary, an agency or entity monitoring the financing of individual candidates' campaigns imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

Under political parties laws, the Election Commission of PPakistan can impose penalties on offenders, but in practice no such action has ever been taken.

References:

Dr. Said Alam Mahsud

Jamilur Rehman

Kamal Jan

100: When rules violations are discovered, the agency or entity is aggressive in penalizing offenders.

75:

50: The agency or entity enforces rules, but is limited in its effectiveness. The agency or entity may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency or entity does not effectively penalize offenders. The agency or entity may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency or entity may be partisan in its application of power.

23e. In practice, the finances of individual candidates' campaigns are audited.

100 | 75 | 50 | 25 | 0

Comments:

In practice, candidates' finances are not audited. However, every candidate and political party crosses the expenditure limit set by the Election Commission of Pakistan (ECP), and offenders are not punished.

References:

Dr. Said Alam Mahsud

Jamilur Rehman

Kamal Jan

100: The finances of individual candidates' campaigns are regularly audited using generally accepted auditing practices.

75:

50: The finances of individual candidates' campaigns are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed contributions.

25:

0: The finances of individual candidates' campaigns are not audited, or the audits performed have no value in tracking contributions. Audits may be performed by entities known to be partisan or biased in their practices.

24. Can citizens access records related to the financing of political parties?

8

24a. In practice, political parties disclose data relating to financial support and expenditures within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Dr. Said Alam Mahsud

Jamilur Rehman

Kamal Jan

100: Political parties disclose their sources of funding and expenditures at least every quarter.

75:

50: Political parties disclose their sources of funding and expenditures only one or two times per year. Delays may occur when sensitive political information is involved.

25:

0: Political parties never publish their sources of funding or expenditures or publish that information only rarely with more than a year in between publication. Politically sensitive information is regular withheld from public disclosure.

24b. In practice, citizens can access the financial records of political parties within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Dr. Said Alam Mahsud

Jamilur Rehman

Kamal Jan

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take two to four weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. There may be persistent delays in obtaining politically sensitive records.

24c. In practice, citizens can access the financial records of political parties at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Dr. Said Alam Mahsud

Jamilur Rehman

Kamal Jan

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

25. Can citizens access records related to the financing of individual candidates' campaigns?

8

25a. In practice, individual political candidates disclose data relating to financial support and expenditures within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Dr. Said Alam Mahsud

Jamilur Rehman

Kamal Jan

100: Individual candidates disclose their sources of funding and expenditures at least every quarter.

75:

50: Individual candidates disclose their sources of funding and expenditures only one or two times per year. Delays may occur when sensitive political information is involved.

25:

0: Individual candidates never publish their sources of funding or expenditures or publish that information only rarely with more than a year in between publication. Politically sensitive information is regular withheld from public disclosure.

25b. In practice, citizens can access the financial records of individual candidates (their campaign revenues and expenditures) within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Dr. Said ALam Mahsud

Jamilur Rehman

Kamal Jan

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take two to four weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. There may be persistent delays in obtaining politically sensitive records.

25c. In practice, citizens can access the financial records of individual candidates (their campaign revenues and expenditures) at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Dr. Said Alam Mahsud

Jamilur Rehman

Kamal Jan

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

Category III. Government Accountability

III-1. ⁶⁹Executive Accountability

27. Can the chief executive be held accountable for his/her actions?

69

27a. In practice, the chief executive gives reasons for his/her policy decisions.

100 | 75 | 50 | 25 | 0

Comments:

The president or the chief executive may or may not give timely or complete reasons for his government's policy decisions. In addition, government ministers never agree on reasons why certain actions were taken.

References:

Saeed Baig, advocate, Supreme Court, Pakistan, July 29, 2008, Peshawar High Court Bar Room, Peshawar

Ismail Fehmi, advocate, Supreme Court, July 29, 2008, Peshawar High Court Bar Room, Peshawar

100: The chief executive and/or cabinet ministers give formal explanations of all policy matters. The chief executive regularly takes critical questions from journalists or an opposition party, usually at least once a month. There is no censoring of such sessions.

75:

50: The chief executive and/or cabinet ministers give explanations of policy, but not always in a timely or complete way. The chief executive occasionally takes critical questions from journalists or an opposition party, but not in a regular or formalized process. Particular issues of political sensitivity may be censored by government broadcasters.

25:

0: The chief executive and/or cabinet ministers do not give substantial justifications for policy. Public appearances by the chief executive offer no exposure to critical questions. The government and government-run media routinely censor such sessions.

27b. In law, the judiciary can review the actions of the executive.

YES | NO

References:

Constitution of Pakistan 1973, article 199

YES: A YES score is earned if there is a formal process by which the judiciary can pass judgments on the legality or constitutionality of actions taken by the executive.

NO: A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established in law or regulation without formal procedures. A NO score is earned if general exemptions exist with respect to executive actions that are reviewable (a national security exemption, for example).

27c. In practice, when necessary, the judiciary reviews the actions of the executive.

100 | 75 | 50 | 25 | 0

References:

Saeed Baig, advocate, Supreme Court, Pakistan, July 29, 2008, Peshawar High Court Bar Room, Peshawar

Ismail Fehmi, advocate, Supreme Court, July 29, 2008, Peshawar High Court Bar Room, Peshawar

100: When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing executive actions and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this power. It does not need to rely upon the executive to initiate a constitutional or legal review.

75:

50: The judiciary will review executive actions, but is limited in its effectiveness. The judiciary may be slow to act, unwilling to take on politically sensitive issues, or occasionally unable to enforce its judgments.

25:

0: The judiciary does not effectively review executive policy. The judiciary may make judgments but not enforce them, or may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power. It must rely on instructions from the executive in order to initiate a legal or constitutional review.

27d. In practice, the chief executive limits the use of executive orders for establishing new regulations, policies, or government practices.

References:

Saeed Baig, advocate, Supreme Court, Pakistan, July 29, 2008, Peshawar High Court Bar Room, Peshawar

Ismail Fehmi, advocate, Supreme Court, July 29, 2008, Peshawar High Court Bar Room, Peshawar

100: The chief executive utilizes executive orders only when there is no constitutional or legal requirement for official legislative action or approval. Executive orders are limited in number and narrow in scope.

75:

50: The chief executive sometimes relies on executive orders to implement policies and regulations opposed by the legislature. Some executive orders are overly broad in scope and are designed to circumvent constitutional or legal requirements for legislative action or approval.

25:

0: The chief executive routinely abuses executive orders to render the legislature practically useless. Executive orders are the norm, not the exception, and directly contravene constitutional or legal requirements for legislative action or approval.

28. Is the executive leadership subject to criminal proceedings?

100

28a. In law, the heads of state and government can be prosecuted for crimes they commit.

YES | NO

Comments:

The president, who is the head state, can be removed and prosecuted according to Article 14: (1) Notwithstanding anything contained in the Constitution, the president may, in accordance with the provision of this Article, be removed from office on the ground of physical or mental incapacity, or impeached on a charge of violating the Constitution or gross misconduct; (2) Not less than one-half of the total membership of either house may give to the Speaker of the National Assembly or, as the case may be, the chairman, written notice of its intention to introduce a resolution for the removal of or to impeach the president; and such notice shall set out the particulars of his incapacity or the charge against him.

The prime minister can also be removed from his position by a vote of no confidence and prosecuted for misconduct or other offenses in a court of law.

References:

Constitution of Pakistan 1973, article 47

YES: A YES score is earned if the heads of state and government can be investigated, charged or prosecuted for criminal allegations. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if either the head of state or government cannot be investigated, charged or prosecuted for criminal allegations or the executive branch controls whether investigative or prosecutorial immunity can be lifted on the heads of state or government.

28b. In law, ministerial-level officials can be prosecuted for crimes they commit.

YES | NO

References:

Constitution of Pakistan 1973, article 47

YES: A YES score is earned if ministerial-level officials, or their equivalents, can all be investigated, charged or prosecuted for criminal allegations.

NO: A NO score is earned if any ministerial-level official, or equivalent official, cannot be investigated, charged or prosecuted for criminal allegations or the executive branch controls whether investigative or prosecutorial immunity can be lifted on ministerial-level officials.

29. Are there regulations governing conflicts of interest by the executive branch?

59

29a. In law, the heads of state and government are required to file a regular asset disclosure form.

YES | NO

References:

Constitution of Pakistan 1973, articles 41-49

YES: A YES score is earned if the heads of state and government are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form need not be publicly available to score a YES. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if either the head of state or government is not required to disclose assets.

29b. In law, ministerial-level officials are required to file a regular asset disclosure form.

YES | NO

References:

Representation of the People Act 1976

YES: A YES score is earned if ministerial-level officials, or their equivalents, are all required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets.

NO: A NO score is earned if ministers are not required to disclose assets. A NO score is earned if some ministers must disclose assets, but other ministers are not required.

29c. In law, there are regulations governing gifts and hospitality offered to members of the executive branch.

YES | NO

References:

Government Servants (Conduct) Rules 1964, article 5

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality offered to members of the executive branch of government.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts and hospitality offered to members of the executive branch. A NO score is earned if the guidelines are overly general and do not specify what is and is not appropriate.

29d. In law, there are requirements for the independent auditing of the executive branch asset disclosure forms (defined here as ministers and heads of state and government).

YES | NO

References:

Representation of People Act 1976

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of executive branch asset disclosures. The auditing is performed by an impartial third-party. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of executive branch asset disclosures or if such requirements exist but allow for self-auditing.

29e. In law, there are restrictions on heads of state and government and ministers entering the private sector after leaving the government.

YES | NO

References:

Interview with Saeed Baig, advocate, Supreme Court, Pakistan

Ismail Fehmi, advocate, Supreme Court, Peshawar

YES: A YES score is earned if there are regulations restricting the ability of heads of state/government and ministers to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if no such restrictions exist.

29f. In practice, the regulations restricting post-government private sector employment for heads of state and government and ministers are effective.

100 | 75 | 50 | 25 | 0

Comments:

Restrictions on post-governmental-service private-sector employment are never imposed. In practice, all government employees and servants, including the heads of state and government, can enter post-government private-sector employment or business.

References:

Saeed Baig, advocate

Ismail Fehmi, advocate

100: The regulations restricting post-government private sector employment for heads of state/government and ministers are uniformly enforced. There are no cases or few cases of those officials taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, heads of state/government or ministers are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Heads of state/government or ministers routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

29g. In practice, the regulations governing gifts and hospitality offered to members of the executive branch are effective.

100 | 75 | 50 | 25 | 0

Comments:

In law, gifts received by members of the executive branch, like those made to members of the legislature, are deposited in the government's Toshakhana, and the names of receiptants are duly recorded. But in practice, these laws are seldom followed.

References:

Saeed Baig, advocate

Ismail Fehmi, advocate

100: The regulations governing gifts and hospitality to members of the executive branch are regularly enforced. Members of the executive branch never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to members of the executive branch are generally applied though exceptions exist. Some ministers in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to members of the executive branch are routinely ignored and unenforced. Ministers and other members of the executive branch routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

29h. In practice, executive branch asset disclosures (defined here as ministers and above) are audited.

100 | 75 | 50 | 25 | 0

Comments:

In practice, asset disclosures of ministers or those above them are not audited.

References:

Saeed Baig, advocate, Supreme Court, Pakistan

Ismail Fehmi, advocate, Supreme Court

100: Executive branch asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Executive branch asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: Executive branch asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

30. Can citizens access the asset disclosure records of the heads of state and government?

0

30a. In law, citizens can access the asset disclosure records of the heads of state and government.

YES | **NO**

Comments:

The prime minister files asset-disclosure statements with the Election Commission of Pakistan as required, but not all citizens can access these records. The president is not required to file an asset-disclosure statement.

References:

Representation of People's Act 1976

YES: A YES score is earned if the heads of state and government file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for either the head of state or government. A NO score is earned if the form is filed, but not available to the public.

30b. In practice, citizens can access the asset disclosure records of the heads of state and government within a reasonable time period.

100 | 75 | 50 | 25 | **0**

References:

Saeed Baig, advocate, Supreme Court

Ismail Fehmi, advocate, Supreme Court

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some additional delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

30c. In practice, citizens can access the asset disclosure records of the heads of state and government at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Saeed Baig, advocate, Supreme Court

Ismail Fehmi, advocate, Supreme Court

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

26. Can citizens sue the government for infringement of their civil rights?

100

26. In law, can citizens sue the government for infringement of their civil rights?

YES | NO

Comments:

Based on the application of any aggrieved party, the High Court may make anyone who works within the territorial jurisdiction of the court, and is connected with the affairs of the federation, a province or a local authority, refrain from doing anything he is not permitted by law to do or to do anything he is required by law to do. Or, the court can declare of no legal effect any act done or proceeding undertaken by anyone described above that was done or undertaken without lawful authority.

References:

Constitution of Pakistan 1973, article 8, article 199, sections 1- 5

YES: A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) can receive compensation or redress through the courts for civil rights violations committed by the government, such as failure to follow due process of law when detaining suspected criminals.

NO: A NO score is earned if any group of citizens is excluded from the right to sue the government, or no such mechanism exists.

31. Official government functions are kept separate and distinct from the functions of the ruling political party.

25

31. In practice, official government functions are kept separate and distinct from the functions of the ruling political party.

Comments:

The functions of the ruling political party are kept separate from the government's official functions, but the bureaucracy acts as an organ and extension of the political party. Hence, the distinction between an official government function and ruling party function is difficult to make.

References:

Saeed Baig, advocate, Supreme Court

Ismail Fehmi, advocate, Supreme Court

100: Clear rules are followed distinguishing state functions from party activities. Government funds are never used for party activities. The civil service is completely distinct from party bureaucracy.

75:

50: The ruling party is, in principal, separate from the state, but exceptions to this standard sometimes occur. Examples may be the use of civil servants to organize political rallies, use of government vehicles on campaign trips, or use of government funds for party purposes.

25:

0: The government bureaucracy is an extension of the ruling party. There are few boundaries between government and party activities. Government funds, equipment and personnel are regularly used to support party activities.

III-2. Legislative Accountability

32. Can members of the legislature be held accountable for their actions?

100

32a. In law, the judiciary can review laws passed by the legislature.

YES | NO

References:

Constitution of Pakistan 1973, articles 184(3), 199

YES: A YES score is earned if there is a formal process by which the judiciary or constitutional courts can pass judgments on the legality or constitutionality of laws passed by the legislature.

NO: A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established in law or regulation without formal procedures. A NO score is earned if general exceptions exist exempting certain legislative actions from being reviewed (a national security exemption, for example).

32b. In practice, when necessary, the judiciary reviews laws passed by the legislature.

References:

Interview with Moazzam Butt, advocate

Amin Khan, advocate, Peshawar

100: When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing laws passed and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this power.

75:

50: The judiciary will review laws passed, but is limited in its effectiveness. The judiciary may be slow to act, unwilling to take on politically sensitive issues, or occasionally unable to enforce its judgments.

25:

0: The judiciary does not effectively review laws passed. The judiciary may make judgments but not enforce them, or may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power.

32c. In law, are members of the national legislature subject to criminal proceedings?

YES | NO

Comments:

Based on the nature of the crime, criminal laws are equally applicable to members of the national legislature.

References:

Criminal Procedure Code

Pakistan Penal Code

YES: A YES score is earned if all members of the legislature can, in law, be investigated and prosecuted for criminal allegations.

NO: A NO score is earned if any member of the legislature cannot, in law, be investigated and prosecuted for criminal proceedings. A NO score is also earned if the legislative branch itself controls whether investigative or prosecutorial immunity can be lifted on members of the legislature.

33. Are there regulations governing conflicts of interest by members of the national legislature?

57

33a. In law, members of the national legislature are required to file an asset disclosure form.

YES | NO

References:

Representation of People Act 1976

Conduct of General Elections Order 2002

YES: A YES score is earned if all members of the legislature are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

NO: A NO score is earned if any member of the legislature is not required to disclose assets.

33b. In law, there are restrictions for national legislators entering the private sector after leaving the government.

YES | **NO**

References:

Interview with Moazzam Butt, advocate

YES: A YES score is earned if there are regulations restricting national legislators' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

33c. In law, there are regulations governing gifts and hospitality offered to members of the national legislature.

YES | NO

Comments:

Gifts received by members of the national or provincial legislature are deposited in the Toshakhana. Responsibility of reporting the receipt of gifts from foreign dignitaries or delegations including the names of the recipients lies with the chief of protocol or ambassador in the concerned foreign country. For foreign delegations with whom the chief of protocol is not associated, the ministry sponsoring the visit is responsible for supplying the details of gifts and the list of recipients.

References:

N/A

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality for members of the legislature.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts or hospitality offered to members of the legislature. A NO score is earned if the guidelines are general and do not specify what is and is not appropriate.

33d. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national legislature.

YES | NO

References:

Rules of National Assembly

Election laws of the Representation of People Act 1976

Conduct of General Elections Order 2002

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of legislative branch asset disclosures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of legislative branch asset disclosures or if such requirements exist but allow for self-auditing.

33e. In practice, the regulations restricting post-government private sector employment for national legislators are effective.

100 | 75 | 50 | 25 | 0

Comments:

There are no regulations governing post-government-service private-sector employment of national legislators. In practice, members of parliament run private businesses and companies even when they are sitting members of parliament. Former Prime Minister Shaukat Aziz is a case in point: He left the country to take up his job in an international bank.

References:

Interview with Moazzam Butt, advocate

Interview with Amin Khan, advocate, High Court, Peshawar

100: The regulations restricting post-government private sector employment for national legislators are uniformly enforced. There are no cases or few cases of legislators taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, legislators are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Legislators routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

33f. In practice, the regulations governing gifts and hospitality offered to national legislators are effective.

100 | 75 | 50 | 25 | 0

References:

Moazzam Butt, advocate, Peshawar

Amin Khan, advocate, Peshawar

100: The regulations governing gifts and hospitality to national legislators are regularly enforced. Legislators never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to national legislators are generally applied though exceptions exist. Some legislators in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to national legislators are routinely ignored and unenforced. Legislators routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

33g. In practice, national legislative branch asset disclosures are audited.

100 | 75 | 50 | 25 | 0

Comments:

Asset disclosures by members of the legislative branch are audited, but audits are limited or do not follow auditing standards, or there are exceptions. The audits are never made public. In practice, assets are not declared.

References:

Moazzam Butt, advocate, Peshawar

Amin Khan, advocate, Peshawar

100: Legislative branch asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Legislative branch asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: Legislative branch asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

34. Can citizens access the asset disclosure records of members of the national legislature?

50

34a. In law, citizens can access the asset disclosure records of members of the national legislature.

YES | NO

References:

Representation of the People Act 1976

Election Commission Order 2002

Interview with Moazzam Butt, advocate

YES: A YES score is earned if members of the national legislature file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for members of the national legislature. A NO score is earned if the form is filed, but not available to the public.

34b. In practice, citizens can access legislative asset disclosure records within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

In 99% of cases, citizens cannot access legislative asset-disclosure records.

References:

Interview with Moazzam Butt, advocate

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

34c. In practice, citizens can access legislative asset disclosure records at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Moazzam Butt, advocate

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

35. Can citizens access legislative processes and documents?

67

35a. In law, citizens can access records of legislative processes and documents.

YES | NO

Comments:

Under the Rules of Business of the National Assembly or rules of provincial assemblies, copies of bills and proceedings are to be distributed among the media for distribution to the public.

References:

Moazzam Butt, advocate

YES: A YES score is earned if there is a general legal right to access records of legislative proceedings including voting records. A YES score can still be given if there are formal rules for specific exemptions to the right to disclosure (special secret sessions related to national security).

NO: A NO score is earned if there is no general right to access documents recording legislative proceedings. A NO score is earned if there exemptions to the general right that are not clearly defined by formal rules.

35b. In practice, citizens can access records of legislative processes and documents within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Records of legislative processes can be accessed, but not all citizen can do so. It takes a fair amount of time and money to get to the relevant places to access legislative-process records. Practically, it depends on individuals' connections to the circles keeping those records.

References:

Moazzam Butt, advocate

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

35c. In practice, citizens can access records of legislative processes and documents at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Interview with Moazzam Butt, advocate

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

36. Are judges appointed fairly?

92

36a. In law, there is a transparent procedure for selecting national-level judges.

YES | NO

Comments:

There is a transparent procedure for selecting national-level judges. The chief justice of a high court or the Supreme Court recommends names of prospective judges to the governor and the president who, in consultation with the chief minister or prime minister, appoint judges to the high court or Supreme Court. Judges of the high court are also elevated to the Supreme court on the recommendation of the chief justice of the Supreme Court and of the high court.

References:

Constitution of Pakistan 1973, article 193/1

YES: A YES score is earned if there is a formal process for selecting national level justices. This process should be public in the debating and confirmation stages. National-level judges are defined as judges who have powers that derive from a national law or constitution; are nominated/appointed by a national governmental body (head of state/government or national legislature); and/or are elected nationally.

NO: A NO score is given if there is no formal process of selection or the process is conducted without public oversight. National-level judges are defined as judges who have powers that derive from a national law or constitution; are nominated/appointed by a national governmental body (head of state/government or national legislature); and/or are elected nationally.

36b. In practice, professional criteria are followed in selecting national-level judges.

100 | 75 | 50 | 25 | 0

References:

Interview with Shakil Ahmad, advocate, Supreme Court of Pakistan, July 22, 2008, Peshawar

100: National-level judges selected have relevant professional qualifications such as formal legal training, experience as a lower court judge or a career as a litigator.

75:

50: Most national-level judges selected meet these qualifications, with some exceptions.

25:

0: National-level judges are often unqualified due to lack of training or experience.

36c. In law, there is a confirmation process for national-level judges (i.e. conducted by the legislature or an independent body).

YES | NO

Comments:

An additional judge is appointed to fill a permanent vacancy. After approval of the president, additional judges are confirmed to the satisfaction of the chief justice of the Supreme Court or high court.

References:

Constitution of Pakistan 1973, article 197

Interview with Shakil Ahmad, advocate, Supreme Court of Pakistan, July 22, 2008, Peshawar

YES: A YES score is earned if there is a formal process establishing a review of national-level judicial nominees by an agency independent from the body appointing the judges.

NO: A NO score is earned if there is no formal review. A NO score is earned if the review is conducted by a body directed by the body appointing the judges (such as review by the head of police if judges are appointed by the executive).

37. Can members of the judiciary be held accountable for their actions?

100

37a. In law, members of the national-level judiciary are obliged to give reasons for their decisions.

YES | NO

References:

Constitution of Pakistan 1973, article 209, clauses 7, 8

YES: A YES score is earned if there is a formal and mandatory process for judges to explain their decisions.

NO: A NO score is earned if justices are not required to explain decisions. A NO score is earned if there is a general exemption from explaining some decisions (such as national security).

37b. In practice, members of the national-level judiciary give reasons for their decisions.

100 | 75 | 50 | 25 | 0

References:

Shakil Ahmad, advocate, Supreme Court, Peshawar

100: Judges are formally required to explain their judgments in detail, establishing a body of precedent. All judges comply with these requirements.

75:

50: Judges are compelled to give substantial reasons for their decisions, but some exceptions exist. These may include special courts, such as military courts or tribunals.

25:

0: Judges commonly issue decisions without formal explanations.

37c. In law, there is a disciplinary agency (or equivalent mechanism) for the national-level judicial system.

YES | NO

References:

Constitution of Pakistan 1973, article 209

YES: A YES score is earned if there is a disciplinary agency (or equivalent mechanism) for the judicial system. A disciplinary agency is defined here as an agency or mechanism specifically mandated to investigate breaches of procedure, abuses of power or other failures of the judiciary.

NO: A NO score is earned if no agency or mechanism is specifically mandated to act as a disciplinary mechanism for the national-level judiciary.

37d. In law, the judicial disciplinary agency (or equivalent mechanism) is protected from political interference.

YES | NO

Comments:

No political interference can be made by political or other agencies, except by the mechanism framed under article 209.

References:

Constitution of Pakistan, article 209

YES: A YES score is earned if there are formal rules establishing that the judicial disciplinary agency (or equivalent mechanism) is protected from political interference by the executive and legislative branches.

NO: A NO score is earned if there are no formal rules establishing the independence of the judicial disciplinary agency (or equivalent mechanism). A NO score is given if the judicial disciplinary agency or equivalent mechanism function is carried out by an inherently subordinate organization, such as an executive ministry or legislative committee.

37e. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) initiates investigations.

100 | 75 | 50 | 25 | 0

References:

Shakil Ahmad, advocate, Peshawar

100: The judicial disciplinary agency (or equivalent mechanism) aggressively starts investigations — or participates fully with cooperating agencies' investigations — into judicial misconduct. The judicial disciplinary agency (or equivalent mechanism) is fair in its application of this power.

75:

50: The judicial disciplinary agency (or equivalent mechanism) will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The judicial disciplinary agency (or equivalent mechanism), though limited in effectiveness, is still fair in its application of power.

25:

0: The judicial disciplinary agency (or equivalent mechanism) rarely investigates on its own or cooperates in other agencies' investigations, or the judicial disciplinary agency (or equivalent mechanism) is partisan in its application of this power.

37f. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

If, after inquiry into the matter, a court believes that a judge is incapable of performing the duties of his office or guilty of misconduct, the court reports to the president.

References:

Shakil Ahmad, advocate

Constitution of Pakistan, article 209(6)

100: When rules violations are discovered, the judicial disciplinary agency (or equivalent mechanism) is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

75:

50: The judicial disciplinary agency (or equivalent mechanism) enforces rules, but is limited in its effectiveness. The judicial disciplinary agency (or equivalent mechanism) may be slow to act, unwilling to take on politically powerful offenders, resistant to cooperating with other agencies, or occasionally unable to enforce its judgments.

25:

0: The judicial disciplinary agency (or equivalent mechanism) does not effectively penalize offenders. The judicial disciplinary agency (or equivalent mechanism) may make judgments but not enforce them, does not cooperate with other agencies in enforcing penalties, or may fail to make reasonable judgments against offenders. The judicial disciplinary agency (or equivalent mechanism) may be partisan in its application of power.

38. Are there regulations governing conflicts of interest for the national-level judiciary?

86

38a. In law, members of the national-level judiciary are required to file an asset disclosure form.

YES | NO

References:

Government Servants (Conduct) Rules 1964

Interview with Shakil Ahmad, advocate, Supreme Court

YES: A YES score is earned if all members of the national-level judiciary are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

NO: A NO score is earned if any member of the national-level judiciary is not required to publicly disclose assets.

38b. In law, there are regulations governing gifts and hospitality offered to members of the national-level judiciary.

YES | NO

Comments:

All gifts, irrespective of their prices, must be reported to the Toshakhana, Cabinet Division. The chief of protocol is responsible for reporting the receipt of gifts to members from foreign dignitaries or delegations, including the names of recipients.

References:

Interview with Shakil Ahmad, advocate

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality for members of the national-level judiciary.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts or hospitality offered to members of the national-level judiciary. A NO score is earned if the guidelines are general and do not specify what is and is not appropriate.

38c. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national-level judiciary.

YES | NO

References:

Constitution of Pakistan 1973, articles 7(b) and 207

Shakil Ahmad, advocate

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of national-level judiciary asset disclosures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of national-level judiciary asset disclosures or if such requirements exist but allow for self-auditing.

38d. In law, there are restrictions for national-level judges entering the private sector after leaving the government.

YES | NO

References:

Constitution of Pakistan 1973, article 2

Shakil Ahmad, advocate

YES: A YES score is earned if there are regulations restricting national-level judges' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

38e. In practice, the regulations restricting post-government private sector employment for national-level judges are effective.

100 | **75** | 50 | 25 | 0

References:

Shakil Ahmad, advocate

Interview with Zakir Hussain, advocate, High Court, July 23, 2008, Peshiwar

100: The regulations restricting post-government private sector employment for national-level judges are uniformly enforced. There are no cases or few cases of judges taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain cases, judges are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Judges routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

38f. In practice, the regulations governing gifts and hospitality offered to members of the national-level judiciary are effective.

100 | 75 | 50 | 25 | 0

References:

Shakil Ahmad, advocate

Zakir Hussain, advocate

100: The regulations governing gifts and hospitality to members of the national-level judiciary are regularly enforced. Judges never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to members of the national-level judiciary are generally applied though exceptions exist. Some judges are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to members of the national-level judiciary are routinely ignored and unenforced. Judges routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

38g. In practice, national-level judiciary asset disclosures are audited.

100 | 75 | 50 | 25 | 0

References:

Shakil Ahmad, advocate

Zakir Hussain, advocate

100: National-level judiciary asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: National-level judiciary asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: National-level judiciary asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

39. Can citizens access the asset disclosure records of members of the national-level judiciary?

0

39a. In law, citizens can access the asset disclosure records of members of the national-level judiciary.

YES | **NO**

References:

Shakil Ahmad, advocate

Zakir Hussain, advocate

YES: A YES score is earned if members of the national-level judiciary file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for members of the national-level judiciary. A NO score is earned if the form is filed, but not available to the public.

39b. In practice, citizens can access judicial asset disclosure records within a reasonable time period.

100 | 75 | 50 | 25 | **0**

References:

Shakil Ahmad, advocate

Zakir Hussain, advocate

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

39c. In practice, citizens can access judicial asset disclosure records at a reasonable cost.

References:

Shakil Ahmad, advocate

Zakir Hussain, advocate

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

III-4. Budget Processes

40. Can the legislature provide input to the national budget?

83

40a. In law, the legislature can amend the budget.

YES | NO

References:

Constitution of Pakistan 1973, article 81

Shakil Ahmad, advocate, Supreme Court, Peshawar

YES: A YES score is earned if the legislature has the power to add or remove items to the national government budget.

NO: A NO score is earned if the legislature can only approve but not change details of the budget. A NO score is earned if the legislature has no input into the budget process.

40b. In practice, significant public expenditures require legislative approval.

References:

Constitution of Pakistan 1973, articles 78-84

Shakil Ahmad, advocate, Supreme Court, Peshawar

100: All significant government expenditures (defined as any project costing more than 1% of the total national budget), must be approved by the legislature. This includes defense and secret programs, which may be debated in closed hearings.

75:

50: Most significant government expenditures (as defined) are approved by the legislature, but some exceptions to this rule exist. This may include defense programs, an executive's personal budget, or other expenses.

25:

0: The legislature does not have the power to approve or disapprove large portions of the government budget, or the legislature does not exercise this power in a meaningful way.

40c. In practice, the legislature has sufficient capacity to monitor the budget process and provide input or changes.

100 | 75 | 50 | 25 | 0

References:

Constitution of Pakistan 1973, articles 81-84

Shakil Ahmad, advocate, Supreme Court, Peshawar

100: Legislators benefit from a sufficient and qualified staff as well as adequate financial and physical resources. Lack of capacity is never a reason why legislators cannot carry out their duties effectively.

75:

50: Legislators have some staff and financial resources but are limited by a shortfall of resources to adequately perform all of their budgetary oversight functions. Legislators are occasionally overwhelmed by the volume of work to be performed.

25:

0: Legislators have little to no staff and virtually no financial resources with which to perform their budgetary oversight role. Lack of resources is a regular and systemic problem that cripples the performance of the legislature.

41. Can citizens access the national budgetary process?

67

41a. In practice, the national budgetary process is conducted in a transparent manner in the debating stage (i.e. before final approval).

100 | 75 | 50 | 25 | 0

References:

Constitution of Pakistan 1973, articles 84-85

Shakil Ahmad, advocate, Supreme Court, Peshawar

100: Budget debates are public and records of these proceedings are easily accessible. Authors of individual budget items can easily be identified. Nearly all budget negotiations are conducted in these official proceedings.

75:

50: There is a formal, transparent process for budget debate, but major budget modifications may be negotiated in separate, closed sessions. Some items, such as non-secret defense projects, may be negotiated in closed sessions. Authors of individual line items may be difficult to identify.

25:

0: Budget negotiations are effectively closed to the public. There may be a formal, transparent process, but most real discussion and debate happens in other, closed settings.

41b. In practice, citizens provide input at budget hearings.

100 | 75 | **50** | 25 | 0

References:

Saeed Baig, advocate, Supreme Court

Ismail Fehmi, advocate, Supreme Court

100: Citizens, usually acting through CSOs, can provide information or commentary to the budget debate through a formal process. This information is essential to the process of evaluating budget priorities.

75:

50: Citizens or CSOs can provide input, but this information is often not relevant to budget decisions.

25:

0: Citizens or CSOs have no formal access to provide input to the budget debate.

41c. In practice, citizens can access itemized budget allocations.

100 | **75** | 50 | 25 | 0

References:

Saeed Baig, advocate, Supreme Court

Ismail Fehmi, advocate, Supreme Court

100: Citizens, journalists and CSOs can access itemized lists of budget allocations. This information is easily available and up to date.

75:

50: Citizens, journalists and CSOs can access itemized lists of budget allocations but this information may be difficult to access, incomplete or out of date.

25:

0: Citizens cannot access an itemized list of budget allocations, due to secrecy, prohibitive barriers or government inefficiency.

43. Is the legislative committee overseeing the expenditure of public funds effective?

43a. In practice, department heads regularly submit reports to this committee.

100 | 75 | 50 | 25 | 0

Comments:

Heads of government departments regularly, or when required to, submit account statements to this committee for approval and authentication.

References:

Public Accounts Committee of the National Assembly

Saeed Baig, advocate, Supreme Court

Ismail Fehmi, advocate, Supreme Court

100: Heads of ministry- or cabinet-level agencies submit regular, formal reports of expenses to a budget oversight committee.

75:

50: Agency heads submit reports to a budget oversight committee, but these reports are flawed in some way. The reports may be inconsistently delivered, or lacking important details.

25:

0: There is no budget oversight committee or equivalent, or heads of agencies do not submit meaningful reports to the agency.

43b. In practice, the committee acts in a non-partisan manner with members of opposition parties serving on the committee in an equitable fashion.

100 | 75 | 50 | 25 | 0

Comments:

The Public Accounts Committee of the National Assembly, which is the legislative committee overseeing the expenditure of public funds, knows how public funds are spent. The committee includes both ruling party and opposition party legislators, and acts in a fairly non-partisan manner.

References:

Saeed Baig, advocate, Supreme Court

Ismail Fehmi, advocate, Supreme Court

100: The committee is comprised of legislators from both the ruling party (or parties) and opposition parties in a roughly equitable distribution. All members of the committee — including opposition party members — are able to fully participate in the activities of the committee and influence the committee's work to roughly the same extent as any other member of the committee.

75:

50: The committee is comprised of legislators from both the ruling party (or parties) and opposition parties although the ruling party has a disproportionate share of committee seats. The chairperson of the committee may be overly influential and curb other members' ability to shape the committee's activities.

25:

0: The committee is dominated by legislators of the ruling party and/or the committee chairperson. Opposition legislators serving on the committee have in practice no way to influence the work of the committee.

43c. In practice, when necessary, this committee initiates independent investigations into financial irregularities.

100 | 75 | 50 | 25 | 0

Comments:

The Public Accounts Committee of the National Assembly, in the lower house of parliament, initiates proceedings into the illegal spending of public funds, but its investigations into financial irregularities are not imposed effectively enough to prosecute offenders.

References:

Saeed Baig, advocate, Supreme Court

Ismail Fehmi, advocate, Supreme Court

100: When irregularities are discovered, the committee is aggressive in investigating the government.

75:

50: The committee starts investigations, but is limited in its effectiveness. The committee may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The committee does not effectively investigate financial irregularities. The committee may start investigations but not complete them, or may fail to detect offenders. The committee may be partisan in its application of power.

42. Is there a separate legislative committee which provides oversight of public funds?

100

42. In law, is there a separate legislative committee which provides oversight of public funds?

YES | NO

References:

Constitution of Pakistan 1973, article 88

YES: A YES score is earned if there is a dedicated legislative committee (or equivalent group located in the legislature) that oversees the expenditure of public funds.

NO: A NO score is earned if no such body exists within the legislature. A NO score is earned if there is a body executing this function but it is not part of the legislature (such as a separate supreme audit institution).

Category IV. Administration and Civil Service

IV-1. Civil Service Regulations

44. Are there national regulations for the civil service encompassing, at least, the managerial and professional staff?

100

44a. In law, there are regulations requiring an impartial, independent and fairly managed civil service.

YES | NO

Comments:

In law, civil services are impartial and carry out their duties without interference from political parties. The Civil Servant Act provides regulations, rules and safeguards to enable civil servants to perform their duties fairly.

References:

Civil Servant Act 1973, section 23

Civil Servants (validation of rules) Ordinance 2001

YES: A YES score is earned if there are specific formal rules establishing that the civil service carry out its duties independent of political interference.

NO: A NO score is earned if there are no formal rules establishing an independent civil service.

44b. In law, there are regulations to prevent nepotism, cronyism, and patronage within the civil service.

YES | NO

References:

Civil Servants Act 1973, section 24

YES: A YES score is earned if there are specific formal rules prohibiting nepotism, cronyism, and patronage in the civil service. These should include competitive recruitment and promotion procedures as well as safeguards against arbitrary disciplinary actions and dismissal.

NO: A NO score is earned if no such regulations exist.

44c. In law, there is an independent redress mechanism for the civil service.

YES | NO

Comments:

The Public Service Tribunals at the provincial level and the Federal Service Tribunal at the national level provide effective mechanisms for independently redressing public servants' grievances.

References:

Civil Servants (Appeals) Rules 1977

Services Tribunals Act 1973

YES: A YES score is earned if there is a mechanism to which civil servants and applicants for the civil service can take grievances regarding civil service management actions. The mechanism should be independent of their supervisors but can still be located within the government agency or entity (such as a special commission or board). Civil servants are able to appeal the mechanism's decisions to the judiciary.

NO: A NO score is earned if no such mechanism exists.

44d. In law, civil servants convicted of corruption are prohibited from future government employment.

YES | NO

References:

Government Servants (Efficiency and Discipline) Rules 1973, section 8

YES: A YES score is earned if there are specific rules prohibiting continued government employment following a corruption conviction.

NO: A NO score is earned if no such rules exist or if the ban is not a lifetime ban.

45. Is the law governing the administration and civil service effective?

72

45a. In practice, civil servants are protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

In practice, civil servants are commonly influenced by political and personal matters. Relationships are a main factor influencing civil servants, as is political interference, which has changed the whole structure of the civil service due to threats, personal loyalty, undue influence and bias.

References:

Masood Iqbal, advocate, High Court, Peshawar, July 30, 2008, PHC Bar Room, Peshawar

100: Civil servants operate independently of the political process, without incentive or pressure to render favorable treatment or policy decisions on politically sensitive issues. Civil servants rarely comment on political debates. Individual judgments are rarely praised or criticized by political figures. Civil servants can bring a case to the courts challenging politically-motivated firings.

75:

50: Civil servants are typically independent, yet are sometimes influenced in their judgments by negative or positive political or personal incentives. This may include favorable or unfavorable treatment by superiors, public criticism or praise by the government, or other forms of influence. Civil servants may bring a case to the judicial system challenging politically-motivated firings but the case may encounter delays or bureaucratic hurdles.

25:

0: Civil servants are commonly influenced by political or personal matters. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. Civil servants are unable to find a remedy in the courts for unjustified or politically-motivated firings.

45b. In practice, civil servants are appointed and evaluated according to professional criteria.

100 | 75 | 50 | 25 | 0

Comments:

In practice, civil servants are appointed and evaluated according to their political approach, family relationships, friendships, personal loyalty and connections in the corridors of power.

References:

Masood Iqbal, advocate

Shahzada Shapoor Jan, advocate, PHC, Peshawar, July 30, 2008

100: Appointments to the civil service and their professional evaluations are made based on professional qualifications. Individuals appointed are free of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments and professional assessments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments and professional assessments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

45c. In practice, civil service management actions (e.g. hiring, firing, promotions) are not based on nepotism, cronyism, or patronage.

100 | 75 | 50 | 25 | 0

References:

Masood Iqbal, advocate

Shahzada Shapoor Jan, advocate, PHC, Peshawar, July 30, 2008

100: Nepotism (favorable treatment of family members), cronyism (favorable treatment of friends and colleagues), and patronage (favorable treatment of those who reward their superiors) are actively discouraged at all levels of the civil service. Hirings, firings, and promotions are based on merit and performance.

75:

50: Nepotism, cronyism, and patronage are discouraged, but exceptions exist. Political leaders or senior officials sometimes appoint family member or friends to favorable positions in the civil service, or lend other favorable treatment.

25:

0: Nepotism, cronyism, and patronage are commonly accepted principles in hiring, firing and promotions of civil servants.

45d. In practice, civil servants have clear job descriptions.

100 | 75 | 50 | 25 | 0

References:

Masood Iqbal, advocate

Shahzada Shapoor Jan, advocate

100: Civil servants almost always have formal job descriptions establishing levels of seniority, assigned functions, and compensation. Job descriptions are a reliable representation of positions in terms of a person's authority, responsibility and base pay.

75:

50: Civil servants often have formal job descriptions, but exceptions exist. Some civil servants may not be part of the formal assignment of duties and compensations. Some job descriptions may not map clearly to pay or responsibilities in some cases.

25:

0: Civil servants do not have formal roles or job descriptions. If they do, such job descriptions have little or nothing to do with the position's responsibilities, authority, or pay.

45e. In practice, civil servant bonuses constitute only a small fraction of total pay.

100 | 75 | 50 | 25 | 0

Comments:

In practice, most civil servants receive bonuses that represent a significant amount of their total pay.

References:

Masood Iqbal, advocate

Shahzada Shapoor Jan, advocate

100: Civil servant bonuses constitute no more than 10% of total pay and do not represent a major element of take-home pay.

75:

50: Civil servant bonuses are generally a small percentage of total take-home pay for most civil servants though exceptions exist where some civil servants' bonuses represent a significant part of total pay.

25:

0: Most civil servants receive bonuses that represent a significant amount of total take-home pay. In some cases bonuses represent the majority of total pay to civil servants.

45f. In practice, the government publishes the number of authorized civil service positions along with the number of positions actually filled.

100 | 75 | 50 | 25 | 0

References:

Masood Iqbal, advocate

Shahzada Shapoor Jan, advocate

100: The government publishes such a list on a regular basis.

75:

50: The government publishes such a list but it is often delayed or incomplete. There may be multiple years in between each successive publication.

25:

0: The government rarely or never publishes such a list, or when it does it is wholly incomplete.

45g. In practice, the independent redress mechanism for the civil service is effective.

100 | 75 | 50 | 25 | 0

Comments:

Public Service Tribunals at the provincial level and the Federal Service Tribunal at the national level provide effective mechanisms for independently redressing public servants' grievances. However, the process is not altogether free from pressure from the executive or the bodies that manage civil servants.

References:

Masood Iqbal, advocate

Shahzada Shapoor Jan, advocate

100: The independent redress mechanism for the civil service can control the timing and pace of its investigations without any input from the bodies that manage civil servants on a day-to-day basis.

75:

50: The independent civil service redress mechanism can generally decide what to investigate and when but is sometimes subject to pressure from the executive or the bodies that manage civil servants on a day-to-day basis on politically sensitive issues.

25:

0: The civil service redress mechanism must rely on approval from the executive or the bodies that manage civil servants on a day-to-day basis before initiating investigations. Politically sensitive investigations are almost impossible to move forward on.

45h. In practice, in the past year, the government has paid civil servants on time.

100 | 75 | 50 | 25 | 0

Comments:

In the past year, the government has frequently paid salaries to civil servants, but in some cases, the disbursement was delayed for various reasons.

References:

Masood Iqbal, advocate

Shahzada Shapoor Jan, advocate

100: In the past year, no civil servants have been paid late.

75:

50: In the past year, some civil servants have been paid late.

25:

0: In the past year, civil servants have frequently been denied due pay.

45i. In practice, civil servants convicted of corruption are prohibited from future government employment.

100 | 75 | 50 | 25 | 0

References:

Masood Iqbal, advocate

Shahzada Shapoor Jan, advocate

Government Servants (Efficiency and Discipline) Rules 1973, section 8

100: A system of formal blacklists and cooling off periods is in place for civil servants convicted of corruption. All civil servants are subject to this system.

75:

50: A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some civil servants may not be affected by the system, or the prohibitions are sometimes not effective. Some bans are only temporary.

25:

0: There is no such system, or the system is consistently ineffective in prohibiting future employment of convicted civil servants.

46. Are there regulations addressing conflicts of interest for civil servants?

75

46a. In law, senior members of the civil service are required to file an asset disclosure form.

YES | NO

References:

NWFP Government Servants (Conduct) Rules 1987, sections 12-14

YES: A YES score is earned if senior members of the civil service are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

NO: A NO score is earned if any senior member of the civil service is not required to disclose assets.

46b. In law, there are requirements for civil servants to recuse themselves from policy decisions where their personal interests may be affected.

YES | NO

References:

Government Servants (Conduct) Rules 1964

YES: A YES score is earned if there are requirements for civil servants to recuse themselves from policy decisions where their personal interests, including personal financial interests as well as those of their family and friends, are affected.

NO: A NO score exists if no such requirements exist in regulation or law.

46c. In law, there are restrictions for civil servants entering the private sector after leaving the government.

YES | NO

Comments:

The Auditor General is restricted by law from joining the private sector for two years after retirement from government service.

References:

N/A

YES: A YES score is earned if there are regulations restricting civil servants' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

46d. In law, there are regulations governing gifts and hospitality offered to civil servants.

YES | NO

References:

Civil Servants Act 1973

Government Servants (Conduct) Rules 1964

NWFP Civil Servants (Conduct) Rules 1987, section 5, sub-sections 1-8

YES: A YES score is earned if there are formal guidelines regarding gifts and hospitality given to civil servants.

NO: A NO score is earned if there are no such guidelines or regulations.

46e. In law, there are requirements for the independent auditing of the asset disclosure forms of senior members of the civil service.

YES | NO

References:

Government Servants (Conduct) Rules 1964, section 13

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of civil service asset disclosures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of civil service asset disclosures or if such requirements exist but allow for self-auditing.

46f. In practice, the regulations restricting post-government private sector employment for civil servants are effective.

100 | 75 | 50 | 25 | 0

Comments:

Ex-public servants can enter private-sector employment, but the Auditor General is restricted for two years after his retirement from the government.

References:

Masood Iqbal, advocate

Shahzada Shapoor Jan, advocate

100: The regulations restricting post-government private sector employment for civil servants are uniformly enforced. There are no cases or few cases of civil servants taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, civil servants are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Civil servants routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

46g. In practice, the regulations governing gifts and hospitality offered to civil servants are effective.

100 | 75 | 50 | 25 | 0

Comments:

It is true that in Pakistan, certain individuals or officials in their own capacity might misappropriate the gifts or hospitality offered to civil servants. However, in a majority of cases, the regulations are practiced strictly.

References:

Masood Iqbal, advocate

Shahzada Shapoor Jan, advocate

100: The regulations governing gifts and hospitality to civil servants are regularly enforced. Civil servants never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to civil servants are generally applied though exceptions exist. Some civil servants in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to the civil service are routinely ignored and unenforced. Civil servants routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

46h. In practice, the requirements for civil service recusal from policy decisions affecting personal interests are effective.

100 | 75 | 50 | 25 | 0

References:

Masood Iqbal, advocate

Shahzada Shapoor Jan, advocate

100: The requirements that civil servants recuse themselves from policy decisions where their personal interests are affected are routinely followed by most or all civil servants.

75:

50: The requirements that civil servants recuse themselves from policy decisions where their personal interests are affected are followed by most civil servants though exceptions exist. In certain sectors, civil servants are known to routinely participate in policy decisions where their personal interests are affected.

25:

0: Most civil servants routinely ignore recusal requirements and continue to participate in policy decisions where their personal interests are affected.

46i. In practice, civil service asset disclosures are audited.

100 | 75 | 50 | 25 | 0

Comments:

The Audit General Office audits asset disclosures by public servants, but the audits are made using inadequate auditing standards or with pressure from the executive branch or the bodies regulating public servants. Proceedings are initiated by the National Accountability Bureau (NAB) against public servants who have accumulated assets beyond their known sources of income.

References:

Masood Iqbal, advocate

Shahzada Shapoor Jan, advocate

100: Civil service asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Civil service asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: Civil service asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

47. Can citizens access the asset disclosure records of senior civil servants?

0

47a. In law, citizens can access the asset disclosure records of senior civil servants.

YES | **NO**

References:

There are no such specific laws.

YES: A YES score is earned if laws or regulations guarantee that citizens can access the asset records of senior civil servants.

NO: A NO score is earned if senior civil servants do not file an asset disclosure. A NO score is earned if senior civil servants file an asset disclosure, but it is not available to the public.

47b. In practice, citizens can access the asset disclosure records of senior civil servants within a reasonable time period.

100 | 75 | 50 | 25 | **0**

References:

Masood Iqbal, advocate

Shahzada Shapoor Jan, advocate

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

47c. In practice, citizens can access the asset disclosure records of senior civil servants at a reasonable cost.

100 | 75 | 50 | 25 | **0**

References:

Masood Iqbal, advocate

Shahzada Shapoor Jan, advocate

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

IV-2. Whistle-blowing Measures

48. Are employees protected from recrimination or other negative consequences when reporting corruption (i.e. whistle-blowing)?

75

48a. In law, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

YES | NO

References:

National Accountability Ordinance 1999

YES: A YES score is earned if there are specific laws against recrimination against public sector whistleblowers. This may include prohibitions on termination, transfer, harassment or other consequences.

NO: A NO score is earned if there are no legal protections for public-sector whistleblowers.

48b. In practice, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

100 | 75 | 50 | 25 | 0

Comments:

In some cases, whistleblowers in the public sector who report cases of corruption to higher authorities or to the media walk away without any negative consequences. But in most cases, they come in for uninvited trouble, recrimination or other negative consequences. It depends on the nature of the case, who it involves, and how and where those involved are connected.

References:

Moazzam Butt, advocate, Peshawar, August 1, 2008

Barkatullah, advocate, PHC, Peshawar

100: Public sector whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers or may be due to a culture that encourages disclosure and accountability.

75:

50: Public sector whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Public sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

48c. In law, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

YES | NO

References:

National Accountability Ordinance 1999

YES: A YES score is earned if there are specific laws against recrimination against private sector whistleblowers. This may include prohibitions on termination, transfer, harassment or other consequences.

NO: A NO score is earned if there are no legal protections for private-sector whistleblowers.

48d. In practice, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

100 | 75 | 50 | 25 | 0

Comments:

In practice, private sector employees who report cases of corruption, power abuse, or graft are punished. If the case involves people with access to the corridors of power, the whistleblower is made the scapegoat in that he or she loses his or her job and may find more trouble in future when struggling to find other employment.

References:

Moazzam Butt, advocate, Peshawar

Barkatullah, advocate, PHC, Peshawar

100: Private sector whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers or may be due to a culture that encourages disclosure and accountability.

75:

50: Private sector whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Private sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

50. In practice, is the internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption effective?

50

50a. In practice, the internal reporting mechanism for public sector corruption has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

Moazzam Butt, advocate

Barkatullah, advocate

100: The agency/entity has staff sufficient to fulfill its basic mandate.

75:

50: The agency/entity has limited staff, a fact that hinders its ability to fulfill its basic mandate.

25:

0: The agency/entity has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

50b. In practice, the internal reporting mechanism for public sector corruption receives regular funding.

100 | 75 | 50 | 25 | 0

References:

Moazzam Butt, advocate

Barkatullah, advocate

100: The agency/entity has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency/entity has a regular source of funding but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

50c. In practice, the internal reporting mechanism for public sector corruption acts on complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Interview with Moazzam Butt, advocate

Barkatullah, advocate

100: The agency/entity acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency/entity acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

50d. In practice, when necessary, the internal reporting mechanism for public sector corruption initiates investigations.

100 | 75 | 50 | 25 | 0

References:

Moazzam Butt, advocate

Barkatullah, advocate

100: When irregularities are discovered, the agency/entity is aggressive in investigating the government or in cooperating with other agencies' investigations.

75:

50: The agency/entity starts investigations, but is limited in its effectiveness. The agency/entity may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other investigative agencies, or occasionally unable to enforce its judgments.

25:

0: The agency/entity does not effectively investigate. The agency/entity may start investigations but not complete them, may refuse to cooperate with other investigative agencies, or may fail to detect offenders. The agency/entity may be partisan in its application of power.

49. Is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

100

49. In law, is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

YES | NO

Comments:

Civil servants can report corruption to the National Accountability Bureau or provincial offices on the phone, in written form or through email, along with documentation claiming to support the allegation of corruption.

References:

NAB Ordinance 1999

Moazzam Butt, advocate, Peshawar

Barkatullah, advocate, PHC, Peshawar

YES: A YES score is earned if there is a mechanism, or multiple mechanisms for multiple national government agencies, through which civil servants can report cases of graft, misuse of public funds, or corruption.

NO: A NO score is earned if no such mechanism (or equivalent series of mechanisms) exists.

75
IV-3. Procurement

51. Is the public procurement process effective?

65

51a. In law, there are regulations addressing conflicts of interest for public procurement officials.

YES | NO

References:

Pakistan Public Procurement Regulatory Authority (PPRA) 2002

Interview with Wilayat Khan, advocate, PHC, Peshawar, Aug. 7, 2008

Interview with Mian Faisal, planning officer, NWFP Emergency Rehabilitation Project, Planning and Development Department, Peshawar, Aug. 7, 2008

YES: A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private interests for public procurement officials. A YES score is earned if such regulations cover all civil servants, including procurement officials.

NO: A NO score is earned if no such rules exist.

51b. In law, there is mandatory professional training for public procurement officials.

YES | NO

References:

Pakistan Public Procurement Regulatory Authority.

Wilayat Khan, advocate

Mian Faisal, planning officer, NWFP Emergency Rehabilitation Project, Planning and Development Department

YES: A YES score is earned if public procurement officials receive regular mandatory training to ensure professional standards in supervising the tendering process. A YES score is earned if such training is mandated for portions of the broader civil service, to include procurement officials.

NO: A NO score is earned if there is no regular required training of public procurement officials or if training is sporadic, inconsistent, unrelated to procurement processes, or voluntary.

51c. In practice, the conflicts of interest regulations for public procurement officials are enforced.

100 | 75 | 50 | 25 | 0

Comments:

Conflict-of-interest regulations guiding public procurement officials are rarely enforced. The official machinery often oversteps and violates the rules and regulations of governing procurement.

References:

Wilayat Khan, advocate

Mian Faisal, planning officer, NWFP Emergency Rehabilitation Project, Planning and Development Department

100: Regulations regarding conflicts of interest for procurement officials are aggressively enforced.

75:

50: Conflict-of-interest regulations exist, but are flawed. Some violations may not be enforced, or some officials may be exempt from regulations.

25:

0: Conflict-of-interest regulations do not exist, or are consistently ineffective.

51d. In law, there is a mechanism that monitors the assets, incomes and spending habits of public procurement officials.

YES | NO

References:

Public Accounts Committee of the National Assembly of Parliament of Pakistan

Wilayat Khan, advocate

Mian Faisal, planning officer, NWFP Emergency Rehabilitation Project, Planning and Development Department

YES: A YES score is earned if there is a formal mandate to some agency to monitor the assets, incomes and spending habits of public procurement officials, such as an inspector general, or ombudsman.

NO: A NO score is earned if no such mandate exists.

51e. In law, major procurements require competitive bidding.

YES | NO

References:

Public Procurement Rules of the Pakistan Public Procurement Regulatory Authority 2002

Wilayat Khan, advocate

Mian Faisal, planning officer, NWFP Emergency Rehabilitation Project, Planning and Development Department

YES: A YES score is earned if all major procurements (defined as those greater than 0.5% of GDP) require competitive bidding.

NO: A NO score is earned if competitive bidding is not required by law or regulation for major procurement (greater than 0.5% OF GDP).

51f. In law, strict formal requirements limit the extent of sole sourcing.

YES | NO

Comments:

The Procurement Division invites sealed bids from manufacturers'/suppliers' Sales and Income Tax Department authorized agents.

References:

Procurement Division invites sealed bids from Sales and Income Tax departments authorized agents of manufacturers/suppliers companies.

Interview with Wilayat Khan, advocate

Mian Faisal, planning officer, NWFP Emergency Rehabilitation Project, Planning and Development Department

YES: A YES score is earned if sole sourcing is limited to specific, tightly defined conditions, such as when a supplier is the only source of a skill or technology.

NO: A NO score is earned if there are no prohibitions on sole sourcing. A NO score is earned if the prohibitions on sole sourcing are general and unspecific.

51g. In law, unsuccessful bidders can instigate an official review of procurement decisions.

YES | NO

Comments:

The public sector purchasing department can accept, reject or cancel any bid, or cancel the process of procurement, without incurring any liability to unsuccessful bidders.

References:

Mian Faisal, planning officer, P&D Department, Peshawar Wilayat Khan, advocate

Interview with Mian Faisal, planning officer, NWFP Emergency Rehabilitation Project, Planning and Development Department

YES: A YES score is earned if there is a formal appeal process for unsuccessful bidders.

NO: A NO score is earned if no such process exists.

51h. In law, unsuccessful bidders can challenge procurement decisions in a court of law.

YES | NO

Comments:

The public sector purchasing department can accept, reject or cancel any bid, or cancel the process of procurement, without incurring any liability to unsuccessful bidders.

References:

Wilayat Khan, advocate

Mian Faisal, planning officer, NWFP Emergency Rehabilitation Project, Planning and Development Department

YES: A YES score is earned if unsuccessful bidders can use the courts to appeal a procurement decision.

NO: A NO score is earned if no such process exists.

51i. In law, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

YES | NO

References:

Wilayat Khan, advocate

Mian Faisal, planning officer, NWFP Emergency Rehabilitation Project, Planning and Development Department

YES: A YES score is earned if there are formal procurement blacklists, designed to prevent convicted companies from doing business with the government.

NO: A NO score is earned if no such process exists.

51j. In practice, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

100 | 75 | 50 | **25** | 0

Comments:

Companies or firms found guilty of violations in public procurement are blacklisted from taking part in future bidding. However, the system is infested with flaws. Some procurements or companies may not be affected by regulations.

References:

Wilayat Khan, advocate

Mian Faisal, planning officer, NWFP Emergency Rehabilitation Project, Planning and Development Department

100: A system of formal blacklists and cooling off periods is in place for companies convicted of corruption. All companies are subject to this system.

75:

50: A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some procurements or companies may not be affected by the system, or the prohibitions are sometimes not effective.

25:

0: There is no such system, or the system is consistently ineffective in prohibiting future hiring of blacklisted companies.

52. Can citizens access the public procurement process?

58

52a. In law, citizens can access public procurement regulations.

YES | NO

References:

Public Procurement Rules 2002, Pakistan Public Procurement Regulatory Authority (PPRA)

Wilayat Khan, advocate

Mian Faisal, planning officer, NWFP Emergency Rehabilitation Project, Planning and Development Department

YES: A YES score is earned if procurement rules are, by law, open to the public. These regulations are defined here as the rules governing the competitive procurement process.

NO: A NO score is earned if procurement rules are officially secret for any reason or if there are no procurement rules.

52b. In law, the government is required to publicly announce the results of procurement decisions.

YES | NO

Comments:

S 4: Principles of procurements: Procuring agencies shall ensure that the procurements are made in a fair and transparent way and that the procurement process is efficient and economical.

References:

Public Procurement Rules 2002

S.R.O. Finance Division Notification, June 8, 2004

Wilayat Khan, advocate

Mian Faisal, planning officer, NWFP Emergency Rehabilitation Project, Planning and Development Department

YES: A YES score is earned if the government is required to publicly post or announce the results of the public procurement process. This can be done through major media outlets or on a publicly-accessible government register or log.

NO: A NO score is earned if there is no requirement for the government to publicly announce the results of the public procurement process.

52c. In practice, citizens can access public procurement regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Wilayat Khan, advocate

Mian Faisal, planning officer, NWFP Emergency Rehabilitation Project, Planning and Development Department

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information. These records are defined here as the rules governing the competitive procurement process.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

52d. In practice, citizens can access public procurement regulations at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Wilayat Khan, advocate

Mian Faisal, planning officer, NWFP Emergency Rehabilitation Project, Planning and Development Department

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line. These records are defined here as the rules governing the competitive procurement process.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

52e. In practice, major public procurements are effectively advertised.

100 | 75 | 50 | 25 | 0

References:

Wilayat Khan, advocate

Mian Faisal, planning officer, NWFP Emergency Rehabilitation Project, Planning and Development Department

100: There is a formal process of advertising public procurements. This may include a government website, newspaper advertising, or other official announcements. All major procurements are advertised in this way. Sufficient time is allowed for bidders to respond to advertisements.

75:

50: There is a formal process of advertisement but it is flawed. Some major procurements may not be advertised, or the advertising process may not be effective. The time between advertisements and bidding may be too short to allow full participation.

25:

0: There is no formal process of advertising major public procurements or the process is superficial and ineffective.

52f. In practice, citizens can access the results of major public procurement bids.

References:

Wilayat Khan, advocate

Mian Faisal, planning officer, NWFP Emergency Rehabilitation Project, Planning and Development Department

100: Records of public procurement results are publicly available through a formal process.

75:

50: Records of public procurements are available, but there are exceptions to this practice. Some information may not be available, or some citizens may not be able to access information.

25:

0: This information is not available to the public through an official process.

IV-4. Privatization

53. Is the privatization process effective?

75

53a. In law, all businesses are eligible to compete for privatized state assets.

YES | NO

References:

Privatization Commission, July 31, 2001

S.R.O. (I)/2001, section 40

Privatization Commission Ordinance 2000, sections 22 and 25

Privatization (Modes and Procedure) Rules 2001

YES: A YES score is earned if all businesses are equally eligible to compete for privatized assets. A YES score is still earned if the government did not privatize any state-owned assets during the study period.

NO: A NO score is earned if any group of businesses (other than those blacklisted due to corruption charges) is excluded by law.

53b. In law, there are regulations addressing conflicts of interest for government officials involved in privatization.

YES | NO

References:

Privatization Commission, 2001

S.R.O. (I)/2001, section 40

Privatization Commission Ordinance 2000, sections 22 and 25

Privatization (Modes and Procedure) Rules 2001

YES: A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private interests for privatization officials. A YES score is earned if such regulations cover all civil servants, including privatization officials.

NO: A NO score is earned if there are no such formal regulations.

53c. In practice, conflicts of interest regulations for government officials involved in privatization are enforced.

100 | 75 | 50 | 25 | 0

Comments:

Conflict-of-interest regulations for government officials involved in privatization are flawed and not effectively enforced. Some violations may not be prosecuted, or some officials may be exempt from the regulations.

References:

Zakir Hayat, advocate, PHC, Peshawar, Aug. 9, 2008

Interview with Tariq Usman, government-approved private contractor, district Karak. Peshawar High Court Bar Room, Aug. 9, 2008

100: Regulations regarding conflicts of interest for privatization officials are aggressively enforced.

75:

50: Conflict-of-interest regulations exist, but are flawed. Some violations may not be enforced, or some officials may be exempt from the regulations.

25:

0: Conflict of interest regulations do not exist, or are consistently ineffective.

54. Can citizens access the terms and conditions of privatization bids?

75

54a. In law, citizens can access privatization regulations.

YES | NO

References:

Privatization (Modes and Procedure) Rules 2001

YES: A YES score is earned if privatization rules (defined here as the rules governing the competitive privatization process) are, by law, open to the public. Even if privatization is infrequent or rare, the most recent privatization should be used as the basis for scoring this indicator.

NO: A NO score is earned if privatization rules are officially secret for any reason or if there are no privatization rules.

54b. In practice, privatizations are effectively advertised.

100 | 75 | 50 | 25 | 0

References:

Zakir Hayat, advocate, PHC, Peshawar, Aug. 9, 2008

Tariq Usman, government-approved private contractor

100: There is a formal process of advertising privatizations. This may include a government website, newspaper advertising, or other official announcements. All major procurements are advertised in this way. Sufficient time is allowed for bidders to respond to advertisements.

75:

50: There is a formal process of advertisement but it is flawed. Some privatizations may not be advertised, or the advertising process may not be effective. The time between advertisements and bidding may be too short to allow full participation.

25:

0: There is no formal process of advertising privatizations or the process is superficial and ineffective.

54c. In law, the government is required to publicly announce the results of privatization decisions.

YES | NO

References:

Privatization (Modes and Procedure) Rules 2001

Interview with Zakir Hayat, advocate, PHC, Peshawar

Tariq Usman, government-approved private contractor

YES: A YES score is earned if the government is required to publicly post or announce the results of the privatization process. This can be done through major media outlets or on a publicly-accessible government register or log.

NO: A NO score is earned if there is no requirement for the government to publicly announce the results of the privatization process.

54d. In practice, citizens can access privatization regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Privatization regulations can be accessed in a reasonable time period, depending the individual's connections with those involved in the privatization process. It may take a fair amount of money and time to access the regulators.

References:

Zakir Hayat, advocate, PHC

Tariq Usman, government-approved private contractor

100: Records (defined here as the rules governing the competitive privatization process) are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

54e. In practice, citizens can access privatization regulations at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

It may cost an unreasonably large amount of money to access the privatization regulators, but it all depends on the person seeking access to such regulators.

References:

Privatization Commission Ordinance 2000

Privatization (Modes and Procedure) Rules 2001

Privatization Commission of Pakistan, <http://www.privatisation.gov.pk/>

Zakir Hayat, advocate, PHC, Peshawar, Aug. 9, 2008

Tariq Usman, government-approved private contractor

100: Records (defined here as the rules governing the competitive privatization process) are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

Category V. Oversight and Regulation

V-1. National Ombudsman

56. Is the national ombudsman effective?

56a. In law, the ombudsman is protected from political interference.

YES | NO

References:

Establishment of the Office of Wafaqi Mohtasib, Order 1983, section 30

YES: A YES score is earned only if the agency (or set of agencies) has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

56b. In practice, the ombudsman is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

The Wafaqi Mohtasi, or National Ombudsman, carries out independent investigations and hears cases, but sometimes political forces or the executive branch may influence in its work.

References:

Interview with Barkatullah, advocate, PHC, July 30, 2008, Peshawar

Interview with Riaz Khan, advocate, PHC, July 30, 2008, Peshawar

100: This agency (or set of agencies) operates independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Investigations can operate without hindrance from the government, including access to politically sensitive information.

75:

50: This agency (or set of agencies) is typically independent, yet is sometimes influenced in its work by negative or positive political incentives. This may include public criticism or praise by the government. The ombudsman may not be provided with some information needed to carry out its investigations.

25:

0: This agency (or set of agencies) is commonly influenced by political or personal incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. The ombudsman cannot compel the government to reveal sensitive information.

56c. In practice, the head of the ombudsman agency/entity is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

The ombudsman can be removed from office by the president on the grounds of misconduct or of being incapable of properly performing the duties of his office by reason of physical or mental incapability.

References:

Establishment of the Office of Wafaqi Mohtasib Order 1983, article 6, sub-article 2

Barkatullah, advocate, PHC

Riaz Khan, advocate, PHC

100: The director of the ombudsman (or directors of multiple agencies) serves a defined term and cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director of the ombudsman (or directors of multiple agencies) serves a defined term, but can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director of the ombudsman (or directors of multiple agencies) can be removed at the will of political leadership.

56d. In practice, the ombudsman agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

Barkatullah, advocate, PHC

Riaz Khan, advocate, PHC

100: The ombudsman agency (or agencies) has staff sufficient to fulfill its basic mandate.

75:

50: The ombudsman agency (or agencies) has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The ombudsman agency (or agencies) has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

56e. In practice, agency appointments support the independence of the ombudsman agency (or agencies).

100 | 75 | 50 | 25 | 0

Comments:

Political pressure or incentives from the executive branch may influence its appointments.

References:

Barkatullah, advocate, PHC

Riaz Khan, advocate, PHC

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

56f. In practice, the ombudsman agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

References:

Barkatullah, advocate, PHC

Riaz Khan, advocate, PHC

100: The agency (or agencies) has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency (or agencies) has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

56g. In practice, the ombudsman agency (or agencies) makes publicly available reports.

100 | 75 | 50 | 25 | 0

Comments:

The ombudsman presents annual reports to the president. They are then available to the public.

References:

Barkatullah, advocate, PHC

Riaz Khan, advocate, PHC

100: The agency (or agencies) makes regular, publicly available, substantial reports either to the legislature or directly to the public outlining the full scope of its work.

75:

50: The agency (or agencies) makes publicly available reports to the legislature and/or directly to the public that are sometimes delayed or incomplete.

25:

0: The agency (or agencies) makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

56h. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

In those cases that are sub judice before any court of law or tribunal, the ombudsman cannot take action on public grievances. The ombudsman mainly takes action in cases relating to the Water and Power Development Authority or other utilities, or corporations or government departments vital to the public interest.

References:

Barkatullah, advocate, PHC

Riaz Khan, advocate, PHC

Wafaqi Mohtasib Order 1983, article 14

100: The agency aggressively starts investigations — or participates fully with cooperating agencies' investigations — into judicial misconduct. The agency is fair in its application of this power.

75:

50: The agency will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power.

25:

0: The agency rarely investigates on its own or cooperates in other agencies' investigations, or the agency is partisan in its application of this power.

56i. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

References:

Barkatullah, advocate, PHC

Riaz Khan, advocate, PHC

100: When rules violations are discovered, the agency is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

75:

50: The agency enforces rules, but is limited in its effectiveness. The agency may be slow to act, unwilling to take on politically powerful offenders, resistant to cooperating with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency does not effectively penalize offenders. The agency may make judgments but not enforce them, does not cooperate with other agencies in enforcing penalties, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

56j. In practice, the government acts on the findings of the ombudsman agency (or agencies).

100 | 75 | 50 | 25 | 0

References:

Barkatullah, advocate, PHC

Riaz Khan, advocate, PHC

100: Ombudsman's reports are taken seriously, with negative findings drawing prompt corrective action.

75:

50: In most cases, ombudsman's reports are acted on, though some exceptions may occur for politically sensitive issues, or particularly resistant agencies.

25:

0: Ombudsman's reports are often ignored, or given superficial attention. Ombudsman's reports do not lead to policy changes.

56k. In practice, the ombudsman agency (or agencies) acts on citizen complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Barkatullah, advocate, PHC

Riaz Khan, advocate, PHC

100: The agency (or agencies) acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency (or agencies) acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency (or agencies) cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

57. Can citizens access the reports of the ombudsman?

67

57a. In law, citizens can access reports of the ombudsman(s).

YES | NO

Comments:

Reports presented to the executive or the legislature are not easily available to the citizens.

References:

Barkatullah, advocate, PHC

Riaz Khan, advocate, PHC

YES: A YES score is earned if all ombudsman reports are publicly available.

NO: A NO score is earned if any ombudsman reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute the reports.

57b. In practice, citizens can access the reports of the ombudsman(s) within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Access to these reports totally depends on the individual status of the person who seeks this information.

References:

Barkatullah, advocate, PHC

Riaz Khan, advocate, PHC

100: Reports are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Reports take around two weeks to obtain. Some delays may be experienced.

25:

0: Reports take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

57c. In practice, citizens can access the reports of the ombudsman(s) at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Barkatullah, advocate, PHC

Riaz Khan, advocate, PHC

100: Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line.

75:

50: Reports impose a financial burden on citizens, journalists or CSOs. Retrieving reports may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving reports imposes a major financial burden on citizens. Reports costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

55. Is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

55. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

YES | NO

References:

National Ombudsman (Wafaqi Mohtasib)

Wafaqi Mohtasib Order 1983

YES: A YES score is earned if there is a specific agency or set of agencies whose primary mandate is to investigate the actions of government on the behalf of common citizens. This agency or set of agencies should be specifically charged with seeking out and documenting abuses of power.

NO: A NO score is earned if no such agency or set of agencies exists, or that function is a secondary concern of a larger body, such as the legislature.

V-2. Supreme Audit Institution

59. Is the supreme audit institution effective?

94

59a. In law, the supreme audit institution is protected from political interference.

YES | NO

References:

Constitution of Pakistan 1973, article 168

YES: A YES score is earned only if the agency has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

59b. In practice, the head of the audit agency is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

The Auditor General shall not be removed from office except by a judge of the Supreme Court.

References:

Constitution of Pakistan 1973, article 168(5)

Interview with Sher Bahadar, senior auditor, Auditor General Office, Peshawar, July 20, 2008

100: The director of the agency serves a defined term and cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director of the agency serves a defined term, but can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director of the agency can be removed at the will of political leadership.

59c. In practice, the audit agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

Interview with Sher Bahadar, senior auditor, Auditor General Office, Peshawar, July 20, 2008

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

59d. In practice, audit agency appointments support the independence of the agency.

100 | 75 | 50 | 25 | 0

References:

Sher Bahadar, senior auditor, Auditor General Office, Peshawar

100: Appointments to the agency are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

59e. In practice, the audit agency receives regular funding.

100 | 75 | 50 | 25 | 0

References:

Sher Bahadar, senior auditor, Auditor General Office, Peshawar

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

59f. In practice, the audit agency makes regular public reports.

100 | 75 | 50 | 25 | 0

References:

Constitution of Pakistan 1973, article 171

Sher Bahadar, senior auditor, Auditor General Office, Peshawar

100: The agency makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work.

75:

50: The agency makes publicly available reports to the legislature and/or to the public directly that are sometimes delayed or incomplete.

25:

0: The agency makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

59g. In practice, the government acts on the findings of the audit agency.

100 | 75 | 50 | 25 | 0

References:

Sher Bahadar, senior auditor, Auditor General Office, Peshawar

100: Audit agency reports are taken seriously, with negative findings drawing prompt corrective action.

75:

50: In most cases, audit agency reports are acted on, though some exceptions may occur for politically sensitive issues, or particularly resistant agencies.

25:

0: Audit reports are often ignored, or given superficial attention. Audit reports do not lead to policy changes.

59h. In practice, the audit agency is able to initiate its own investigations.

100 | 75 | 50 | 25 | 0

References:

Sher Bahadar, senior auditor, Auditor General Office, Peshawar

100: The supreme audit institution can control the timing and pace of its investigations without any input from the executive or legislature.

75:

50: The supreme audit institution can generally decide what to investigate, and when, but is subject to pressure from the executive or legislature on politically sensitive issues.

25:

0: The supreme audit institution must rely on approval from the executive or legislature before initiating investigations. Politically sensitive investigations are almost impossible to move forward on.

60. Can citizens access reports of the supreme audit institution?

50

60a. In law, citizens can access reports of the audit agency.

YES | NO

Comments:

These reports are discussed in the National Assembly and are available to the Public Accounts Committee.

References:

Constitution of Pakistan 1973, article 171

YES: A YES score is earned if all supreme auditor reports are available to the general public.

NO: A NO score is earned if any auditor reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute.

60b. In practice, citizens can access audit reports within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Sher Bahadar, senior auditor, Auditor General Office, Peshawar

100: Reports are available on-line, or records can be obtained within two days. Reports are uniformly available; there are no delays for politically sensitive information.

75:

50: Reports take around two weeks to obtain. Some delays may be experienced.

25:

0: Reports take more than a month to acquire. In some cases, most reports may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

60c. In practice, citizens can access the audit reports at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Sher Bahadar, senior auditor, Auditor General Office, Peshawar

100: Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line.

75:

50: Reports impose a financial burden on citizens, journalists or CSOs. Retrieving reports may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving reports imposes a major financial burden on citizens. Report costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

58. Is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

100

58. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

YES | NO

References:

Constitution of Pakistan 1973, article 108

YES: A YES score is earned if there is a specific agency whose primary mandate is to audit and track the movement of money through the government. This agency should be specifically charged to investigate and document the misuse of funds. A system of agencies located in each department is equivalent.

NO: A NO score is earned if no such agency exists, or that function is a secondary concern of a larger body, such as the executive.

81
V-3. Taxes and Customs

62. Is the tax collection agency effective?

100

62a. In practice, the tax collection agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

Arbab Faridullah, advocate

Interview with Gulab Shah, advocate, PHC, Peshawar July 27, 2008

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

62b. In practice, the tax agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The tax collection agency receives regular funding from the government., but corruption is rampant in the agency. Workers often taking from and/or forcing citizens to give them illegal bribes.

References:

Arbab Faridullah, advocate

Gulab Shah, advocate, PHC, Peshawar

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

65. Is the customs and excise agency effective?

100

65a. In practice, the customs and excise agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The customs and excise agency has a full -time professional staff. Officers are selected through competitive examinations conducted by the Federal Public Service Commission and are properly trained for revenue collection.

References:

Arbab Faridullah, advocate

Gulab Shah, advocate, PHC, Peshawar

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

65b. In practice, the customs and excise agency receives regular funding.

100 | 75 | 50 | 25 | 0

References:

Arbab Faridullah, advocate

Gulab Shah, advocate, PHC, Peshawar

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

61. Is there a national tax collection agency?

100

61. In law, is there a national tax collection agency?

YES | NO

References:

Federal Bureau of Revenue (FBR)

YES: A YES score is earned if there is a national agency formally mandated to collect taxes.

NO: A NO score is earned if that function is spread over several agencies, or does not exist. A NO score is earned if national government ministries can collect taxes independently.

63. Are tax laws enforced uniformly and without discrimination?

50

63. In practice, are tax laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

Comments:

The possibility of abuse of power cannot be ruled out, because big industrial concerns or individual groups may evade tax laws. The Federal Bureau of Revenue oversees implementation of tax laws, but tax officials are allegedly notorious for applying the tax laws as they see fit.

References:

Arbab Faridullah, advocate

Gulab Shah, advocate, PHC, Peshawar

100: Tax laws (which may be economically unfair as written) are enforced consistently for all citizens. No general group of citizens is more or less likely to evade tax law than another.

75:

50: Tax laws are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade tax law. Some arbitrary and discriminatory tax rules exist.

25:

0: Tax law is unequally applied. Some groups of citizens are consistently more or less likely to evade tax law than others. Tax regulations are, as a rule, written to be discriminatory and/or arbitrary.

64. Is there a national customs and excise agency?

100

64. In law, is there a national customs and excise agency?

YES | NO

Comments:

The Customs and Excise Department and the Income Tax Department work under the Federal Bureau of Revenue (FBR).

References:

Customs Act 1969

Customs Rules 2001

YES: A YES score is earned if there is an agency formally mandated to collect excises and inspect customs.

NO: A NO score is earned if that function is spread over several agencies, or does not exist.

66. Are customs and excise laws enforced uniformly and without discrimination?

50

66. In practice, are customs and excise laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

Comments:

Customs and excise laws are infested with lacunas, and officials seldom enforce them uniformly or without favor or fear.

References:

Arbab Faridullah, advocate

Gulab Shah, advocate, PHC, Peshawar

100: Customs and excise laws (which may be economically unfair as written) are enforced consistently for all citizens. No general group of citizens is more or less likely to evade customs than another.

75:

50: Customs and excise laws are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade customs requirements.

25:

0: Customs and excise laws are unequally applied. Some groups of citizens are consistently more or less likely to evade customs and excise laws than others.

V-4. State-Owned Enterprises

68. Is the agency, series of agencies, or equivalent mechanism overseeing state-owned companies effective?

75

68a. In law, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies is protected from political interference.

YES | NO

Comments:

Production is protected from political interference.

References:

Federal Ministry of Commerce and Industry

Interview with Shoaib Jally, advocate, PHC, Peshawar, Aug. 10, 2008

Behlol Khattak, advocate, former general secretary, High Court Bar Association, Peshawar

YES: A YES score is earned only if the agency, series of agencies, or equivalent mechanism has some formal operational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency, series of agencies, or equivalent mechanism is a subordinate part of any government ministry or agency.

68b. In practice, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

Ministry of Commerce and Industry

Privatization Commission of Pakistan

Cabinet Division, Government of Pakistan

Interview with Shoaib Jally, advocate, PHC, Peshawar

Interview with Behlol Khattak, advocate, former general secretary, High Court Bar Association, Peshawar

100: The agency, series of agencies, or equivalent mechanism has staff sufficient to fulfill its basic mandate.

75:

50: The agency, series of agencies, or equivalent mechanism has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency, series of agencies, or equivalent mechanism has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

68c. In practice, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies receives regular funding.

100 | 75 | 50 | 25 | 0

References:

Interview with Shoab Jally, advocate, PHC, Peshawar

Behlol Khattak, advocate, former general secretary, High Court Bar Association, Peshawar

100: The agency, series of agencies, or equivalent mechanism has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency, series of agencies, or equivalent mechanism has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

68d. In practice, when necessary, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

The Federal Bureau of Revenue and its subordinate tax and excise departments initiate investigations, but they are slow or unwilling to act. Investigations are ineffective and are enforced in a discriminatory way.

References:

Shoab Jally, advocate, PHC, Peshawar

Behlol Khattak, advocate, former general secretary, High Court Bar Association, Peshawar

100: When irregularities are discovered, the agency, series of agencies, or equivalent mechanism is aggressive in investigating and/or in cooperating with other investigative bodies.

75:

50: The agency, series of agencies, or equivalent mechanism starts investigations, but is limited in its effectiveness or in its cooperation with other investigative agencies. The agency, series of agencies, or equivalent mechanism may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency, series of agencies, or equivalent mechanism does not effectively investigate financial irregularities or cooperate with other investigative agencies. The agency, series of agencies, or equivalent mechanism may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

68e. In practice, when necessary, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

The Federal Bureau of Revenue enforces the rules, but the rules are occasionally applied unequally to all the offenders.

References:

Shoab Jally, advocate, PHC, Peshawar

Behlol Khattak, advocate, former general secretary, High Court Bar Association, Peshawar

100: When rules violations are discovered, the agency, series of agencies, or equivalent mechanism is aggressive in penalizing offenders and/or in cooperating with other agencies that impose penalties.

75:

50: The agency, series of agencies, or equivalent mechanism enforces rules, but is limited in its effectiveness or reluctant to cooperate with other agencies. The agency, series of agencies, or equivalent mechanism may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency, series of agencies, or equivalent mechanism does not effectively penalize offenders or refuses to cooperate with other agencies that enforce penalties. The agency, series of agencies, or equivalent mechanism may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency, series of agencies, or equivalent mechanism may be partisan in its application of power.

69. Can citizens access the financial records of state-owned companies?

65

69a. In law, citizens can access the financial records of state-owned companies.

YES | NO

Comments:

Subject to sub-section 2 of section 12 of the ordinance, any citizen of Pakistan can apply on the prescribed form (Appendix-I) to obtain the required record or information held by a public body. The application shall contain particulars of the requester. This will be accompanied by receipt of the required fee deposited under the relevant head of account in the State Bank of Pakistan, National Bank of Pakistan, the local post office or the treasury, as given in the Appendix-I. When an application is made in an electronic form, the requester will ensure that receipt of the requisite fee deposited, as suggested in section 12 of these rules, reaches the designated official within 10 days of the request. If a requester fails to do so, his or her application will be treated as withdrawn. The required fee for an access to information will be 100 rupees (US\$1.27) (non-refundable). Receipt of the fee deposited in the relevant head of account will be attached with the application or, if the request is made electronically, will be sent to the designated official within 10 days after the electronic request is made. An amount of 1 rupee (US\$0.01) per page of the photocopied record or information shall be deposited in the relevant head of account for every additional page if the number of the pages of the record requested exceeds 20 pages per requisition. In case the requester opts to access information or records in the form of a CD, diskette or another electronic form, the requester shall deposit a cer

References:

Shoab Jally, advocate, PHC, Peshawar

Behlol Khattak, advocate, former general secretary, High Court Bar Association, Peshawar

Freedom of Information Rules 2003

YES: A YES score is earned if the financial information of all state-owned companies is required by law to be public. State-owned companies are defined as companies owned in whole or in part by the government.

NO: A NO score is earned if any category of state-owned company is exempt from this rule, or no such rules exist.

69b. In practice, the financial records of state-owned companies are regularly updated.

100 | 75 | 50 | 25 | 0

References:

Shoaib Jally, advocate, PHC, Peshawar

Behlol Khattak, advocate, former general secretary, High Court Bar Association, Peshawar

100: State-owned companies always publicly disclose financial data, which is generally accurate and up to date.

75:

50: State-owned companies disclose financial data, but it is flawed. Some companies may misstate financial data, file the information behind schedule, or not publicly disclose certain data.

25:

0: Financial data is not publicly available, or is consistently superficial or otherwise of no value.

69c. In practice, the financial records of state-owned companies are audited according to international accounting standards.

100 | 75 | 50 | 25 | 0

References:

Shoaib Jally, advocate, PHC, Peshawar

Behlol Khattak, advocate, former general secretary, High Court Bar Association, Peshawar

100: Financial records of all state-owned companies are regularly audited by a trained third party auditor using accepted international standards.

75:

50: Financial records of state-owned companies are regularly audited, but exceptions may exist. Some companies may use flawed or deceptive accounting procedures, or some companies may be exempted from this requirement.

25:

0: State-owned companies are not audited, or the audits have no functional value. The auditors may collude with the companies in providing misleading or false information to the public.

69d. In practice, citizens can access the financial records of state-owned companies within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Shoaib Jally, advocate, PHC, Peshawar

Behlol Khattak, advocate, former general secretary, High Court Bar Association, Peshawar

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

69e. In practice, citizens can access the financial records of state-owned companies at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Shoab Jally, advocate, PHC, Peshawar

Behlol Khattak, advocate, former general secretary, High Court Bar Association, Peshawar

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

67. Is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

100

67. In law, is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

YES | NO

References:

Federal Ministry of Commerce and Industry

Constitution of Pakistan 1973, article 153

YES: A YES score is earned if there is an agency, series of agencies, or equivalent mechanism tasked with overseeing the conduct and performance of state-owned companies on behalf of the public. A YES score can be earned if several government agencies or ministries oversee different state-owned enterprises. State-owned companies are defined as companies owned in whole or in part by the government.

NO: A NO score is earned if this function does not exist, or if some state-owned companies are free from government oversight.

70. Are business licenses available to all citizens?

63

70a. In law, anyone may apply for a business license.

YES | NO

Comments:

Before launch of a business concern, the citizen must have a properly registered company or firm for that business.

References:

Interview with Shoaib Jally, advocate, PHC, Peshawar

Shabbir Jan, businessman, exporter and importer, Peshawar, Aug. 5, 2008

Security Exchange Commission of Pakistan

Companies Ordinance 1984, amended in 1986

YES: A YES score is earned if no particular group or category of citizens is excluded from applying for a business license, when required. A YES score is also earned if basic business licenses are not required.

NO: A NO score is earned if any group of citizens are categorically excluded from applying for a business license, when required

70b. In law, a complaint mechanism exists if a business license request is denied.

YES | NO

References:

Securities and Exchange Commission of Pakistan

Shoaib Jally, advocate, PHC, Peshawar

Shabbir Jan, businessman, exporter and importer, Peshawar

YES: A YES score is earned if there is a formal process for appealing a rejected license.

NO: A NO score is earned if no such mechanism exists.

70c. In practice, citizens can obtain any necessary business license (i.e. for a small import business) within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

It depends purely on the individual's financial and social status and his or her connections in the government and political circles.

References:

Shoab Jally, advocate, PHC, Peshawar

Shabbir Jan, businessman, exporter and importer, Peshawar

100: Licenses are not required, or licenses can be obtained within roughly one week.

75:

50: Licensing is required and takes around one month. Some groups may be delayed up to a three months

25:

0: Licensing takes more than three months for most groups. Some groups may wait six months to one year to get necessary licenses.

70d. In practice, citizens can obtain any necessary business license (i.e. for a small import business) at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

This depends on the individual's financial and social status.

References:

Shoab Jally, advocate, PHC, Peshawar

Shabbir Jan, businessman, exporter and importer, Peshawar

100: Licenses are not required, or licenses are free. Licenses can be obtained at little cost to the organization, such as by mail, or on-line.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

71. Are there transparent business regulatory requirements for basic health, environmental, and safety standards?

100

71a. In law, basic business regulatory requirements for meeting public health standards are transparent and publicly available.

YES | NO

Comments:

ISO/IEC 17025 assists in certification of other regulatory requirements, for example Food and Drug Administration, MDCA, Monopoly Control Authority and public-health-sector schemes in industries.

References:

International Standard Organization (ISO) 9000

ISO 14000

ISO/IEC 17025

Quality Standard (QS) 9000

Shoaib Jally, advocate, PHC, Peshawar

Shabbir Jan, businessman, exporter and importer, Peshawar

YES: A YES score is earned if basic regulatory requirements for meeting public health standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

71b. In law, basic business regulatory requirements for meeting public environmental standards are transparent and publicly available.

YES | NO

Comments:

Basic business regulatory requirements for meeting public safety standards are transparent, for example ISO/ IEC 17025, which ensure health and basic environmental standards.

References:

Shoaib Jally, advocate, PHC, Peshawar

Shabbir Jan, businessman, exporter and importer, Peshawar

YES: A YES score is earned if basic regulatory requirements for meeting public environmental standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

71c. In law, basic business regulatory requirements for meeting public safety standards are transparent and publicly available.

YES | NO

Comments:

ISO 9000 and other regulatory standards are transparent and publicly available.

Basic business regulatory requirements for meeting public safety standards are transparent, for example ISO/ IEC 17025, which ensure health and basic environmental standards.

References:

ISO 9000

YES: A YES score is earned if basic regulatory requirements for meeting public safety standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

72. Does government effectively enforce basic health, environmental, and safety standards on businesses?

25

72a. In practice, business inspections by government officials to ensure public health standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

References:

Shoaib Jally, advocate, PHC, Peshawar

Shabbir Jan, businessman, exporter and importer, Peshawar

100: Business inspections by the government to ensure that public health standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public health standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public health standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

72b. In practice, business inspections by government officials to ensure public environmental standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

References:

Shoaib Jally, advocate, PHC, Peshawar

Shabbir Jan, businessman, exporter and importer, Peshawar

100: Business inspections by the government to ensure that public environmental standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public environmental standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public environmental standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

72c. In practice, business inspections by government officials to ensure public safety standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

References:

Shoaib Jally, advocate, PHC, Peshawar

Shabbir Jan, businessman, exporter and importer, Peshawar

100: Business inspections by the government to ensure that public safety standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public safety standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public safety standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

Category VI. Anti-Corruption and Rule of Law

VI-1. ⁷⁸Anti-Corruption Law

73. Is there legislation criminalizing corruption?

100

73a. In law, attempted corruption is illegal.

YES | NO

References:

Pakistan Penal Code, sections 148, 149, 109

YES: A YES score is earned if corruption laws include attempted acts.

NO: A NO score is earned if this is not illegal.

73b. In law, extortion is illegal.

YES | NO

References:

Pakistan Penal Code, sections 383-389

YES: A YES score is earned if corruption laws include extortion. Extortion is defined as demanding favorable treatment (such as a bribe) to withhold a punishment.

NO: A NO score is earned if this is not illegal.

73c. In law, offering a bribe (i.e. active corruption) is illegal.

YES | NO

References:

Pakistan Penal Code, sections 160

YES: A YES score is earned if offering a bribe is illegal.

NO: A NO score is earned if this is not illegal.

73d. In law, receiving a bribe (i.e. passive corruption) is illegal.

YES | NO

References:

Pakistan Penal Code, section 161

YES: A YES score is earned if receiving a bribe is illegal.

NO: A NO score is earned if this is not illegal.

73e. In law, bribing a foreign official is illegal.

YES | NO

References:

Pakistan Penal Code, section 108

YES: A YES score is earned if bribing a foreign official is illegal.

NO: A NO score is earned if this is not illegal.

73f. In law, using public resources for private gain is illegal.

YES | NO

References:

Pakistan Penal Code, section 268

YES: A YES score is earned if using public resources for private gain is illegal.

NO: A NO score is earned if this is not illegal.

73g. In law, using confidential state information for private gain is illegal.

YES | NO

References:

Pakistan Penal Code, section 175

Official Secrets Act

YES: A YES score is earned if using confidential state information for private gain is illegal.

NO: A NO score is earned if this is not illegal.

73h. In law, money laundering is illegal.

YES | NO

References:

State Bank of Pakistan National Seminar on Anti-Money Laundering and Counter: Terrorist Financing; Rick McDonell, head, Asia/Pacific Group on Money Laundering (APG) Secretariat; The Asia/Pacific Group on Money Laundering (APG), Islamabad, March 29, 2005. http://209.85.175.104/search?q=cache:HWSp4Eh67mMJ:www.sbp.org.pk/bpd/seminar/Regional_Perspective/Rick_McDonell_APGML.ppt+money+lauding+laws+pakistan&hl=en!

Anti-Money Laundering and Terrorist Financing Activities in the Asia/Pacific Region: Pakistan to tighten anti-money laundering laws, Marcus Simpson, June 12, 2007. <http://www.bankersalmanac.com/addcon/news/Pakistan-to-tighten-anti-money-laundering-laws.aspx>

Analysis of Pakistan's Anti-Money Laundering Bill, Taimur Malik, executive director of the Research Society of International Law (RSIL) Pakistan, <http://ezinearticles.com/?Analysis-Of-Pakistans-Anti-Money-Laundering-Bill&id=462712>

YES: A YES score is earned if money laundering is illegal. Money laundering is defined as concealing the origin of funds to hide wrongdoing or avoid confiscation.

NO: A NO score is earned if this is not illegal.

73i. In law, conspiracy to commit a crime (i.e. organized crime) is illegal.

YES | NO

References:

Pakistan Penal Code, section 120

YES: A YES score is earned if organized crime is illegal.

NO: A NO score is earned if this is not illegal.

VI-2. Anti-Corruption Agency

75. Is the anti-corruption agency effective?

58

75a. In law, the anti-corruption agency (or agencies) is protected from political interference.

YES | NO

Comments:

The NAB is Pakistan's anti-corruption organization. It is responsible for eliminating corruption and is protected from political interference.

References:

National Accountability Bureau (NAB) Ordinance 1999

NAB (Recovery and Reward) Rules 2002

NAB Employees Terms and Conditions of Services TCS 2002

YES: A YES score is earned only if the agency (or agencies) has some formal organizational or operational independence from the government. A YES score is earned even if the agency/agencies is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency (or agencies) is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department, in such a way that limits its operational independence.

75b. In practice, the anti-corruption agency (or agencies) is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

The primary anti-corruption prime agency in Pakistan is the National Accountability Bureau (NAB), which was set up by dispensation of former president Gen. Pervez Musharraf after he came to power in a bloodless coup in October 1999. The NAB, which initiates investigations into corruption charges and corrupt practices, is not altogether free from political interference. The

agency was put in place to frame corruption cases against opposition party leaders and is alleged to have been a partisan agency.

References:

Interview with Fazal Elahi Advocate, PHC, Peshawar, Aug. 2, 2008

Interview with Zar Mohammad Afridi, advocate, PHC, Aug 2, 2008, Peshawar

100: This agency (or agencies) operates independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Investigations can operate without hindrance from the government, including access to politically sensitive information. .

75:

50: This agency (or agencies) is typically independent, yet is sometimes influenced in its work by negative or positive political incentives. This may include favorable or unfavorable public criticism by the government, political appointments, or other forms of influence. The agency (or agencies) may not be provided with some information needed to carry out its investigations.

25:

0: This agency (or agencies) is commonly influenced by political or personal incentives. These may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. The agency (or agencies) cannot compel the government to reveal sensitive information.

75c. In practice, the head of the anti-corruption agency (or agencies) is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

The head of the state or the head of the government can remove the head of the of National Accountability Bureau without any relevant justification.

References:

Fazal Elahi, advocate, PHC, Peshawar

Zar Mohammad Afridi, advocate, PHC, Peshawar

100: The director(s) cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director(s) can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director(s) can be removed at the will of political leadership.

75d. In practice, appointments to the anti-corruption agency (or agencies) are based on professional criteria.

100 | 75 | 50 | 25 | 0

Comments:

No professional criteria are followed when appointments are made in the anti-corruption agency. Since its inception under of National Accountability Bureau Ordinance 1999, the head of the agency or the majority of its top staff were taken from the armed forces.

References:

Fazal Elahi, advocate, PHC, Peshawar

Zar Mohammad Afridi, advocate, PHC, Peshawar

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

75e. In practice, the anti-corruption agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

Not in all agencies, for example the of National Accountability Bureau.

References:

Fazal Elahi, advocate, PHC, Peshawar

Zar Mohammad Afridi, advocate, PHC, Peshawar

100: The agency (or agencies) has staff sufficient to fulfill its basic mandate.

75:

50: The agency (or agencies) has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

25:

0: The agency (or agencies) has no staff, or a limited staff, that is clearly unqualified to fulfill its mandate.

75f. In practice, the anti-corruption agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The agency receives regular funding from the government. But the new government has totally sidelined the National Accountability Bureau, and it seems to have gone into hibernation.

References:

Fazal Elahi, advocate, PHC, Peshawar

Zar Mohammad Afridi, advocate, PHC, Peshawar

100: The agency (or agencies) has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency (or agencies) has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: The agency's funding sources are unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

75g. In practice, the anti-corruption agency (or agencies) makes regular public reports.

100 | 75 | **50** | 25 | 0

Comments:

The of National Accountability Bureau (NAB) makes some reports public, but reports related to corrupt practices of public officeholders or anyone recognizable under the NAB ordinance may not be made public. Most of the reports and statements are posted on the NAB website, <http://www.nab.gov.pk>.

References:

Fazal Elahi, advocate, PHC, Peshawar

Zar Mohammad Afridi, advocate, PHC, Peshawar

100: The agency (or agencies) makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work.

75:

50: The agency (or agencies) makes publicly available reports to the legislature that are sometimes delayed or incomplete.

25:

0: The agency (or agencies) makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

75h. In practice, the anti-corruption agency (or agencies) has sufficient powers to carry out its mandate.

100 | 75 | **50** | 25 | 0

Comments:

The powers are sometimes misused by the official machinery.

References:

Fazal Elahi, advocate, PHC, Peshawar

Zar Mohammad Afridi, advocate, PHC, Peshawar

100: The agency (or agencies) has powers to gather information, including politically sensitive information. The agency (or agencies) can question suspects, order arrests and bring suspects to trial (or rely on related agencies or law enforcement authorities to perform such functions).

75:

50: The agency (or agencies) has most of the powers needed to carry out its mandate with some exceptions.

25:

0: The agency (or agencies) lacks significant powers which limit its effectiveness.

75i. In practice, when necessary, the anti-corruption agency (or agencies) independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

The National Accountability Bureau (NAB) initiates investigations into charges of corruption or corrupt practices, but the progress of an investigation depends on the individual's status or his or her connections in the power corridors. The NAB is seen by many as a partisan agency.

References:

Fazal Elahi Advocate, PHC, Peshawar

Zar Mohammad Afridi Advocate, PHC, Peshawar

100: When irregularities are discovered, the agency (or agencies) is aggressive in investigating the government or in cooperating with other investigative agencies.

75:

50: The agency (or agencies) starts investigations, but is limited in its effectiveness or is reluctant to cooperate with other investigative agencies. The agency (or agencies) may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency (or agencies) does not effectively investigate or does not cooperate with other investigative agencies. The agency (or agencies) may start investigations but not complete them, or may fail to detect offenders. The agency (or agencies) may be partisan in its application of power.

76. Can citizens access the anti-corruption agency?

50

76a. In practice, the anti-corruption agency (or agencies) acts on complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The National Accountability Bureau (NAB) acts on complaints of corruption, but in practice, it depends who is making the complaint and against whom. This completely depends on the officials concerned or the powers that be at the time the complaint is made.

References:

Fazal Elahi, advocate, PHC, Peshawar

Zar Mohammad Afridi, advocate, PHC, Peshawar

100: The agency (or agencies) acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency (or agencies) acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency (or agencies) cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

76b. In practice, citizens can complain to the anti-corruption agency (or agencies) without fear of recrimination.

100 | 75 | 50 | 25 | 0

Comments:

Citizens can report corruption cases without fear of recrimination, but, again, it depends on who is alleged to have committed the corruption. Most citizens just ignore any wrong or corrupt practice for fear of personal or job security.

References:

Fazal Elahi, advocate, PHC, Peshawar

Zar Mohammad Afridi, advocate, PHC, Peshawar

100: Whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers, or may be due to a culture that encourages disclosure and accountability.

75:

50: Whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

74. Is there an agency (or group of agencies) with a legal mandate to address corruption?

100

74. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

YES | NO

Comments:

The NAB ordinance can come into a play against a person who has (1) remained in political power, (2) is or has been in public office or (3) processing administrative power, or his or her associates, or those who have looted public funds or financial institutions by means of their status or power.

References:

The Federal Investigation Agency Rules 1975

National Accountability Bureau (NAB) Ordinance 1999

Pakistan Legal Decisions (official court documents) 2003

YES: A YES score is earned if an agency is specifically mandated to address corruption. A YES score is earned if there are several agencies or entities with specific roles in fighting corruption, including special prosecutorial entities.

NO: A NO score is earned if no agency (or group of agencies/entities) is specifically mandated to prevent or prosecute corruption.

77. Is there an appeals mechanism for challenging criminal judgments?

67

77a. In law, there is a general right of appeal.

YES | NO

References:

Criminal Procedure Code (CrPC) 1898, chapter VII of appeals, references and revision

YES: A YES score is earned if there is a formal process of appeal for challenging criminal judgments.

NO: A NO score is earned if there is no such process.

77b. In practice, appeals are resolved within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Appeals against decisions of the lower courts are made in the High Court and then the Supreme Court. Appeals may take longer to decide than the original case did; it depends on the nature and importance of the case. If the matter is of public interest, the appeal may be decided in a reasonable period of time, but if it is related to corruption charges or corrupt practices, it may take even longer.

References:

Fazal Elahi, advocate, PHC, Peshawar

Zar Mohammad Afridi, advocate, PHC, Peshawar

100: Appeals are acted upon quickly. While some backlog is expected and inevitable, appeals are acknowledged promptly and cases move steadily towards resolution.

75:

50: Appeals are generally acted upon quickly but with some exceptions. Some appeals may not be acknowledged, and simple cases may take years to resolve.

25:

0: Most appeals are not resolved in a timely fashion. Appeals may go unacknowledged for months or years and simple cases may never be resolved.

77c. In practice, citizens can use the appeals mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The appeals cost is most reasonable, but locating a case file in a court of law may incur extra charges and may even involve kickbacks to the concerned officials. Hence, the appeal mechanism and its cost depends on the nature of the case.

References:

Fazal Elahi, advocate, PHC, Peshawar

Zar Mohammad Afridi, advocate, PHC, Peshawar

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge criminal judgments. Attorneys fees are not a barrier to appeals.

75:

50: In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge criminal judgments. Attorneys fees present somewhat of a barrier to pursuing appeal.

25:

0: The prohibitive cost of utilizing the appeals mechanism prevents middle class citizens from challenging criminal judgments. Attorneys fees greatly discourage the use of the appeals process.

78. Do judgments in the criminal system follow written law?

100

78. In practice, do judgments in the criminal system follow written law?

100 | 75 | 50 | 25 | 0

References:

Fazal Elahi, advocate, PHC, Peshawar

Zar Mohammad Afridi, advocate, PHC, Peshawar

100: Judgments in the criminal system are made according to established legal code and conduct. There are no exceptional cases in which individuals are treated by a separate process. Political interference, bribery, cronyism or other flaws are rarely factors in judicial outcomes.

75:

50: Judgments in the criminal system usually follow the protocols of written law. There are sometimes exceptions when political concerns, corruption or other flaws in the system decide outcomes.

25:

0: Judgments in the criminal system are often decided by factors other than written law. Bribery and corruption in the criminal judicial process are common elements affecting decisions.

79. Are judicial decisions enforced by the state?

75

79. In practice, are judicial decisions enforced by the state?

100 | 75 | 50 | 25 | 0

References:

Fazal Elahi, advocate, PHC, Peshawar

Zar Mohammad Afridi, advocate, PHC, Peshawar

100: Judicial decisions are enforced quickly regardless of what is being decided or who is appearing before the court. Failure to comply brings penalties enforced by the state.

75:

50: Judicial decisions are generally enforced by the state, with some exceptions. Certain areas of law may be ignored, or certain parties appearing before the courts may evade or delay enforcement.

25:

0: Judicial decisions are often ignored. The state lacks the will or capacity to consistently enforce these decisions.

80. Is the judiciary able to act independently?

88

80a. In law, the independence of the judiciary is guaranteed.

YES | NO

References:

Constitution of Pakistan 1973, part VII, chapter 1

Constitution of Pakistan 1973, article 175, section 2

Supreme Court (Pakistan Legal Decisions 2000 SC 869)

YES: A YES score is earned if there are formal rules establishing that the judiciary is independent from political interference by the executive and legislative branches. Independence include financial issues (drafting, allocation, and managing the budget of the courts).

NO: A NO score is earned if there are no formal rules establishing an independent judiciary.

80b. In practice, national-level judges are protected from political interference.

100 | 75 | 50 | 25 | 0

References:

Fazal Elahi, advocate, PHC, Peshawar

Zar Mohammad Afridi, advocate, PHC, Peshawar

100: National level judges operate independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Judges never comment on political debates. Individual judgments are rarely praised or criticized by political figures.

75:

50: National level judges are typically independent, yet are sometimes influenced in their judgments by negative or positive political incentives. This may include favorable or unfavorable treatment by the government or public criticism. Some judges may be demoted or relocated in retaliation for unfavorable decisions.

25:

0: National level judges are commonly influenced by politics and personal biases or incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include demotion, pay cuts, relocation, threats or harassment.

80c. In law, there is a transparent and objective system for distributing cases to national-level judges.

YES | NO

Comments:

Powers and functions of the chief justice of the high court or the supreme court.

References:

Constitution of Pakistan 1973

YES: A YES score is earned if there is an objective system that is transparent to the public that equitably or randomly assigns cases to individual judges. The executive branch does not control this process.

NO: A NO score is earned if the case assignment system is non-transparent or subjective where judges themselves have influence over which cases they adjudicate. A NO score is also earned if the executive branch controls this process.

80d. In law, national-level judges are protected from removal without relevant justification.

YES | NO

Comments:

Judges of superior courts are subject to accountability only in accordance with the methodology laid down in Article 209. This article provides for a Supreme Judicial Council, which can take action with respect to judges of superior courts on the grounds of misconduct or inability to perform the duty of his office for reasons of physical or mental incapability.

The Supreme Judicial Council (SJC) itself cannot grant any relief to someone aggrieved by the illegal or unconstitutional appointment of a judge to a superior court. The finding of the SJC in such an enquiry is to be made by the president on the advice of the prime minister or the cabinet. The case of Chief Justice Iftikhar Mohammad Chaudhry, who was removed from office for the second time on Nov. 3, 2007, is one that validates the notion that a judge cannot be removed from office without relevant justification.

References:

Constitution of Pakistan 1973, articles 209 and 210, section 4

YES: A YES score is earned if there are specific, formal rules for removal of a justice. Removal must be related to abuse of power or other offenses related to job performance.

NO: A NO score is earned if justices can be removed without justification, or for purely political reasons. A NO score is earned if the removal process is not transparent, or not based on written rules.

81. Are judges safe when adjudicating corruption cases?

81a. In practice, in the last year, no judges have been physically harmed because of adjudicating corruption cases.

YES | **NO**

References:

Interview with Fazal Elahi, advocate, PHC, Peshawar

Zar Mohammad Afridi, advocate, PHC, Peshawar

YES: A YES score is earned if there were no documented cases of judges being assaulted because of their involvement in a corruption case during the specific study period. YES is a positive score.

NO: A NO score is earned if there were any documented cases of assault to a judge related to his/her participation in a corruption trial. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

81b. In practice, in the last year, no judges have been killed because of adjudicating corruption cases.

YES | NO

References:

Fazal Elahi, advocate, PHC, Peshawar

Zar Mohammad Afridi, advocate, PHC, Peshawar

YES: A YES score is earned if there were no documented cases of judges being killed related to their involvement in a corruption case during the study period. YES is a positive score.

NO: A NO score is earned if there were any documented cases where a judge was killed because of his/her participation in a corruption trial. The relationship between a mysterious death and a judge's involvement in a case may not be clear, however the burden of proof here is low. If it is a reasonable assumption that a judge was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

82. Do citizens have equal access to the justice system?

82a. In practice, judicial decisions are not affected by racial or ethnic bias.

100 | **75** | 50 | 25 | 0

Comments:

Judges often decide cases on merit. In most cases, judicial decisions are free from any bias or unaffected by racial or ethnic basis. But, in some cases, including corruption cases, or those related to sectarian or ethnic issues, decisions may be affected depending by the integrity of the individual judge.

References:

Fazal Elahi, advocate, PHC, Peshawar

100: Judicial decisions are not affected by racial or ethnic bias.

75:

50: Judicial decisions are generally not affected by racial or ethnic bias, with some exceptions. Some groups may be occasionally discriminated against, or some groups may occasionally receive favorable treatment.

25:

0: Judicial decisions are regularly distorted by racial or ethnic bias. Some groups consistently receive favorable or unfavorable treatment by the courts.

82b. In practice, women have full access to the judicial system.

100 | 75 | **50** | 25 | 0

Comments:

Women in big urban centers have free access to courts, but those in rural and far-off areas find it difficult to approach a court of law for redressal of their grievances. Women are also restricted by the distance to a court and, in some cases, by the conservative values of the local society.

References:

Fazal Elahi, advocate, PHC, Peshawar

Zar Mohammad Afridi, advocate, PHC, Peshawar

100: Women enjoy full and equal status in the eyes of the courts. There are no exceptions or practices in which women are treated differently by the judicial system. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

75:

50: Women generally have use of the judicial system, with some exceptions. In some cases, women may be limited in their access to courts, or gender biases may affect court outcomes. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

25:

0: Women generally have less access to the courts than men. Court decisions are commonly distorted by gender bias. Women may have to go through intermediaries to interact with the court, or are unable to present evidence. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

82c. In law, the state provides legal counsel for defendants in criminal cases who cannot afford it.

YES | NO

References:

Constitution of Pakistan 1973, article 10, section 5

YES: A YES score is earned if the government is required by law to provide impoverished defendants with legal counsel to defend themselves against criminal charges.

NO: A NO score is earned if there is no legal requirement for the government to provide impoverished defendants with legal counsel to defend themselves against criminal charges.

82d. In practice, the state provides adequate legal counsel for defendants in criminal cases who cannot afford it.

100 | 75 | 50 | 25 | 0

Comments:

Defendants, if they so desire, can avail themselves of legal counsel at the state's expenses; the state is bound to provide legal counsel to defendants in criminal cases if they cannot afford to hire an attorney. But there have been instances when defendants went without any legal counsel.

References:

Fazal Elahi, advocate, PHC, Peshawar

Zar Mohammad Afridi, advocate, PHC, Peshawar

100: State-provided legal aid is basic, but well-trained and effective in representing the rights of impoverished defendants.

75:

50: State-provided legal aid is available, but flawed. Legal aid may be unavailable to some impoverished defendants. Legal aid/public defenders may be sometimes unable or unwilling to competently represent all defendants.

25:

0: State-provided legal aid is unavailable to most impoverished defendants. State legal aid/public defenders may be consistently incompetent or unwilling to fairly represent all defendants.

82e. In practice, citizens earning the median yearly income can afford to bring a legal suit.

100 | 75 | 50 | 25 | 0

Comments:

In most cases, citizens earning the median yearly income try to avoid bringing lawsuits because doing so incurs heavy costs. People are mostly concerned with survival.

References:

Fazal Elahi, advocate, PHC, Peshawar

Zar Mohammad Afridi, advocate, PHC, Peshawar

100: In most cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance. Attorneys fees do not represent a major cost to citizens.

75:

50: In some cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance. In other cases, the cost is prohibitive. Attorneys fees are a significant consideration in whether to bring a case.

25:

0: The cost of engaging the legal system prevents middle class citizens from filing suits. Attorneys fees are high enough to discourage most citizens from bringing a case.

82f. In practice, a typical small retail business can afford to bring a legal suit.

100 | 75 | 50 | 25 | 0

Comments:

Like citizens with median yearly incomes, small retailers prefer to avoid landing in a legal battle or bringing any lawsuits to the courts.

References:

Fazal Elahi, advocate, PHC, Peshawar

Zar Mohammad Afridi, advocate, PHC, Peshawar

100: In most cases, the legal system is an affordable option to a small retail business seeking to redress a grievance. Attorneys fees do not represent a major cost to small businesses.

75:

50: In some cases, the legal system is an affordable option to a small retail business seeking to redress a grievance. In other cases, the cost is prohibitive. Attorneys fees are a significant consideration in whether to bring a case.

25:

0: The cost of engaging the legal system prevents small businesses from filing suits. Attorneys fees are high enough to discourage most small businesses from bringing a case.

82g. In practice, all citizens have access to a court of law, regardless of geographic location.

100 | 75 | 50 | 25 | 0

Comments:

In practice, not all citizens have easy access to courts due to their geographical locations or the distance to the courts.

References:

Fazal Elahi, advocate, PHC, Peshawar

Zar Mohammad Afridi, advocate, PHC, Peshawar

100: Courtrooms are always accessible to citizens at low cost, either through rural courthouses or through a system of traveling magistrates.

75:

50: Courts are available to most citizens. Some citizens may be unable to reach a courtroom at low cost due to location.

25:

0: Courts are unavailable to some regions without significant travel on the part of citizens.

VI-4. Law Enforcement

83. Is the law enforcement agency (i.e. the police) effective?

83a. In practice, appointments to the law enforcement agency (or agencies) are made according to professional criteria.

100 | 75 | 50 | 25 | 0

Comments:

Professional criteria are mostly bypassed when making appointments to law enforcement agencies. Appointments are mostly made on personal likes and dislikes and the status of the individual seeking appointment.

References:

Fazal Elahi, advocate, PHC, Peshawar

Zar Mohammad Afridi, advocate, PHC, Peshawar

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

83b. In practice, the law enforcement agency (or agencies) has a budget sufficient to carry out its mandate.

100 | 75 | 50 | 25 | 0

Comments:

Law enforcement agencies in most cases have a sufficient budget to carry out their professional obligations. But the police department is always short of funds and barely equipped to carry out its mandatory duty. This is one of the reasons for rampant corruption in the police department. When a citizen seeks a police action, for example, he or she would have to give illegal graft to the official to do the job.

References:

professional criteria is mostly bypassed.

100: The agency (or agencies) has a budget sufficient to fulfill its basic mandate.

75:

50: The agency (or agencies) has limited budget, generally considered somewhat insufficient to fulfill its basic mandate.

25:

0: The agency (or agencies) has no budget or an obviously insufficient budget that hinders the agency's ability to fulfill its mandate.

83c. In practice, the law enforcement agency is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

Law enforcement agencies and the police are infested with political interference.

References:

Fazal Elahi, advocate, PHC, Peshawar

Zar Mohammad Afridi, advocate, PHC, Peshawar

100: The agency (or agencies) operates independently of the political process and has operational independence from the government. All laws can be enforced regardless of the status of suspects or the sensitivity of the investigation.

75:

50: The agency (or agencies) is typically independent, yet is sometimes influenced in its investigations or enforcement actions by negative or positive political incentives. This may include favorable or unfavorable public criticism by the government or other forms of influence. The agency (or agencies) may not be provided with some information needed to carry out its investigations.

25:

0: The investigative and enforcement work of the agency (or agencies) is commonly influenced by political actors or the government. These may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power by the government.

84. Can law enforcement officials be held accountable for their actions?

88

84a. In law, there is an independent mechanism for citizens to complain about police action.

YES | NO

References:

Criminal Procedure Code (CrPC) Pakistan. section 22A

YES: A YES score is earned if there is a formal process or mechanism by which citizens can complain about police actions. A YES score is earned if a broader mechanism such as the national ombudsman, human rights commission, or anti-corruption agency has jurisdiction over the police.

NO: A NO score is earned if there is no such mechanism

84b. In practice, the independent law enforcement complaint reporting mechanism responds to citizen's complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Fazal Elahi, advocate, PHC, Peshawar

Zar Mohammad Afridi, advocate, PHC, Peshawar

100: The agency/entity responds to complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency/entity responds to complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take three to six months to resolve. Serious abuses are not investigated with any urgency.

84c. In law, there is an agency/entity to investigate and prosecute corruption committed by law enforcement officials.

YES | NO

References:

National Accountability Bureau (NAB)

YES: A YES score is earned if there is an agency/entity specifically mandated to investigate corruption-related activity within law enforcement. This agency/entity may be internal to the police department (provided it has a degree of independence, such as an internal affairs unit) or part of a broader national mechanism such as the national ombudsman, human rights commission, or anti-corruption agency.

NO: A NO score is earned if no such agency/entity exists.

84d. In practice, when necessary, the agency/entity independently initiates investigations into allegations of corruption by law enforcement officials.

100 | 75 | 50 | 25 | 0

References:

Fazal Elahi, advocate, PHC, Peshawar

Zar Mohammad Afridi, advocate, PHC, Peshawar

100: When irregularities are discovered, the agency/entity is aggressive in investigating government law enforcement officials or in cooperating with other investigative agencies.

75:

50: The agency/entity starts investigations, but is limited in its effectiveness or is reluctant to cooperate with other investigative agencies. The agency/entity may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency/entity does not effectively investigate or does not cooperate with other investigative agencies. The agency may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

84e. In law, law enforcement officials are not immune from criminal proceedings.

YES | NO

Comments:

Criminal proceedings can be initiated against law enforcement officials for gross misconduct.

References:

Criminal Procedure Code 1898, sections 7, 22A, 29, 32 and other relevant sections

Civil Servants Act 1973

Government Service (Conduct) Rules

Police Order 2002

YES: A YES score is earned if law enforcement officers are fully accountable for their actions under the law and can be investigated and prosecuted for their actions.

NO: A NO score is earned if law enforcement enjoys any special protection from criminal investigation or prosecution.

84f. In practice, law enforcement officials are not immune from criminal proceedings.

100 | 75 | 50 | 25 | 0

References:

Fazal Elahi, advocate, PHC, Peshawar

Zar Mohammad Afridi, advocate, PHC, Peshawar

100: Law enforcement officers are subject to criminal investigation for official misconduct. No crimes are exempt from prosecution.

75:

50: Law enforcement is generally subject to criminal investigation but exceptions may exist where criminal actions are overlooked by the police or prosecutors. Some crimes may be exempt from prosecution, such as actions taken in the line of duty.

25:

0: Law enforcement enjoys a general protection from most criminal investigation. This may be due to a formal immunity or an informal understanding that the law enforcement community protects itself.