

Overall Score:

68 - Weak

Legal Framework Score:

91 - Very Strong

Actual Implementation Score:

47 - Very Weak

Category 1. Non-Governmental Organizations, Public Information and Media

1.1. ⁶⁷Anti-Corruption Non-Governmental Organizations

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

67

01a. In law, citizens have a right to form NGOs focused on anti-corruption or good governance.

Yes

No

Comments:

Article 15, 16,17 and 19 of the Constitution guarantee the freedoms of movement, assembly, association and speech of individuals and media as fundamental rights of every citizen. These have been institutionalized in the list of Acts mentioned.

Though freedom of association is guaranteed, several regulatory acts exist that allow for registration and licensing. The four acts allow civil society organizations to register, with varying degree of regulation of their functioning and operations.

[links]: Constitution of Pakistan, 1973, with amendments, can be found at <http://www.pakistani.org/pakistan/constitution/>

Companies Ordinance, 1984 at <http://www.vakilno1.com/saarclaw/pakistan/part4.htm> and http://www.secp.gov.pk/corporatelaws/pdf/CO_1984_0710.pdf

Voluntary Social Welfare Agencies (Registration and Control Ordinance), 1961 at <http://www.pakistansocietyofcriminology.com/Admin/laws/THEVOLUNTARYSOCIALWELFAREAGENCIESOrdinance1961.doc>

Societies Registration Act, 1860 at <http://www.punjablaws.gov.pk/laws/1.html>

Trusts Act, 1882 at <http://www.ngosinfo.gov.pk/TrustAct1882.aspx>

References:

Constitution of Pakistan, 1973, articles 15-19

Voluntary Social Welfare Agencies (Registration and Control Ordinance), 1961

Societies Registration Act, 1860

Trusts Act, 1882

Companies Ordinance 1984, section 42

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. Non-governmental organizations (NGOs) are defined here as any organized group that is separate from the state working on issues of governance, transparency, and/or anti-corruption.

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.

01b. In law, anti-corruption/good governance NGOs are free to accept funding from any foreign or domestic sources.

Yes

No

Comments:

There is no blanket law that puts limitations on the sources of funding to the civil service organizations (CSOs) and nongovernmental Organizations (NGOs).

Article 17 of the Constitution of Pakistan, 1973, gives freedom of association to all citizens. In 1994 a legal bill was drafted (known as the "Sher Afghan Law") that had required all NGOs and CSOs or any other organizations, to register. However this was never passed in the legislature and enacted. NGOs have resisted compulsory registration by invoking article 17 of the Constitution.

However, there is voluntary and incentive-based registration, under the Societies Registration Act (SRA), 1860, the Trust Act, 1882, the Voluntary and Social Welfare Agencies (VSWA), 1961, and under section 42 of the Companies Ordinance of 1984. These various laws have varying degrees of regulatory mechanisms and enforcement; they also vary depending on the regulatory authority.

Companies Ordinance, 1984 at <http://www.vakilno1.com/saarclaw/pakistan/part4.htm> and http://www.secp.gov.pk/corporatelaws/pdf/CO_1984_0710.pdf

VSWA, 1961 at

<http://www.pakistansocietyofcriminology.com/Admin/laws/THEVOLUNTARYSOCIALWELFAREAGENCIESOrdinance1961.doc>

SRA, 1860 at <http://www.punjablaws.gov.pk/laws/1.html>

Trust Act, 1882 at <http://www.ngosinfo.gov.pk/TrustAct1882.aspx>

References:

Societies Registration Act, 1860;

Trusts Act, 1882;

Voluntary Social Welfare Agencies (Registration and Control) Ordinance, 1961;

Companies Ordinance, 1984, section 42

Interview – Salman Raja, Lawyer and Senior Partner, Raja Mohammed Akram & Co, Advocate & Legal Consultant, 33 – C, Main Gulberg, Lahore, Dec. 21, 2010

Interview – Fauzia Yazdani, Researching Consultants, Islamabad, Dec. 27, 2010

Yes: A YES score is earned if anti-corruption/good governance NGOs 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 NGOs focused on anti-corruption or good governance.

01c. In law, anti-corruption/good governance NGOs are required to disclose their sources of funding.

Yes | **No**

Comments:

There is no blanket law that requires civil service organizations (CSOs) to disclose their sources of funding. The nongovernmental Organizations (NGOs) are free to receive funding from any sources.

The NGO/development sector in Pakistan has seen a huge inflow of money, particularly after 2001, with further shocks in 2005 earthquake, the 2009 IDP crisis and the 2010 floods.

The NGO/CSO sector is, in some sense, the least transparent and least accountable. This is largely due to the loose legal and regulatory structure. The donors are also not interested in strong accountability measures. The Economic Affairs Division (EAD) in the Ministry of Finance has a single section officer that monitors the flow of funds to NGOs. However, the disclosure is mostly voluntary and most NGOs neither disclose their financial data to EAD, nor make this publicly available through other channels. The government does not have the capacity to implement the rather toothless and patchy regulatory framework.

Companies Ordinance, 1984 at <http://www.vakilno1.com/saarclaw/pakistan/part4.htm> and http://www.secp.gov.pk/corporatelaws/pdf/CO_1984_0710.pdf

VSWA, 1961 at <http://www.pakistansocietyofcriminology.com/Admin/laws/THEVOLUNTARYSOCIALWELFAREAGENCIESOrdinance1961.doc>

SRA, 1860 at <http://www.punjablaws.gov.pk/laws/1.html>
Trust Act 1882 at <http://www.ngosinfo.gov.pk/TrustAct1882.aspx>

References:

Societies Registration Act (SRA), 1860;

Trusts Act, 1882;

Voluntary Social Welfare Agencies (Registration and Control) Ordinance (VSWA), 1961;

Companies Ordinance, 1984

Interview – Salman Raja, Lawyer and Senior Partner, Raja Mohammed Akram & Co, Advocate & Legal Consultant, 33-C, Main Gulberg, Lahore, Dec. 21, 2010

Interview – Fauzia Yazdani, Researching Consultants, Islamabad, Dec. 27, 2010

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

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

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

58

02a. In practice, the government does not create barriers to the organization of new anti-corruption/good governance NGOs.

100 | 75 | 50 | 25 | 0

Comments:

This will vary depending on the Act under which a civil service organization (CSO) registers. While registration is voluntary, there are a number of regulations that become applicable depending on the size of the organization, the incentive for tax exemption, the desire to participate in the bidding process, acquiring government funding, etc. The process can be difficult and cumbersome, and certain organizations that are known to be critical of government position, or against the established power, often face unofficial barriers.

References:

Interview – Salman Raja, Lawyer and Senior Partner, Raja Mohammed Akram & Co, Advocate & Legal Consultant, 33-C, Main Gulberg, Lahore, Dec. 21, 2010

Naqeeb, B., “NGO Sector in Pakistan: Issues and Challenges,” The Daily Times, Feb. 08, 2010

100: NGOs 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: NGOs 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 NGO. Some unofficial barriers, such as harassment of minority groups, may occur.

25:

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

02b. In practice, anti-corruption/good governance NGOs actively engage in the political and policymaking process.

100 | 75 | 50 | 25 | 0

Comments:

The influence is generally through personal contacts. Some nongovernmental Organizations (NGOs) like CRCP, PILDAT and

others have often worked closely with the policy circles to draft important legislation. For instance, certain NGOs played a large part in drafting and implementing the Freedom of Information Ordinance, 2002. However, one wonders how influential the work of local groups would be if there was no donor pressure, such as that from the Asian Development Bank.

References:

Interview-Waseem Hashmi, former employee of National Accountability Bureau, CRCP, G-6/1, Islamabad, Oct.18, 2010

Interview-Abrar Hafeez, Secretary General, CRCP, Islamabad, Oct. 18, 2010

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

75:

50: Anti-corruption/good governance NGOs are active, but may not be relevant to political decisions or the policymaking process. Those NGOs 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 NGOs are effectively prohibited from engaging in the political process. Those NGOs are unwilling to take positions on political issues. They are not relevant to changes in public opinion.

02c. In practice, no anti-corruption/good governance NGOs have been shut down by the government for their work on corruption-related issues during the study period.

Yes

No

References:

Interview-Waseem Hashmi, former employee of National Accountability Bureau, CRCP, G-6/1, Islamabad, Oct.18, 2010

Interview-Abrar Hafeez, Secretary General, CRCP, Islamabad, Oct. 18, 2010

Yes: A YES score is earned if there were no NGOs 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 NGO 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 NGO's work may not be explicit, however the burden of proof here is low. If it seems likely that the NGO 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 anti-corruption/good governance NGO activists safe when working on corruption issues?

03a. In practice, in the past year, no anti-corruption/good governance NGO activists working on corruption issues have been imprisoned.

Yes | No

References:

Interview-Waseem Hashmi, former employee of National Accountability Bureau, CRCP, G-6/1, Islamabad, Oct.18, 2010

Interview-Abrar Hafeez, Secretary General, CRCP, Islamabad, Oct. 18, 2010

Yes: A YES score is earned if there were no NGO 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.

03b. In practice, in the past year, no anti-corruption/good governance NGO activists working on corruption issues have been physically harmed.

Yes | No

References:

Interview-Waseem Hashmi, former employee of National Accountability Bureau, CRCP, G-6/1, Islamabad, Oct.18, 2010

Interview-Abrar Hafeez, Secretary General, CRCP, Islamabad, Oct. 18, 2010

Yes: A YES score is earned if there were no documented cases of NGO 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.

03c. In practice, in the past year, no anti-corruption/good governance NGO activists working on corruption issues have been killed.

Yes | No

References:

Interview-Waseem Hashmi, former employee of National Accountability Bureau, CRCP, G-6/1, Islamabad, Oct.18, 2010

Interview-Abrar Hafeez, Secretary General, CRCP, Islamabad, Oct. 18, 2010

Yes: A YES score is earned if there were no documented cases of NGO 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?

63

04a. In law, citizens have a right to organize into trade unions.

Yes | No

Comments:

Article 17 of the Constitution grants freedom of association and freedom to form trade unions as a fundamental right.

References:

Constitution of Pakistan 1973, article 17

Industrial Relations Ordinance, 2002

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.

04b. In practice, citizens are able to organize into trade unions.

Comments:

While unions exist in some industrial sectors, they face threats and barriers from government and corporations. There are official and unofficial barriers to student unions in many universities. Large populations in the informal sector, domestic workers, and bonded labor in the brick kilns are not aware of their rights. Further, these groups face brutal repression whenever organized action is taken.

References:

“Declining Decent Work & Emerging Struggles,” Report by Pakistan Institute of Labour Education and Research (Piler), 2010

Shahid Hussain, “Workers’ Issues Not On Gov’t Agenda: IA Rahman,” The News International, Dec. 30, 2010

Iqbal, Javaid, “Bonded Labor in the Brick Kiln Industry of Pakistan,” The Lahore Journal of Economics 11:1 (summer 2006), pp 99-119

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.

1.2. Media's Ability to Report on Corruption

5. Are media and free speech protected?

100

05a. In law, freedom of the media is guaranteed.

Yes

No

Comments:

The freedom of speech and press is guaranteed under article 19 of the Constitution of 1973, conditional to “reasonable restrictions.” Legally, nongovernmental media are not legally restricted or prohibited, although, in practice, restrictions are applied using official and unofficial channels.

Constitution of Pakistan, 1973, with amendments can be found at <http://www.pakistani.org/pakistan/constitution/>

Article 19 reads:

“19. Freedom of speech, etc.

Every citizen shall have the right to freedom of speech and expression, and there shall be freedom of the press, subject to any reasonable restrictions imposed by law in the interest of the glory of Islam or the integrity, security or defence of Pakistan or any part thereof, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court,[15] [commission of] or incitement to an offence.”

References:

Constitution of Pakistan, 1973, article 19

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.

05b. In law, freedom of speech is guaranteed.

Yes

No

Comments:

Article 19 of the Constitution grants a conditional freedom of speech and freedom of press, the “reasonable restrictions” can refer to the “glory of Islam or the integrity, security or defense of Pakistan”, friendly relations with other states, decency, morality etc.

However, these “reasonable restrictions” are, at times, unreasonably employed. Freedom of speech can be legally curtailed by defining certain forms of speech as criminal. For example, Articles 298B and 298C of the penal code prevent the Qadiani/Ahmadi religious group from using certain terms, including the labels of “masjid” for their place of worship and “azan” for the call to prayers.

Constitution of Pakistan, 1973, with amendments can be found at <http://www.pakistani.org/pakistan/constitution/>

Article 19 reads:

“19. Freedom of speech, etc.

Every citizen shall have the right to freedom of speech and expression, and there shall be freedom of the press, subject to any reasonable restrictions imposed by law in the interest of the glory of Islam or the integrity, security or defence of Pakistan or any part thereof, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court,[15] [commission of] or incitement to an offence.”

References:

Constitution of Pakistan 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

06a. In practice, the government does not create barriers to form a print media entity.

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

Comments:

There can be some unofficial barriers to entry and it is not easy for every person to start a print media outlet. Various laws apply for any print media outfit of a reasonable size. For instance, separate regulations apply to keep a printing press. The government can also use negative and positive incentives to control the less-influential actors.

References:

Interview-Mian Najeeb ur Rehman, Editor, Daily Lahore Post, Lahore, Dec. 31, 2010

All Pakistan Newspaper Agency, website <http://www.apns.com.pk/news/index.php>

Muralidharan, et al."Freedom in Solidarity: Media Working for Peace in South Asia 2010," United States Institute of Peace, October 2010. pp 31-38

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.

06b. In law, where a print media license is necessary, there is an appeals mechanism if a license is denied or revoked.

Yes | No

Comments:

Appeals can be made to the relevant district official or in the High Courts.

Section 20 reads:

"20. Appeals. – (1) Any person who has been refused authentication of a declaration under this Ordinance or whose declaration has been cancelled may, within thirty days from the date of such order prefer an appeal to the High Court within whose

jurisdiction such order has been passed.

(2) The High Court shall, after giving notice to the appellant and the Government, hear and dispose of the appeal within sixty days of its institution and pass such order, including an order awarding the aggrieved it may deemed fit.”

Link to the 2002 ordinance, <http://www.crcp.org.pk/PDF%20Files/press%20reg%20law.PDF>

References:

The Press, Newspapers, News Agencies and Books Registration Ordinance, 2002, article 20

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.

06c. In practice, where necessary, citizens can obtain a print media license within a reasonable time period.

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

Comments:

A license can be obtained in four months through the Press Information Department (www.pid.gov.pk). However, the newly formed newspapers, especially if they do not belong to some influential media conglomerate, do have incentive to appear favorable to the government (federal, provincial or local) since this can result in good business obtained from the government, such as tender notices, ads etc.

New outfits are generally put on an unofficial “probation” for a year, to observe if they are pro-government or not.

References:

Interview-Mian Najeeb ur Rehman, Editor, Daily Lahore Post, Lahore, Dec. 31, 2010

“Shujaat Lashes Out at New Print Media Rules,” The Nation, Jan.12, 2009, <http://www.nation.com.pk/pakistan-news-newspaper-daily-english-online/Regional/Top/12-Jan-2009/Shujaat-lashes-out-at-new-print-media-rules>

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.

06d. In practice, where necessary, citizens can obtain a print media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Interview-Mian Najeeb ur Rehman, Editor, Daily Lahore Post, Lahore, Dec. 31, 2010

“Shujaat Lashes Out at New Print Media Rules,” The Nation, Jan.12, 2009, <http://www.nation.com.pk/pakistan-news-newspaper-daily-english-online/Regional/Top/12-Jan-2009/Shujaat-lashes-out-at-new-print-media-rules>

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?

50

07a. In practice, the government does not create barriers to form a broadcast (radio and TV) media entity.

100 | 75 | 50 | 25 | 0

Comments:

Unofficial barriers to entry exist. Niaz reports that “No Objection Certificates” are not issued in certain cases, which prevents media and journalists from establishing a working outlet.

References:

Waqas Ahmed, Pakistan Electronic Media Regulatory Authority (PEMRA), Lahore, Dec. 30, 2010

Tahir Niaz, “NOC Holding Up Protective Equipment For Journalists,” Sept. 21, 2009, http://www.dailytimes.com.pk/default.asp?page=2009921story_21-9-2009_pg7_18

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.

07b. In law, where a broadcast (radio and TV) media license is necessary, there is an appeals mechanism if a license is denied or revoked.

Yes | No

Comments:

Section 30A of the Pakistan Electronic Media Regulatory Authority (PEMRA) Ordinance, gives a thirty-day period for an appeal to a High Court against any decision by the Authority.

References:

Pakistan Electronic Media Regulatory Authority Ordinance, article 30 A

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.

07c. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Pakistan Electronic Media Regulatory Authority (PEMRA) Ordinance, Article 22 sets a duration of not more than a hundred days from the time of receipt of the application for a license for consideration of the application. In practice, this can take almost a year in most cases.

References:

Waqas Ahmed, Pakistan Electronic Media Regulatory Authority (PEMRA), Lahore, Dec. 30, 2010

Pakistan Electronic Media Regulatory Authority Ordinance, article 22

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.

07d. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license at a reasonable cost.

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

Comments:

Getting a license requires visiting offices in the capital and major cities. The fees are also very high, especially for broadcast media, which prevents most citizens from forming and operating such outfits. In addition, running a media organization and the costs associated with it in general are always prohibitive.

References:

Waqas Ahmed, Pakistan Electronic Media Regulatory Authority (PEMRA), Lahore, Dec. 30, 2010

PEMRA Rules 2009, 5, 6, 8, 10 and Schedule B

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

08a. In practice, the government does not prevent citizens from accessing content published on-line.

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

Comments:

“Pakistan Telecommunications Authority (PTA) repeatedly bans websites on the pretext of national integrity, security, and to stop blasphemy. Several websites are also blocked for politically motivated reasons.”

In a column in Dawn newspaper, Yusuf notes that PTA blocked a video alleging an abuse of power and interrogation by Army and Navy officials. Dawn also reports that videos of rigging in the 2008 elections were also blocked.

According to the May 21 report on Express Tribune newspaper, "A list of over 370 websites that the Pakistan Telecommunication Authority (PTA) has asked ISPs to block was obtained by The Express Tribune, while PTA spokesperson Khurram Mehran has confirmed that the total number of blocked sites has reached 1,000."

According to the U.S. State Department's 2009 report on Pakistan: "Local sources reported that authorities continued to ban Walochwarna, a Web site that advocated independence for Balochistan. As of September 10, the Web site Balochvoice, a pro-Balochistan independence site that was previously banned, was accessible on the Internet and appeared to be operating without interference."

According to PTA's own website, it has blocked "more than 450 links on the Internet containing derogatory material." These include a ban on Facebook after a decision by Lahore High Court, a ban on YouTube over the Danish Cartoon controversy. However, more surprising are the cases when website displaying pictures of the family of Governor Punjab (Salman Taseer) are blocked... c.f., <http://teeth.com.pk/blog/2009/01/01/pta-blocks-salman-taseer-pictures>

References:

"Web of Silence," Human Yusuf, Feb. 14, 2010, Dawn Column, <http://news.dawn.com/wps/wcm/connect/dawn-content-library/dawn/the-newspaper/columnists/12-web-of-silence-420-bi-07>

"Pakistan's list of Blocked Website Swells", Express Tribune newspaper, May 21, 2010, <http://tribune.com.pk/story/15015/pakistans-list-of-blocked-websites-swells/>

US Dept. of State, 2010, "2009 Human Rights Report: Pakistan," Bureau of Democracy, Human Rights and Labor, March 11, 2010; Access date, Dec. 7, 2010, <http://www.state.gov/g/drl/rls/hrrpt/2009/sca/136092.html>

Declan Walsh, "Pakistan Blocks Facebook In Row Over Muhammad Drawings," Guardian, May 19, 2010, <http://www.guardian.co.uk/world/2010/may/19/facebook-blocked-pakistan-muhammad-drawings>

Press release at Pakistan Telecommunications Authority (PTA) website (www.pta.gov.pk)

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.

08b. In practice, the government does not censor citizens creating content on-line.

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

Comments:

The banned sites have included YouTube, Facebook, and several blogs.

Websites of certain political groups are also banned; these include Baluch nationalist groups.

References:

“Pakistan’s list of blocked website swells,” Express Tribune newspaper, May 21, 2010, <http://tribune.com.pk/story/15015/pakistans-list-of-blocked-websites-swells/>

“YouTube shut down in Pakistan,” June 01, 2010, PTA Press release, http://www.pta.gov.pk/index.php?option=com_content&task=view&id=1581&catid=92&Itemid=739

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?

58

09a. In law, it is legal to report accurate news even if it damages the reputation of a public figure.

Yes

No

Comments:

Article 19 allows freedom of expression, though it is subject to conditions. <http://www.mofa.gov.pk/Publications/constitution.pdf>

Pakistan Penal Code, section 499, declares “defamation” as an offense, but creates exceptions for publication of truth in public interest, among other things. According to this law, accurate news reporting, even if damages the reputation of a public figure, is legal.

499, Defamation:

Whoever by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person.

First Exception: Imputation of truth which public good requires to be made or published: It is not defamation to impute anything which is true concerning any person, if it be for the public good that the imputation should be made or published. Whether or not it is for the public good is a question of fact.

Second Exception: On public conduct of public servants: It is not defamation to express in good faith any opinion whatever respecting the conduct of a public servant in the discharge of his public functions, or respecting his character, so far as his character appears in that conduct, and no further.

Third Exception: Conduct of any person touching any public question: It is not defamation to express in good faith any opinion whatever respecting the conduct of any person touching any public question, and, respecting his character, so far as his character appears in that conduct, and no further.

Fourth Exception: Publication of reports of proceedings of Courts: It is not defamation to publish a substantially true report of the proceedings of a Court of Justice, or of the result of any such proceedings.

Fifth Exception: Merits of a case decided in Court or the conduct of witnesses and others concerned: It is not defamation to express in good faith any opinion whatever respecting the merits of any case, civil or criminal, which has been decided by a Court of Justice, or respecting the conduct of any person as a party, witness or agent, in any such case, or respecting the character of such person, as far as his character appears in that conduct, and not further.

Sixth Exception: Merits of public performance: It is not defamation to express in good faith any opinion respecting the merits of any performance which its author has submitted to the judgment of the public, or respecting the character of the author so far as his character appears in such performance, and no further.

Tenth Exception: Caution intended for the good of the person to whom it is conveyed or for the public good: It is not defamation to convey a caution, in good faith, to one person against another, provided that such caution be intended for the good of the person to whom it is conveyed, or of some person in whom that person is interested, or for the public good.

Defamation Ordinance, 2002, defines defamation in article 3, and plausible defense in article 5, which includes: "it is based on truth and was made for public good";

"3. Defamation (1) any wrongful act or publication or circulation of a false statement or representation made orally or in written or visual form which injures the reputation of a person, tends to lower him in the estimation of others or tends to reduce him to ridicule, unjust criticism, dislike, contempt or hatred shall be actionable as defamation.

(2) Defamation is of two forms, namely:

(i) slander; and

(ii) libel

(3) Any false oral statement or representation that amounts to defamation shall be actionable as slander.

(4) Any false written, documentary or visual statement or representation made either by ordinary form or expression or by electronic or other modern means or devices that amounts to defamation shall be actionable as libel.

5. Defenses: In defamation proceedings, a person has a defense if he shows that:

(a) he was not the author, editor, publisher or printer of the statement complained of;

(b) the matter commented on is fair and in the public interest and is an expression of opinion and not an assertion of fact and was published in good faith;

(c) it is based on truth and was made for public good;

(d) assent was given for the publication by the plaintiff;

(e) offer to tender a proper apology and publish the same was made by the defendant but was refused by the plaintiff;

(f) an offer to print or publish a contradiction or denial in the same manner and with the same prominence was made but was refused by the plaintiff;

(g) the matter complained of was privileged communication such as between lawyer and client or between persons having fiduciary relations;

(h) the matter is covered by absolute or qualified privilege.

References:

Constitution of Pakistan, 1973, Article 19

Pakistan Penal Code, 1860, section 499

Defamation Ordinance 2002, 3, 5

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.

09b. In practice, the government or media owners/distribution groups do not encourage self-censorship of corruption-related stories.

100 | 75 | 50 | 25 | 0

Comments:

There is serious censorship, especially on matters related to military and military operations in the Tribal Areas and Baluchistan. The Military prevents the media from independent reporting and demands that only reports released by the Inter Services Public relations (ISPR) be used. This notion of “embedded” journalism is a farcical device used to censor stories about the abuse of power and authority.

The government also exercised direct and indirect pressure on various media outlets and cable TV operators to block transmission of a “shoe-throwing” incident involving the President Asif Ali Zardari.

References:

Waqas Ahmed, Pakistan Electronic Media Regulatory Authority (PEMRA), Lahore, Dec. 30, 2010

Roy Greenslade, “Pakistan TV Bocked Over Zardari Shoe-throwing,” Greenslade Blog at guardian.co.uk, Aug. 12, 2010, <http://www.guardian.co.uk/media/greenslade/2010/aug/12/press-freedom-asif-ali-zardari>

“Restrictions on the media in military operations in Waziristan,” AHRC statement (also cited in U.S. Dept of State, 2010, “2009 Human Rights Report:Pakistan”, Bureau of Democracy, Human Rights and Labor, March 11, 2010, p187-190; Access date, Dec 7, 2010; url: <http://www.state.gov/g/drl/rls/hrrpt/2009/sca/136092.htm>

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.

09c. In practice, there is no prior government restraint (pre-publication censoring) on publishing corruption-related stories.

Comments:

Media reporting on corruption is restricted in certain ways. First of all, certain issues regarding the abuse of power by the military, both in financial and in political matters, is not reported and direct threats of use of force, the actual use of force, and indirect pressure are applied to affect reporting.

However, the media has also been very active in highlighting many corruption-related stories, especially since the higher judiciary is actively pursuing many high profile cases.

References:

Waqas Ahmed, Pakistan Electronic Media Regulatory Authority (PEMRA), Lahore, Dec 30,2010

Roy Greenslade, "Pakistan TV blocked Over Zardari shoe-throwing," Greenslade Blog at guardian.co.uk, Aug. 12, 2010, <http://www.guardian.co.uk/media/greenslade/2010/aug/12/press-freedom-asif-ali-zardari>

"Restrictions on the media in military operations in Waziristan", AHRC statement (also cited in US Deptt of State, 2010. "2009 Human Rights Report:Pakistan", Bureau of Democracy, Human Rights and Labor, March 11, 2010, p187-190; Access date, Dec 7, 2010; url: <http://www.state.gov/g/drl/rls/hrrpt/2009/sca/136092.htm>"

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.

10. Are the media credible sources of information?

60

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

Yes

No

Comments:

Disclosure of such information is required at the time of registration. The Press Registrar, a civil servant, maintains these registration records.

References:

The Press, Publication and Newspapers Registration Ordinance, 2002, article 6, <http://www.crcp.org.pk/PDF%20Files/press%20reg%20law.PDF>

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

Comments:

Disclosures are made at the time of registration. Sections 18-24 of the Pakistan Electronic Media Regulatory Authority (PEMRA) Ordinance, 2002, specify the various types of licenses and relevant expectations.

Rules 4,5,6 further detail the application process, which requires filling out an application form. Details of licensing fees are given in Schedule B. The ownership is declared in the application form, and, technically, this information can be obtained through the freedom of information act. See example application form at http://www.pemra.gov.pk/pemra/images/docs/stv/Application_Form_STV.pdf

References:

Pakistan Electronic Media Regulatory Authority (PEMRA) Ordinance, 2002, sections 24

PEMRA Rules, 2009, rules 4, 5, 6

http://www.pemra.gov.pk/pemra/images/docs/legislation/Ordinance_2002.pdf

http://www.pemra.gov.pk/pemra/images/docs/legislation/PEMRA_Rules_2009.pdf
accessed on 03/03/2011

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 types 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:

This might be the case most of the time. The recent 'fake Wikileaks leaks' story clearly indicates lack of professionalism on the part of major journalists and editors. As Declan Walsh of the Guardian reported, major newspapers of Pakistan published stories supposedly based on Wikileaks publishing of U.S. embassy cables, claiming that these U.S. cables called the Indian military generals "genocidal" and that New Delhi backs militants. Walsh reports that these false Wikileaks might have been provided by the military intelligence agencies.

"An extensive search of the WikiLeaks database by the Guardian by date, name and keyword failed to locate any of the incendiary allegations. It suggests this is the first case of WikiLeaks being exploited for propaganda purposes."

References:

Declan Walsh, "Pakistani media publish fake Wikileaks cables Attacking India", The Guardian, Dec 9, 2010 <http://www.guardian.co.uk/world/2010/dec/09/pakistani-newspaper-fake-leaks-india>

Interview – Waqas Ahmed, Assistant Director, Pakistan Electronic Media Regulatory Authority (PEMRA), Lahore, Dec. 30, 2010

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:

Several private news channels were shut down during the most recent general elections of 2008. AAJ TV journalists were banned from appearing on television. Mir Shakilur Rehman of Geo TV and the Jang media group reported being threatened by ISI, the Pakistani military agency. Pakistan Electronic Media Regulatory Authority (PEMRA) was reportedly calling newsrooms and interfering with news operations.

References:

"Media Monitoring Report: Election 2008," by Civic Education Network, available at www.pakistanpolitics.org/Media%20Monitoring%20Report.doc_dETGW4K2YD-w

HRW report, "Pakistan: Media Restrictions Undermine Elections," 2008, available at <http://www.hrw.org/en/news/2008/02/15/pakistan-media-restrictions-undermine-election>

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

Comments:

Civic Education Network's reported media coverage in three periods before the 2008 election. They showed that during the first and third stage (weeks immediately preceding elections), the incumbent party, the Pakistan Muslim League (PML Q), which fared badly in the elections, was given twice as much airtime as the most popular party, the Pakistan Peoples Party (PPP).

The PPP received most coverage during the second phase, but this was due to the assassination of PPP leader Benazir Bhutto. Similar biases existed in the Presidential race, this time after the formation of the PPP government and thus favoring the PPP candidate, Asif Ali Zardari, the current president of Pakistan.

Human Rights Watch also reported similar treatment by state-owned media, and further points out that "curbs on the media prohibit coverage of election rallies, live call-ins, live talk shows, live coverage of protests, or any live broadcasts that could show the government in a negative light, severely restricting the right to free expression ahead of Pakistan's election on February 18, 2008."

References:

"Media Monitoring Report: Election 2008," by Civic Education Network, available at www.pakistanpolitics.org/Media%20Monitoring%20Report.doc_dETGW4K2YD-w

Human Rights Watch report, "Pakistan: Media Restrictions Undermine Elections," 2008, available at <http://www.hrw.org/en/news/2008/02/15/pakistan-media-restrictions-undermine-election>

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?

33

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

Yes | **No**

Comments:

Reporters Sans Frontieres (RSF) highlights the case of Ghulam Rasool Khan who has been detained in eastern Punjab since Nov. 3, 2010 (report published on Nov. 18, 2010), without due process. Further:

“The Pakistani correspondent of News Network International (NNI), Khan has been held for the past 12 days in Bahawalpur prison, in Punjab province. The district authorities used the provisions of a law for the maintenance of public order to detain him and his brother for one month without trial.

“The real reason for his arrest was his coverage of local government corruption. He recently shed light on various cases of embezzlement and misuse of public funds in several Punjabi government departments.”

References:

“A reporter jailed without trial, another abducted by suspected security agents,” Reporters Sans Frontieres, Nov. 15, 2010

“CAP condemns arrest of Bahawalpur journalist”, M.A. Khan Faridi, Nov 05, 2010, url: <http://www.markthetruth.com/pakistan/1046-cap-condemns-arrest-of-bahawalpur-journalist.html>

Press release by Pakistan Federal Union of Journalists (PFUJ),

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**

Comments:

Umar Cheema, a journalist of The News, was abducted in early September near Islamabad. He was detained and tortured for six hours by intelligence agencies. He reputedly wrote articles that were critical of the government and the presidency.

The News International reports: “Pakistani journalists are targets of not only Taliban militants, Baloch separatists and intelligence agencies, but most of the liberal political parties are also not happy with the free media.”

References:

The News International, “Pakistan Becomes the Deadliest Country for Media,” by Hamid Mir, 10 Sept 2010

The News International, “What Cheema Reported and Paid for Through His Nose,” Sept. 5, 2010, <http://www.thenews.com.pk/05-09-2010/Top-Story/386.htm>

“Attack on Journalist”, Editorial, Dawn, Sept. 7, 2010

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

Comments:

Reporters Sans Frontieres notes the case of Abdul Hameed Hayatan, a young Baluch journalist who was found dead on Nov. 18. The report claims:

“His reporting was critical of the Pakistani authorities and his support for the Baloch national movement were almost certainly the motive for his abduction and murder.”

They also point to reporters dying in violence related to conflict, and extra-judicial killings.

The News International, in its Sept. 10, 2010 edition reports: “Seven Pakistani journalists lost their lives in target killings and bomb blasts this year, more than 70 were injured and about 10 were kidnapped and tortured in different areas of the country. Thirty journalists were forced to leave their homes from 7 tribal agencies of FATA in last six years, and about 10 journalists have left the valley of Swat in last two years.

Twenty journalists migrated from Quetta to other parts of the country in one year because they were threatened and told to leave the profession or leave the area. Many journalists have moved from Peshawar to Islamabad and a lot of others are looking for jobs outside the Khyber Pakhtunkhwa province.

“These journalists left their homes not only because the Taliban were angry with them; many of them were forced to leave their homes under the pressure of intelligence agencies and security outfits.”

References:

“Baloch Journalist Kidnaped, Tortured, and Murdered”, Nov. 23, 2010, Reporters Sans Frontieres.

The News International, “Pakistan Becomes the Deadliest Country for Media,” by Hamid Mir, Sept. 10, 2010

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.

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

Yes

No

Comments:

The right to information is a fundamental right guaranteed under the Constitution, under section 19A (<http://www.pakistani.org/pakistan/constitution/>).

The Freedom of Information Act 2002 gives qualified rights to citizens. Article 19 website gives a good overview, <http://www.article19.org/pdfs/analysis/pakistan.foi.02.pdf> accessed 03/03/2011

References:

Constitution of Pakistan 1973, Article 19A

Freedom of Information Act 2002

Yes: A YES score is earned if there is a formal right to request 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 a request for a basic government record is denied.

Yes

No

Comments:

If the designated officer of a public body fails to provide the requested information within 21 days, the requester can first file a complaint with the head of the public body, and the complaint must then be disposed within 30 days of the complaint; in case of failure by the head of the organization to respond after the 30 day period, the requester can file a complaint with the Wafaqi Mohtasib (National Ombudsman).

Full text:

19. Recourse to the Mohtasib and Federal Tax Ombudsman. – (1) If the applicant is not provided the information or copy of the record declared public record under section 7 within the prescribed time or the designated official refuses to give such information or, as the case may be, copy of such record, on the ground that the applicant is not entitled to receive such information or copy of such record, the applicant may, within thirty days of the last date of the prescribed time for giving such information or, as the case may be, of such record, or the communication of the order of the designated official declining to give such information or copy of such record, file a complaint with the head of the public body; and on failing to get the requested information from him within the prescribed time, may file a complaint with the Mohtasib; and, in cases relating to Revenue Division, its subordinate departments, offices and agencies with the Federal Tax Ombudsman.

(2) The Mohtasib or the Federal Tax Ombudsman, as the case may be, may, after hearing the applicant and the designated official, direct the designated official to give the information or, as the case may be, the copy of the record, or may reject the complaint.

References:

Freedom of Information Ordinance 2002, section 19,
<http://ccrinepal.org/files/documents/legislations/8.pdf> accessed 03/03/2011

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:

The Freedom of Information Ordinance clearly establishes the institutional mechanism. The requester submits a written request of information to the designated information official of the government department is approached. Upon failure, the requester can approach the head of department/organization, and finally the Wafaqi Mohtasib.

References:

Freedom of Information Ordinance 2002, section 4-13, 19,
<http://ccrinepal.org/files/documents/legislations/8.pdf> accessed 03/03/2011

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 to information requests effective?

42

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

100 | 75 | 50 | 25 | 0

Comments:

Sensitive information is hard to get. Most departments are not used to information requests, and do not cooperate initially. However, some claim that, with time, cooperation levels are improving. (Interview, W. Hashmi)

Others tell a different story. Naeem Sadiq, an activist, claimed at a recent seminar that he made 16 requests but did not receive a single satisfactory answer. He added that "government departments are not willing to share information with citizens and they only respond when Ombudsman intervenes."

Hamid Maker of Helpline trust claims that even after a year and several requests, their group has not received requested information on the privatization agreements and subsequent amendments between the NEPRA, KESC, and Abraaj group of

companies
(Business Recorder, Dec. 7, 2010 report).

References:

Interview – Waseem Hashmi, former employee of National Accountability Bureau, Islamabad, Oct. 18, 2010

“Access to information fundamental right of all citizens,” Business Recorder, Dec. 7, 2010, <http://www.brecorder.com/news/general-news/pakistan/1131123:news.html>

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 information request mechanism at a reasonable cost.

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

Comments:

The law dictates that the requester must afford the expenditure of copying of material. There are no extra charges. So, this depends on the size of data requested. Sometimes multiple trips must be made to the relevant departments to obtain the records, and this can add to the cost.

References:

Interview-Waseem Hashmi, former employee of National Accountability Bureau, Islamabad, Oct. 18, 2010

Interview-Abrar Hafeez, Secretary General, CRCP, Islamabad, Oct. 18, 2010

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 NGOs. 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 NGOs trying to access this information.

13c. In practice, responses to information requests are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

Multiple requests might be necessary to get full access. Certain kinds of data, such as the military and defense expenditures, are not public and cannot be accessed, even if the right to information is invoked. Sensitive data on privatization is also hard to get.

References:

Interview-Waseem Hashmi, former employee of National Accountability Bureau, Islamabad, Oct. 18, 2010

Interview-Abrar Hafeez, Secretary General, CRCP, Islamabad, Oct 18, 2010

“Access to information fundamental right of all citizens,” Business Recorder, Dec. 7, 2010, <http://www.brecorder.com/news/general-news/pakistan/1131123:news.html>

100: Responses to information requests typically address the requestor’s questions in full and are not redacted or edited to remove sensitive information.

75:

50: Information requests are sometimes met with sufficient responses, but responses to information requests may be vague or overly general when sensitive information is sought.

25:

0: The government rarely or never replies to information requests with meaningful responses. If and when responses are issued, they are so overly general or heavily redacted as to render them useless.

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

100 | 75 | 50 | 25 | 0

Comments:

The appeals process starts only after 51 days have passed. Appeals are made to the Wafaqi Mohtasib, and this process can take a very long time.

References:

Interview-Waseem Hashmi, former employee of National Accountability Bureau, Islamabad, Oct. 18, 2010

Interview-Abrar Hafeez, Secretary General, CRCP, Islamabad, Oct. 18, 2010

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.

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

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

References:

Interview-Waseem Hashmi, former employee of National Accountability Bureau, Islamabad, Oct. 18, 2010

Interview-Abrar Hafeez, Secretary General, CRCP, Islamabad, Oct. 18, 2010

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.

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

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

Comments:

In some cases, if the information falls under categories not covered under the Freedom of Information law, reasons are given. However, this is not always the case.

References:

Interview-Waseem Hashmi, former employee of National Accountability Bureau, Islamabad, Oct. 18, 2010

Interview-Abrar Hafeez, Secretary General, CRCP, Islamabad, Oct. 18, 2010

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.

Category 2. Elections

2.1. ⁵⁹Voting and Party Formation

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:

Article 51(2) of the Constitution specifies that all adult and sane citizens whose names are on the electoral role are entitled to vote.

Part VIII of the Constitution gives provisions for an Election Commission that is responsible for managing and annually updating electoral roles for general elections (c.f article 219, of the 1973 Constitution).

References:

The Constitution of Pakistan 1973, Article 51(2)

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:

National and provincial assemblies have a term of 5 years. General elections for National and Provincial assemblies are to be held within 60 days in case of completion of a term and 90 days if the assemblies were dissolved under constitutional provisions. The election results must be announced no later than 14 days after polls close (article 224 of the 1973 Constitution).

Similar provisions exist for the election of Senate members, and the President (article 41).

References:

The Constitution of Pakistan, article 52, 224

The Representation of the People Act, 1976

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?

42

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

100

75

50

25

0

Comments:

The first issue is regarding electoral rolls, since all adult citizens can vote only if their name appears on the electoral roll. The Pakistan Institute of Legislative and Development and Transparency (PILDAT) reports that a push was made by the Election Commission to computerize the electoral roll, beginning in 2005.

Instead of using the existing national identification system via the National Database and Registration Authority (NADRA) as the baseline, a decision was made to prepare fresh rolls using door-to-door enumeration (Pildat, p09). A significant decline in number of voters between 2002 and 2006 appeared, a gap of almost 30 million voters. PILDAT report notes that number of women voters dropped by 39 percent, as compared to a decline in male voters by 18 percent. The Aurat Foundation has noted that many women do not have their names on the electoral rolls.

References:

"State of Electoral Rolls in Pakistan," PILDAT report, 2010

Interview-Aurangzeb Chaudhry, Advocate High Court, Lahore, Dec. 20, 2010

Interview-Khurram Taseer, Advocate High Court, Lahore, Dec. 18, 2010

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:

There are examples when various actors present at polling stations intimidate or pressurize voters. Ballots maybe subject to tampering, during and after voting.

References:

Interview-Aurangzeb Chaudhry, Advocate High Court, Lahore, Dec. 20, 2010

Interview-Khurram Taseer, Advocate High Court, Lahore, Dec. 18, 2010

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:

No freely elected civilian government has ever completed its term. Often these governments are overthrown by the military. Elections are often not held according to schedule.

References:

Interview-Aurangzeb Chaudhry, Advocate High Court, Lahore, Dec. 20, 2010

Interview-Khurram Taseer, Advocate High Court, Lahore, Dec. 18, 2010

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?

55

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

Yes

No

Comments:

Article 17 of the constitution guarantees the right of association.

For section 5 of the PPO 2002:

“5. Membership of political parties.—(1) Every citizen, not being in the service of Pakistan, shall have the right to form or be a member of a political party or be otherwise associated with a political party or take part in political activities or be elected as an office-bearer of a political party:

Provided that a person shall not be appointed or serve as an office-bearer of a political party if he is not qualified to be, or is disqualified from being, elected or chosen as a member of the Majlis-e-Shoora (Parliament) under Article 63 of the Constitution of the Islamic Republic of Pakistan or under any other law for the time being in force 2[:]

2: Provided further that the condition of educational qualification being a graduate possessing a bachelor degree or equivalent is laid down for a member of Majlis-e-Shoora (Parliament) or a Provincial Assembly shall not be applicable to an office-bearer of a political party.

(2) Where a person joins a political party, his name shall be duly entered in the record of the political party as a member and shall be issued a membership card, or any other document showing his membership of such political party.

(3) A person shall not be a member of more than one political party at a time.

(4) A member of a political party shall have the right of access to the records of the political party.”

While there is a constitutional guarantee to freedom of assembly and organization, the Political Parties Act does not apply to the Federally Administered Tribal Areas (FATA).

“Parties call for immediate extension of Political Parties Act and other reforms in FATA”, June 17, 2009 NDI Press Release

Abubakar Siddique, "New Government Announces Major Reforms In Tribal Areas," April 3, 2008, <http://www.rferl.org/content/article/1079732.html>

Syed Irfan Raza, "Far-reaching Fata reforms unveiled," DAWN, Aug. 14, 2009

References:

Constitution of Pakistan 1973, article 17

<http://www.mofa.gov.pk/Publications/constitution.pdf>

Political Parties Act of 1962

Political Parties Ordinance 2002, section 5

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:

Non-Muslim citizens cannot run for the office of the President.

References:

Constitution of Pakistan 1973, article 41 (2)

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:

While there is a constitutional guarantee to freedom of assembly and organization, the Political Parties Act does not apply to the Federally Administered Tribal Areas (FATA).

"Parties call for immediate extension of Political Parties Act and other reforms in FATA", June 17, 2009, NDI Press Release

Abubakar Siddique, "New Government Announces Major Reforms In Tribal Areas," April 3, 2008, <http://www.rferl.org/content/article/1079732.html>

Syed Irfan Raza, "Far-reaching Fata reforms unveiled," DAWN, Aug. 14, 2009

References:

Interview-Aurangzeb Chaudhry, Advocate High Court, Lahore, Dec. 20, 2010

Interview-Khurram Taseer, Advocate High Court, Lahore, Dec. 18, 2010

"Parties call for immediate extension of Political Parties Act and other reforms in FATA," June 17, 2009, NDI Press Release

Abubakar Siddique, "New Government Announces Major Reforms In Tribal Areas", April 03, 2008 <http://www.rferl.org/content/article/1079732.html>;

Syed Irfan Raza, "Far-reaching Fata reforms unveiled", DAWN, Aug 14, 2009

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

References:

Interview-Aurangzeb Chaudhry, Advocate High Court, Lahore, Dec. 20, 2010

Interview-Khurram Taseer, Advocate High Court, Lahore, Dec. 18, 2010

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:

This depends on the strength of the opposition party. In the past, opposition parties were nominally present in the legislature. However, the current Parliament seems to have a stronger role for the opposition party. New constitutional guarantees have also provided for a more active role from the opposition benches of the legislature. For instance, regarding the Election Commission of Pakistan, article 213 (B) of the 1973, the Constitution requires representation from the opposition benched in Parliamentary Committees.

References:

Interview-Aurangzeb Chaudhry, Advocate High Court, Lahore, Dec. 20, 2010

Interview-Khurram Taseer, Advocate High Court, Lahore, Dec. 18, 2010

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.

2.2. Election Integrity

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

100

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

Yes

No

Comments:

Election Commission of Pakistan (ECP) has this authority under articles 213-221 of the 1973 Constitution. Article 218 (3) makes the ECP responsible for organizing and conducting an honest, just, fair and legal election, and to safeguard against corrupt practices.

References:

Election Commission of Pakistan (ECP) Constitution of Pakistan 1973, article 213-221

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.

18. Is the election monitoring agency effective?

60

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

Yes

No

References:

Constitution of Pakistan 1973, article 213

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.

Comments:

The incumbent governments historically have a lot of control over appointments of the Election Commissioner, and generally these officials have clear party loyalties. More recently the Election Commission of Pakistan (ECP) has been given more freedom and independence via constitutional amendments. However these are early days for determining if such legal guarantees are being met with revised and reformed practices with respect to appointments.

References:

Interview-Aurangzeb Chaudhry, Advocate High Court, Lahore, Dec. 20, 2010

Interview-Khurram Taseer, Advocate High Court, Lahore, Dec. 18, 2010

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.

Comments:

The agency has sufficient staff but not sufficient for elections; further, the staff is called in from different government departments at the time of actual elections. There are questions as far as the professional training and qualifications of these people.

References:

Interview-Aurangzeb Chaudhry, Advocate High Court, Lahore, Dec. 20, 2010

Interview-Khurram Taseer, Advocate High Court, Lahore, Dec. 18, 2010

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:

Reports by the Election Commission of Pakistan (ECP) are often delayed and difficult to access, especially on sensitive matters. The ECP has been in the middle of the controversy about “fake academic degrees” of parliamentarians, and it has been slow to investigate and act on this issue.

References:

Interview-Aurangzeb Chaudhry, Advocate High Court, Lahore, Dec. 20, 2010

Interview-Khurram Taseer, Advocate High Court, Lahore, Dec. 18, 2010

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:

Reports by the Election Commission of Pakistan (ECP) are often delayed and difficult to access, especially on sensitive matters. The ECP has been in the middle of the controversy about “fake academic degrees” of parliamentarians, and it has been slow to investigate and act on this issue.

References:

Interview-Aurangzeb Chaudhry, Advocate High Court, Lahore, Dec. 20, 2010

Interview-Khurram Taseer, Advocate High Court, Lahore, Dec. 18, 2010

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?

71

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) started a door-to-door registration policy, first without coordinating with the National Database and Registration Authority (NADRA), which maintains a national identification database.

However, as the Pakistan Institute of Legislative and Development and Transparency (PILDAT) report observes, the ECP went back and forth with using the NADRA database and the requirement that a Computerized National Identity Card (CNIC) should be a prerequisite for registration on the electoral roll. PILDAT identified almost 30 million “missing” voters, based on a comparison of 2002 and 2007 data.

The report also points to the problems of “duplicates” and “ghosts” on the electoral roll.

References:

“State of Electoral Rolls in Pakistan,” PILDAT report, 2010, available at <http://www.pildat.org/publications/publication/elections/State%20of%20Electoral%20Rolls%20in%20Pakistan%20040310.pdf>

Interview-Aurangzeb Chaudhry, Advocate High Court, Lahore, Dec. 20, 2010

Interview-Khurram Taseer, Advocate High Court, Lahore, Dec. 18, 2010

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

Comments:

One of the duties of the election commission is to appoint tribunals for dispute resolution.

References:

Constitution of Pakistan 1973, article 219(c), 225

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 respondents pointed out that the commission can act in a biased manner in dealing with the appeals. It is also a tactic used to delay results.

References:

Interview-Aurangzeb Chaudhry, Advocate High Court, Lahore, Dec. 20, 2010

Interview-Khurram Taseer, Advocate High Court, Lahore, Dec. 18, 2010

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 military is a powerful political actor in Pakistan, and there have been several military coups and martial law regimes, often under the guise of “democracy.” The military has been overtly and covertly involved during elections that have been run after military coups, the latest incident taking place in 2002. The military overtly and covertly supports political candidates. In the most recent elections, military has taken somewhat of the back seat, but is certainly has preferences and covert support.

References:

Interview-Aurangzeb Chaudhry, Advocate High Court, Lahore, Dec. 20, 2010

Interview-Khurram Taseer, Advocate High Court, Lahore, Dec. 18, 2010

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

Comments:

Various elections laws, including the cited ordinance, are available at the Election Commission of Pakistan website.

<http://www.ecp.gov.pk/ElectionLaws/volume1.pdf>

References:

Election Commission Order 2002, section 7(b), 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:

Respondents claim that although observers are allowed, their access is sometimes limited, especially in certain areas due to security concerns.

For the 2008 elections, an European Union (EU) Election Observation Mission deployed 48 long-term observers across Pakistan, “covering 65% of constituencies, observing and assessing the different stages of the electoral process in accordance with international standards for elections.”

The report also indicates that due to security concerns, there were no observations of political rallies, and no observations at all in certain parts of the country, including Federally Administered Tribal Areas (FATA) and parts of Baluchistan and Khyber-Pakhtunkhwa (known then as the North West Frontier Province (NWFP)) provinces.

See report by the commission here: http://eeas.europa.eu/_human_rights/election_observation/pakistan/final_report_en.pdf ; accessed on 03/03/2011

References:

Interview-Aurangzeb Chaudhry, Advocate High Court, Lahore, Dec. 20, 2010

Interview-Khurram Taseer, Advocate High Court, Lahore, Dec. 18, 2010

EU Election Observation Mission, Pakistan 2008 – Final Report, http://eeas.europa.eu/_human_rights/election_observation/pakistan/final_report_en.pdf ; accessed on 03/03/2011)

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.

77
2.3. Political Financing Transparency

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

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

Yes | **No**

Comments:

There are no limits on individual donations to political parties.

References:

PILDAT, 2005, "Public Funding of Political Parties", Background paper, <http://www.pildat.org/Publications/publication/elections/public%20of%20political%20parties%20-%20Selected%20Case%20Studies.pdf>

Interview-Aurangzeb Chaudhry, Advocate High Court, Lahore, Dec. 20, 2010

Interview-Khurram Taseer, Advocate High Court, Lahore, Dec. 18, 2010

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.

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

Yes | No

Comments:

The relevant section states:

"(3) Any contribution made, directly or indirectly, by any foreign government, multi-national or domestically incorporated public or private company, firm, trade or professional association shall be prohibited and the parties may accept contributions and donations only from individuals."

<http://www.ecp.gov.pk/ElectionLaws/ThePoliticalPartiesOrder2002.aspx>

References:

Political Parties Order, 2002, 6(3)

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.

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

Yes | **No**

Comments:

While there are no limits on the total party expenses during an election campaign, the limits on individual candidates under Representation of People Act 1976, article 49, imposes restriction on spending.

References:

Interview-Khurram Taseer, Advocate High Court, Lahore, Dec. 18, 2010

Representation of People Act 1976, article 49

Yes: A YES score is earned if there are any limits in size on political party expenditures during the course of an election.

No: A NO score is earned if there are no limits on political party expenditures during an election. 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 requirements for the disclosure of donations to political parties.

Yes | No

Comments:

Political Parties Order (PPO) 2002, section 13:

13. Information about the sources of party's fund:

(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 sixty days from the close of each financial year, a consolidated statement of accounts of the party audited by a Chartered Accountant containing:

(a) annual income and expenses;

(b) sources of its funds; and

(c) assets and liabilities.

(2) The statement referred to in clause (1), shall be accompanied by a certificate signed by the party leader stating that:

(a) no funds from any source prohibited under this Order were received by the party; and

(b) the statement contains an accurate financial position of the party."

<http://www.ecp.gov.pk/ElectionLaws/ThePoliticalPartiesOrder2002.aspx>

Political Parties Rules 2002, 4 and 5:

"4. Submission of statement of accounts.-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 sixty 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.

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

<http://pakistanconstitution-law.org/2010/06/17/political-parties-rules-2002/>

Representation of the People Act 1976, and Representation of People (Code of Conduct) Rules 1977 are available at the ECP website,

<http://www.ecp.gov.pk/ElectionLaws/volume1.pdf>

References:

Political Parties Order 2002, 13

Political Parties Rules 2002, 4 and 5,

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. Systems where only certain donation amounts are required to be made public (above a non-trivial amount) also earn a NO score.

20e. In law, there are requirements for the independent auditing of the finances and expenditures of political parties when financial irregularities are uncovered.

Yes

No

Comments:

Political parties declare their account and expense reports to the Election Commission of Pakistan (ECP).

Political Parties Rules 2002, 4 and 5:

Political Parties Rules 2002: “4. Submission of statement of accounts: 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 sixty 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.

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

6. Confiscation of prohibited funds: 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 favour of the State to be deposited in Government Treasury or sub-Treasury in the following head of the account.

<http://pakistanconstitution-law.org/2010/06/17/political-parties-rules-2002/>

Representation of Peoples Act, articles 50 and 51 call for the inspection of election expense documents filed by political parties and candidates. The (Conduct of Election Rules) 1977 have the following relevant articles:

28A. Submission of statement of assets and liabilities;

29. Public inspection of documents;

29A. Inspection of documents, etc.

30. Account of election expenses.

These however apply to election candidates and regulate political party expenses only indirectly.

All election related laws are available via the ECP website,
<http://www.ecp.gov.pk/ElectionLaws/volume1.pdf>

References:

Election Commission Order 2002

Representation of Peoples Act 1976, 50-51

Representation of People (Conduct of Election) Rules 1977

Political Parties Order, 2002, 6(3)

Political Parties Rules 2002, 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 when irregularities are uncovered. 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 when financial irregularities are uncovered. A NO score is also earned if such requirements exist but allow for parties to self-audit.

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

Yes | No

References:

Election Commission of Pakistan (ECP), under the Constitution of Pakistan, 1973

Election Commission Order 2002

Political Parties Order 2002, 13 (2)

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. A NO score is also earned if this monitoring is solely carried out by the media and non-governmental organizations.

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

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

Yes | **No**

Comments:

There are no specific legal provision that limits individual donations to political candidates.

References:

Interview-Aurangzeb Chaudhry, Advocate High Court, Lahore, Dec. 20, 2010

Interview-Khurram Taseer, Advocate High Court, Lahore, Dec. 18, 2010

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.

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

Yes | No

Comments:

The cited references are available at the website of the Election Commission, <http://www.ecp.gov.pk/ElectionLaws/volume1.pdf>.

References:

Representation of People Act 1976, 49

Political Parties Order, 2002, 6(3)

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.

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

Yes | No

Comments:

Section 49 requires that all the expenses must be met by the candidate and puts a numerical limit on the expenses.

Section 50 requires the candidate to submit returns of election expenses.

Section 50 (d) specifically requires that this must include “a statement of all moneys, securities or equivalent of money received from, or spent, by any person for the benefit of the candidate, specifying the name of every such person.”

Section 51 requires inspection of these returns.

Representation of the People Act 1976, and Representation of People (Code of Conduct) Rules 1977 are available at the Election Commission of Pakistan website,
<http://www.ecp.gov.pk/ElectionLaws/volume1.pdf>

References:

Representation of People Act 1976, 49, 50, 51

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. Systems where only certain donation amounts are required to be made public (above a non-trivial amount) also earn a NO score.

21d. In law, there are requirements for the independent auditing of the campaign finances of individual political candidates when irregularities are uncovered.

Yes | No

Comments:

The Election Commission of Pakistan (ECP) can conduct independent auditing (which are powers given under the Election Commission Order 2002).

Representation of Peoples Act, 1975, section 51 requires an inspection of returns filed by individual candidates, and irregularities must be investigated:

“51 Inspection of returns, etc.-(1) The returns and documents submitted under section 50 shall be kept by the Returning Officer in his office or at such other convenient place as he may think fit and shall, during one year from the date of their receipt by him, be open to inspection by any person on payment of the prescribed fee.

(2) The Returning Officer shall, on an application made in this behalf and payment of the prescribed fee, give any person copies of any return or document kept under sub-section (1)].”

These laws are available at the ECP website,
<http://www.ecp.gov.pk/ElectionLaws/volume1.pdf>”

References:

Election Commission Order 2002

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 when financial irregularities are uncovered. 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 when financial irregularities are uncovered. A NO score is also earned if such requirements exist but allow for candidates to self-audit.

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

Yes | No

Comments:

"218. Election Commission: 1[(1) For the purpose of election to both Houses of Majlis-e-Shoora (Parliament), Provincial Assemblies and for election to such other public offices as may be specified by law, a permanent Election Commission shall be constituted in accordance with this Article.]

2[(2) The Election Commission shall consist of:

(a) the Commissioner who shall be the Chairman of the Commission; and

(b) four members, each of whom has been a Judge of a High Court from each Province, appointed by the President in the manner provided for appointment of the Commissioner in clauses (2A) and (2B) of Article 213.]

(3) It shall be the duty of the Election Commission constituted in relation to an election to organize and conduct the election and to make such arrangements as are necessary to ensure that the election is conducted honestly, justly, fairly and in accordance with law, and that corrupt practices are guarded against.

<http://www.mofa.gov.pk/Publications/constitution.pdf>

References:

Election Commission of Pakistan (ECP), under article 218 of the Constitution of Pakistan, 1973

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. A NO score is also earned if this monitoring is solely carried out by the media and non-governmental organizations.

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

8

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:

No legal limits exist.

References:

Interview-Aurangzeb Chaudhry, Advocate High Court, Lahore, Dec. 20, 2010

Interview-Khurram Taseer, Advocate High Court, Lahore, Dec. 18, 2010

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

References:

Interview-Aurangzeb Chaudhry, Advocate High Court, Lahore, Dec. 20, 2010

Interview-Khurram Taseer, Advocate High Court, Lahore, Dec. 18, 2010

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

References:

Interview-Aurangzeb Chaudhry, Advocate High Court, Lahore, Dec. 20, 2010

Interview-Khurram Taseer, Advocate High Court, Lahore, Dec. 18, 2010

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:

The Election Commission of Pakistan is seen as partisan, though new constitutional arrangements might allow it in future to act more independently, c.f. "Poll Commission asserts its independence", Dawn news, August 14, 2010.

References:

Interview-Aurangzeb Chaudhry, Advocate High Court, Lahore, Dec. 20, 2010

“Poll Commission asserts its independence”, Dawn news, Aug. 14 2010, <http://news.dawn.com/wps/wcm/connect/dawn-content-library/dawn/the-newspaper/front-page/19-letters-sent-to-secretaries-of-na,-senate-and-ministries-poll-commission-asserts-its-independence-480-hh-15>

100: The agency or entity aggressively starts investigations into allegations of wrong doing with respect to the financing of political parties, or cooperates well with other agencies that do. 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, has limited effectiveness when investigating, or is reluctant to cooperate with other agencies in politically sensitive cases. 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, is uncooperative with other agencies, 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

References:

Interview-Aurangzeb Chaudhry, Advocate High Court, Lahore, Dec. 20, 2010

Interview-Khurram Taseer, Advocate High Court, Lahore, Dec. 18, 2010

“Poll Commission asserts its independence,” Dawn news, Aug. 14, 2010

100: When rules violations are discovered, the agency or entity is aggressive in penalizing offenders or cooperates well with other agencies that impose penalties.

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, reluctant to cooperate with other agencies, 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 and may refuse cooperation with other agencies.

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

References:

Interview-Aurangzeb Chaudhry, Advocate High Court, Lahore, Dec. 20, 2010

Interview-Khurram Taseer, Advocate High Court, Lahore, Dec. 18, 2010

"Poll Commission asserts its independence," Dawn News, Aug. 14, 2010

100: Political party finances are regularly audited using generally accepted auditing practices. The auditing may be regular and comprehensive or only initiated after an initial review reveals irregularities. Auditing 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?

0

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.

References:

Interview-Aurangzeb Chaudhry, Advocate High Court, Lahore, Dec. 20, 2010

Interview-Khurram Taseer, Advocate High Court, Lahore, Dec. 18, 2010

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:

Interview-Aurangzeb Chaudhry, Advocate High Court, Lahore, Dec. 20, 2010

Interview-Khurram Taseer, Advocate High Court, Lahore, Dec. 18, 2010

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

References:

Interview-Aurangzeb Chaudhry, Advocate High Court, Lahore, Dec. 20, 2010

Interview-Khurram Taseer, Advocate High Court, Lahore, Dec. 18, 2010

100: The agency or entity aggressively starts investigations into allegations of wrong doing with respect to the financing of individual candidates' campaigns, or cooperates well with other agencies that do. 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. It may be reluctant to cooperate with other investigatory agencies.

25:

0: The agency or entity rarely investigates on its own, or the agency or entity is partisan in its application of this power. It does not cooperate well with other investigatory agencies.

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

References:

Interview-Aurangzeb Chaudhry, Advocate High Court, Lahore, Dec. 20, 2010

Interview-Khurram Taseer, Advocate High Court, Lahore, Dec. 18, 2010

100: When rules violations are discovered, the agency or entity is aggressive in penalizing offenders or in cooperating with other agencies that do.

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, reluctant to cooperate with other agencies, 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 or may refuse to cooperate with other agencies.

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

100 | 75 | 50 | 25 | 0

References:

Interview-Aurangzeb Chaudhry, Advocate High Court, Lahore, Dec. 20, 2010

Interview-Khurram Taseer, Advocate High Court, Lahore, Dec. 18, 2010

100: The finances of individual candidates' campaigns are regularly audited using generally accepted auditing practices. The auditing may be regular and comprehensive or only initiated after an initial review reveals irregularities.

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?

19

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

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

Comments:

This data is never published independently by the political parties. This is submitted to the Election Commission, but the information disclosed lacks credibility and citizen have limited access in practice.

References:

Interview-Aurangzeb Chaudhry, Advocate High Court, Lahore, Dec. 20, 2010

Interview-Khurram Taseer, Advocate High Court, Lahore, Dec. 18, 2010

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:

Interview-Aurangzeb Chaudhry, Advocate High Court, Lahore, Dec. 20, 2010

Interview-Khurram Taseer, Advocate High Court, Lahore, Dec. 18, 2010

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

Comments:

In practice, whatever information is available with the Election Commission of Pakistan (ECP) is very difficult to obtain, even though the Freedom of Information Act and the right to information as guaranteed under the constitution give the public access to such information. These records require visits to ECP offices in the provincial or federal capitals. Moreover, indirect costs are incurred as repeated efforts and visits might be required.

References:

Interview-Aurangzeb Chaudhry, Advocate High Court, Lahore, Dec. 20, 2010

Interview-Khurram Taseer, Advocate High Court, Lahore, Dec. 18, 2010

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 NGOs. 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 NGOs trying to access this information.

24d. In practice, the publicly available records of political parties' finances are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

According to the instructions of the Election Commission of Pakistan, the records have details.

References:

Interview-Aurangzeb Chaudhry, Advocate High Court, Lahore, Dec. 20, 2010

Interview-Khurram Taseer, Advocate High Court, Lahore, Dec. 18, 2010

100: Publicly available records of political parties' finances are complete and detailed, itemizing all significant sources of income and expenditures.

75:

50: Publicly available records of political parties' finances are available but are often lacking in important details, are overly general, or are otherwise incomplete.

25:

0: Publicly available records of political parties' finances, when available, are so incomplete or overly general as to render them useless in understanding a party's sources of income and its expenditures.

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

25

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:

Interview-Aurangzeb Chaudhry, Advocate High Court, Lahore, Dec. 20, 2010

Interview-Khurram Taseer, Advocate High Court, Lahore, Dec. 18, 2010

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

Comments:

In practice, whatever information is available with the Election Commission of Pakistan (ECP) is very difficult to obtain, even though the Freedom of Information Act and the right to information as guaranteed under the constitution give the public access to such information. These records require visit to ECP offices in the provincial or federal capitals. Records of a sensitive nature are very hard to obtain and requests can result in long delays.

References:

Interview-Aurangzeb Chaudhry, Advocate High Court, Lahore, Dec. 20, 2010

Interview-Khurram Taseer, Advocate High Court, Lahore, Dec. 18, 2010

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

Comments:

The data on individual campaigns is filed with the Election Commission of Pakistan (ECP), but in practice these are very difficult to obtain, even though the Freedom of Information Act and the right to information as guaranteed under the constitution give the public access to such information. These records require visits to ECP offices in the provincial or federal capitals. Moreover, indirect costs are incurred as repeated efforts and visits might be required.

References:

Interview-Aurangzeb Chaudhry, Advocate High Court, Lahore, Dec. 20, 2010

Interview-Khurram Taseer, Advocate High Court, Lahore, Dec. 18, 2010

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 NGOs. 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 NGOs trying to access this information.

25d. In practice, the publicly available records of political candidates' campaign finances are of high quality.

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

References:

Interview-Aurangzeb Chaudhry, Advocate High Court, Lahore, Dec. 20, 2010

Interview-Khurram Taseer, Advocate High Court, Lahore, Dec. 18, 2010

100: Publicly available records of political candidates' campaign finances are complete and detailed, itemizing all significant sources of income and expenditures.

75:

50: Publicly available records of political candidates' campaign finances are available but are often lacking in important details, are overly general, or are otherwise incomplete.

25:

0: Publicly available records of political candidates' campaign finances, when available, are so incomplete or overly general as to render them useless in understanding a candidate's sources of income and expenditures.

3.1. Conflicts of Interest Safeguards & Checks and Balances: Executive Branch

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

100

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

Yes

No

Comments:

Civil rights are protected as fundamental rights in the Constitution of Pakistan. Article 199:

(1)(c) allows the High Courts to review the actions of the executive if an appeal is made on the grounds that executive action goes against the Fundamental Rights of a person, as specified by the Constitution.

Citizens can also sue the government using Civil Code Procedure for matters of property rights.

References:

Constitution of Pakistan 1973, article 199 (1c)

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.

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

63

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

100

75

50

25

0

Comments:

Some of the most important policy decisions are not adequately explained; c.f., OBI's budget index, which highlights the limited or no information given about taxation, conditionality of aid from international donors (including the International Monetary Fund (IMF) and the World bank (WB)), and general lack of disaggregated information on individual programs.

References:

“13th National Assembly Year-2 Preliminary Roundup” PILDAT Report, March 2010, available at: <http://www.pildat.org/Publications/publication/Democracy&LegStr/13th> NA Y-2 Preliminary Roundup PILDAT 010310.pdf

Irshad, K. & Kanwal S.M., “Open Budget Questionnaire: Pakistan”, Sept. 2009, International Budget Partnership; pp 46-52

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

Comments:

Article 199 (1)(c) allows the High Courts to review the actions of the executive if an appeal is made on the grounds that executive action goes against the fundamental rights of a person, as specified by the Constitution.

Article 184(3) gives the Supreme Court the power to take suo moto notice of government actions for the purpose of enforcement of fundamental rights.

References:

Constitution of Pakistan 1973, article 8, 184(3), 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.

Comments:

The judiciary can and regularly reviews the actions of the executive. The most prominent of these cases, at the time of research, include: the judicial review of promotion of civil servants; hearings on National Reconciliation Ordinance and the issue of appointment of Chairman of National Accountability Bureau.

There are some concerns regarding judicial activism. The judiciary is inevitably dragged into a “judiciary vs. executive” scenario. For example:

- “No Judicial Activism, only Judicial constitutionalism,” in Pak Tribune, Oct. 7, 2010;
- “Mistrust between judiciary and executive”, Zaidi, H.N, in Dawn News, Oct. 24, 2010

References:

Iqbal, N., “SC verdict rocks PM’s bureaucracy,” in Dawn News, Apr. 29, 2010, <http://news.dawn.com/wps/wcm/connect/dawn-content-library/dawn/news/pakistan/04-sc-strikes-down-pm-order-fed-secs-02>

“No Judicial Activism, only Judicial constitutionalism,” in Pak Tribune, Oct. 7, 2010, <http://www.paktribune.com/news/index.shtml?232274>

“Mistrust between judiciary and executive”, Zaidi, H.N, in Dawn News, Oct 24, 2010; <http://news.dawn.com/wps/wcm/connect/dawn-content-library/dawn/in-paper-magazine/encounter/mistrust-between-judiciary-and-executive-400>

Interview – Salman Raja, Lawyer and Senior Partner, Raja Mohammed Akram & Co, Advocate & Legal Consultant, 33 – C, Main Gulberg, Lahore, Dec 21,2010.

Interview – Justice Nasira Iqbal (retired), Dec 13, 2010, Gulberg I, Lahore

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.

Comments:

During 2009-2010, 69 Presidential Ordinances were presented before the National Assembly legislature, 27 Ordinances during 2009-2010, and 17 Ordinances in 2008 2009.

As Ahmad Hassan reports in Dawn, several opposition lawmakers have tried to use such measures, in the case reports on to “surreptitiously’ curtail the powers of National Accountability Bureau’s (NAB) chairman.”

References:

“13th National Assembly Year-2 Preliminary Roundup,” PILDAT Report, March 2010, available at: <http://www.pildat.org/Publications/publication/Democracy&LegStr/13th> NA Y-2 Preliminary Roundup PILDAT 010310.pdf

Ahmad Hassan, “Rabbani joins walkout over NAB ordinance,” Oct. 02, 2010, Dawn Daily, <http://news.dawn.com/wps/wcm/connect/dawn-content-library/dawn/the-newspaper/front-page/rabbani-joins-walkout-over-nab-ordinance-200>

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?

50

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

Yes

No

Comments:

Article 248 of the 1973 Constitution states that the President of Pakistan enjoys legal immunity during his time in office. Section (2) of the article states: “No criminal proceedings whatsoever shall be instituted or continued against the president or a governor in any court during his term of office.”

However, it is not clear whether this immunity applies retroactively; i.e., to criminal investigations that were already underway before someone was elected President. This is unlikely to happen under ordinary circumstances, but Pakistani politics is anything but ordinary. The case of the current President, Asif Ali Zardari, illustrates this. Zardari was under criminal investigation in corruption cases, and these were being pursued in Swiss courts.

In 2007, the incumbent president General Musharraf, enacted the National Reconciliation Ordinance (NRO), under which all actions, inside and outside Pakistan, against the political leadership of the country, in which the State of Pakistan was a party, were to be dropped and all such requests of investigations made by government of Pakistan were to be withdrawn.

Subsequently, the Attorney General of Pakistan wrote to the Swiss authorities who were investigating corruption cases against Asif Ali Zardari, withdrawing the Pakistani state as a party in these investigations. Consequently, the Swiss authorities closed these investigations. Asif Ali Zardari became the President after Musharraf was deposed.

However, the Supreme Court of Pakistan, in a 2009 ruling, declared NRO as unconstitutional and void ab initio, as if it never existed. It then requested the government to write a letter to the Swiss authorities informing them of this position. The Prime Minister and Law Ministry objected that writing such a letter would amount to asking the Swiss authorities to initiate a criminal

case against the incumbent president Asif Ali Zardari. However, seemingly the Supreme Court holds a different view. This case is still underway and will unfold in the coming months.

Interview-Salman Raja, Lawyer and Senior Partner, Raja Mohammed Akram & Co, Advocate & Legal Consultant, 33-C, Main Gulberg, Lahore, Dec. 21, 2010

Asghar, R., "President enjoys legal immunity, insists Gilani," in Dawn News, Jan. 29, 2010
<http://news.dawn.com/wps/wcm/connect/dawn-content-library/dawn/news/pakistan/govt+will+implement+supreme+court+decision+on+nro+gilani>

also "Presidential immunity challenged in SC," April 15, 2010, The Daily Times. http://www.dailytimes.com.pk/default.asp?page=2010415story_15-4-2010_pg7_2

References:

The Constitution of Pakistan, 1973, article 248

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

Comments:

Regular provisions for criminal and civil proceedings also apply to ministerial-level officials (Under the Pakistan Penal Code, Criminal Procedures Code and Civil Procedures Code of Pakistan),
<http://pakistanconstitution-law.org/category/02-the-code-of-criminal-procedure-1898/>

<http://www.pakistani.org/pakistan/legislation/1860/actXLVof1860.html>

Articles 248 and 249 of the constitution specify some restrictions and limitations.

"248. Protection to President, Governor, Minister, etc:

(1) The President, a Governor, the Prime Minister, a Federal Minister, a Minister of State, the Chief Minister and a Provincial Minister shall not be answerable to any court for the exercise of powers and performance of functions of their respective offices or for any act done or purported to be done in the exercise of those powers and performance of those functions. It is provided that nothing in this clause shall be construed as restricting the right of any person to bring appropriate proceedings against the Federation or a Province.

(2) No criminal proceedings whatsoever shall be instituted or continued against the President or a Governor in any court during his term of office.

(3) No process for the arrest or imprisonment of the President or a Governor shall issue from any court during his term of office.

(4) No civil proceedings in which relief is claimed against the President or a Governor shall be instituted during his term of office in respect of anything done by or not done by him in his personal capacity whether before or after he enters upon his office unless, at least sixty days before the proceedings are instituted, notice in writing has been delivered to him, or sent to him in the manner prescribed by law, stating the nature of the proceedings, the cause of action, the name, description and place of residence of the party by whom the proceedings are to be instituted and the relief which the party claims.

249. Legal proceedings:

(1) Any legal proceedings which, but for the Constitution, could have been brought by or against the Federation in respect of a matter which, immediately before the commencing day, was the responsibility of the Federation and has, under the Constitution, become the responsibility of a Province, shall be brought by or against the Province concerned; and if any such legal proceedings were pending in any court immediately before the commencing day then, in those proceedings, for the Federation the Province concerned shall, as from that day, be deemed to have been substituted.

(2) Any legal proceedings which, but for the Constitution, could have been brought by or against a Province in respect of a matter which, immediately before the commencing day, was the responsibility of the Province and has under the Constitution become the responsibility of the Federation, shall be brought by or against the Federation; and if any such legal proceedings were pending in any court immediately before the commencing day then, in those proceedings, for the Province the Federation shall, as from that day, be deemed to have been substituted.”

<http://www.pakistani.org/pakistan/constitution/part12.ch4.html>

References:

Constitution of Pakistan 1973, articles 248, 249

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?

56

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

Yes

No

Comments:

Disclosures are also made to the Election Commission at the time of filing of candidacy papers.

42A. Yearly submission of statements of assets and liabilities:

(1) Every member shall, on a form prescribed under clause (f) of sub-section (2) of section 12, submit a statement of assets and liabilities of his own, his spouse and dependents annually to the Commission by the thirtieth day of September each year.

(2) The statements of assets and liabilities submitted under sub-section (1) shall be published in the official Gazette and copies thereof may be obtained on payment of prescribed fee.

(3) The Commissioner shall, by the fifteenth day of October each year, notify the names of the members who fail to file statements of assets and liabilities within the period specified in sub-section (1) and by an order, direct that such member shall cease to function till such statement is submitted.

(4) Where a member submits the statement of assets and liabilities under sub-section (1) which is found to be false in material particulars, he may be proceeded against under section 82 for committing the offence of corrupt practice.

<http://www.ecp.gov.pk/ElectionLaws/volume1.pdf>

References:

The Representation of the People Act 1976, 42A

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

Comments:

Disclosures are also made to the Election Commission at the time of filing of candidacy papers.

42A. Yearly submission of statements of assets and liabilities:

(1) Every member shall, on a form prescribed under clause (f) of sub-section (2) of section 12, submit a statement of assets and liabilities of his own, his spouse and dependents annually to the Commission by the thirtieth day of September each year.

(2) The statements of assets and liabilities submitted under sub-section (1) shall be published in the official Gazette and copies thereof may be obtained on payment of prescribed fee.

(3) The Commissioner shall, by the fifteenth day of October each year, notify the names of the members who fail to file statements of assets and liabilities within the period specified in sub-section (1) and by an order, direct that such member shall cease to function till such statement is submitted.

(4) Where a member submits the statement of assets and liabilities under sub-section (1) which is found to be false in material particulars, he may be proceeded against under section 82 for committing the offence of corrupt practice.

<http://www.ecp.gov.pk/ElectionLaws/volume1.pdf>

References:

The Representation of the People Act 1976, article 42A

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

Comments:

5. Gifts.- (1) Save as otherwise provided in this rule, no government servant shall, except with the previous sanction of the Government, accept, or permit any member of his family to accept, from any person any gift the receipt of which will place him under any form of official obligation to the donor. If, however, due to very exceptional reasons, a gift cannot be refused, the same may, under intimation to the Cabinet Division, be kept for official use in the Department or Organisation in which he is working.

(2) If any question arises whether receipt of a gift places a Government servant under any form of official obligation to the donor, the decision of the Government thereon shall be final.

(3) If any gift is offered by the head or representative of a foreign state, the Government servant concerned should attempt to avoid acceptance of such a gift, if he can do so without giving offence. If, however, he cannot do so, he shall accept the gift and shall report its receipt to the Cabinet Division for orders as to its disposal.

*(4) Government servants are prohibited from receiving gifts of any kind for their person or for members of their families from diplomats, consular and other foreign Government representatives or their employees who are stationed in Pakistan. If, however, due to very exceptional reasons, a gift cannot be refused, it should invariably be deposited in the Toshakhana.

(5) Government servants, except those belonging to BPS 1 to 4, are prohibited from accepting cash awards offered by the visiting foreign dignitaries. In case, however, it becomes impossible to refuse without causing offence to the visiting dignitary, the amount may be accepted and immediately deposited in the Treasury under the proper head of account.

<http://www.fde.gov.pk/Downloads/ESTABLISHMENT%20CODE.pdf>
(on pp 604 of 1520 of the pdf document; last accessed 03/03/2011)

References:

The 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

Comments:

The Election Commission of Pakistan (ECP) can perform independent audits. The National Accountability Bureau can also investigate the accounts and conduct audits. These are printed in the gazette of the ECP.

References:

Election Commission Order, 2002

Representation of Peoples Act, 1976, 51

Representation of People (Conduct of Election) Rules, 1977

Political Parties Order, 2002, 6(3)

Political Parties Rules, 2002, 4 and 5

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**

Comments:

No such provisions exist. Consider the recent case of the former Finance Minister Shaukat Tarin, a prominent banker, who “resigned” due to potential conflict of interest as he wanted “to raise equity from the market for the Silk Bank.”

References:

Interview-Salman Raja, Lawyer and Senior Partner, Raja Mohammed Akram & Co, Advocate & Legal Consultant, 33-C, Main Gulberg, Lahore, Dec. 21, 2010

Kiani, K, (2010), “PM accepts Shaukat Tarin’s resignation,” Dawn News, Feb. 24, 2010;
<http://news.dawn.com/wps/wcm/connect/dawn-content-library/dawn/news/pakistan/13+finance+minister+shaukat+tarin+to+resign+officials-za-09>

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:

No such legal restrictions exist, so there is no question of enforcement in practice.

c.f. former Finance Minister Shaukat Tarin left office to raise equity for a bank.

A former caretaker Prime Minister, Moeen Qureshi, founded an investment firm known as EMP and is currently the chairman and managing partner of EMP Global.
http://www.empglobal.com/team_details.xml?id=1057

References:

Interview-Salman Raja, Lawyer and Senior Partner, Raja Mohammed Akram & Co, Advocate & Legal Consultant, 33-C, Main

Kiani, K, (2010), “PM accepts Shaukat Tarin’s resignation,” Dawn News, Feb. 24, 2010, <http://news.dawn.com/wps/wcm/connect/dawn-content-library/dawn/news/pakistan/13+finance+minister+shaukat+tarin+to+resign+officials-za-09>”

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. A zero score is also earned if heads of state and government or minister are allowed to hold private sector jobs while in office.

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

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

Comments:

This level of corruption here is relatively insignificant, given the scale of other forms of corruptions, especially in procurement, privatization deals, commissions made on large government and military contracts, and the “indirect” corruption due to lack of financial regulation grounded in the neo-liberal ideology of economic growth.

Recent newspapers reported a loss of PRs 103 million (US\$2,395,000) between 1999 and 2009 related to gifts given to the president, prime minister, and civil and military elites.

References:

Interview-Salman Raja, Lawyer and Senior Partner, Raja Mohammed Akram & Co, Advocate & Legal Consultant, 33-C, Main Gulberg, Lahore, Dec. 21, 2010

Rauf Klasra, “Vanished presents: our leaders and our gifts”, Dec. 12, 2010. <http://tribune.com.pk/story/89144/vanished-presents-our-leaders-and-our-gifts/>

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:

The disclosures are not accurate and there are no regular quality audits. The National Reconciliation Order (NRO) of 2007 had given a blanket protection to many in the current executive branch, including the President.

However, given the latest decision by the Supreme court to declare the NRO void ab initio implies that the immunity has been withdrawn. Still the anti-corruption bodies are ineffective, lacking staff and a mandate. An anti-corruption bill has been under consideration since April 2009. No one in the government or in the opposition is willing to pass even this toothless bill.

References:

"How rich are Pakistani MNAs?" The Express Tribune, Sept. 14, 2010,

"NGO wants others to declare assets too," Dawn Daily, Sept. 24, 2010

Interview-Aasiya Riaz, Joint Director Pakistan Institute of Legislative Development and Transparency (PILDAT), Dec. 30, 2010

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?

63

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

Yes | No

Comments:

Constitution, article 19A:

Right to information: Every citizen shall have the right to have access to information in all matters of public importance subject to regulation and reasonable restriction imposed by the law.”

Representation of People Rules 1977, 29: Public inspection of documents

(1) The documents retained by the Commission under section 44, except the ballot papers, shall be open to public inspection during office hours on payment of a fee at the rate of one rupee for each document.

(2) Copies of, or extracts from the documents mentioned in sub-rule (1) shall be furnished upon an application made by any person on payment of fee at the rate of one rupee for the first two hundred words or a fraction thereof.

(3) Every application for inspection of documents or supply of copies shall be accompanied by court-fee stamps of the requisite value.

Representation of People Act (RPA) 12(2)(f): “The conduct of elections for national legislature, requires each candidate to give “a statement of his assets and liabilities and those of his spouse and dependents.”

RPA 42A: “1[42A. Yearly submission of statements of assets and liabilities.

(1) Every member shall, on a form prescribed under clause (f) of sub-section (2) of section 12, submit a statement of assets and liabilities of his own, his spouse and dependents annually to the Commission by the thirtieth day of September each year.

(2) The statements of assets and liabilities submitted under sub-section (1) shall be published in the official Gazette and copies thereof may be obtained on payment of prescribed fee.

(3) The Commissioner shall, by the fifteenth day of October each year, notify the names of the members who fail to file statements of assets and liabilities within the period specified in sub-section (1) and by an order, direct that such member shall cease to function till such statement is submitted.

(4) Where a member submits the statement of assets and liabilities under sub-section (1) which is found to be false in material particulars, he may be proceeded against under section 82 for committing the offence of corrupt practice.]”

The right to information, plus the provisions in the Representation of People Act, article 12 and 42A under which assets of the candidates are declared at the time of elections and then yearly, the Senate Act section 25A which applies to asset disclosure of candidates for the Senate, and general provision under rule 29 of Representation of People (Conduct of Election) Rules, all combine to form the legal basis under which citizens can access asset disclosure records of the heads of state, government and other elected officials. These records are maintained by the Election Commission of Pakistan.

Constitution, <http://www.mofa.gov.pk/Publications/constitution.pdf>

Various election laws:

<http://www.ecp.gov.pk/ElectionLaws/volume1.pdf>

<http://www.ecp.gov.pk/ElectionLaws/volume2.pdf>

<http://www.ecp.gov.pk/ElectionLaws/volume3.pdf>

Last accessed: March 3, 2011

References:

The Constitution of Pakistan, article 19A

Representation of People Act, 1976 – article 12 & section 42A

Senate (Election) Act, 1975, section 25A

Representation of People (Conduct of Election) Rules, 1977, 29

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

Comments:

These records are printed by the Election Commission of Pakistan (ECP) in its official gazette. However, the quality of the declarations are highly dubious, but that is a matter that the anti-corruption, investigation and accountability agencies need to decide. The records are available every year through the ECP.

References:

Interview-Waseem Hashmi, former employee of National Accountability Bureau, CRCP, G-6/1, Islamabad, Oct.18, 2010

Interview-Aasiya Riaz, Joint Director, Pakistan Institute of Legislative Development and Transparency (PILDAT), Dec. 30, 2010

“NGO wants others to declare assets too”, Dawn Daily, Sept. 24, 2010

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

Comments:

These records are printed by the Election Commission of Pakistan (ECP) in its official gazette. However, the quality of the declarations are highly dubious, but that is a matter that the anti-corruption, investigation and accountability agencies need to decide. The records are available every year through the ECP.

References:

Interview-Waseem Hashmi, former employee of National Accountability Bureau, CRCP, G-6/1, Islamabad, Oct.18, 2010

Interview-Aasiya Riaz, Joint Director, Pakistan Institute of Legislative Development and Transparency (PILDAT), Dec. 30, 2010

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 NGOs. 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 NGOs trying to access this information.

30d. In practice, the asset disclosure records of the heads of state and government are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

President Asif Ali Zardari is one of the richest man in Pakistan and allegedly has made billions through corruption and taking personal cuts on official deals, which has earned him the title “Mr 10%” (see BBC’s profile of Asif Zardari at <http://news.bbc.co.uk/2/hi/4032997.stm>).

References:

Interview-Waseem Hashmi, former employee of National Accountability Bureau, CRCP, G-6/1, Islamabad, Oct.18, 2010

Interview-Aasiya Riaz, Joint Director, Pakistan Institute of Legislative Development and Transparency (PILDAT), Dec. 30, 2010

“President Asif Zardari will not declare his assets”, Pakistan Daily, Sept. 13, 2008

“Profile: Asif Ali Zardari”, BBC News, accessed Dec. 17, 2010

100: The asset disclosure records of the heads of state and government are complete and detailed, providing the public with an accurate and updated accounting of the individuals’ sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of the heads of state and government contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of the heads of state and government are overly general, lack any meaningful detail, and do not provide a clear accounting of the individuals’ sources of income, investments, and other financial assets.

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

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

100 | 75 | 50 | 25 | 0

Comments:

Such distinctions are not hard and fast. The President and Prime Minister belong to a single ruling party and the functions are not often distinct. In fact, social protection programs etc are also loaded with party rhetoric (Benazir Income Support Programme (BISP), for instance). Further, the office of the President is highly politicized, and this also ties up with the control that the President, as head of the ruling party, exercises over government decisions.

One clear example of this is the issue of the National Accountability Bureau (NAB) and National Reconciliation Ordinance (NRO). The current government has been trying, both through “sneaking in” legislative changes (through the NAB Amendment Ordinance 2010, and through transfers and demotions in the department, to render the NAB ineffectual. The attempt is to take control of the department by installing favorable officials and by shifting some critical powers to the law ministry, which these days is acting as the personal law council for President Asif Ali Zardari.

In July it was reported that some high ranking officials at NAB have decided to resist and face government actions, which involve attempts to take control of the department through transfers and demotions. On July 8, 2010, Dawn News reported that some thirty-five officials at key posts in the bureau are considered to be in a “difficult position.”

The cases have been opened after the NRO was scrapped by the supreme court. Ten of these NAB officials have received their transfer letters and the long-serving Finance Director was demoted last year due to his refusal to obey the orders of the Presidency.

Yet at the same time, the government cannot be equated with the ruling party or the coalition. There are rifts within the ruling coalition. Most recently, a few have left this coalition. At the same time, the major opposition party Pakistan Muslim League-Nawaz (PML-N) has been influential in the parliament. Several landmark pieces of legislation, most prominently the 18th amendment bill, have been passed unanimously in both houses of the legislature.

References:

“13th National Assembly Year-2 Preliminary Roundup” PILDAT Report, March 2010, <http://www.pildat.org/Publications/publication/Democracy&LegStr/13th> NA Y-2 Preliminary Roundup PILDAT 010310.pdf

Ahmad Hassan, “Rabbani joins walkout over NAB ordinance,” Oct. 02, 2010, Dawn Daily, <http://news.dawn.com/wps/wcm/connect/dawn-content-library/dawn/the-newspaper/front-page/rabbani-joins-walkout-over-nab-ordinance-200>

Syed Irfan Raza, “‘Mini-revolt’ brewing in NAB”, Dawn daily, Jul 08 2010, <http://news.dawn.com/wps/wcm/connect/dawn-content-library/dawn/the-newspaper/front-page/minirevolt-brewing-in-nab-870>

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.

3.2. Conflicts of Interest Safeguards & Checks and Balances: Legislative Branch

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

Comments:

A constitutional petition can be filed using the Civil Procedures laws. Article 199 of the Constitution defines the jurisdictions of superior courts, including the right to review legislation and the legality and constitutionality of laws passed by the legislature if a writ-petition is filed by any citizen. Under article 183(4), the Supreme Court of Pakistan, if it deems of public importance with reference to enforcement of any of the Fundamental rights (conferred by the Constitution), has the power to make an order of the nature mentioned in Article 199, and it also has the power to take suo moto notice to effect such review of legislation.

<http://www.mofa.gov.pk/Publications/constitution.pdf>

<http://www.pakistansocietyofcriminology.com/Admin/laws/CodeofCivilProcedure.doc>

References:

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

Civil Procedure Code, ORDER XXVIIA

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.

100

75

50

25

0

Comments:

Recently the Judiciary has been active and has conducted judicial reviews in several important cases including, for instance, the review of Article 175A under the 18th Amendment to the constitution, regarding judicial appointments.

References:

H Zaidi, May 2, 2009, Dawn News, "The power of judicial review: scope and limits"

"Supreme Court Order", Dawn Editorial, Oct. 22, 2010, <http://news.dawn.com/wps/wcm/connect/dawn-content-library/dawn/the-newspaper/editorial/supreme-court-order-200>

Barristor Amjad Malik, "NRO Order, CJ Or 18th Amendment," Feb. 20,2010, <http://teeth.com.pk/blog/2010/02/20/nro-order-cj-or-18th-amendment>

18th Amendment Order, Supreme Court of Pakistan Judgments, (<http://www.supremecourt.gov.pk/web/page.asp?id=398>).

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:

Article 248 (1): "248. Protection to President, Governor, Minister, etc.:

(1) The President, a Governor, the Prime Minister, a Federal Minister, a Minister of State, the Chief Minister and a Provincial Minister shall not be answerable to any court for the exercise of powers and performance of functions of their respective offices or for any act done or purported to be done in the exercise of those powers and performance of those functions. It is provided that nothing in this clause shall be construed as restricting the right of any person to bring appropriate proceedings against the Federation or a Province."

The Civil Procedure Code and the Pakistan Penal Code (PPC), 1860 are applicable to members of the national legislature. For example, the PPC 161, 162, 163 and 164 institute mechanisms against taking bribes by public servants, giving bribes, influencing public servants to show favors, with punishments of up to three years of imprisonment and/or fine.

Civil Procedures Code sections 79-82 (suits by or against the government or public officials in their official capacity) and 91-93 (suits relating to public matters) also provide necessary and relevant legal provisions.

<http://www.mofa.gov.pk/Publications/constitution.pdf>

<http://www.pakistani.org/pakistan/legislation/1860/actXLVof1860.html>

<http://pakistanconstitution-law.org/category/02-the-code-of-criminal-procedure-1898/>

References:

The Constitution of Pakistan, 1973, article 248 (1)

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?

54

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

Yes

No

Comments:

RPA 12(2)(f): "The conduct of elections for national legislature, requires each candidate to give "a statement of his assets and liabilities and those of his spouse and dependents."

RPA 42A: "1[42A. Yearly submission of statements of assets and liabilities.

(1) Every member shall, on a form prescribed under clause (f) of sub-section (2) of section 12, submit a statement of assets and liabilities of his own, his spouse and dependents annually to the Commission by the thirtieth day of September each year.

(2) The statements of assets and liabilities submitted under sub-section (1) shall be published in the official Gazette and copies thereof may be obtained on payment of prescribed fee.

(3) The Commissioner shall, by the fifteenth day of October each year, notify the names of the members who fail to file statements of assets and liabilities within the period specified in sub-section (1) and by an order, direct that such member shall cease to function till such statement is submitted.

(4) Where a member submits the statement of assets and liabilities under sub-section (1) which is found to be false in material particulars, he may be proceeded against under section 82 for committing the offence of corrupt practice.]"

The right to information, plus the provisions in the Representation of People Act, article 12 and 42A under which assets of the candidates are declared at the time of elections and then yearly, the Senate Act section 25A, which applies to asset disclosure of candidates for the Senate, and general provision under rule 29 of Representation of People (conduct of election) Rules, all combine to form the legal basis under which citizens can access asset disclosure records of the heads of state, government and other elected officials. These records are maintained by the Election Commission of Pakistan.

Constitution here: <http://www.mofa.gov.pk/Publications/constitution.pdf>

Various election laws here: <http://www.ecp.gov.pk/ElectionLaws/volume1.pdf>

<http://www.ecp.gov.pk/ElectionLaws/volume2.pdf>

<http://www.ecp.gov.pk/ElectionLaws/volume3.pdf>

Last accessed: 03/03/2011

According to section 42A of the Representation of the People Act 1976 and Section 25A of the Senate (Election) Act 1975, all elected members of the National and Provincial legislators are required to submit details of assets to the Election Commission of Pakistan by the end of each financial year.

Also see Pakistan Institute of Legislative and Development and Transparency (PILDAT) report: "How Rich are Pakistani MNAs? 13th National Assembly of Pakistan," Aug. 2010; available online at

References:

Representation of People Act, 1976, article 12 & section 42A

Senate (Election) Act 1975, section 25A

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**

Comments:

No such restrictions exist. See source for various ministers who have joined private sector after leaving the national assembly.

References:

Kiani, K., "PM accepts Shaukat Tarin's resignation," Dawn News, Feb. 24, 2010, <http://news.dawn.com/wps/wcm/connect/dawn-content-library/dawn/news/pakistan/13+finance+minister+shaukat+tarin+to+resign+officials-za-09>

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:

"5. Gifts.- (1) Save as otherwise provided in this rule, no Government servant shall, except with the previous sanction of the Government, accept, or permit any member of his family to accept, from any person any gift the receipt of which will place him under any form of official obligation to the donor. If, however, due to very exceptional reasons, a gift cannot be refused, the same may, under intimation to the Cabinet Division, be kept for official use in the Department or Organisation in which he is working.

"(2) If any question arises whether receipt of a gift places a Government servant under any form of official obligation to the donor, the decision of the Government thereon shall be final.

"(3) If any gift is offered by the head or representative of a foreign State, the Government servant concerned should attempt to avoid acceptance of such a gift, if he can do so without giving offence. If, however, he cannot do so, he shall accept the gift and

shall report its receipt to the Cabinet Division for orders as to its disposal.

*[(4) Government servants are prohibited from receiving gifts of any kind for their person or for members of their families from diplomats, consular and other foreign Government representatives or their employees who are stationed in Pakistan. If, however, due to very exceptional reasons, a gift cannot be refused, it should invariably be deposited in the Toshakhana.

(5) Government servants, except those belonging to BPS 1 to 4, are prohibited from accepting cash awards offered by the visiting foreign dignitaries. In case, however, it becomes impossible to refuse without causing offence to the visiting dignitary, the amount may be accepted and immediately deposited in the Treasury under the proper head of account.”

<http://www.fde.gov.pk/Downloads/ESTABLISHMENT%20CODE.pdf>
(on pp 604 of 1520 of the pdf document; last accessed 03/03/2011)

References:

The Government Servants (Conduct) Rules 1964, article 5

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

Comments:

The assets declared are published in the official gazette of the Election Commission, and some civil society groups make these available. Audits may be conducted if irregularities are observed. These can be done by the Election Commission, National Accountability Bureau or the Federal Bureau of Investigation.

Rules of National Assembly here: www.na.gov.pk

Various election laws here: <http://www.ecp.gov.pk/ElectionLaws/volume1.pdf>

<http://www.ecp.gov.pk/ElectionLaws/volume2.pdf>

<http://www.ecp.gov.pk/ElectionLaws/volume3.pdf>

Last accessed: March 3, 2011

References:

Rules of National Assembly

Representation of People Act 1976, 12, 42A

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:

No such restrictions exist in law, so there is no question of effective implementation in practice.

References:

"Kiani, K., ""PM accepts Shaukat Tarin's resignation"", Dawn News, Feb. 24,

2010, <http://news.dawn.com/wps/wcm/connect/dawn-content-library/dawn/news/pakistan/13+finance+minister+shaukat+tarin+to+resign+officials-za-09>

Interview-Salman Raja, Lawyer and Senior Partner, Raja Mohammed Akram & Co, Advocate & Legal Consultant, 33-C, Main Gulberg, Lahore, Dec. 21, 2010

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. A zero score is also earned if legislators are allowed to hold private sector positions while in office.

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

100 | 75 | 50 | 25 | 0

Comments:

The regulations are not uniformly or regularly enforced. The minor offender can escape detection, whereas the bigger culprit is politically protected.

References:

Interview-Salman Raja, Lawyer and Senior Partner, Raja Mohammed Akram & Co, Advocate & Legal Consultant, 33-C, Main Gulberg, Lahore, Dec. 21, 2010

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 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.

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

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

Comments:

Some audits are conducted by the National Accountability Bureau (NAB). These are not seen to be partial. The newly appointed chief of NAB is seen as partisan and sympathetic of the Pakistan Peoples Party government; see, Butt, N. article in source.

References:

Butt, N. "200 NAB files gone missing: PML(N): Zardari criticised," Oct. 20, 2010, Business Recorder

Interview-Salman Raja, Lawyer and Senior Partner, Raja Mohammed Akram & Co, Advocate & Legal Consultant, 33-C, Main Gulberg, Lahore, Dec. 21, 2010

Interview-Waseem Hashmi, former employee of National Accountability Bureau, CRCP, G-6/1, Islamabad, Oct.18, 2010

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: 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.

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

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

Yes

No

Comments:

The details of these are with the Election Commission of Pakistan and available on request, at least in law. These are also published in the official gazette of the Election Commission.

“RPA 12(2)(f): The conduct of elections for national legislature, requires each candidate to give a statement of his assets and liabilities and those of his spouse and dependents

“RPA 42A: 1[42A. Yearly submission of statements of assets and liabilities.

(1) Every member shall, on a form prescribed under clause (f) of sub-section (2) of section 12, submit a statement of assets and liabilities of his own, his spouse and dependents annually to the Commission by the thirtieth day of September each year.

“(2) The statements of assets and liabilities submitted under sub-section (1) shall be published in the official Gazette and copies thereof may be obtained on payment of prescribed fee.

“(3) The Commissioner shall, by the fifteenth day of October each year, notify the names of the members who fail to file statements of assets and liabilities within the period specified in sub-section (1) and by an order, direct that such member shall cease to function till such statement is submitted.

“(4) Where a member submits the statement of assets and liabilities under sub-section (1) which is found to be false in material particulars, he may be proceeded against under section 82 for committing the offence of corrupt practice.”

The right to information, plus the provisions in the Representation of People Act, article 12 and 42A under which assets of the candidates are declared at the time of elections and then yearly, the Senate Act section 25A which applies to asset disclosure of candidates for the Senate, and general provision under rule 29 of Representation of People (conduct of election) Rules, all combine to form the legal basis under which citizens can access asset disclosure records of the heads of state, government and other elected officials. These records are maintained by the Election Commission of Pakistan.

Constitution here: <http://www.mofa.gov.pk/Publications/constitution.pdf>

Various election laws here: <http://www.ecp.gov.pk/ElectionLaws/volume1.pdf>

<http://www.ecp.gov.pk/ElectionLaws/volume2.pdf>

<http://www.ecp.gov.pk/ElectionLaws/volume3.pdf>

Last accessed: March 3, 2011

According to section 42A of the Representation of the People Act 1976 and Section 25A of the Senate (Election) Act 1975, all elected members of the National and Provincial legislators are required to submit details of assets to the Election Commission of Pakistan by the end of each financial year.

Also see Pakistan Institute of Legislative and Development and Transparency (PILDAT) report: “How Rich are Pakistani MNAs? 13th National Assembly of Pakistan,” August 2010; available online at <http://www.pildat.org/Publications/publication/democracy&LegStr/How%20Rich%20are%20Pakistani%20MNAs%20August%202010/>

According to section 42A of the Representation of the People Act 1976 and Section 25A of the Senate (Election) Act 1975, all elected members of the National and Provincial legislators are required to submit details of assets to the Election Commission of Pakistan by the end of each financial year.

Also see PILDAT report: “How Rich are Pakistani MNAs? 13th National Assembly of Pakistan”, August 2010; available online at:

<http://www.pildat.org/Publications/publication/democracy&LegStr/How%20Rich%20are%20Pakistani%20MNAs%20August%202010/>

References:

Representation of People Act, 1976, Article 12 & Section 42A

Senate (Election) Act 1975, Section 25A

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, non-governmental 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:

These records are printed by the Election Commission of Pakistan (ECP) in its official gazette. However, the quality of the declarations are highly dubious, but that is a matter that the anti-corruption, investigation and accountability agencies need to decide. The records are available every year through ECP.

References:

Interview-Waseem Hashmi, former employee of National Accountability Bureau, CRCP, G-6/1, Islamabad, Oct.18, 2010

Interview-Aasiya Riaz, Joint Director, Pakistan Institute of Legislative Development and Transparency (PILDAT), Dec. 30, 2010

“NGO wants others to declare assets too,” Dawn Daily, Sept 24, 2010

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

Comments:

These records are printed by the Election Commission of Pakistan (ECP) in its official gazette. However, the quality of the declarations are highly dubious, but that is a matter that the anti-corruption, investigation and accountability agencies need to decide. The records are available every year through the ECP.

References:

Interview-Waseem Hashmi, former employee of National Accountability Bureau, CRCP, G-6/1, Islamabad, Oct.18, 2010

Interview-Aasiya Riaz, Joint Director, Pakistan Institute of Legislative Development and Transparency (PILDAT), Dec. 30, 2010

“NGO wants others to declare assets too”, Dawn Daily, Sept. 24, 2010

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 NGOs. 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 NGOs trying to access this information.

34d. In practice, the asset disclosure records of members of the national legislature are of high quality.

100 | 75 | 50 | 25 | 0

References:

Interview-Waseem Hashmi, former employee of National Accountability Bureau, CRCP, G-6/1, Islamabad, Oct.18, 2010

Interview-Aasiya Riaz, Joint Director, Pakistan Institute of Legislative Development and Transparency (PILDAT), Dec. 30, 2010

100: The asset disclosure records of members of the national legislature are complete and detailed, providing the public with an accurate and updated accounting of the individuals’ sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of the members of the national legislature contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of the members of the national legislature are overly general, lack any meaningful detail, and do not provide clear accounting of the individuals’ sources of income, investments, and other financial assets.

35. Can citizens access legislative processes and documents?

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

Yes | No

Comments:

While there is a constitutional guarantee and a freedom of information act, the real practice is determined by the rules of the two legislative houses. These specify that the Secretaries (civil servants) are the custodians of all records of the legislature and the Speakers/Chairs of the legislative houses must give written permission before records can be handed out.

References:

Constitution of Pakistan 1973, article 19A

Rules of Procedure and Conduct of Business in the National Assembly, 2007, 282
http://www.na.gov.pk/publications/rules_procedure.pdf (access date: Dec. 12, 2010)

Rules of Procedure and Conduct of Business for the Senate of Pakistan, 1988 , rule 231

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 are 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:

Recent orders and proceedings are available online. Sessions are also broadcast and journalists are allowed to cover them. However, some important sessions are closed.

The Secretary also prepares and maintains reports on proceedings etc, which are published in the official gazette. However, accessing specific records is a lengthy and time-consuming process. Bills are published in the gazette and this can also be obtained online. But specific information may not be available, especially on voting on various legislation. It can be costly and time consuming to obtain this information.

References:

www.na.gov.pk/

www.senate.gov.pk

Access date Dec 12, 2010

“How to Contact Provincial and Federal Representatives” and “Qualities of a Good Parliamentarian — A Checklist,” Legislative Oversight Tool Kit, Consumer Rights Commission of Pakistan, 2005

"The Process of Federal Budget Making," Legislative Oversight Tool Kit, 2005, Consumer Rights Commission of Pakistan, <http://www.crcp.org.pk/publicationplsc.htm>

"State of Transparency and Freedom of Information in Pakistan," 2006, Report by Center for Peace and Development Initiatives, <http://www.cpd-pakistan.org/images/stories/publications/sofojp.pdf> (access date: Dec. 12, 2010)

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

Comments:

The information may be printed in the official gazette, but this is not accessible for most citizens. Only a limited number is printed, and they can be obtained from a few designated places in big cities. These are also published in English, making these inaccessible for most people. (Center for Peace and Development Initiatives, 2006, p8).

References:

www.na.gov.pk/

www.senate.gov.pk

Access date Dec. 12, 2010

"How to Contact Provincial and Federal Representatives" and "Qualities of a Good Parliamentarian — A Checklist," Legislative Oversight Tool Kit, Consumer Rights Commission of Pakistan, 2005

"The Process of Federal Budget Making", Legislative Oversight Tool Kit, 2005, Consumer Rights Commission of Pakistan, <http://www.crcp.org.pk/publicationplsc.htm>

"State of Transparency and Freedom of Information in Pakistan," 2006, Report by Center for Peace and Development Initiatives, <http://www.cpd-pakistan.org/images/stories/publications/sofojp.pdf> (access date: Dec 12, 2010)

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 NGOs. 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 NGOs trying to access this information.

67
3.3. Conflicts of Interest Safeguards & Checks and Balances:
Judicial Branch

36. Are judges appointed fairly?

92

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

Yes

No

Comments:

The 18th amendment to the 1973 constitution has added a clear criteria and a transparent procedure for the selection of judges to superior courts. The details of this procedure are contested, and brought the executive, legislature and judiciary to a full-on confrontation with suspicions that the process will lead to politically charged appointments. A crisis seems to have been averted by a recent court ruling, though the parliament needs to decide this issue by January 2011, see "Editorial," Friday, Oct. 22, 2010, Dawn Newspaper.

[159A]175A. Appointment of Judges to the Supreme Court, High Courts and the Federal Shariat Court.-

(1) There shall be a Judicial Commission of Pakistan, hereinafter in this Article referred to as the Commission, for appointment of Judges of the Supreme Court, High Courts and the Federal Shariat Court, as hereinafter provided.

(2) For appointment of Judges of the Supreme Court, the Commission shall consist of-

(i) Chairman: Chief Justice of Pakistan;

(ii) Members: [159B][four] most senior Judges of the Supreme Court;

(iii) Member: a former Chief Justice or a former Judge of the Supreme Court of Pakistan to be nominated by the Chief Justice of Pakistan, in consultation with the [159C][four] member Judges, for a period of two years;

(iv) Member: Federal Minister for Law and Justice;

(v) Member: Attorney-General for Pakistan; and

(vi) Member: a Senior Advocate of the Supreme Court of Pakistan nominated by the Pakistan Bar Council for a term of two years.

(3) Notwithstanding anything contained in clause (1) or clause (2), the President shall appoint the most senior Judge of the Supreme Court as the Chief Justice of Pakistan.

(4) The Commission may make rules regulating its procedure.

(5) For appointment of Judges of a High Court, the Commission in clause (2) shall also include the following, namely:-

(i) Member: Chief Justice of the High Court to which the appointment is being made;

(ii) Member: the most senior Judge of that High Court;

(iii) Member: Provincial Minister for Law; and

[159D] [(iv) Member: an advocate having not less than fifteen years practice in the High Court to be nominated by the concerned Bar Council for a term of two years:]

[159E] [Provided that for appointment of the Chief Justice of a High Court the most Senior Judge mentioned in paragraph (ii) shall not be member of the Commission:

Provided further that if for any reason the Chief Justice of a High Court is not available, he shall be substituted by a former Chief Justice or former Judge of that Court, to be nominated by the Chief Justice of Pakistan in consultation with the four member Judges of the Commission mentioned in paragraph (ii) of clause (2).]

(6) For appointment of Judges of the Islamabad High Court, the Commission in clause (2) shall also include the following, namely:-

(i) Member: Chief Justice of the Islamabad High Court; and

(ii) Member: the most senior Judge of that High Court

Provided that for initial appointment of the [159F][Chief Justice and the] Judges of the Islamabad High Court, the Chief Justices of the four Provincial High Courts shall also be members of the Commission:

Provided further that subject to the foregoing proviso, in case of appointment of Chief Justice of Islamabad High Court, the provisos to clause (5) shall, mutatis mutandis, apply.

(7) For appointment of Judges of the Federal Shariat Court, the Commission in clause (2) shall also include the Chief Justice of the Federal Shariat Court and the most senior Judge of that Court as its members:

Provided that for appointment of Chief Justice of Federal Shariat Court, the provisos to clause (5) shall, mutatis mutandis, apply.

(8) The Commission by majority of its total membership shall nominate to the Parliamentary Committee one person, for each vacancy of a Judge in the Supreme Court, a High Court or the Federal Shariat Court, as the case may be.

(9) The Parliamentary Committee, hereinafter in this Article referred to as the Committee, shall consist of the following eight members, namely:-

(i) four members from the Senate; and

(ii) four members from the National Assembly[159G][:]

[159H][Provided that when the National Assembly is dissolved, the total membership of the Parliamentary Committee shall consist of the members of the Senate only mentioned in paragraph (i) and the provisions of this Article shall, mutatis mutandis apply.]

(10) Out of the eight members of the Committee, four shall be from the Treasury Benches, two from each House and four from the Opposition Benches, two from each House. The nomination of members from the Treasury Benches shall be made by the Leader of the House and from the Opposition Benches by the Leader of the Opposition.

(11) Secretary, Senate shall act as the Secretary of the Committee.

(12) The Committee on receipt of a nomination from the Commission may confirm the nominee by majority of its total membership within fourteen days, failing which the nomination shall be deemed to have been confirmed:

[159I][Provided that the Committee, for reasons to be recorded, may not confirm the nomination by three-fourth majority of its total membership within the said period:]

[159J][Provided further that if a nomination is not confirmed by the Committee it shall forward its decision with reasons so recorded to the Commission through the Prime Minister:

Provided further that if a nomination is not confirmed, the Commission shall send another nomination.]

[159K] [(13) The Committee shall send the name of the nominee confirmed by it or deemed to have been confirmed to the Prime Minister who shall forward the same to the President for appointment.]

(14) No action or decision taken by the Commission or a Committee shall be invalid or called in question only on the ground of the existence of a vacancy therein or of the absence of any member from any meeting thereof.

[159L] [(15) The meetings of the Committee shall be held in camera and the record of its proceedings shall be maintained.

(16) The provisions of Article 68 shall not apply to the proceedings of the Committee.][159M]
[(17)] The Committee may make rules for regulating its procedure.”

References:

Constitution of Pakistan, 1973, Article 175A

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

Comments:

Judicial appointments were a somewhat politicized affair, but the 1996 Al-Jihad Trust Case in the Supreme Court changed this. It was essentially said that there are a certain number of criteria prescribed in the constitution. If these are not followed, judges will have to be removed. Two to three months after this approximately 30 to 40 judges were removed.

Now the 18th amendment has altered the procedure and has politicized the issue. The Supreme Court has requested the parliament to create a more fair and transparent system. The parliament is re-examining the issue and has proposed new amendments to the constitution.

References:

Interview- Justice Nasira Iqbal (retired), Dec. 13, 2010, Gulberg I, Lahore

Interview- Bilal Manto, Lawyer, Nov. 29, 2010

“Editorial,” Friday, Oct. 22, 2010, Dawn Newspaper

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:

While there is a confirmation process, it is very difficult for the legislature to block confirmation, since this requires a three-fourths majority and the parliament only has 14 days to deliberate the appointment.

<http://www.mofa.gov.pk/Publications/constitution.pdf>

References:

Constitution of Pakistan 1973, article 175A, 193

Yes: A YES score is earned if there is a formal process establishing a review of national-level judicial nominees by an agency or entity 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 the same body that appoints the judges (such as the Prime Minister approving judicial nominees put forward by the Minister of Justice, both of whom are part of 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

Comments:

4.(1) Judgments of a Court of Small Causes need not contain more than the points for determination and the decision thereon.

(2) Judgments of other Courts shall contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decision.

<http://www.pakistansocietyofcriminology.com/Admin/laws/CodeofCivilProcedure.doc>

References:

Code of Civil Procedures, 1908, Order XX, Judgment and Decree, section 4

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

Comments:

Reasons must be provided in all cases. Whether these reasons are sufficient or not is decided through the appeals mechanism.

When a court or any forum is dealing with a dispute, it must give a reason. It is called a speaking order. If the court does not give reasons, the ruling can be challenged and struck down (which happens all the time through appeals). Every decision-making body is bound to give reasons.

References:

Interview-Justice Nasira Iqbal (retired), Dec. 13, 2010, Gulberg I, Lahore

Interview-Bilal Manto, Lawyer, Nov. 29, 2010

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

Comments:

The Supreme Judicial Council (SJC) can be classified as a “disciplinary” agency, as it hears cases of misconduct and is the only authority that can dismiss judges. Article 209 of the Constitution provides for this disciplinary agency: <http://www.mofa.gov.pk/Publications/constitution.pdf>.

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. A YES score can still be earned if the judicial disciplinary agency (or mechanism) is internal to 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:

Article 209 gives provision regarding an independent judicial disciplinary committee (Supreme Judicial Council): <http://www.mofa.gov.pk/Publications/constitution.pdf>

References:

Constitution of Pakistan 1973, 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 executive ministry or legislative committee.

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

100

75

50

25

0

Comments:

If there is an investigation against the Chief Justice, the next most senior judge takes his place in the Supreme Judicial Council.

References:

Interview-Justice Nasira Iqbal (retired), Dec. 13, 2010, Gulberg I, Lahore

Interview-Salman Raja, Lawyer and Senior Partner, Raja Mohammed Akram & Co, Advocate & Legal Consultant, 33-C, Main Gulberg, Lahore, Dec. 21, 2010

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:

The Supreme Judicial Council can and does dismiss judges.

References:

Interview-Justice Nasira Iqbal (retired), Dec. 13, 2010, Gulberg I, Lahore

Interview-Salman Raja, Lawyer and Senior Partner, Raja Mohammed Akram & Co, Advocate & Legal Consultant, 33-C, Main Gulberg, Lahore, Dec. 21, 2010

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?

68

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

Yes | No

Comments:

There is an internal mechanism. The parliament can pass a law of transparency and accountability to ensure stronger regulatory requirements.

References:

Interview-Justice Nasira Iqbal (retired), Dec.13, 2010, Gulberg I, Lahore

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:

Judges are not supposed to interact with most people so there will be no questions regarding the receiving of gifts or hospitality.

References:

Interview-Justice Nasira Iqbal (retired), Dec. 13, 2010, Gulberg I, Lahore

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

Comments:

There is no formal procedure. However, the judiciary is always under scrutiny and cannot acquire assets beyond known resources.

References:

Interview-Justice Nasira Iqbal (retired), Dec. 13, 2010, Gulberg I, Lahore

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

Comments:

Judges of the superior courts are prevented from employment in the private sector for at least two years after retirement or resignation,
<http://www.mofa.gov.pk/Publications/constitution.pdf>

References:

Constitution of Pakistan, 1973, article 207(2)

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

Comments:

Respondents did specify any cases where such restrictions were not implemented, but pointed out that there are always some "black sheep."

References:

Interview-Justice Nasira Iqbal (retired), Dec. 13, 2010, Gulberg I, Lahore

Interview-Bilal Manto, Lawyer, Nov. 29 Nov, 2010

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. A zero score is also earned if judges are allowed to hold private sector jobs while serving on the bench.

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

100 | 75 | 50 | 25 | 0

Comments:

There are exceptions and deviations, but these do not happen frequently or regularly.

References:

Interview-Justice Nasira Iqbal (retired), Dec. 13, 2010, Gulberg I, Lahore

Interview-Bilal Manto, Lawyer, Nov. 29, 2010

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 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.

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

100 | 75 | 50 | 25 | 0

Comments:

There are some internal mechanisms, but there is a need for transparency and accountability law to ensure audits of judicial assets.

References:

Interview-Justice Nasira Iqbal (retired), Dec. 13, 2010, Gulberg I, Lahore

Interview-Bilal Manto, Lawyer, Nov. 29, 2010

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: 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.

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

25

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

Yes | No

Comments:

There is no law that requires asset declaration, but citizens do have access to information under the constitution article 19A, which gives the right to information.

<http://www.mofa.gov.pk/Publications/constitution.pdf>

Interview-Justice Nasira Iqbal (retired), Dec. 13, 2010, Gulberg I, Lahore

References:

Constitution of Pakistan 1973, Article 19A

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:

Interview-Justice Nasira Iqbal (retired), Dec. 13, 2010, Gulberg I, Lahore

"NGO wants others to declare assets too," Dawn Daily, Sept. 24, 2010

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.

100 | 75 | 50 | 25 | 0

References:

Interview-Justice Nasira Iqbal (retired), Dec. 13, 2010, Gulberg I, Lahore

“NGO wants others to declare assets too,” Dawn Daily, Sept. 24, 2010

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 NGOs. 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 NGOs trying to access this information.

39d. In practice, the asset disclosure records of the national-level judiciary are of high quality.

100 | 75 | 50 | 25 | 0

References:

Interview-Justice Nasira Iqbal (retired), Dec. 13, 2010, Gulberg I, Lahore

“NGO wants others to declare assets too,” Dawn Daily, Sept. 24, 2010

100: The asset disclosure records of the national-level judiciary are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of the national-level judiciary contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of the national-level judiciary are overly general, lack any meaningful detail, and do not provide a clear accounting of the individuals' sources of income, investments, and other financial assets.

3.4. Budget Process Oversight & Transparency

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

67

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

Yes

No

Comments:

Article 80 dictates that the Federal government (executive) must present the Annual Budget Statement in front of the legislature. Article 82 (2) gives the legislature (National Assembly) the power to assent or refuse to assent to any demand from the executive, and even can demand reduction in the requested amounts.

References:

Constitution of Pakistan 1973, article 80 and 82

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.

Comments:

Defense expenditures make up a very significant and high proportion of public expenditures, and they do not require legislative approval.

References:

Irshad, K.& Kanwal S.M., "Open Budget Questionnaire: Pakistan", Sept. 2009, International Budget Partnership

Haider, Z, "Militancy-hit Pakistan Ups Defense Spending by 17 Percent", Reuters online, June 5, 2010, accessed on Dec 07, 2010; url: <http://www.reuters.com/article/idUSTRE6541UF20100605>

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.

Comments:

The legislature has limited time to review the budget and its ability to monitor the process raise doubts. The IBP notes that the budget oversight provided by the legislature is weak.

For example, former Chief Economist of Pakistan Dr. Pervez Tariq commented: "An emerging consensus is that instead of the executive, budgetary decisions must be taken by parliament but another question is if parliament is well-informed or not," (Shahbaz Rana, Dec 9, 2010)

The executive holds limited consultations with the legislature (p. 57, Irshad & Kanwal, 2010). They receive the budget less than six weeks before the start of the budget year.

References:

"Report card: Pakistan Below Average in Budget Transparency," by Shahbaz Rana, The Express Tribune, Dec. 9 2010, <http://tribune.com.pk/story/87662/report-card-pakistan-below-average-in-budget-transparency/>

Irshad, K.& Kanwal S.M., "Open Budget Questionnaire: Pakistan", Sept. 2009, International Budget Partnership

"Open Budget Index, 2010: Pakistan," International Budget Project report, 2010.

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?

50

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

Comments:

Some public hearings are held in the legislature where the executive testifies. The process is not transparent though. It is difficult to identify authors of individual line items.

References:

Ilrshad, K.& Kanwal S.M., "Open Budget Questionnaire: Pakistan", Sept. 2009, International Budget Partnership

"The Process of Federal Budget Making," Legislative Oversight Tool Kit, 2005, Consumer Rights Commission of Pakistan, <http://www.crcp.org.pk/publicationplsc.htm>

"State of Transparency and Freedom of Information in Pakistan," 2006, Report by Center for Peace and Development Initiatives, <http://www.cpd-pakistan.org/images/stories/publications/sofojp.pdf> (access date: Dec 12, 2010)

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

Comments:

The executive holds limited consultations, involving only a few constituencies (p. 58); the legislature holds some public hearings, but testimony from the public is not heard and only the executive and “experts” testify (pp. 60-61). Still, several civil society groups and media provides important feedback during the budget process.

References:

Irshad, K.& Kanwal S.M., “Open Budget Questionnaire: Pakistan”, Sept. 2009, International Budget Partnership

“The Process of Federal Budget Making,” Legislative Oversight Tool Kit, 2005, Consumer Rights Commission of Pakistan <http://www.crcp.org.pk/publicationplsc.htm>

“State of Transparency and Freedom of Information in Pakistan,” 2006, Report by Center for Peace and Development Initiatives, <http://www.cpd-pakistan.org/images/stories/publications/sofojp.pdf> (access date: Dec 12, 2010)

“Parliamentary Budget Process in Pakistan and Canada,” Baseline Report, Pakistan Institute of Legislative Development and Transparency, January 2010.

100: Citizens, usually acting through NGOs, 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 NGOs can provide input, but this information is often not relevant to budget decisions.

25:

0: Citizens or NGOs 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

Comments:

The budget-related documents are available from the Ministry of Finance website. The budget speech (summary), budget in brief (executive’s budget proposal), and supporting budget documents are available online, free, or through mail order.

However, this information is not comprehensive and allocations are not consistently itemized. The budget on Defense, which is a significant percentage of expenditure in a budget year, is listed as a single item and no details are provided. Further, International Budget Partnership’s (IBP) 2010 report suggests that “highly disaggregated information is available to public for programs representing at least two-thirds of, but not all, expenditures” (p52).

For a more comprehensive study on this see IBP’s Open Budget questionnaire for 2010, pages 5-7, 10, 40, and 52.

References:

Irshad, K.& Kanwal S.M., “Open Budget Questionnaire: Pakistan,” Sept. 2009, International Budget Partnership

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

75:

50: Citizens, journalists and NGOs 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.

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

100

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

Yes

No

Comments:

The Public Accounts Committee of the National Assembly monitors the expenditure of the legislature (article 88 of the Constitution), <http://www.mofa.gov.pk/Publications/constitution.pdf>

From the official website: “Only the National Assembly, through its Public Accounts Committee, scrutinizes public spending and exercises control of expenditure incurred by the government,” www.na.gov.pk

“88. Finance Committees.

(1) The expenditure of the National Assembly and the Senate within authorised appropriations shall be controlled by the National Assembly or, as the case may be, the Senate acting on the advice of its Finance Committee.

(2) The Finance Committee shall consist of the Speaker or, as the case may be, the Chairman, the Minister of Finance and such other members as may be elected thereto by the National Assembly or, as the case may be, the Senate.

(3) The Finance Committee may make [78] rules for regulating its procedure.”

References:

The Public Accounts Committee under the 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).

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

58

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

100 | 75 | 50 | 25 | 0

Comments:

This is not done in a consistent manner. Especially, there are no regular reports submitted on defense expenditures.

References:

"Parliamentary Budget Process in Pakistan and Canada," Baseline Report, Pakistan Institute of Legislative Development and Transparency, January 2010.

Razi Syed, "Budget 2009-10: PAC body submits report on supplementary grants," The Daily Times, July 4, 2010

Khawar Ghumman, "'PAC lets big fish off the hook in two high-profile cases,'" Dawn Newspaper, Dec. 8, 2010

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:

Currently, the Chairman of the oversight committee is the leader of opposition.

References:

Razi Syed, "Budget 2009-10: PAC body submits report on supplementary grants," The Daily Times, July 4, 2010

Khawar Ghumman, "'PAC lets big fish off the hook in two high-profile cases,'" Dawn Newspaper, Dec. 8, 2010

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 (PAC) is known to let the ‘big fish’ off the hook . A December 2008 report specifies that two high-profile audit reports were closed; the first dealt with issues of corruption by the National Logistics Cell (NLC), which is run by army general and civil bureaucrats. Media reports indicated that three retired army generals and two senior bureaucrats were implicated in a loss of over Rs. 2 billion (US\$23,446,658) to NLC. These officers include:

“Officers in-charge of the NLC, Lt-Gen (retird) Khalid Munir Khan (Jan 2005 to June 2005) and Lt-Gen (reted) Mohammad Afzal Muzzafar, (June 2005 to Oct 2008); director-general Maj-Gen (reted) Khalid Zaheer Akhtar (July 2002 to Jan 2008), finance and accounts director Najibur Rehman (Oct 2002 to April 2007) and chief finance officer Saeedur Rehman (June 2004 to Oct 2008).”

Instead of conducting its own private investigations, the PAC closed the case and said that it will ask the Army chief to conduct internal investigations,
<http://www.dawn.com/2010/12/08/pac-lets-big-fish-off-the-hook-in-two-high-profile-cases-2.html>

The committee does start investigations, and is headed currently by the leader of opposition of the lower house of the legislature. However, it has limited effectiveness, especially when it comes to cases related to the military, or the various commercial businesses that are run by retired army generals and officers — something referred to as a parallel military economy, military business, or “Milbus” (see Ayesha Siddiq’a’s book “Military Inc,” 2007, OUP).

References:

Razi Syed, “Budget 2009-10: PAC body submits report on supplementary grants,” The Daily Times, July 4, 2010

Khawar Ghumman, “PAC lets big fish off the hook in two high-profile cases,” Dawn Newspaper, Dec. 8, 2010

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.

Category 4. Public Administration and Professionalism

69
4.1. Civil Service: Conflicts of Interest Safeguards and Political Independence

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:

Apart from constitutional guarantees against discrimination in services, the regulations regarding an impartial, independent and fairly managed civil service are given under the Civil Servants Act 1973.

These laws are available here:

<http://www.fde.gov.pk/Downloads/ESTABLISHMENT%20CODE.pdf>

References:

Constitution of Pakistan 1973, articles 27, 240-242

Civil Servants Act, 1973

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

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 (Appointment, Promotion and Transfer) Rules, 1973

Government Servants (Conduct) Rules 1964, #30

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:

Rule 3 establishes the right of appeal. Rules 4-8 specify more details.
<http://www.fde.gov.pk/Downloads/ESTABLISHMENT%20CODE.pdf>

References:

Civil Servants (Appeals) Rules 1977, rule 3, 4 and 8

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, or if the only recourse civil servants have is directly through the courts.

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

Yes | No

Comments:

3(c) specifies corruption as grounds for punishment, which can result in a dismissal from service (under 4 (1)(b)iv), which results in barring from future government employment, under 4(2).

References:

Government Servants (Efficiency and Discipline) Rules, 1973, 3 (c)

Removal from Service (Special Powers) Ordinance, 2000, 3

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?

50

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

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

Comments:

The civil bureaucracy in Pakistan has been an important part of the “overdeveloped state” and has not only been marred with political interference, but has been central to political grievances and marginalization of provinces and various ethnicities due to over-representation of certain ethnic groups, and, later during the 1970s, due to further politicization of the civil bureaucracy under the quota-system.

References:

Wilder, A. “The Politics of Civil Service Reform in Pakistan,” *Journal of International Affairs* v. 63 no. 1 (Fall/Winter 2009) pp. 19-37

“Reforming Pakistan’s Civil Service,” International Crisis Group (ICG) Asia Report N 185, Feb. 16, 2010

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:

Civil servants must meet some basic qualification criteria, though appointments, evaluations and promotions are influenced by political preferences, loyalties and patronage. During the Musharraf regime, the chairman of the Federal Public Service Commission was a Lt. General.

Recently, a retired justice of the Supreme Court has been appointed the chairman, responsible for appointments of higher level of civil servants. This took place after an ugly episode of politically motivated appointments by the incumbent government, and a decision by the Supreme Court against these promotions and appointments.

In April 2010, the SC struck down on 54 promotions awarded by the Prime Minister to high-level bureaucrats.

References:

Wilder, A. "The Politics of Civil Service Reform in Pakistan," Journal of International Affairs v. 63, no. 1 (Fall/Winter 2009) p. 19-37

"Reforming Pakistan's Civil Service," International Crisis Group (ICG) Asia Report N 185, Feb. 16, 2010

Nasir Iqbal, "SC verdict rocks PM's bureaucracy," Dawn News, April 29, 2010,

<http://news.dawn.com/wps/wcm/connect/dawn-content-library/dawn/news/pakistan/04-sc-strikes-down-pm-order-fed-secs-02>

Ansar Abbasi, "'Merit-based appointments now ensures'", The NEWS international, Dec 23, 2010, <http://www.thenews.com.pk/TodaysPrintDetail.aspx?ID=2851&Cat=13>

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

Comments:

This is generally the case, but with the recent appointment of a retired justice of the Supreme Court to be the chairman of Federal Public Service Commission, there is hope that things will change.

References:

Wilder, A. "The Politics of Civil Service Reform in Pakistan," Journal of International Affairs v. 63, no. 1 (Fall/Winter 2009) pp. 19-37

"Reforming Pakistan's Civil Service," International Crisis Group (ICG) Asia Report N 185, Feb. 16, 2010

Nasir Iqbal, "SC verdict rocks PM's bureaucracy," Dawn News, April 29, 2010,

<http://news.dawn.com/wps/wcm/connect/dawn-content-library/dawn/news/pakistan/04-sc-strikes-down-pm-order-fed-secs-02>

Ansar Abbasi, "Merit-based appointments now ensures," The NEWS international, Dec 23,

2010, <http://www.thenews.com.pk/TodaysPrintDetail.aspx?ID=2851&Cat=13>

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

Comments:

There are certainly clear job instructions for most departments. However, under the Musharraf regime, devolution at the district levels led to a certain degree of confusion as the elected officials (mayors or councilors) were given charge of certain roles historically under the district management group (DMG) of the civil bureaucracy. The current government is still under the process of reforming and changing the local governance system, which now is being done at the provincial level.

References:

"Reforming Pakistan's Civil Service," International Crisis Group (ICG) Asia Report N 185, Feb. 16, 2010

Jawad Awan, "PML-N to reintroduce LG system in Punjab," The Nation, Jan. 3, 2010

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:

While there are no real system of bonuses, there are several perks and allowances. For the highest grades, these can be up to 250 percent of the basic salary. The biggest allowance by far is the housing allowance.

However, the higher grade officials who avail of the government housing benefit more than those getting the direct allowances in their pay. The difference, according to estimates by Bilquess, can be almost 1,000 percent.

The government has recently revised the pay structure, but this does not include a bonus or performance-based pay system. This was however under consideration in the time of the previous government.

References:

F. Bilquees, 2007, "Civil Servants Salary Structure," Pakistan Institute of Development Economics

Rauf Klasra, "It pays to be a bureaucrat in Pakistan," The Express Tribune, Oct. 28, 2010

"Government mulls bonus system for extraordinary performers," Peninsula Newspaper, May 4, 2006

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

Comments:

The Federal Public Service Commission advertises positions and publishes the filled positions. This, however, is not always done in a consistent, complete and accurate manner. As Abdul Manan reports, while the results for the 2010 competitive results are in, the 2009 and 2008 lists are still undecided.

References:

"Annual Report 2009", Federal Public Service Commission (FPSC), Islamabad, Pakistan.

Abdul Manan, "'09 lists undecided, '10 CSS results in," The Express Tribune, Oct. 15, 2010

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:

While mostly the independent redress mechanism is effective, there are certain recent cases that point to unfair handling. The case of Ms. Ashfaq Sheikh, a BPS 20 civil servant, during the 2008-2009 period is illuminating.

While investigating a case of misappropriation and embezzlement in an internal audit report, Ms. Sheikh of the audit and accounts group, was not paid her salary for the previous 8 months. She was DG, MIS, and was transferred when her seniors learned about her intentions to go by the book. She resisted the transfer as illegal, but was dismissed from the office of the CGA. The CGA maintains that Ms. Ashfaq had been transferred and since she wasn't under any position, so she could not receive any salary.

Ms. Ashfaq had taken the matter to court and argues that unless a competent authority makes a decision about her transfer, her salary cannot be blocked. Ms. Ashfaq took the case to Islamabad High Court when the Auditor General of Pakistan disposed off her plea of cancellation of an illegal transfer without referring it to the PM. The High Court ruled that the case should have been referred to the PM and AGP did not have this authority. The PM secretariat had asked for the release of her salary.

References:

Khawar Ghumman, "'Bureaucrat in trouble for 'refusing to toe' seniors' line," Dawn Daily, June 2, 2009; <http://news.dawn.com/wps/wcm/connect/dawn-content-library/dawn/the-newspaper/national/bureaucrat-in-trouble-for-refusing-to-toe-seniors-line-269> ; Dec 25, 2010

Khawar Ghumman, "Auditor General's powers questioned," Dawn Daily, July 18, 2009, <http://news.dawn.com/wps/wcm/connect/dawn-content-library/dawn/the-newspaper/national/auditor-generals-powers-questioned-879>

Wilder, A. "The Politics of Civil Service Reform in Pakistan," Journal of International Affairs v. 63, no. 1 (Fall/Winter 2009), p. 19-37

"Reforming Pakistan's Civil Service," International Crisis Group (ICG) Asia Report N 185, Feb. 16, 2010

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:

While mostly the independent redress mechanism is effective, there are certain recent cases that point to unfair handling. The case of Ms. Ashfaq Sheikh, a BPS 20 civil servant, during the 2008-2009 period is illuminating.

While investigating a case of misappropriation and embezzlement in an internal audit report, Ms. Sheikh of the audit and accounts group, was not paid her salary for the previous 8 months. She was DG, MIS, and was transferred when her seniors learned about her intentions to go by the book. She resisted the transfer as illegal, but was dismissed from the office of the CGA. The CGA maintains that Ms. Ashfaq had been transferred and since she wasn't under any position, so she could not receive any salary.

Ms. Ashfaq had taken the matter to court and argues that unless a competent authority makes a decision about her transfer, her salary cannot be blocked. Ms. Ashfaq took the case to Islamabad High Court when the Auditor General of Pakistan disposed of her plea of cancellation of an illegal transfer without referring it to the PM. The High Court ruled that the case should have been referred to the PM and AGP did not have this authority. The PM secretariat had asked for the release of her salary.

References:

Khawar Ghumman, "Bureaucrat in trouble for 'refusing to toe' seniors' line," Dawn Daily, June 2, 2009, <http://news.dawn.com/wps/wcm/connect/dawn-content-library/dawn/the-newspaper/national/bureaucrat-in-trouble-for-refusing-to-toe-seniors-line-269> ; Dec 25, 2010

Khawar Ghumman, "Auditor General's powers questioned," Dawn Daily, July 18, 2009, <http://news.dawn.com/wps/wcm/connect/dawn-content-library/dawn/the-newspaper/national/auditor-generals-powers-questioned-879>

Maha Mussadaq, "72 Universities go on strike," The Express Tribune, Sept. 23, 2010 <http://tribune.com.pk/story/53536/72-universities-go-on-strike/>

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

Comments:

A civil servant is only barred from future employment if they are dismissed. Civil servants convicted of corruption can be sent on forced leave or even removed from office, but these do not mean future prohibitions against working in the government.

References:

Government Servants (Efficiency and Discipline) Rules, 1973, 3 and 4

Removal from Service (Special Powers) Ordinance, 2000, 3

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?

53

46a. In law, senior members of the civil service are required to file an asset disclosure form.

Yes | No

Comments:

These are available in the Civil Establishment Code (ESTACODE) at:
<http://www.fde.gov.pk/Downloads/ESTABLISHMENT%20CODE.pdf>

12. Declaration of property.- (1) Every Government servant shall, at the time of entering Government service, make a declaration to the Government, through the usual channel, of all immovable and movable properties including shares, certificates, securities, insurance policies and jewellery having a total value of **[Rs.50,000 (fifty thousand rupees); US\$586]] or more belonging to or held by him or a member of his family and such declaration shall,-

(a) state the district within which the property is situated;

(b) show separately individual items of jewellery exceeding **[Rs. 50,000 (fifty thousand rupees; US\$586)] in value; and

(c) give such further information as the Government may, by general or special order, require.

(2) Every Government servant shall submit to the Government, through usual channel, an annual return of assets in *Added vide Estt. Division Notification No. S.R.O. 1005(1)/98, dated 28-9-1998.

**Subs vide Estt. Division Notification No. S.R.O. 846(1)/85, dated 5-9-1985 for the words Rs. 10,000/- (Ten thousand rupees; [US\$117])⁹. the month of December showing any increase or decrease of property as shown in the declaration under sub-rule or, as the case may be, the last annual return.

13. Disclosure of assets, immovable, movable and liquid.-

A Government servant shall, as and when he is so required by Government by a general or special order, furnish information as to his assets disclosing liquid assets and all other properties, immovable and movable, including shares, certificates, insurance policies, jewelery *[and expenses during any period specified by such order in the form specified therein].

14. Speculation and investment.- (1) No Government servant shall speculate in investments. For the purpose of this sub-rule, the habitual purchase and sale of securities of notoriously fluctuating value shall be deemed to be speculation in investments.

(2) No Government servant shall make, or permit any member of his family to make, any investment likely to embarrass or influence him in the discharge of his official duties.

(3) No Government servant shall make any investment the value of which is likely to be affected by some event of which information is available to him as a Government servant and is not equally available to the general public.

(4) If any question arises whether a security or an investment is of the nature referred to in any of the foregoing sub-rules, the decision of the Government thereon shall be final.

15. Promotion and management of companies, etc.- No Government servant shall, except with the previous sanction of the Government, take part in the promotion, registration or management of any bank or company:

*Added vide Estt. Division Notification No. S.R.O. 225(1)/92, dated 31-3-1992.

Provided that a Government servant may, subject to the provisions of any general or special order of the Government, take part in the promotion, registration or management of a Co-operative Society registered under the Co-operative societies Act, 1912 (II of 1912), or under any similar law.

16. Private trade, employment or work.- (1) No Government servant shall, except with the previous sanction of the Government, engage in any trade or undertake any employment or work, other than his official duties:

Provided that he may, without such sanction, undertake honorary work of a religious, social or charitable nature or occasional work of a literary artistic-character, subject to the conditions that his official duties do not thereby suffer and that the occupation or undertaking does not conflict or is not inconsistent with his position or obligations as a Government servant but he shall not undertake or shall discontinue such work if so directed by the Government. A Government servant who has any doubt about the propriety of undertaking any particular work should refer the matter for the orders of the Government:

Provided further that non-gazetted Government servant may, without such sanction, undertake a small enterprise which absorbs family labour and where he does so shall file details of the enterprise alongwith the declaration of assets.

(2) Notwithstanding any thing contained in sub-rule (1), no Government servant shall associate himself with any private trust, foundation or similar other institution which is not sponsored by the Government.

(3) This rule does not apply to sports activities and membership of recreation clubs.

References:

Government Servants (Conduct) Rules 1964, articles 12, 13, 15, 16

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

Comments:

Available at <http://www.fde.gov.pk/Downloads/ESTABLISHMENT%20CODE.pdf>

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

References:

Interview-BPS 18 grade government servant, Cabinet Division, Dec. 30, 2010 (name withheld on request)

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

Comments:

"5. Gifts.- (1) Save as otherwise provided in this rule, no Government servant shall, except with the previous sanction of the Government, accept, or permit any member of his family to accept, from any person any gift the receipt of which will place him under any form of official obligation to the donor. If, however, due to very exceptional reasons, a gift cannot be refused, the same may, under intimation to the Cabinet Division, be kept for official use in the Department or Organisation in which he is working.

(2) If any question arises whether receipt of a gift places a Government servant under any form of official obligation to the donor, the decision of the Government thereon shall be final.

(3) If any gift is offered by the head or representative of a foreign State, the Government servant concerned should attempt to avoid acceptance of such a gift, if he can do so without giving offence. If, however, he cannot do so, he shall accept the gift and shall report its receipt to the Cabinet Division for orders as to its disposal.

*[(4) Government servants are prohibited from receiving gift of any kind for their person or for members of their families from diplomats, consular and other foreign Government representatives or their employees who are stationed in Pakistan. If, however, due to very exceptional reasons, a gift cannot be refused, it should invariably be deposited in the Toshakhana.

(5) Government servants, except those belonging to BPS 1 to 4, are prohibited from accepting cash awards offered by the visiting foreign dignitaries. In case, however, it becomes impossible to refuse without causing offence to the visiting dignitary, the amount may be accepted and immediately deposited in the Treasury under the proper head of account.”

<http://www.fde.gov.pk/Downloads/ESTABLISHMENT%20CODE.pdf>
(on p 604 of 1,520 of the pdf document; last accessed March 3, 2011)

References:

Government Servants (Conduct) Rules 1964, 5

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

Comments:

The National Accountability Bureau (NAB) and the Federal Investigation Agency (FIA) can request the Auditor General to conduct audits of the asset disclosures of civil servants on suspicion. These organizations can start independent investigations.

Civil Establishment Code (ESTACODE) is at <http://www.fde.gov.pk/Downloads/ESTABLISHMENT%20CODE.pdf>.

NAB ordinance is at www.nab.gov.pk.

References:

Government Servants (Conduct) Rules 1964

National Accountability Bureau Ordinance, 1999

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:

There are no such regulations in most government departments.

References:

Interview-BPS 18 grade government servant, Cabinet Division, Dec. 30, 2010 (name withheld on request)

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:

Such regulations are highly ineffective. This is a common practice and “gifts” and “hospitality” can take many forms. This includes “on-site” visits to foreign countries, discount deals for personal purchase of goods or services in return of granting the status of an official vendor, etc.

References:

Interview-BPS 18 grade government servant, Cabinet Division, Dec. 30, 2010 (name withheld on request)

Rauf Klasra, “Vanished presents: our leaders and our gifts,” Dec. 12, 2010, <http://tribune.com.pk/story/89144/vanished-presents-our-leaders-and-our-gifts/>

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

Comments:

Given the nature of the department, the conflict of interest regulations are highly ineffective. Many government servants own a share in a business, which then acts as a service or goods vendor to the said department. The procurement regulations can be satisfied in a number of ways and still ensure that the contract is given to the preferred parties.

References:

Interview-BPS 18 grade government servant, Cabinet Division, Dec. 30, 2010 (name withheld on request)

“Reforming Pakistan’s Civil Service,” International Crisis Group (ICG) Asia Report N 185, Feb. 16, 2010

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:

Internal and external audits are conducted, but these are mostly related to departmental expenses. The assets of civil servants are hardly audited, and there is a need for enforcing this, especially in cases where the government servants are “living beyond their means.”

References:

Interview-BPS 18 grade government servant, Cabinet Division, Dec. 30, 2010 (name withheld on request)

Interview-Inamullah Khan, Procurement & Capacity Strengthening Manager, Technical Resource Facility, Islamabad, Dec. 29, 2010

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?

25

47a. In law, citizens can access the asset disclosure records of senior civil servants.

Yes | No

Comments:

The disclosures are made to the relevant authorities, and legally, under the right of information (article 19A of the Constitution), the citizens have right to access these records as well. However, the Freedom of Information Act, 2002, does not allow this for now. More importantly, the details of the recently included constitutional right can only be flushed out once such requests are made by the public, journalists or others.

<http://www.mofa.gov.pk/Publications/constitution.pdf>

References:

Constitution of Pakistan, 1973, article 19A

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

Comments:

Disclosures are not made public.

References:

"NGO wants others to declare assets too," Dawn Daily, Sept. 24, 2010

Interview-Inamullah Khan, Procurement & Capacity Strengthening Manager, Technical Resource Facility, Islamabad, Dec. 29, 2010

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:

"NGO wants others to declare assets too," Dawn Daily, Sept. 24, 2010

Interview-Inamullah Khan, Procurement & Capacity Strengthening Manager, Technical Resource Facility, Islamabad, Dec. 29, 2010

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 NGOs. 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 NGOs trying to access this information.

47d. In practice, the asset disclosure records of senior civil servants are of high quality.

References:

"NGO wants others to declare assets too," Dawn Daily, Sept. 24, 2010

Interview-Inamullah Khan, Procurement & Capacity Strengthening Manager, Technical Resource Facility, Islamabad, Dec. 29, 2010

100: The asset disclosure records of senior civil servants are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of senior civil servants contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of senior civil servants are overly general, lack any meaningful detail, and do not provide a clear accounting of the individuals' sources of income, investments, and other financial assets.

4.2. Whistle-blowing Protections

48. Are employees protected from recrimination or other negative consequences when reporting corruption (i.e. whistle-blowing)?

13

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**

Comments:

There are no such specific legal protections. Usually, rules and regulations apply under the Government Servants (Conduct) Rules, 1964, and the Pakistan Penal Code, 1860. In fact some laws such as the Official Secret Act and the Qanoon-e-Shahadat Order (Law of Evidence), 1984, articles 6 and 7, can be read as taking strong measures against some kinds of whistle-blowing.

However, in *Benazir Bhutto v. Federation of Pakistan*, the SC ruled that these articles do not imply that the government officials have absolute power to withhold information, and as a principle "public interest" must be determined by the courts.

References:

Official Secrets Act, 1923

Qanoon-e-Shahadat Order (Law of Evidence) 1984, articles 6 & 7

“State of Transparency and Freedom of Information in Pakistan,” 2006, Report by Center for Peace and Development Initiatives, <http://www.cpd-pakistan.org/images/stories/publications/sofojp.pdf> (access date: Dec. 12, 2010)

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:

According to a recent survey conducted in some of the most corrupt departments of Pakistan (Bashir et al, 2010), 92 percent of those observing corruption did not report it, and 33 percent of these did not do so because of fear of retaliation (p. 7).

Out of the 7 percent who reported corruption, a majority were male, under 30 years of age, and had a postgraduate degree. 84 percent of those reporting corruption also reported suffering some form of retaliation (p. 8). T

he breakdown of these retaliation is:

Verbal harassment, 90 percent;

charged with committing an unrelated offense, 66 percent;

coworkers stop associating with the whistle-blower, 60 percent;

poor performance appraisal, 54 percent;

professional reputation harmed, 45 percent;

denial of promotion, 25 percent;

suspension from job 22 percent;

fired from job 4% (p. 9).

The retaliation also depends on the nature and scope of the case. Consider the case of Ms. Ashfaq Sheikh. While this is not specifically a case of whistle-blowing, and Ms. Sheikh was performing her duty of audit and account checks, one can understand why the culture of protection of whistle-blowers is non-existent.

While investigating a case of misappropriation and embezzlement in an internal audit report, Ms. Sheikh of audit and accounts group, not paid her salary for last eight months. She was DG, MIS, and was transferred when her seniors became aware of her intentions to go by the book. She resisted the transfer as illegal, but thrown out of the office of CGA. The CGA maintains that Ms. Ashfaq had been transferred and since she wasn't under any position, so she could not receive any salary.

Ms. Ashfaq has taken the matter to court and argues that unless a competent authority makes a decision about her transfer, her salary cannot be blocked. Ms. Ashfaq took the case to Islamabad High Court when the Auditor General of Pakistan disposed off her plea of cancellation of an illegal transfer without referring it to the PM. The High Court ruled that the case should have been referred to the PM and that the AGP did not have this authority. The PM secretariat had asked for the release of her salary.

References:

Bashir, et al. 2010. "Whistle-Blowing in Public Sector Organizations: Evidence from Pakistan," The American Review of Public Administration, XX(X) 1-12, <http://arp.sagepub.com/content/early/2010/06/26/0275074010376818.abstract>

Khawar Ghumman, "Bureaucrat in trouble for 'refusing to toe' seniors' line," Dawn Daily, June 2, 2009, <http://news.dawn.com/wps/wcm/connect/dawn-content-library/dawn/the-newspaper/national/bureaucrat-in-trouble-for-refusing-to-toe-seniors-line-269> ; Dec 25, 2010

Khawar Ghumman, "Auditor General's powers questioned," Dawn Daily, July 18, 2009, <http://news.dawn.com/wps/wcm/connect/dawn-content-library/dawn/the-newspaper/national/auditor-generals-powers-questioned-879>

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

Comments:

The law has restrictions on disclosure of specific kind of information for government servants. Civilians and private sector employees can report corruption, grant, abuse of power etc without any necessary, legally sanctioned, negative consequences.

Under the National Accountability Ordinance, 31E the Chairman and the courts can take measure for the safety, security, and protection of witnesses and their families. This provides means for protection from recrimination or other negative consequences. However, no such law is specifically mentioned.

References:

"National Anti Corruption Strategy (NACS)", Islamabad, 2002, p. 33, <http://www.nab.gov.pk/Downloads/Doc/NACS.pdf>

Raza Ahmed, Policy Adviser and Researcher, ADB consultant, Lahore, phone interview, Jan. 1, 2010

"CRCP demands whistleblowers protection law for curbing corruption," Consumer Rights Commission of Pakistan, webpage, Dec. 8, 2007, http://www.crcp.org.pk/pr_08_dec_2007.htm

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:

The media perform this role. It exposes many cases of corruption. For examples see the media reports listed. There are no formal protection mechanisms for private sector whistle-blowers. This will depend on where the report is filed. As Bashir et al. point out, there are several deterrents to reporting observed corruption. A lack of institutional mechanisms and fear of retaliation are among the top reasons.

References:

Bashir et al. 2010. "Whistle-Blowing in Public Sector Organizations: Evidence from Pakistan," The American Review of Public Administration, XX(X) 1-12, <http://arp.sagepub.com/content/early/2010/06/26/0275074010376818.abstract>

"CRCP demands whistleblowers protection law for curbing corruption," Consumer Rights Commission of Pakistan, webpage, Dec 08, 2007, http://www.crcp.org.pk/pr_08_dec_2007.htm

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.

49. In law, is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

100

49a. 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:

There is no internal mechanism, but the National Accountability Bureau (NAB) and the office of Wafaqi Mohtasib combine to effectively provide the mechanism for reporting corruption. See comments regarding NAB and Mohtasib in relevant sections.

References:

National Accountability Bureau, www.nab.gov.pk

Wafaqi Mohtasib, www.mohtasib.gov.pk

“National Anti Corruption Strategy (NACS)”, Islamabad, 2002, p. 33, <http://www.nab.gov.pk/Downloads/Doc/NACS.pdf>

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.

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

Comments:

There is no internal mechanism, but the National Accountability Bureau (NAB) and the office of Wafaqi Mohtasib combine to effectively provide the mechanism for reporting corruption. See comments regarding NAB and Mohtasib in relevant sections.

References:

Bhurgri et al. 2010, “Annual Report 2009,” Wafaqi Mohtasib (Ombudsman) of Pakistan, Islamabad, Pakistan, March 2010, pp 9, 10 and 18

Interview-Waseem Hashmi, former employee of National Accountability Bureau, CRCP, G-6/1, Islamabad, Oct.18, 2010

Moriani, Farrukh. 2007, “Improving Service Delivery Through Improved Advocacy and Outreach: A communication strategy for the office of the federal ombudsman of Pakistan,” working paper, Wafaqi Mohtasib (Ombudsman) of Pakistan.

ICG, “Reforming Pakistan’s Criminal Justice System,” International Crisis Group Asia Report No 196, 6, December 2010 <http://www.crisisgroup.org/en/regions/asia/south-asia/pakistan/196-reforming-pakistans-criminal-justice-system.aspx>

“NAB Chairman Naveed Ahsan resigns”, Dawn, Feb 24, 2010 <http://news.dawn.com/wps/wcm/connect/dawn-content-library/dawn/news/pakistan/14-nab-chairman-naveed-ahsan-resigns-zj-04>

Syed Irfan Raza, “‘Mini-revolt’ brewing in NAB”, Dawn daily, Jul 08 2010, <http://news.dawn.com/wps/wcm/connect/dawn-content-library/dawn/the-newspaper/front-page/minirevolt-brewing-in-nab-870>

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

Comments:

There is no internal mechanism, but the National Accountability Bureau (NAB) and the office of Wafaqi Mohtasib combine to effectively provide the mechanism for reporting corruption. See comments regarding NAB and Mohtasib in relevant sections.

References:

Bhurgri et al. 2010. "Annual Report 2009". Wafaqi Mohtasib (Ombudsman) of Pakistan, Islamabad, Pakistan, March 2010

Interview-Waseem Hashmi, former employee of National Accountability Bureau, CRCP, G-6/1, Islamabad, Oct.18, 2010

Syed Irfan Raza, "Rs700m [US\$8,215,962] allocated for NAB," June 8, 2010, Dawn, <http://news.dawn.com/wps/wcm/connect/dawn-content-library/dawn/the-newspaper/national/rs700m-allocated-for-nab-860>

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

Comments:

There is no internal mechanism, but the National Accountability Bureau (NAB) and the office of Wafaqi Mohtasib combine to effectively provide the mechanism for reporting corruption. See comments regarding NAB and Mohtasib in relevant sections.

References:

Bhurgri et al. "Annual Report 2009," Wafaqi Mohtasib (Ombudsman) of Pakistan, Islamabad, Pakistan, March 2010

Khan, Shafiq A., Regional Director, Ombudsman Secretariate, Mirpurkhas, Sindh, "Amend Wafaqi Mohtasib's institution," Dawn newspaper, Letter to the Editor, Oct. 4, 2010

Interview-Waseem Hashmi, former employee of National Accountability Bureau, CRCP, G-6/1, Islamabad, Oct.18, 2010

"NAB Update Jan-March 2010", NAB website; access date Dec. 16, 2010, <http://www.nab.gov.pk/Downloads/NAB%20Update/NABUpdateMar10.pdf>

"Annual report 2007," National Accountability Bureau, Pakistan, <http://www.nab.gov.pk/Downloads/Report.rar> , access date Dec. 16, 2010

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

Comments:

There is no internal mechanism, but the National Accountability Bureau (NAB) and the office of Wafaqi Mohtasib combine to effectively provide the mechanism for reporting corruption. See comments regarding NAB and Mohtasib in relevant sections.

References:

Bhurgri et al. 2010. "Annual Report 2009," Wafaqi Mohtasib (Ombudsman) of Pakistan, Islamabad, Pakistan, March 2010

Interview-Waseem Hashmi, former employee of National Accountability Bureau, CRCP, G-6/1, Islamabad, Oct.18, 2010

"Annual report 2007," National Accountability Bureau, Pakistan, <http://www.nab.gov.pk/Downloads/Report.rar>, access date Dec. 16, 2010

"Weak Mechanism of Accountability of Holders of Public Office is the greatest threat to Democracy," August 2009, PILDAT Legislative Brief, <http://www.pildat.org/eventsdel.asp?detid=328>

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.

4.3. Government Procurement: Transparency, Fairness, and Conflicts of Interest Safeguards

51. Is the public procurement process effective?

78

51a. In law, there are regulations addressing conflicts of interest for public procurement officials.

Yes

No

Comments:

Grievance redress and arbitration rules are specified in numbers 48 and 49 of the Public Procurement Rules 2004, available at the website of Public Procurement Regulatory Authority (PPRA), <http://www.ppra.org.pk/rules.asp>, accessed Dec. 10, 2010.

References:

Public Procurement Rules, 2004

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**Comments:**

The law does not require mandatory trainings of procurement officials, but the Public Procurement Regulatory Authority (PPRA) set up the National Institute of Procurement (NIP) in July 2009.

The NIP aims “[to] provide short/medium term trainings, courses, seminars/workshops and offer[s] professional certification in public procurement and related areas.”

The PPRA has held 135 sessions of two-day primary trainings on the implementation of Public Procurement Rules, 2004. In total, over 3,800 procurement officers have participated in these trainings (PPRA correspondence and website).

The trainings are held on a regular basis, but the attendance is based on nominations by various government department and agencies.

These trainings are insufficient as these are only two-day trainings, which merely act as an orientation session, rather than sessions that train procurement officers in practical skills. There is a need for institutional and educational support for such training, as such measures will go a long way in preventing corruption (Inamullah Khan).

References:

Asif Khan, Deputy Director-I, Public Procurement Regulatory Authority, email correspondence, Dec. 14 and Dec. 30, 2010

Interview-Inamullah Khan, Procurement & Capacity Strengthening Manager, Technical Resource Facility, Islamabad, Dec. 29, 2010

“National Institute of Procurement,” webpage on the Public Procurement Regulatory Authority’s website, <http://www.ppra.org.pk/nip.asp>, last accessed Dec. 10, 2010

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:

Departments generally lack a clear “code of ethics” for procurement officers. Lack of professional training also hampers conflict of interest regulations. This, according to the respondent, is more of a problem of capacity and training, and an understanding that procurement procedures and rules must be clearly defined.

The auditors and regulators themselves are part of the problem. They are also not trained to understand complex procurement mechanisms and evaluation criteria. The result is that the focus is on quantity, and usually the minimum cost-bid is selected, even if other more costly bids are better value for money and bring greater quality.

References:

Interview-Inamullah Khan, Procurement & Capacity Strengthening Manager, Technical Resource Facility, Islamabad, Dec. 29, 2010

“Pakistan,” country report in ‘Curbing Corruption in Public Procurement in Asia and the Pacific,’ ADB/OECD, 2006, pp. 86-89

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

Comments:

All government servants submit yearly asset reports and various investigating agencies, such as the Federal Investigation Agency (FIA) and the National Accountability Bureau (NAB) monitor and investigate any irregularities. However, there are no separate mechanism to monitor assets, income and income habits of public procurement officials (Email correspondence with Asif Khan, Deputy Director-I PPRA, and Inamullah Khan of TRF, see op. citations).

<http://www.fde.gov.pk/Downloads/ESTABLISHMENT%20CODE.pdf>

References:

Government Servants (Conduct) Rules, 1964 articles 12,13, 15, and 16

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

Comments:

Rule 20 of the Public Procurement Rules, 2004, stipulates that open competitive bidding must be the principle method of procurement of goods, services and works.

Rule 42 allows alternative methods of bidding including, which can go up to an absolute upper limit of PRs 500,000 PKR (US\$5,758) for direct quotations. Exceptions are also made when there is only one supplier, or for getting spare parts from an old supplier.

References:

Public Procurement Rules 2004, rules 20 and 42

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:

Rule 42 lists the formal requirements that limit the extent of sole sourcing. This includes emergency, aesthetic/artistic considerations, or when an old contractor is used to get spare parts or to avoid cost of replacement of older equipments, etc.

References:

Public Procurement Rules, 2004, rule 42

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:

Grievance redress and arbitration rules are specified in rules 48 and 49 of the Public Procurement Rules 2004, available at the website of Public Procurement Regulatory Authority (PPRA).

A written complaint must be lodged within 15 days of the announcement of the decision, and decisions are to be made within 15 days by a committee.

<http://www.ppra.org.pk/rules.asp>, accessed Dec. 10, 2010

References:

Public Procurement Rules, 2004, rule 48, 49

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:

First a written complaint can be lodged with a committee established by the Public Procurement Regulatory Authority (PPRA).

The complaint must be lodged within 15 days of the announcement of the decision, and decisions are to be made within 15 days by a committee. If bidders remain unsatisfied, they can appeal in a relevant court of jurisdiction.

#48(5): "Any bidder not satisfied with the decision of the committee of the procuring agency may lodge an appeal in the relevant court of jurisdiction."

<http://www.ppra.org.pk/rules.asp>, accessed Dec. 10, 2010

References:

Public Procurement Rules 2004, rule 48 (5)

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

Comments:

Companies can be blacklisted and thereof prevented from taking part in any bids.

Rule 18. Disqualification of suppliers and contractors.-

The procuring agency shall disqualify a supplier or contractor if it finds, at any time, that the information submitted by him concerning his qualification as supplier or contractor was false and materially inaccurate or incomplete.

Rule 19. Blacklisting of suppliers and contractors.-

The procuring agencies shall specify a mechanism and manner to permanently or temporarily bar, from participating in their respective procurement proceedings, suppliers and contractors who either consistently fail to provide satisfactory performances or are found to be indulging in corrupt or fraudulent practices. Such barring action shall be duly publicized and communicated to the Authority.

References:

Public Procurement Rules 2004, rules 18 & 19

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.

Comments:

Rule 19 of the Public Procurement Rules, 2004, provides the mechanism for blacklisting and prohibiting firms and companies. The Public Procurement Regulatory Authority (PPRA) provides this information on its website (PPRA correspondence).

There is a lot of flexibility within each department regarding who can be blacklisted, and for what period of time. Given this flexibility, putting emphasis on enforcement of prohibition from future bids is somewhat of a limited view on cross-departmental variations. It is possible that in some cases even the blacklisted firms are allowed to bid, in direct contradiction to the internal rules of the concerned department (Inamullah Khan).

Another serious concern is the abuse of these powers to eliminate unwanted bidders. There is no review mechanism, although recourse to the judiciary is possible (ADB/OECD report).

References:

Asif Khan, Deputy Director-I, Public Procurement Regulatory Authority, email correspondence, Dec 14 and Dec. 30, 2010

Interview-Inamullah Khan, Procurement & Capacity Strengthening Manager, Technical Resource Facility, Islamabad, Dec. 29, 2010

"Pakistan," country report on Curbing Corruption in Public Procurement in Asia and the Pacific, ADB/OECD, 2006, pp. 86-89

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?

79

52a. In law, citizens can access public procurement regulations.

Yes | No

Comments:

Rules and regulations are available at the Public Procurement Regulatory Authority (PPRA) website.

Pakistan Constitution, <http://www.mofa.gov.pk/Publications/constitution.pdf>

Article 19A states that access to information is a fundamental right.

References:

Constitution of Pakistan, 1973, article 19A, <http://www.ppra.org.pk/>, last accessed on Dec. 10, 2010

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:

Rule 35. Announcement of evaluation reports:

Procuring agencies shall announce the results of bid evaluations in the form of a report giving justification for acceptance or rejection of bids at least ten days prior to the award of procurement contract.

Rule 47 ensures public access and transparency: "As soon as a contract has been awarded the procuring agency shall make all documents related to the evaluation of the bid and award of contract public..."

References:

Public Procurement Rules, 2004, rule 35, 47

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

Comments:

Procurement regulations are available online at the Public Procurement Regulation Authority website. However, there is no availability of records of the procurement mechanism in regard to the armed forces.

References:

Public Procurement Rules, 2004, <http://www.ppra.org.pk/doc/rules.pdf>

Public Procurement Regulation Authority Ordinance, 2002,
<http://www.ppra.org.pk/doc/ordinance2002.pdf>

Public Procurement Regulations, 2008, <http://www.ppra.org.pk/doc/regulation.pdf>

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

Comments:

All publicly accessible information is available online.

References:

Public Procurement Rules, 2004, <http://www.ppra.org.pk/doc/rules.pdf>

Public Procurement Regulation Authority Ordinance, 2002, <http://www.ppra.org.pk/doc/ordinance2002.pdf>

Public Procurement Regulations, 2008, <http://www.ppra.org.pk/doc/regulation.pdf>

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 NGOs. 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 NGOs trying to access this information.

52e. In practice, major public procurements are effectively advertised.

100 | 75 | 50 | 25 | 0

Comments:

Tender notices are issued in major newspapers and are also available on the Public Procurement Regulation Authority and other

government websites. These are not available for defense and military procurements.

References:

State Bank of Pakistan, Tenders, online website, <http://www.sbp.org.pk/tenders/index2.asp>, access date Dec. 10, 2010

“Online Tenders,” Public Procurement Regulating Authority website, http://www.ppra.org.pk/dad_tenders.asp, Dec. 10, 2010

“Transparency International to check on Army procurements,” April 14, 2010, Pak Tribune, <http://www.paktribune.com/news/index.shtml?226467>

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.

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

Comments:

Results of some bids are available on the Public Procurement Regulatory Authority (PPRA) website, but the documents provided do not cover all procurement projects. This information can only be obtained by contacting the relevant departments. Further, the more sensitive and high profile cases are very difficult to obtain.

Getting information on large procurements by the military, navy and air force is nearly impossible. Unlike civilian departments, details related to armed forces are not made available under the Freedom of Information Act, 2002.

References:

“Evaluation Results,” PPRA website, <http://www.ppra.org.pk/elv.asp>, last accessed on Dec. 10, 2010

“Procurement Contract,” PPRA website, <http://www.ppra.org.pk/pcontract.asp>

Interview-Inamullah Khan, Procurement & Capacity Strengthening Manager, Technical Resource Facility, Islamabad, Dec. 29, 2010

“Transparency International to check on Army procurements,” April 14, 2010, Pak Tribune, <http://www.paktribune.com/news/index.shtml?226467>

“Army Procurement”, Dawn Editorial, 15 April, 2010

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.

4.4. Privatization of Public Administrative Functions: Transparency, Fairness, and Conflicts of Interest Safeguards

53. Is the privatization process effective?

75

53a. In law, all businesses are eligible to compete for privatized state assets.

Yes

No

Comments:

No business groups are excluded from the process legally. However, article 25 lists various modes of privatization, though not all of these allow competitive and equal opportunity to all businesses. At least, all businesses are treated equally by law, that is, equally fairly or unfairly.

<http://www.privatisation.gov.pk/Ordinance/ordinance.htm>

[http://www.privatisation.gov.pk/Rules/11\(1\)L-P&C-2001-Modes.htm](http://www.privatisation.gov.pk/Rules/11(1)L-P&C-2001-Modes.htm)

References:

Privatization Commission Ordinance, 2000

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

Comments:

High courts have jurisdiction in matters of dispute over privatization transactions.

PART VI – Jurisdiction

28. Jurisdiction of High Courts;

32. Offences;

33. Appeal.

<http://www.privatisation.gov.pk/Ordinance/ordinance.htm>

References:

Privatization Commission Ordinance, 2000, Part IV, Jurisdiction, articles 28, 32 and 33

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:

Although conflict-of-interest regulations exist, they are inconsistently applied. There have been several cases where privatizations of heavy industry and other public sector organizations have raised serious questions about the officials involved. The Privatization Commission and the high courts have been unable to deal with these issues. Currently, the Supreme Court is looking at several high profile cases, after taking suo moto action.

References:

Interview-Fazal Ilahi, Director Administration, Privatization Commission of Pakistan, Dec. 22, 2010

Usman Manzoor, "Pak Steel case again heading for SC," Dec. 22, 2010, The News Daily.

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?

95

54a. In law, citizens can access privatization regulations.

Yes | No

Comments:

The rules and regulations are available, in law and in practice, via the website of the Privatisation Commission of Pakistan.

“Rules and Regulations,” website of Privatisation Commission, <http://www.privatisation.gov.pk/Rules/Rules.htm> , access date: Dec. 12, 2010

References:

Privatization Commission Ordinance, 2000, promulgated

Privatisation Modes and Procedures Rules, 2001

The Privatisation Commission (Hiring of Financial Advisers) Regulations, 2007
Valuation of Property Rules 2001

The Privatisation Commission (Valuation of Property) Rules, 2007

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

Comments:

Government officials maintain that the privatizations are effectively advertised and the time period is sufficient, although it depends on the nature of transaction.

References:

Interview-Fazal Ilahi, Director Administration, Privatization Commission of Pakistan, Dec. 22, 2010

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

Comments:

26. Publication of privatisation transaction.-

(1) The Commission shall, within thirty days of the completion of each privatisation transaction, publish by notice in the official Gazette:

(a) summary description of the transaction including name and address of the contracting party;

(b) the consultants advising the Commission on the transaction; and

(c) any other matter relating to the transaction considered appropriate by the Commission.

<http://www.privatisation.gov.pk/Ordinance/ordinance.htm>

References:

Privatisation Commission Ordinance, 2000, 26

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.

Comments:

The rules and regulations are available, in law and in practice, via the website of the Privatisation Commission of Pakistan.

“Rules and Regulations”, website of Privatization Commission, <http://www.privatisation.gov.pk/Rules/Rules.htm>, access date Dec. 12, 2010

References:

“Privatisation Commission Ordinance, 2000, promulgated

Privatisation Modes and Procedures Rules, 2001

The Privatisation Commission (Hiring of Financial Advisers) Regulations, 2007

Valuation of Property Rules, 2001

The Privatisation Commission (Valuation of Property) Rules, 2007

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.

Comments:

The rules and regulations are available, in law and in practice, via the website of the Privatisation Commission of Pakistan.

“Rules and Regulations,” website of Privatization Commission, <http://www.privatisation.gov.pk/Rules/Rules.htm>, access date Dec. 12, 2010

References:

Privatisation Commission Ordinance, 2000, promulgated

Privatisation Modes and Procedures Rules, 2001

The Privatisation Commission (Hiring of Financial Advisers) Regulations, 2007

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 NGOs. 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 NGOs trying to access this information.

Category 5. Government Oversight and Controls

5.1. ⁷⁵National Ombudsman

55. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

100

55a. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

Yes

No

Comments:

The office was first described in the Constitution of 1973 in the Fourth Schedule of the Federal Legislative list.

References:

Wafaqi Mohtasib under the Constitution of Pakistan 1973, and the Establishment of the Office of the Wafaqi Mohtasib (Ombudsman) Order, 1983, <http://www.mohtasib.gov.pk/>

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.

56. Is the national ombudsman effective?

68

56a. In law, the ombudsman is protected from political interference.

Yes

No

Comments:

3. Appointment of Mohtasib:

(1) There shall be a Wafaqi Mohtasib (Ombudsman), who shall be appointed by the President;

(2) Before entering upon office, the Mohtasib shall take an oath before the President in the form set out in the First Schedule;

(3) The Mohtasib shall, in all matters, perform his functions and exercise his powers fairly, honestly, diligently and independently of the executive; and all executive authorities throughout Pakistan shall act in aid of the Mohtasib;

4. Tenure of the Mohtasib:

(1) The Mohtasib shall hold office for a period of four years and shall not be eligible for any extension of tenure or reappointment as Mohtasib under any circumstances.

(2) The Mohtasib may resign his office by writing under his hand addressed to the President.

6. Terms and conditions of service and remuneration of Mohtasib:

(1) The Mohtasib shall be entitled to such salary, allowances and privileges and other terms and conditions of service as the President may determine and these terms shall not be varied during the term of office of a Mohtasib.

(2) The Mohtasib may be removed from office by the President on the ground of misconduct or of being incapable of properly performing the duties of his office by reasons of physical or mental incapacity:

Provided that the Mohtasib may, if he sees fit and appropriate to refute any charges, request an open public evidentiary hearing before the Supreme Judicial Council and, if such a hearing is not held within thirty days of receipt of such request or not concluded within ninety days of its receipt, the Mohtasib will be absolved of any and all stigma whatever. In such circumstances, the Mohtasib may choose to leave his office and shall be entitled to receive full remuneration and benefits for the rest of his term.

(3) If the Mohtasib makes a request under the proviso to clause (2), he shall not perform his functions under this Order until the hearing before the Supreme Judicial Council has concluded.

(4) A Mohtasib removed from office on the ground of misconduct shall not be eligible to hold any office of profit in the service of Pakistan or for election as member of Parliament or a Provincial Assembly or any local body.

References:

Establishment of the Office of the Wafaqi Mohtasib (Ombudsman) Order 1983, articles 3 and 6

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:

Appointments to the agency are sometimes made on political and partisan considerations. The secretary Wafaqi Mohtasib was among a group of civil servants whose promotion was annulled by the Supreme Court of Pakistan. While this decision was not specific to the office of the Mohtasib (ombudsman), this reflects how the appointments and promotions in the institution are politically influenced.

The Law and Justice Commission of Pakistan has emphasized the need for increasing the powers of the Mohtasib, since the office is constrained in the carrying out of its orders and decisions.

References:

Ghumman, Khawar. "Govt in defiance mode!" Dawn Newspaper, April 29, 2010, <http://www.dawn.com/wps/wcm/connect/dawn-content-library/dawn/the-newspaper/front-page/govt-in-defiance-mode-940>

Iqbal, Nasir. "'SC verdict rocks PM's bureaucracy," Dawn Newspaper, April 29, 2010, <http://www.dawn.com/wps/wcm/connect/dawn-content-library/dawn/news/pakistan/04-sc-strikes-down-pm-order-fed-secs-02>

"Enhancing the powers of Wafaqi Mohtasib," Report by the Law and Justice Commission of Pakistan

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.

Comments:

Appointments to the post are made by the President without any express qualification criteria. While the first seven Wafaqi Mohtasib have been retired justices, the last two appointments were made from the civil bureaucracy.

Under article 6 of the Establishment of the Office of the Wafaqi Mohtasib (Ombudsman) Order, 1983, the President can remove the Mohtasib on grounds of misconduct or physical/mental incapacity to perform his duties. The Mohtasib can refute and challenge this removal in an “open public evidentiary hearing before the Supreme Judicial Council.” No such cases have taken place since the office began functioning.

Out of the 9 Mohtasib that have served so far, 4 were acting heads for one-to-two year periods.

References:

Establishment of the Office of the Wafaqi Mohtasib (Ombudsman) Order, 1983

“Profiles”, website of Wafaqi Mohtasib (Ombudsman) of Pakistan, accessed Dec. 14, 2010, <http://www.mohtasib.gov.pk/site/profiles/>

“Ex Wafaqi Mohtasibs of Pakistan,” <http://www.123pakistani.com/ex-wm.html>

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.

Comments:

The Annual Report of 2009 points out that in previous years, because service rules were not established, the staff was hired on a contractual basis and promotions were delayed. This prevents the creation of a specialized professional cadre.

The report also mentions that the investigating officers had more workload than they could handle. Between 2008 and 2009, “the number of investigation officers had been reduced while the workload of each investigating officer had gone up considerably owing not only to the raised volume...but also because of the withdrawal of 5 judicial officers.” (pp.18-19)

References:

Bhurgrri et al. 2010. “Annual Report 2009.” Wafaqi Mohtasib (Ombudsman) of Pakistan, Islamabad, Pakistan, March 2010, pp. 9, 10 and 18

Interview – Waseem Hashmi, former employee of National Accountability Bureau, CRCP, G-6/1, Islamabad, Oct. 18. 2010

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:

While the establishment of Wafaqi Mohtasib took place in 1983, the department is still in the process of getting its house in order, and this affects the appointments to the agency.

The service rules for the staff and the officers were not drafted and approved until June 2009. These include the Office of Wafaqi Mohtasib (Ombudsman) Officers' Service Rules, 2009; and the Office of Wafaqi Mohtasib (Ombudsman), Ministerial Staff Rules, 2009. These rules will now allow for the creation of a specialized cadre of investigating officers, instead of contractual employees. Decisions on "long delayed promotions" were made in October 2009 after the creation of the said rules. Unlike previous years, this year, the appointments were made "in an open, competitive and transparent manner" (Bhurgri et al., 2010, pp. 9-10).

References:

Bhurgri et al., "Annual Report 2009," Wafaqi Mohtasib (Ombudsman) of Pakistan, Islamabad, Pakistan, March 2010

Ghumman, Khawar. "Govt in defiance mode!" Dawn Newspaper, April 29, 2010, <http://www.dawn.com/wps/wcm/connect/dawn-content-library/dawn/the-newspaper/front-page/govt-in-defiance-mode-940>

Iqbal, Nasir, "SC verdict rocks PM's bureaucracy," Dawn Newspaper, April 29, 2010, <http://www.dawn.com/wps/wcm/connect/dawn-content-library/dawn/news/pakistan/04-sc-strikes-down-pm-order-fed-secs-02>

"Enhancing the powers of Wafaqi Mohtasib," Report by the Law and Justice Commission of Pakistan

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

Comments:

Funding does not seem to be an issue. This is true not only for current expenditures, but also in regard to an office being built for a new secretariat that was started in April 2008, with an estimated cost of PRs. 475 million (US\$5,574,463).

References:

Bhurgri et al. 2010. "Annual Report 2009," Wafaqi Mohtasib (Ombudsman) of Pakistan, Islamabad, Pakistan, March 2010

Interview-Waseem Hashmi, former employee of National Accountability Bureau, CRCP, G-6/1, Islamabad, Oct.18, 2010

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

References:

Bhurgri et al., "Annual Report 2009," Wafaqi Mohtasib (Ombudsman) of Pakistan, Islamabad, Pakistan, March 2010

"Annual Reports," website of the Wafaqi Mohtasib (Ombudsman) of Pakistan, <http://www.mohtasib.gov.pk/site/knowledge-products/annual-reports.php>

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:

The agency cannot investigate defense and service matters. In 2009, there was a significant jump in complaints received by the office of the Federal Ombudsman, from 23,332 complaints in 2008 to 29,700 complaints in 2009 or a 37 percent increase (Annual report 2009, Bhurgri et al, p. 18).

In 2009 out of all the closed cases, only 4 percent, or 798, were disputed in front of the President (under Article 32 of the 1983 Act). Out of these, 460 of 597 decisions went in favor of the Wafaqi Mohtasib (Annual report, Bhurgri et al, p. 23).

References:

Bhurgri et al., "Annual Report 2009, Wafaqi Mohtasib (Ombudsman) of Pakistan, Islamabad, Pakistan, March 2010

Interview-Waseem Hashmi, former employee of National Accountability Bureau, CRCP, G-6/1, Islamabad, Oct.18, 2010

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

Comments:

The office of the Wafaqi Mohtasib does not have the powers to impose penalties on offenders. It only forwards its recommendations and suggestions to the concerned departments.

References:

Bhurgri et al., "Annual Report 2009," Wafaqi Mohtasib (Ombudsman) of Pakistan, Islamabad, Pakistan, March 2010

Interview-Waseem Hashmi, former employee of National Accountability Bureau, CRCP, G-6/1, Islamabad, Oct.18, 2010

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

Comments:

This depends on the findings, the departments and agencies involved, and the scope of the issue. Some recommendations require serious policy reforms and require a long-term approach.

Compliance has been an issue. A 2007 review showed that “in a substantially large number of implementable findings, the agencies concerned had neither implemented the findings nor had represented against them to the President” (annual report 2009, Bhurgri et al., p. 48).

A small number of complaints were brought back to the Ombudsman after inaction, due to the cost and limited accessibility for the people. This prompted the office of the Ombudsman to open an “Implementation Wing.” This improved the situation and out of the “1307 show cause notices issued in the year 2009, implementation is over 85% of the cases reported.” The percentage of implementation varies by agencies. Some of the figures are (in terms of percentage implementation): Water and Power Development Authority (WAPDA), 89 percent, Sui Gas 82 percent, PTCL, 44 percent, Earthquake Reconstruction and Rehabilitation Authority (ERRA), 39 percent, etc. (p. 51).

References:

Bhurgri et al., “Annual Report 2009,” Wafaqi Mohtasib (Ombudsman) of Pakistan, Islamabad, Pakistan, March 2010

Interview-Waseem Hashmi, former employee of National Accountability Bureau, CRCP, G-6/1, Islamabad, Oct.18, 2010

Moriani, Farrukh, “Improving Service Delivery Through Improved Advocacy and Outreach: A communication strategy for the office of the federal ombudsman of Pakistan,” working paper, Wafaqi Mohtasib (Ombudsman) of Pakistan, 2007.

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

Comments:

In 2009, the time for disposal of complaints was: within three months (48 percent), within 6 months (35 percent), within 1 year (14 percent), and more than 1 year (3 percent). These figures show a considerable and commendable improvement from previous years, though there is ample room for improvement.

However, there is another mechanism where cases can be closed with or without providing relief to the grieved party. The “closed with relief” category implies resolution of a dispute through conciliation, where the Ombudsman “aims at narrowing the differences in the perceptions of the parties of the dispute” (Bhurgri, p. 22). This takes less time and 52 percent of the cases resolved were resolved through conciliation (Annual report 2009, Bhurgri et al., p. 21).

(The rating of 25 is selected, based on the given criteria; however, the time periods suggested in the response categories seem unrealistic.)

There is a serious problem of accessibility for the common citizen, and this certainly creates inevitable delays. “If a poor resident of Chachro or Sinjhoro receives an inflated or incorrect bill from the Water and Power Development Authority (WAPDA), PTCL or Sui Gas, he has to send a complaint against these three agencies to the Wafaqi Mohtasib only in Karachi because these agencies fall under the jurisdiction of the Wafaqi Mohtasib-e-Ala and its nearest offices are in Karachi and Sukkur.

“The aggrieved consumer cannot go to the local Sindh Mohtasib’s Office in Mithi or Larkana’s Sindh Mohtasib Office due to the restriction of Wafaqi Mohtasib’s jurisdiction.”

References:

Bhurgri et al., “Annual Report 2009,” Wafaqi Mohtasib (Ombudsman) of Pakistan, Islamabad, Pakistan, March 2010

Khan, Shafiq A., Regional Director, Ombudsman Secretariat, Mirpurkhas, Sindh, “Amend Wafaqi Mohtasib’s institution,” Dawn Newspaper, Letter to the Editor, Oct. 4, 2010

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?

100

57a. In law, citizens can access reports of the ombudsman(s).

Yes | No

Comments:

Constitution, Article 19A guarantees right to information. The Establishment of the Office of the Wafaqi Mohtasib (EOWM) 1983, has provisions for publishing annual reports, under article 28.

EOWM, Article 28. Annual and other reports:

(1) Within three months of conclusion of the calendar year to which the report pertains, the Mohtasib shall submit an Annual Report to the President.

(2) The Mohtasib may, from time to time, lay before the President such other reports relating to his functions as he may think proper or as may be desired by the President.

(3) Simultaneously, such reports shall be released by the Mohtasib for publication and copies thereof shall be provided to the public at reasonable cost.

(4) The Mohtasib may also, from time to time, make public any of his studies, research, conclusions, recommendations, ideas or suggestions in respect of any matters being dealt with by the Office.

(5) The report and other documents mentioned in this Article shall be placed before the Federal Council or the National Assembly, as the case may be.

Pakistan Constitution, <http://www.mofa.gov.pk/Publications/constitution.pdf>

EOWM 1983, <http://www.mohtasib.gov.pk/site/publications/presidential-order-1983.pdf>

References:

Constitution of Pakistan, article 19A

Establishment of the Office of the Wafaqi Mohtasib (Ombudsman) Order, 1983, article 28

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

References:

Interview-Waseem Hashmi, former employee of National Accountability Bureau, CRCP, G-6/1, Islamabad, Oct.18, 2010

“Annual Reports,” website of the Wafaqi Mohtasib (Ombudsman) of Pakistan, <http://www.mohtasib.gov.pk/site/knowledge-products/annual-reports.php>

Moriani, Farrukh, "Improving Service Delivery Through Improved Advocacy and Outreach: A communication strategy for the office of the federal ombudsman of Pakistan," working paper, Wafaqi Mohtasib (Ombudsman) of Pakistan, 2007

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:

Interview-Waseem Hashmi, former employee of National Accountability Bureau, CRCP, G-6/1, Islamabad, Oct.18, 2010

"Annual Reports," website of the Wafaqi Mohtasib (Ombudsman) of Pakistan, <http://www.mohtasib.gov.pk/site/knowledge-products/annual-reports.php>

Moriani, Farrukh, "Improving Service Delivery Through Improved Advocacy and Outreach: A communication strategy for the office of the federal ombudsman of Pakistan," working paper, Wafaqi Mohtasib (Ombudsman) of Pakistan, 2007

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 NGOs. 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 NGOs trying to access this information.

5.2. Supreme Audit Institution

58. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

100

58a. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

Yes

No

Comments:

Pakistan Constitution, <http://www.mofa.gov.pk/Publications/constitution.pdf>

References:

The Auditor-General of Pakistan under the Constitution of Pakistan, 1973, articles 168-171

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.

59. Is the supreme audit institution effective?

78

59a. In law, the supreme audit institution is protected from political interference.

Yes

No

Comments:

Article 168 (5) stipulates that the Auditor General shall not be removed from office except through the same process required to remove a judge of the Supreme Court.

References:

Constitution of Pakistan, 1973, articles 168-171

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 head of the Auditor-General is appointed by the President. There is some suspicion of political favor and loyalty. However, the removal of the AG must be done in the same manner used to dismiss a judge of the Supreme Court.

References:

Interview-Waseem Hashmi, former employee of National Accountability Bureau, CRCP, G-6/1, Islamabad, Oct.18, 2010

Interview-Amjad Raheem, Spokesperson, Directorate General Audit (Federal)

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

Comments:

The supreme audit institution has a core staff of over 700 audit professionals who undergo rigorous training.

References:

Irshad, K.& Kanwal S.M., "Open Budget Questionnaire: Pakistan," Sept. 2009, International Budget Partnership

Human Resources website of the Auditor General of Pakistan, accessed Dec. 20, 2010, <http://www.agp.gov.pk/human-res.html>

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

Comments:

The office of the Auditor General is well staffed with qualified individuals. However, some appointments might be politically driven.

References:

Human Resources website of the Auditor General of Pakistan, accessed Dec. 20, 2010, <http://www.agp.gov.pk/human-res.html>

Interview-Amjad Raheem, Spokesperson, Directorate General Audit (Federal)

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:

Interview-Amjad Raheem, Spokesperson, Directorate General Audit (Federal)

Ilrshad, K. & Kanwal S.M., "Open Budget Questionnaire: Pakistan," Sept. 2009, International Budget Partnership

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

Comments:

Reports are available to the parliament and citizens cannot directly obtain these from the AG directorate. While request for information can be made under the freedom of information act, this on average can take longer than 2 months.

References:

Irshad, K.& Kanwal S.M., "Open Budget Questionnaire: Pakistan," Sept. 2009, International Budget Partnership, p. 82

Interview-Amjad Raheem, Spokesperson, Directorate General Audit (Federal)

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

Comments:

The military and armed forces have their internal audit mechanisms. The department can only audit and report back to the legislature. Action might not be taken depending on the nature of scope of the irregularities. No action has yet been taken on reports of bogus payments by Earthquake Reconstruction and Rehabilitation Authority (ERRA); see the cited Dawn report.

References:

Irshad, K.& Kanwal S.M., "Open Budget Questionnaire: Pakistan," Sept. 2009, International Budget Partnership, pp. 80-86

Interview-Waseem Hashmi, former employee of National Accountability Bureau, CRCP, G-6/1, Islamabad, Oct.18, 2010

Interview-Amjad Raheem, Spokesperson, Directorate General Audit (Federal)

Khawar Ghumman, "ERRA distributed Rs94m among bogus victims," Dec. 16, 2008, Dawn Daily, <http://news.dawn.com/wps/wcm/connect/dawn-content-library/dawn/news/pakistan/erra-distributed-rs94m-among-bogus-victims-yn>

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

Comments:

There are certain limitations, especially regarding military expenditures that fall outside the mandate of the audit agency.

References:

Irshad, K.& Kanwal S.M., "Open Budget Questionnaire: Pakistan," Sept. 2009, International Budget Partnership, pp. 80-86

Interview-Amjad Raheem, Spokesperson, Directorate General Audit (Federal)

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:

The office of the Auditor-General works under the requests from parliamentary committees, including the Public Accounts Committee of the National Assembly. The reports are made available to members of the parliament, but, in practice, not everything is accessible to citizens.

Article 19A of the Constitution guarantees the right to information,
<http://www.mofa.gov.pk/Publications/constitution.pdf>

References:

Constitution of Pakistan, article 19A

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

Comments:

Reports are available to the parliament; however, and citizens cannot directly obtain these from the AG directorate. While several budget related documents are publicly scrutinized and discussed in the parliament, no reports on the actions taken are released to the public. Requests for information can be made under the Freedom of Information Act, but responses to these take a lot of time, and are often required to go through the Ombudsman.

References:

Irshad, K.& Kanwal S.M., "Open Budget Questionnaire: Pakistan," Sept. 2009, International Budget Partnership, p. 86

Interview-Waseem Hashmi, former employee of National Accountability Bureau, CRCP, G-6/1, Islamabad, Oct.18, 2010

Interview-Amjad Raheem, Spokesperson, Directorate General Audit (Federal)

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

Comments:

High costs are incurred with respect to repeated requests and wastes of time, which are prohibitive for ordinary citizens.

References:

Irshad, K.& Kanwal S.M., "Open Budget Questionnaire: Pakistan," Sept. 2009, International Budget Partnership, p. 86

Interview-Waseem Hashmi, former employee of National Accountability Bureau, CRCP, G-6/1, Islamabad, Oct.18, 2010

Interview-Amjad Raheem, Spokesperson, Directorate General Audit (Federal)

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 NGOs. 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 NGOs trying to access this information.

76
5.3. Taxes and Customs: Fairness and Capacity

61. In law, is there a national tax collection agency?

100

61a. In law, is there a national tax collection agency?

Yes | No

Comments:

The Federal Board of Revenue (FBR) is the national tax collection agency. The FBR replaced the older Central Board of Revenue through the FBR Act, 2007.

<http://www.fbr.gov.pk/legal/files/FBRActN.pdf>

References:

Federal Board of Revenue Act, 2007

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.

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

Comments:

The government of Pakistan received a grant/credit from World Bank's International Development Association (IDA) and the Department for International Development (DFID) for a Tax Administration Reform Program (TARP). The goal is to develop a "modern, integrated, effective and efficient tax system" promoting mutual trust between tax payers and tax collectors.

The Federal Board of Revenue (FBR) is receiving ample funding from the World Bank to not only hire full-time staff but to hire international consultants. See for example an three-year tax policy review project conducted by the International Studies School at Georgia State University, funded by the World Bank.

"Pakistan-Tax Policy Review Project," web page at the Andrew Young School of Policy Studies of Georgia State University, <http://aysps.gsu.edu/isp/1864.html>; access date: Dec. 2010

References:

"FBR About Us", web page, FBR website, <http://www.fbr.gov.pk/aboutus>, access date Dec. 14, 2010

Alvarez Estrada, D. "Pakistan-Pakistan Tax Administration Reforms Project : P077306-Implementation Status Results Report: Sequence 11," World Bank report # ISR31, Oct. 10, 2010, <http://go.worldbank.org/KMX1IH82L0>

Richter, K. and Martinez-Vazquez, J., "Tapping Tax Bases for Development: Volume I: Summary Report," July 2009, World Bank/FBR report, <http://aysps.gsu.edu/isp/1864.html>

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 government of Pakistan received a grant/credit from World Bank's International Development Association (IDA) and the Department for International Development (DFID) for a Tax Administration Reform Program (TARP). The goal is to develop a "modern, integrated, effective and efficient tax system" promoting mutual trust between tax payers and tax collectors.

The Federal Board of Revenue (FBR) is receiving ample funding from the World Bank to not only hire full-time staff but to hire international consultants. See for example a three-year tax policy review project conducted by the International Studies School at Georgia State University (GSU), funded by the World Bank.

One of the key findings of the GSU report is that the larger problem is political; i.e., tax reform will depend "less on the mechanism of taxation [including HR] and more on the politics of taxation."

"Pakistan-Tax Policy Review Project," web page at the Andrew Young School of Policy Studies of Georgia State University, <http://aysps.gsu.edu/isp/1864.html>; access date: Dec. 2010

References:

AAlvarez Estrada, D. "Pakistan-Pakistan Tax Administration Reforms Project : P077306-Implementation Status Results Report: Sequence 11," World Bank report # ISR31, Oct. 10, 2010, <http://go.worldbank.org/KMX11H82L0>

Richter, K. and Martinez-Vazquez, J., "Tapping Tax Bases for Development: Volume I: Summary Report," July 2009, World Bank/FBR report, <http://aysps.gsu.edu/isp/1864.html>

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.

63. In practice, are tax laws enforced uniformly and without discrimination?

25

63a. In practice, are tax laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

Comments:

Research points to the twin problem of improving both the tax policy and tax administration.

Some see this as a problem of a “lack of political will.” Richter and Martinez-Vazquez note that while there has been significant improvement in technical abilities of the staff, and a push for “modernization” through the use of technology, the overall system still requires a lot of improvement.

The enforcement of tax laws is highly politicized. This is referred to as distortions and gaps. A key conclusion of the Richter and Martinez-Vazquez report is in regard to the politics of taxation. “Beyond adequate administrative resources and an implementation strategy, this [tax reform] will require a clear political recognition of the importance of the task and the willingness to persist with tax reform over the long haul.”

Others dispute this view. Huzaima Bukhari and Dr. Haq write that despite millions of dollars being spent by the World Bank and other donors to reform the tax system, the results have been below par. “Progressive taxes, like wealth tax, estate duty, capital gain on immovable property and gift tax were abolished to benefit the rich.”

Instead, the focus, driven by World Bank (WB) and International Monetary Fund (IMF) policies is on regressive taxation, which will effect the poor the most and thus is being met with political resistance, conveniently dismissed as “lack of political will.” Needless to say that the neo-liberal ideology, despite its failure in the United States and Europe, is still the dogmatic cry of the international financial institutions.

Wahid and Wallace (2008) provide another perspective by noting that taxation in Pakistan is not regressive (p. V).

References:

Richter, K. and Martinez-Vazquez, J., “Tapping Tax Bases for Development: Volume I: Summary Report,” July 2009, World Bank/FBR report, <http://aysps.gsu.edu/isp/1864.html>

Huzaima Bukhari and Dr. Haq, “Our ‘narrow’ tax base,” opinion editorial, The News, Dec. 07, 2010

Wahid, U and Wallace, S, “Incidents of Taxes in Pakistan: Primer and Estimates”, Dec 2008, International Studies Program working paper, Georgia State University

Ahmed RA, Rider, M. “Pakistan’s Tax Gap: Estimates by Tax Calculation and Methodology”, December 2008, International Studies Program working paper, George State University

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. In law, is there a national customs and excise agency?

100

64a. In law, is there a national customs and excise agency?

Yes | No

Comments:

The Custom and Excise Department and Income Tax Department of the Federal Board of Revenue, <http://www.cbr.gov.pk/newcu/CustomsAct/2006-2007/CustomsAct2006.pdf>

References:

The Customs Act, 1969

The 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.

65. Is the customs and excise agency effective?

75

65a. In practice, the customs and excise agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

New staff have been hired to meet the computerization and modernization. The IT staff is usually hired on contract bases. When funding dries up, this leads to problems with the staff, as well. There needs to be government-based hiring so that a proper qualified staff can be developed.

However, the situation differs from regional department to regional department. For instance, the situation appears to be better in the Punjab's department when compared to the situation in the Islamabad/Federal territory's department.

Then there is the other cadre of field staff that is based on the older government servant system. These are the actual implementers on the ground, and they perform the regulatory functions on a day to day basis. However, while there is some focus on strengthening and computerizing certain aspect of excise and taxation, this is done in a bifurcated manner.

There needs to be imaginative and creative ways of incorporating the old and the new, or of phasing out the old system to bring in the new and improved mechanism. Not only does this require more and consistent funding, it requires regular trainings of the staff, and creation of clear rules and service guidelines. For instance, the legal status of an electronic transaction or file is not the same as an old, paper-based file.

References:

Alvarez Estrada, D. "Pakistan-Pakistan Tax Administration Reforms Project : P077306-Implementation Status Results Report: Sequence 11," World Bank report # ISR31, Oct. 10, 2010, <http://go.worldbank.org/KMX1IH82L0>

Richter, K. and Martinez-Vazquez, J., "Tapping Tax Bases for Development: Volume I: Summary Report," July 2009, World Bank/FBR report, <http://aysps.gsu.edu/isp/1864.html>

Interview-Waleed Ahmad, Program Manager, Excise and Taxation Department, Islamabad, Dec. 28, 2010

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

Comments:

There has been an increasing emphasis on e-governance and various departments have been investing in IT Infrastructure for the past few years. However, there are different provincial and federal level departments and these initiatives are developed and implemented at these levels.

The procedure required filing a PC-1 request to get funds for a particular project. The IT staff is usually hired on contract bases. While there was lot of funding, it was coming through donor support. Once the time period of these project ends (which are generally budgeted to be 2 to 5 years long), funding shortages are felt. Some departments take their own initiative to generate revenue. For instance, the Excise and Duty department in Islamabad provides certain services to the user and charges fee that can be used for these expenses. There is a dire need for regular funding.

References:

Alvarez Estrada, D. "Pakistan-Pakistan Tax Administration Reforms Project : P077306-Implementation Status Results Report: Sequence 11," World Bank report # ISR31, Oct. 10, 2010, <http://go.worldbank.org/KMX11H82L0>

Richter, K. and Martinez-Vazquez, J., "Tapping Tax Bases for Development: Volume I: Summary Report," July 2009, World Bank/FBR report, <http://aysps.gsu.edu/isp/1864.html>

Interview – Waleed Ahmad, Program Manager, Excise and Taxation Department, Islamabad, Dec 28, 2010

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.

66. In practice, are customs and excise laws enforced uniformly and without discrimination?

66a. In practice, are customs and excise laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

Comments:

"Paxar Corporation, a New York-listed company recently acquired by Avery, acknowledged paying \$30,000 to bribe Pakistani customs officials in 2008 through its local customs broker," <http://www.riazhaq.com/2009/10/corruption-in-south-asia.html>

Link to the settlement between SEC and Avery, <http://www.sec.gov/litigation/admin/2009/34-60393.pdf>, access date Dec. 14, 2010

References:

Richter, K. and Martinez-Vazquez, J., "Tapping Tax Bases for Development: Volume I: Summary Report," July 2009, World Bank/FBR report, <http://aysps.gsu.edu/isp/1864.html>

"Custom and Excise Department involved in corruption-Zahir Shah," OnePakistan News, March 19, 2010, <http://www.onepakistan.com/news/local/peshawar/37390-Custom-and-Excise-Department-involved-corruption-Zahir-Shah.html>

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.

5.4. Oversight of State-Owned Enterprises

67. In law, is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

100

67a. In law, is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

Yes

No

Comments:

Various ministries look after different state-owned enterprise. The ministries of railways and post look after Pakistan railways and Pakistan Postal Services respectively. The Ministry of Commerce administers three government-owned insurance companies (State Life Insurance Corporation of Pakistan; National Insurance Company Limited; and Pakistan Reinsurance Company Limited).

The Ministry of Industries and Production takes care of Heavy Mechanical Complex (HMC); Heavy Electrical Complex (HEC) at Taxila; Pakistan Machine Tool Factory (PMTF), Karachi; Pakistan Engineering Company (PECO), Lahore; and Tools, Dies and Moulds Centers (TDMC), at Gujranwala and Karachi.

The Council of Common Interest is the constitutionally mandated body that regulates and formulates policy on various matters related to the Federal Legislative list, including Railways, Water and Power Development Authority, and other state-owned enterprises.

Pakistan Constitution, <http://www.mofa.gov.pk/Publications/constitution.pdf>

References:

Council of Common Interest under articles 153 and 154, Constitution of Pakistan, 1973

Part II of Federal Legislative list, Fourth Schedule of the Constitution of Pakistan, 1973

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.

68. Is the agency, series of agencies, or equivalent mechanism overseeing state-owned companies effective?

50

68a. In law, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies is protected from political interference.

Yes

No

Comments:

No single agency looks after the State-owned enterprise. Several ministries, headed by Federal and State ministers, look after these affairs. Appointments to these ministries are by their very nature political.

References:

Constitution of Pakistan 1973, articles 151-153, Fourth Schedule, Federal Legislative List, Part II

“SECP preparing law for state-owned enterprises,” Dawn Newspaper, Nov. 17, 2010

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

Comments:

The various ministries have sufficient staff.

References:

Constitution of Pakistan 1973, articles 151-153, Fourth Schedule, Federal Legislative List, Part II

“SECP preparing law for state-owned enterprises,” Dawn Newspaper, Nov 17, 2010

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:

Constitution of Pakistan 1973, articles 151-153, Fourth Schedule, Federal Legislative List, Part II

“SECP preparing law for state-owned enterprises,” Dawn Newspaper, Nov. 17, 2010

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:

Investigations have been taken up by the National Accountability Bureau (NAB), the Federal Investigation Agency (FIA) and on suo moto notices of the Supreme Court

References:

“SC rejects FIA report on Pakistan Steel Mills case,” The Nation, June 25, 2010

“SC calls for records of dubious Chinese railways deal,” Pakistan Muslim League-N, media page, Dec. 29, 2010, http://www.pmln.org/media/nd_176_sc-calls-for-all-records-of-dubious-chinese-railways-deal.pmln

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:

Investigations have been taken up by National Accountability Bureau (NAB), Federal Investigation Agency (FIA), and on suo moto notices of the Supreme Court.

Since there is no centralized agency or series of agencies responsible for overseeing state-owned companies, there is no question of imposing any such penalties on offenders. What penalties are imposed are sometimes due to internal mechanisms, ministry or legislative action, or through investigative agencies and courts.

References:

“SC rejects FIA report on Pakistan Steel Mills case,” The Nation, June 25, 2010

“SC calls for records of dubious Chinese railways deal,” Pakistan Muslim League-N, media page, Dec. 29, 2010, http://www.pmln.org/media/nd_176_sc-calls-for-all-records-of-dubious-chinese-railways-deal.pmln

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?

55

69a. In law, citizens can access the financial records of state-owned companies.

Yes

No

Comments:

Article 19A grants the right to information. This can be used to obtain financial records of state-owned companies.

Pakistan Constitution, <http://www.mofa.gov.pk/Publications/constitution.pdf>

References:

Constitution of Pakistan, 1973, article 19A

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

Comments:

Some state-owned firms provide financial data. However, there are many, including the military-industrial complex in Taxila, Wah, etc., which are state owned but do not provide details of their financial data. The expenditure and receipts are also mentioned in the annual budget.

References:

"Federal Budget Details of Demands for Grants and Appropriations 2010-11 Current Expenditure (Volume I)," Pink Book, Federal Budget 2010-11, Ministry of Finance, http://www.finance.gov.pk/fb_2010_11.html

"Federal Budget Details of Demands for Grants and Appropriations 2010-11 Development Expenditure (Volume II)," Pink Book, Federal Budget 2010-11, Ministry of Finance, http://www.finance.gov.pk/fb_2010_11.html

"Accounting and Auditing in Pakistan", book chapter in 'Financial Management and Governance Issues in Pakistan', 2000, Asian Development Bank, http://www.adb.org/Documents/Books/Financial_Mgt/Pakistan/chap_02.pdf

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

Comments:

The Auditor-General of Pakistan conducts external audits. Internal audits are also conducted.

References:

"Federal Budget Details of Demands for Grants and Appropriations 2010-11 Current Expenditure (Volume I)," Pink Book, Federal Budget 2010-11, Ministry of Finance, http://www.finance.gov.pk/fb_2010_11.html

"Federal Budget Details of Demands for Grants and Appropriations 2010-11 Development Expenditure (Volume II)," Pink Book, Federal Budget 2010-11, Ministry of Finance, http://www.finance.gov.pk/fb_2010_11.html

"Accounting and Auditing in Pakistan", book chapter in 'Financial Management and Governance Issues in Pakistan', 2000, Asian Development Bank, http://www.adb.org/Documents/Books/Financial_Mgt/Pakistan/chap_02.pdf

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

Comments:

Summarized records are available in the budget documents. There is some financial information present at Ministry of Finance website, and obtainable through ministries. The Freedom of Information Act and the constitutional right to information can be invoked, but this is a costly and time-consuming measure.

References:

"Federal Budget Details of Demands for Grants and Appropriations 2010-11 Current Expenditure (Volume I)," Pink Book, Federal Budget 2010-11, Ministry of Finance, http://www.finance.gov.pk/fb_2010_11.html

"Federal Budget Details of Demands for Grants and Appropriations 2010-11 Development Expenditure (Volume II)," Pink Book, Federal Budget 2010-11, Ministry of Finance, http://www.finance.gov.pk/fb_2010_11.html

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

Comments:

Summarized records are available in the budget documents. There is some financial information present at the Ministry of

Finance website, and obtainable through ministries. The Freedom of Information Act and the constitutional right to information can be invoked, but this is a costly and time-consuming measure.

References:

"Federal Budget Details of Demands for Grants and Appropriations 2010-11 Current Expenditure (Volume I)," Pink Book, Federal Budget 2010-11, Ministry of Finance, http://www.finance.gov.pk/fb_2010_11.html

"Federal Budget Details of Demands for Grants and Appropriations 2010-11 Development Expenditure (Volume II)," Pink Book, Federal Budget 2010-11, Ministry of Finance, http://www.finance.gov.pk/fb_2010_11.html"

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 NGOs. 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 NGOs trying to access this information.

68

5.5. Business Licensing and Regulation

70. Are business licenses available to all citizens?

75

70a. In law, anyone may apply for a business license.

Yes

No

Comments:

Section 14 of the Companies Ordinance makes registration mandatory for any company or partnership of over twenty people (with some exceptions). Section 15 specifies that anyone can register and form a public or a private company (with some conditions).

"14. Obligation to register certain associations, partnerships etc., as companies:

(1) No association partnership or company, consisting of more than twenty persons shall be formed for the purpose of carrying on any business that has for its object the acquisition of gain by the association, partnership or company, or by the individual members thereof, unless it is registered as a company under this Ordinance.

"15. Mode of forming a company:

(1) Any 2[three] or more persons associated for any lawful purpose may, by subscribing their names to a memorandum of association and complying with the requirements of this Ordinance in respect of registration, form a public company and any 1[one,] or more persons so associated may in like manner from a private company.”

Full text of Companies Ordinance, 1984, http://www.secp.gov.pk/corporatelaws/pdf/Comp_Ord1984.pdf

References:

The Companies Ordinance, 1984, 14 and 15

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

Comments:

“(4) If registration of the memorandum is refused, the subscribers of the memorandum or any one of them authorised by them in writing may either supply the deficiency and remove the defect pointed out, or within thirty days of the order of refusal prefer an appeal—

(a) where the order of refusal has been passed by an additional registrar, a joint registrar, a deputy registrar or an assistant registrar, to the registrar; and

(b) where the order of refusal has been passed, or up-held in appeal, by the registrar, to the Commission.

(5) An order of the Commission under sub-section (4) shall be final and shall not be called in question before any Court or other authority.”

http://www.secp.gov.pk/corporatelaws/pdf/Comp_Ord1984.pdf

References:

Companies Ordinance, 1984, section 30 (4)

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:

The process can take roughly a month. "Doing Business" reports a time of 21 days for starting a business.

References:

Email correspondence-Jamil A. Goheer, Founder and CEO, Kualitatem, Lahore, Dec. 14-27, 2010

"Ease of doing business Pakistan:Economy Overview," Doing Business website, IFC/WB, Dec. 2011, <http://www.doingbusiness.org/data/exploreeconomies/pakistan>

"Pakistan," in "Doing Business 2011: Making a difference for Entrepreneurs," The World Bank, 2010.

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:

Nominal fees are charged by the registration authorities. However, there can be substantial cost incurred when corporate lawyers are hired. Doing Business reports a cost of almost 11 percent of income per capita, but this is focused on only the required fees.

References:

"Email correspondence-Jamil A. Goheer, Founder and CEO, Kualitatem, Lahore, Dec. 14-27, 2010

"Ease of doing business Pakistan:Economy Overview," Doing Business website, IFC/WB, Dec. 2011, <http://www.doingbusiness.org/data/exploreeconomies/pakistan>

"Pakistan," in "Doing Business 2011: Making a difference for Entrepreneurs," The World Bank, 2010.

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:

The Pakistan Penal code, 1860, criminalizes certain practices related to public health standards. See chapter XIV, "Of Offences Affecting the Public Health, Safety, Convenience, Decency and Morals." These include:

268, Public nuisance;

269, negligent;

270, Malignant act likely to spread infection or disease dangerous to life;

272, Adulteration of food and drink intended for sale;

273, Sale of noxious food and drink;

277, Fouling water of public spring or reservoir;

278, Making atmosphere noxious to health;

279 Rash driving.

There are also safety concerns regarding water; selling of obscene songs, books, materials etc, especially to children.

Pakistan Penal Code, <http://www.pakistani.org/pakistan/legislation/1860/actXLVof1860.html>

While there is no integrated mechanism, there are various laws that become applicable for certain businesses and under certain conditions. These regulations are publicly available.

Under 2(e) Public Health (Emergency Provisions), Ordinance 1944 applies to "public health services" and "public health establishments," which include "respectively, sanitary, water supply, vaccination, sewage disposal, drainage and conservancy services and establishment maintained for the purposes of such services, and any other service or establishment of a local authority which the appropriate Government may, by notification in the official Gazette, declare to be a public health service or public health establishment for any purpose of this Ordinance";

Article 7 specifically regulates standards for local water supply.

<http://punjablaws.gov.pk/laws/58.html>

Pakistan Hotels and Restaurant Act, 1976 regulates the standards for hotels and and restaurants. For instance, section 19 (iii) allows for inspections by the controller who may:

“(iii) require an owner or a manager to undertake through an agency qualified to do so scientific tests of water, food and other articles of human consumption at the cost of the owner, to determine their quality and conformity with the requirements of health and hygiene.”

http://www.pakistantourism.gov.pk/pdf/policies/Hotel%2B_Resturant_%2BAct_1976.pdf

Factory Act, 1934, Chapter III, Health and Safety, sections 13 to 33Q, deal with a whole range of health and safety issues
<http://www.ilo.org/dyn/natlex/docs/WEBTEXT/35384/64903/E97PAK01.htm>

The West Pakistan Shops and Establishment Ordinance, 1969, has provisions for “hours and other conditions of work and employment of persons employed in shops and commercial, industrial and other establishments.”

<http://www.punjablaws.gov.pk/laws/230.html>

References:

Pakistan Penal Code 1860, XIV, 268, 269, 272, 273, 277, 278, and 279

Public Health (Emergency Provisions) Ordinance, 1944, 2 (e), 7

Pakistan Hotels and Restaurant Act, 1976

Factory Act, 1934, CHAPTER III, Health and Safety

The West Pakistan Shops and Establishment Ordinance, 1969

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:

Pakistan Environmental Protection Act 1997 is available here: <http://www.elaw.org/system/files/Law-PEPA-1997.pdf>

Several other applicable laws are also applicable, related to land use, water resources, noise, solid wastes, marine and fisheries, forest conservation etc.

The Pakistan Penal code, 1860, criminalizes certain practices related to public health standards. See chapter XIV, “Of Offences Affecting the Public Health, Safety, Convenience, Decency and Morals.” These include:

268, Public nuisance;

269, negligent;

270, Malignant act likely to spread infection or disease dangerous to life;

272, Adulteration of food and drink intended for sale;

273, Sale of noxious food and drink;

277, Fouling water of public spring or reservoir;

278, Making atmosphere noxious to health;

279 Rash driving.

There are also safety concerns regarding water; selling of obscene songs, books, materials etc, especially to children.

Pakistan Penal Code, <http://www.pakistani.org/pakistan/legislation/1860/actXLVof1860.html>

While there is no integrated mechanism, there are various laws that become applicable for certain businesses and under certain conditions. These regulations are publicly available.

Under 2(e) Public Health (Emergency Provisions), Ordinance 1944 applies to “public health services” and “public health establishment,” which include “respectively sanitary, water supply, vaccination, sewage disposal, drainage and conservancy services and establishment maintained for the purposes of such services, and any other service or establishment of a local authority which the appropriate Government may by notification in the official Gazette declare to be a public health service or public health establishment for any purpose of this Ordinance”;

Article 7 specifically regulates standards for local water supply.

<http://punjablaws.gov.pk/laws/58.html>

Factory Act, 1934, Chapter III, Health and Safety, sections 13 to 33Q, deal with a whole range of health and safety issues

<http://www.ilo.org/dyn/natlex/docs/WEBTEXT/35384/64903/E97PAK01.htm>

References:

Pakistan Environmental Protection Ordinance, 1997

Pakistan Penal Code 1860, XIV, 268, 269, 272, 273, 277, 278, and 279

Public Health (Emergency Provisions) Ordinance 1944, 2 (e), 7

Factories Act 1934, Factory Act, 1934, CHAPTER III – Health and Safety

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:

The Pakistan Penal code, 1860, criminalizes certain practices related to public health standards. See chapter XIV, “Of Offences Affecting the Public Health, Safety, Convenience, Decency and Morals.” These include:

268, Public nuisance;

269, negligent;

270, Malignant act likely to spread infection or disease dangerous to life;

272, Adulteration of food and drink intended for sale;

273, Sale of noxious food and drink;

277, Fouling water of public spring or reservoir;

278, Making atmosphere noxious to health;

279 Rash driving.

There are also safety concerns regarding water; selling of obscene songs, books, materials etc, especially to children.

Pakistan Penal Code, <http://www.pakistani.org/pakistan/legislation/1860/actXLVof1860.html>

Pakistan Hotels and Restaurant Act, 1976, regulates the standards for hotels and and restaurants,

http://www.pakistantourism.gov.pk/pdf/policies/Hotel%2B_Resturant_%2BAct_1976.pdf

Factory Act, 1934, Chapter III, Health and Safety, from sections 13 to 33Q, deals with a whole range of health and safety issues,

<http://www.ilo.org/dyn/natlex/docs/WEBTEXT/35384/64903/E97PAK01.htm>

The West Pakistan Shops and Establishment Ordinance, 1969, has provisions for “hours and other conditions of work and employment of persons employed in shops and commercial, industrial and other establishments,”

<http://www.punjablaws.gov.pk/laws/230.html>

References:

Pakistan Penal Code 1860, chapter XIV, 269, 272, 273, 277, 278 and 279

Pakistan Hotels and Restaurant Act, 1976

Factory Act, 1934, Chapter III, Health and Safety

The West Pakistan Shops and Establishment Ordinance, 1969

Boilers Act, 1923

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 and are carried out in a uniform and even-handed manner.

Comments:

There is no central regulatory authority or mechanism that can cover the whole range of laws related to health, environmental and safety standards. The implementation is patchy. Corruption is rampant.

References:

Interview-Salman Raja, Lawyer and Senior Partner, Raja Mohammed Akram & Co, Advocate & Legal Consultant, 33-C, Main Gulberg, Lahore, Dec. 21, 2010

Email correspondence, Jamil A. Goheer, Founder and CEO, Kualitatem, Lahore, Dec. 14-27, 2010

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.

Comments:

Business inspections can be inconsistently made and are marred by bribery and nepotism.

References:

Interview-Salman Raja, Lawyer and Senior Partner, Raja Mohammed Akram & Co, Advocate & Legal Consultant, 33-C, Main Gulberg, Lahore, Dec. 21, 2010

Email correspondence, Jamil A. Goheer, Founder and CEO, Kualitatem, Lahore, Dec. 14-27, 2010

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

Comments:

These inspections can be sometimes inconsistently performed. Bribery and influence are factors that allow many businesses to operate under lax public safety standards. The scale and magnitude of this problem varies, both geographically, and also depends on the industry, and whether the sector is formal or informal.

Unions are strong in some sectors and in heavy industries, and they campaign for better public safety standards. However, unions are repressed, and for many small and informal businesses, they do not exist for a number of reasons.

References:

Interview-Salman Raja, Lawyer and Senior Partner, Raja Mohammed Akram & Co, Advocate & Legal Consultant, 33-C, Main Gulberg, Lahore, Dec. 21, 2010

Email correspondence, Jamil A. Goheer, Founder and CEO, Kualitatem, Lahore, Dec. 14-27, 2010"

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 6. Anti-Corruption Legal Framework, Judicial Impartiality, and Law Enforcement Professionalism

6.1. ⁷⁰Anti-Corruption Law

73. Is there legislation criminalizing corruption?

73a. In law, attempted corruption is illegal.

Yes | No

Comments:

Articles 161-171 of the Pakistan Penal Code deal with corruption by public servants.

Under article 120 of the penal code, a conspiracy to commit an illegal act (such as corruption) is also illegal.

Under Article 511, attempt to commit illegal acts is also a crime.

<http://www.pakistani.org/pakistan/legislation/1860/actXLVof1860.html>

The National Accountability Bureau (NAB) Ordinance, 1999, defines “corruption and corrupt practices” in article 9.

<http://www.nab.gov.pk/Downloads/nao.asp>

References:

Pakistan Penal Code 1860, 161-171, 511 and 120

National Accountability Bureau Ordinance, 1999, 9

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

Comments:

<http://www.pakistani.org/pakistan/legislation/1860/actXLVof1860.html>

Of Extortion

Section 383, Extortion:

Whoever intentionally puts any person in fear of any injury to that person, or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property or valuable security or anything signed or sealed which may be converted into a valuable security, commits “extortion.”

Illustrations:

(a) A threatens to publish a defamatory libel concerning Z unless Z gives him money. He thus induces Z to give him money. A has committed extortion.

(b) A threatens Z that he will keep Z's child in wrongful confinement, unless Z will sign and deliver to A a promissory-note binding Z, to pay certain money to A. Z signs and delivers the note. A has committed extortion.

(c) A threatens to send club-men to plow up Z's field unless A will sign and deliver to A a bond binding Z under a penalty to deliver certain produce to B, and thereby induces Z to sign and deliver the bond. A has committed extortion.

(d) A, by putting Z in fear of grievous hurt, dishonestly induces Z to sign or affix his seal to a blank paper and deliver it to A. Z signs and delivers the paper to A. Here, as the paper so signed may be converted into a valuable security, A has committed extortion.

384. Punishment for extortion:

Whoever, commits extortion shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

385. Putting person in fear of injury in order to commit extortion:

Whoever, in order to the committing of extortion, puts any, person in fear, or attempts to put any person in fear, of any injury, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

386. Extortion by putting a person in fear of death or grievous hurt:

Whoever commits extortion by putting any person in fear of death or of grievous hurt to that person to any other, shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.

387. Putting person in fear of death or of grievous hurt, in order to commit extortion:

Whoever, in order to the committing of extortion, puts or attempts to put any person in fear of death or of grievous hurt to that person or to any Other, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

388. Extortion by threat of accusation of an offence punishable with death or imprisonment for life, etc.:

Whoever commits extortion by putting any person in fear of an accusation against that person or any other, of having committed or attempted to commit any offence punishable with death, or with imprisonment for life, with imprisonment for a term which may extend to ten years, or of having attempted to induce any other person to commit such offence, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and, if the offence be one punishable under Sec. 377 of this Code, may be punished with imprisonment for life.

389. Putting person in fear of accusation of offence, in order to commit extortion:

Whoever, in order to the committing of extortion, puts or attempts to put any person in fear of an accusation, against that person or any other, of having committed, or attempted to commit, commit an offence punishable with death or with imprisonment for life, or imprisonment for a term which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, and, if the offence be one punishable under Sec. 377 of this Code, may be punished with imprisonment for life.

References:

Pakistan Penal Code 1860, 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

Comments:

Receiving a bribe is illegal by section 161 of the penal code. Offering a bribe is considered an abetting offense, which is also illegal under 108 and 109 of the penal code. Section 120 makes conspiracy to commit an illegal act (offering a bribe) illegal.

<http://www.pakistani.org/pakistan/legislation/1860/actXLVof1860.html>

National Accountability Bureau (NAB) Ordinance, 1999, defines of "corruption and corrupt practices" in article 9.

<http://www.nab.gov.pk/Downloads/nao.asp>

References:

Pakistan Penal Code 1860, sections 108, 109 and 161

NAB Ordinance 1999, #9

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

Comments:

Receiving a bribe is illegal by section 161 of the penal code.

<http://www.pakistani.org/pakistan/legislation/1860/actXLVof1860.html>

National Accountability Bureau (NAB) Ordinance, 1999, defines "corruption and corrupt practices" in article 9.

<http://www.nab.gov.pk/Downloads/nao.asp>

References:

Pakistan Penal Code 1860, section 161

National Accountability Bureau Ordinance, 1999, 9

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

Comments:

Section 108 of the penal code implies that bribing a foreign official is also illegal, as this is considered abetting an illegal act.

References:

Pakistan Penal Code 1860, section 108, 109, 161

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

Comments:

National Accountability Bureau (NAB) Ordinance, 1999, defines “corruption and corrupt practices” in article 9.

<http://www.nab.gov.pk/Downloads/nao.asp>

References:

National Accountability Bureau Ordinance, 1999, 9

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

Comments:

Penal code, <http://www.pakistani.org/pakistan/legislation/1860/actXLVof1860.html>

National Accountability Bureau (NAB) Ordinance 1999 defines “corruption and corrupt practices” in article 9.

<http://www.nab.gov.pk/Downloads/nao.asp>

References:

Pakistan Penal Code 1860, 161-171

National Accountability Bureau Ordinance, 1999, 9

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

Comments:

Anti-Money Laundering Ordinance 2007, http://www.secp.gov.pk/corporatelaws/pdf/AML_Regulation.pdf

References:

Anti-Money Laundering Ordinance, 2007

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

Comments:

Criminal Conspiracy:

120-A Definition of criminal conspiracy:

When two or more persons agree to do, or cause to be done,

(1) an illegal act, or;

(2) an act which is not illegal by illegal means such an agreement is designated a criminal conspiracy:

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation: It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object.

120-B Punishment of criminal conspiracy:

(1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.

<http://www.pakistani.org/pakistan/legislation/1860/actXLVof1860.html>

References:

Pakistan Penal Code, Section 120A, 120B

Yes: A YES score is earned if organized crime is illegal.

No: A NO score is earned if this is not illegal.

6.2. Anti-Corruption Agency or Equivalent Mechanisms

74. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

100

74a. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

Yes

No

Comments:

National Accountability Bureau (NAB) and Federal Investigation Agencies (FIA) at the federal level, and Anti-Corruption Establishments at the provincial level are legally mandated to address corruption, under Pakistan Penal Code (sections 160-165), Prevention of Corruption Act (1947), and NAB Ordinance 1999. (National Anti Corruption Strategy, pp47)

Penal code: <http://www.pakistani.org/pakistan/legislation/1860/actXLVof1860.html>

NAB Ordinance: <http://www.nab.gov.pk/Downloads/nao.asp>

PoCA: Prevention of Corruption Act, 1947, punjablaws.gov.pk/laws/97.html

The NAB is an independent institution with a mandate to investigate and prosecute corrupt practices against anyone, except judiciary and military personnel. The Supreme Judicial Council is mandated to address corruption in the judiciary, and there are questions about gaps in this system.

The military has its internal accountability mechanism and the commander can actually decide whether a case be pursued under civil or military mechanism (the latter being provided under the Army Act). Given its direct and indirect presence and influence in the civilian government departments, this implies that there is really no real and transparent accountability of the military when it

plays a “civilianized” role. Because defense spending accounts for the highest costs and involves huge procurement deals, the military is the organization most in need of transparency and accountability.

The National Accountability Ordinance, 1999, has lapsed and a new bill is still to be drafted and passed through the national legislature. The accountability bureau has also been ineffectual, due to political pressures from the government.

The Supreme Court has also acted on the inaction of NAB and removed several key officials from the organization. If anything, the Supreme Court is acting as the de facto anti-corruption agency by taking suo moto notices of high profile corruption cases. See, for instance, Umer Cheema’s, Dec. 30, 2010 article in the News International, “SC emerges as the major anti-corruption agency.”

The Federal Investigation Agency (FIA) under the FIA Act, 1974, also acts as the anti-corruption agency, and its work somewhat overlaps with the NAB. The FIA has the mandate to look at economic crime, and corruption by police, but has not been very effective. Its effectiveness was further hampered when its mandate was increased to include anti-terrorism investigations as well. The FIA acts under the Ministry of Interior and is highly politicized.

At the provincial level, Anti-Corruption Establishments have the mandate to investigate corruption, but these groups are also constrained by lack of capacity and political interference.

There is still a legal and administrative vacuum at the district- and local-level governments and a dire need for accountability at these levels. While there is political rhetoric of participatory and community-based mechanisms to monitor corruption, there is hardly any focus at this level.

References:

National Accountability Bureau (NAB), www.nab.gov.pk

Federal Investigation Agency (FIA)

Anti-Corruption Establishments

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.

75. Is the anti-corruption agency effective?

50

75a. In law, the anti-corruption agency (or agencies) is protected from political interference.

Yes

No

Comments:

National Accountability Bureau (NAB) Ordinance establishes the bureau as an independent body that is protected legally from political interference.

References:

National Accountability Bureau (NAB) Ordinance, 1999

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:

Federal Investigation Agency (FIA) and Anti-Corruption Establishments (ACE) are not protected from political interference. Since the National Accountability Bureau (NAB) is going through a transition phase, legally and administratively, there is more reliance on the FIA and the ACE than was the case when NAB was more effective.

The NAB has been in the thick of things and, despite strong legal mechanisms, it has been politicized. The politicization of the office of the President is perhaps the most important factor in this. The President is supposed to be an apolitical actor, but the current president who is the head of Pakistan Peoples Party (PPP), the ruling party, has employed all means, political and otherwise, to attempt to control the NAB.

The current government has been trying, both through “sneaking in” legislative changes through the NAB (Amendment) Ordinance 2010, and through transfers and demotions in the department, to render the NAB ineffectual. The government is attempting to take control of the department by installing favorable officials and by shifting some critical powers to the law ministry, which these days is acting as the personal law council for President Asif Ali Zardari.

However, these efforts are being resisted at multiple fronts. In July, it was reported that some high-ranking officials at the NAB have decided to resist the government’s attempts to take control of the department through transfers and demotions.

On July 8, 2010, Dawn News reported that some thirty-five officials at key posts in the bureau are considered to be in “difficult position”. These cases were opened after the National Reconciliation Ordinance (NRO) was scrapped by the supreme court. Ten of these NAB officials have received their transfer letters. The high-profile officials facing these tough circumstances include: “NAB’s Director General in Punjab, Shahnawaz Badar; its chief in Khyber Pakhtunkhwa Musaddiq Abbasi; Director General of (Administration Headquarters) Khursheed Alam; Director of Finance Shahzad Anwar Bhatti; Director of National Anti-Corruption Strategy (NACS) Alia Rashid; Additional Director Zahir Shah; Brig (retd) Ashfaq Ashraf; and Director (Administration) Shahzad Saleem.”

The long-serving Finance Director of the National Accountability Bureau (NAB), Shahzad Anwar Bhatti was demoted last year due to his refusal to obey the orders of the Presidency. Apparently, the NAB has received important evidence against Asif Ali Zardari. The NAB spokesman Ghazni Khan told that media that the “NAB has solid evidence against President Asif Ali Zardari and the bureau is not seeking withdrawal of this case.” Ghazni Khan was then promptly removed from his post. Following the resignation of Nawid Ahsan, the last chairman of NAB, the bureau decided to withdraw the cases against ruling party leaders.

References:

Interview-Waseem Hashmi, former employee of National Accountability Bureau, CRCP, G-6/1, Islamabad, Oct.18, 2010

“NAB Chairman Naveed Ahsan resigns,” Dawn, Feb. 24, 2010, <http://news.dawn.com/wps/wcm/connect/dawn-content-library/dawn/news/pakistan/14-nab-chairman-naveed-ahsan-resigns-zj-04>

Syed Irfan Raza, “‘Mini-revolt’ brewing in NAB,” Dawn Daily, July 8, 2010, <http://news.dawn.com/wps/wcm/connect/dawn-content-library/dawn/the-newspaper/front-page/minirevolt-brewing-in-nab-870>

National Anti Corruption Strategy, 2002, pp. 47-50

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:

Several newspapers reported that the removal of the National Accountability Bureau (NAB) chief in 2009 was done in order to protect top politicians.

References:

Interview-Waseem Hashmi, former employee of National Accountability Bureau, CRCP, G-6/1, Islamabad, Oct.18, 2010

“NAB Chairman Naveed Ahsan resigns”, Dawn, Feb. 24, 2010, <http://news.dawn.com/wps/wcm/connect/dawn-content-library/dawn/news/pakistan/14-nab-chairman-naveed-ahsan-resigns-zj-04>

Syed Irfan Raza, “Former NAB chief removed to protect top politicians,” Dawn, Nov. 26, 2009, <http://news.dawn.com/wps/wcm/connect/dawn-content-library/dawn/news/pakistan/06-former-nab-chief-removed-to-protect-top-politicians-rs-06>

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:

All the chairmen appointed thus far meet professional criteria. However the real question is about their political loyalties. The post

of National Accountability Bureau (NAB) chairman remained empty after Javeed Ahsan resigned, and the Supreme Court set the deadline twice for the government to appoint a new Chairman.

In October, a new chairman was appointed, Justice (retd.) Deedar Hussain. The main opposition party Pakistan Muslim League-Nawaz (PML-N) protested that the government did not follow proper consultation with the opposition, to which the Prime Minister replied that consultation did not mean consent of the opposition leader.

The new NAB chairman, as PML-N noted its objection, had defended President Zardari in corruption cases as his lawyer. He had also been elected an MPA on the Pakistan Peoples Party (PPP) ticket twice. Justice Shah was also the Chief Justice of the Sindh High Court, which gave a life imprisonment against the former Prime Minister Nawaz Sharif (who is now the leader of the major opposition party) in the plane hijacking conspiracy case involving former President General Musharraf. However, in the famous Al-Jehad Trust case, the Supreme Court had ruled that party loyalties could not be a grounds for a judge's disqualification and the same applies to the NAB chairman.

On October 26, the Supreme Court summoned newly appointed NAB chairman and the Attorney General to assist the court in ascertaining if the NAB chairman appointment was done against the NAB rules. This means that the appointment must be in accordance with section 6 of the NAB Ordinance 1999, which specifies that the President must appoint the chairman in consultation with both the leaders of the House and Opposition in the national legislature (the other aspect that he be a retired chief justice of a high court or judge of supreme court, or a retired Lt. General, or a BPS 22 or above officer, is satisfied).

Further, after the court's ruling in Afsandiyar Wali case, the Court Justice's input must be followed in the appointment. "Advocate Mohammad Akram Sheikh, the counsel for Chaudhry Nisar, argued that the appointment of Justice Deedar Shah would affect the process of across-the-board accountability. He said the appointment made by President Asif Ali Zardari was tainted with personal motivation and susceptible to manifest abuse because the president was accused in more than a dozen cases of corruption within and outside the country. Thus this was a clear case of conflict of interest, he added."

The case was adjourned till second week of January. Legal experts believe that the grounds for the case of removal of this appointment are thin. See Asad Jamal, "NAB chief's appointment — the legal angle," The Express Tribune, Oct 15, 2010 <http://tribune.com.pk/story/63095/nab-chiefs-appointment-the-legal-angle/>

References:

Interview-Waseem Hashmi, former employee of National Accountability Bureau, CRCP, G-6/1, Islamabad, Oct.18, 2010

Syed Irfan Raza, "Retired judge appointed new NAB chief," Dawn daily, Oct. 9, 2010, <http://news.dawn.com/wps/wcm/connect/dawn-content-library/dawn/news/pakistan/04-nab-chairman-qs-06>

"SC summons NAB chief, AG over appointment," Tuesday, Oct 26, 2010, Dawn daily, <http://news.dawn.com/wps/wcm/connect/dawn-content-library/dawn/news/pakistan/04-sc-deedar-appointment-qs-04>

"NAB Chairman Naveed Ahsan resigns", Dawn, Feb 24, 2010 <http://news.dawn.com/wps/wcm/connect/dawn-content-library/dawn/news/pakistan/14-nab-chairman-naveed-ahsan-resigns-zj-04>

Syed Irfan Raza, "'Mini-revolt' brewing in NAB", Dawn daily, Jul 08 2010, <http://news.dawn.com/wps/wcm/connect/dawn-content-library/dawn/the-newspaper/front-page/minirevolt-brewing-in-nab-870>

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:

Currently, the National Accountability Bureau (NAB) staff is under a lot of political pressure. Many high profile officials, including the Chairman, have resigned, been removed, demoted or transferred. Further, the International Crisis Group (ICG) reports that NAB prosecutors often lack necessary training (footnote 21, page 5, ICG No 196).

References:

Interview-Waseem Hashmi, former employee of National Accountability Bureau, CRCP, G-6/1, Islamabad, Oct.18, 2010

“Reforming Pakistan’s Criminal Justice System,” International Crisis Group Asia Report No 196, 6, December 2010, <http://www.crisisgroup.org/en/regions/asia/south-asia/pakistan/196-reforming-pakistans-criminal-justice-system.aspx>

“NAB Chairman Naveed Ahsan resigns”, Dawn, Feb 24, 2010 <http://news.dawn.com/wps/wcm/connect/dawn-content-library/dawn/news/pakistan/14-nab-chairman-naveed-ahsan-resigns-zj-04>

Syed Irfan Raza, “Mini-revolt’ brewing in NAB”, Dawn daily, Jul 08 2010, <http://news.dawn.com/wps/wcm/connect/dawn-content-library/dawn/the-newspaper/front-page/minirevolt-brewing-in-nab-870>

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 funding is insufficient. The National Accountability Bureau (NAB), under the current regime, does not even have enough funding to give out salaries. In 2008, NAB reportedly used its entire budget of PRs150 million (US\$1,760,356) in the first quarter of the fiscal year. This happened after a major downsizing due to budgetary constraints.

Since 2008, the NAB’s status has been somewhat in question because the Prime Minister, in his first speech in the parliament, mentioned replacing it with a stronger National Accountability Commission. Recently, the funding allotted to the NAB for 2010-2011 was PRs.700 million (US\$8,214,997), which is the highest ever made to the bureau, a 36 percent increase from last year.

References:

Interview-Waseem Hashmi, former employee of National Accountability Bureau, CRCP, G-6/1, Islamabad, Oct.18, 2010

Syed Irfan Raza, “Rs700m allocated for NAB,” June 8, 2010, Dawn, <http://news.dawn.com/wps/wcm/connect/dawn-content-library/dawn/the-newspaper/national/rs700m-allocated-for-nab-860>

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 website only provides the annual report for 2007. It is only required to submit an annual report to the President of Pakistan. Updated statistics about cases and investigations are given on the website, with some details about select cases.

References:

Interview-Waseem Hashmi, former employee of National Accountability Bureau, CRCP, G-6/1, Islamabad, Oct.18, 2010

"NAB Update Jan-March 2010," NAB website; access date Dec. 16, 2010, <http://www.nab.gov.pk/Downloads/NAB%20Update/NABUpdateMar10.pdf>

"Case studies," NAB Public Information Page, access date Dec. 16, 2010 http://www.nab.gov.pk/Public_info_material.asp#CASE_STUDIES

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:

Political pressure, interference in appointments, promotions, transfers, and promotions, lack of training and funding, and a highly

politicized office of the President, are all factors that combine to ensure that the efficacy of the agency is limited.

However, the Supreme Court has taken several decisions to create space for the NAB. At the same time, the court's landmark decision on the National Reconciliation Order (NRO) has led to increased pressures on NAB, since it implicates hundreds of public officer holders and bureaucrats in corruption cases.

The NAB chairman resigned on February 24 after coming under tremendous pressure since the court declared the NRO unconstitutional and further ordered the bureau to reopen the Swiss cases against President Zardari. After the chairman handed in his resignation, though, the Prime Minister (PM) asked him to carry on until a new appointment had been made. The PM claimed that the new appointment will be made in consultation with leader of the house and leader of the opposition as required by law.

The NAB was under pressure from the government as it tried to appoint favorable officials to the bureau, but the bureau and its chairman had legal protection under the National Accountability Ordinance (NAO), 1999.

References:

Interview-Waseem Hashmi, former employee of National Accountability Bureau, CRCP, G-6/1, Islamabad, Oct.18, 2010

Syed Irfan Raza, "Former NAB chief removed to protect top politicians," Dawn, Nov. 26.

2009, <http://news.dawn.com/wps/wcm/connect/dawn-content-library/dawn/news/pakistan/06-former-nab-chief-removed-to-protect-top-politicians-rs-06>

"Reforming Pakistan's Criminal Justice System," International Crisis Group Asia Report No 196, 6, December

2010, <http://www.crisisgroup.org/en/regions/asia/south-asia/pakistan/196-reforming-pakistans-criminal-justice-system.aspx>

"NAB Chairman Naveed Ahsan resigns," Dawn, Feb. 24, 2010, <http://news.dawn.com/wps/wcm/connect/dawn-content-library/dawn/news/pakistan/14-nab-chairman-naveed-ahsan-resigns-zj-04>

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) has the mandate to investigate independently. In the Annual report of 2007, the NAB specifies that it has a high load of complaints and takes action on these complaints, which are filed independently. However, the bureau is politically influenced through direct and indirect pressures. This defines the scope and range of its investigations.

The Pakistan Institute of Legislative and Development and Transparency (PILDAT) observes that, by mid-2009, nearly 50 percent of NAB employees had left and the rest remained demoralized.

References:

Interview-Waseem Hashmi, former employee of National Accountability Bureau, CRCP, G-6/1, Islamabad, Oct.18, 2010

“Annual report 2007,” National Accountability Bureau, Pakistan, <http://www.nab.gov.pk/Downloads/Report.rar> , access date Dec. 16, 2010

“Weak Mechanism of Accountability of Holders of Public Office is the greatest threat to Democracy,” August 2009, PILDAT Legislative Brief, <http://www.pildat.org/eventsdel.asp?detid=328>

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?

38

76a. In practice, the anti-corruption agency (or agencies) acts on complaints within a reasonable time period.

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

Comments:

The agency deals with many high-profile cases and these take years to resolve. There is a capacity issue and cases are assigned priority, which means some cases are inevitably delayed. However, complaints are usually acknowledged immediately.

References:

Interview – Waseem Hashmi, former employee of National Accountability Bureau, Islamabad, 18 Oct 2010

“NAB Update Jan-March 2010,” NAB website; access date Dec. 16, 2010, <http://www.nab.gov.pk/Downloads/NAB%20Update/NABUpdateMar10.pdf>

“Annual report 2007,” National Accountability Bureau, Pakistan, <http://www.nab.gov.pk/Downloads/Report.rar> , access date Dec. 16, 2010

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:

While there are no specific whistle-blowing protections, the National Accountability Bureau (NAB) ordinance allows the NAB chairman to protect witnesses. Complaints can be lodged through a universal access number (UAN) number or at the Complaint Cell. All complaints are acknowledged.

However, as identified in the National Anti Corruption Strategy, 2002, and subsequent annual reports of the NAB, there is a culture of secrecy in official circles, and general perceptions in the culture that prevents citizens from complaining because of fear of recrimination.

References:

Interview-Waseem Hashmi, former employee of National Accountability Bureau, CRCP, G-6/1, Islamabad, Oct.18, 2010

“Annual report 2007,” National Accountability Bureau, Pakistan, <http://www.nab.gov.pk/Downloads/Report.rar> , access date Dec 16, 2010

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.

77a. In law, there is a general right of appeal.

Yes | No

Comments:

Article 10A of the constitution gives the right to a fair trial.

<http://www.mofa.gov.pk/Publications/constitution.pdf>

Chapter VII of the Criminal Procedures Code

<http://pakistanconstitution-law.org/category/02-the-code-of-criminal-procedure-1898/>

The relevant Orders of the Civil Procedure codes are:

Order Xli – Appeals From Original Decrees

Order Xlii – Appeals From Appellate Decrees

Order Xliii – Appeals From Orders

Order Xliv – Pauper Appeals

Order Xlv – Appeals To The [Supreme Court]

<http://www.pakistansocietyofcriminology.com/Admin/laws/CodeofCivilProcedure.doc>

References:

Constitution of Pakistan, 1973, Article 10A

Criminal Procedure Code, 1898, Chapter VII

Civil Procedure Code, Orders XLI-XLV

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:

It is difficult to give an “average” time period for trials. Simple cases can take years to resolve, although these are eventually resolved. Trials take less time. Further, huge backlogs at courts are an issue that slows down the legal process, including the

resolution of appeals. The Chief Justice has a new judicial policy which has a time-frame for everything. However, enough judges are needed to carry the policy out.

References:

Interview-Bilal Manto, Lawyer, Nov. 29, 2010

Interview-Justice Nasira Iqbal (retired), Dec. 13, 2010, Gulberg I, Lahore

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:

Cost for hiring lawyers is very high and that makes the appeals process costly. When you cannot afford a lawyer, the government appoints one, but there is no guarantees on the quality. Costs are compounded by huge delays.

Justice Iqbal notes that there is a need to overhaul the system and that local governments and the Union Council must be brought into play to solve family disputes and other petty matters. This used to be the case. This is the only way to provide timely and cost-effective access to justice.

References:

Interview-Bilal Manto, Lawyer, Nov. 29, 2010

Interview-Justice Nasira Iqbal (retired), Dec. 13, 2010, Gulberg I, Lahore

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge criminal judgments. Attorney 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. Attorney 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. Attorney fees greatly discourage the use of the appeals process.

78. In practice, do judgments in the criminal system follow written law?

75

78a. In practice, do judgments in the criminal system follow written law?

100 | 75 | 50 | 25 | 0

Comments:

Political interference and bribery happens, and this can influence the outcome of a case. This is generally due to the question of appreciating evidence and interpreting law. Judgments have to follow the written law. However, corruption involving interference and bribery is present at all levels. Even the President does not have a good track record.

Judges used to get pittance salaries while litigators made a lot of money. However, judge's salaries have increased, and this should improve matters.

References:

Interview-Bilal Manto, Lawyer, Nov. 29, 2010

Interview-Justice Nasira Iqbal (retired), Dec. 13, 2010, Gulberg I, Lahore

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. In practice, are judicial decisions enforced by the state?

75

79a. In practice, are judicial decisions enforced by the state?

100 | 75 | 50 | 25 | 0

Comments:

This is generally the case, but there can be some exceptions. Most recently, a high-profile case has seen the refusal by the Prime

Minister to act on the Supreme Court's decision that asked the government to write a letter to Swiss authorities regarding corruption cases against President Asif Ali Zardari.

Another instance involves the National Reconciliation Ordinance, which was struck down by the Supreme Court. The beneficiaries of the said ordinance should have resigned, but the President had them re-instated. The tussle between the executive and judiciary continues and the executive has the state and the law enforcement agencies at its disposal.

References:

Interview-Bilal Manto, Lawyer, Nov. 29, 2010

Interview-Justice Nasira Iqbal (retired), Dec. 13, 2010, Gulberg I, Lahore

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

Comments:

Security of tenure of judges is guaranteed under article 175 (2) of the Constitution and the landmark decision of the Supreme Court (PLD 2000 SC 869)

<http://www.mofa.gov.pk/Publications/constitution.pdf>

<http://pakistanconstitution-law.org/p-l-d-2000-sc-869/>

Interview-Bilal Manto, Lawyer, Nov. 29, 2010

Interview-Justice Nasira Iqbal (retired), Dec. 13, 2010, Gulberg I, Lahore

References:

Constitution of Pakistan 1973, article 175 (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 includes 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

Comments:

Judges are transferred and demoted by the judiciary. However, there is suspicion of political interference and incentives in matters related to the superior judiciary.

References:

Interview-Bilal Manto, Lawyer, Nov. 29, 2010

Interview-Justice Nasira Iqbal (retired), Dec. 13, 2010, Gulberg I, Lahore

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:

The executive branch does not control this process, and judges cannot influence which cases they adjudicate.

Legal provisions describe the kinds of cases that can be tried in different kinds of courts. Various laws, such as the Civil Procedures Code, Criminal Procedure Code, and other laws and ordinances, define the jurisdictions of the relevant courts. Generally, for Civil and Criminal cases, the respective High Courts of the provinces are responsible for distribution of cases in accordance with set rules.

Interview-Bilal Manto, Lawyer, Nov. 29, 2010

Interview-Justice Nasira Iqbal (retired), Dec. 13, 2010, Gulberg I, Lahore

For Pakistan SC Rules, 1980 see here:

http://www.supremecourt.gov.pk/web/user_files/File/The_Pakistan_Supreme_Court_Rules.pdf

For provincial courts, the high court rules specify the distribution of cases.

The sessions judge or the Chief Justice assign different cases to judges. For Lahore High Court, the procedure for distribution of civil cases is specified in the Rules of Lahore High Court – Volume 1, chapter 1, part II, section 3.

http://www.lhc.gov.pk/rules_orders/volume1.pdf

The Code of Criminal Procedures and Code of Civil Procedures also contain several guidelines for distribution of cases:

Code of Criminal Procedures, 556: Case in which Judge or Magistrate is personally interested:

No Judge or Magistrate shall, except with the permission of the Court to which an appeal lies from his Court, try any case to or in which he is a party, or personally interested, and no Judge or Magistrate shall hear an appeal from an judgment or order passed or made by himself.

CCrP 185. High Court to decide, in case of doubt, district where inquiry or trial shall take place.

(1) Whenever a question arises as to which of two or more Courts subordinate to the same High Court ought to inquire into or try any offence, it shall be decided by that High Court.

Full legislation here: <http://pakistanconstitution-law.org/category/02-the-code-of-criminal-procedure-1898/>

References:

The Pakistan Supreme Court Rules, 1980

Rules of Lahore High Court – Volume 1, chapter 1, part II, section 3

Code of Criminal Procedures, 185, 556

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:

There are different procedures for different types and level of judges. The Supreme Judicial Council (SJC) is responsible for overseeing all matters of removal of judges and must provide relevant justification.

<http://www.mofa.gov.pk/Publications/constitution.pdf>

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?

100

81a. In practice, in the last year, no judges have been physically harmed because of adjudicating corruption cases.

Yes

No

References:

Interview-Bilal Manto, Lawyer, Nov. 29, 2010

Interview-Justice Nasira Iqbal (retired), Dec. 13, 2010, Gulberg I, Lahore

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:

Interview-Bilal Manto, Lawyer, Nov. 29, 2010

Interview-Justice Nasira Iqbal (retired), Dec. 13, 2010, Gulberg I, Lahore

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?

50

82a. In practice, judicial decisions are not affected by racial or ethnic bias.

100 | 75 | 50 | 25 | 0

Comments:

It is generally assumed that a judge will be impartial. It will also be extremely difficult to point to specific cases where judgments have been demonstratively affected by racial or ethnic bias.

However, individual biases and mindsets do influence decisions, and judges can be somewhat influenced by ethnic fragmentation of the society. However, if there are radically biased judgments, these can be challenged in the appellate courts.

Religious minorities might also suffer from these biases, especially in cases of blasphemy laws that often target Ahmedis, Christians and Hindus. The most recent episode is the death sentence of a poor Christian woman from Punjab Asia Bibi.

See, "Blasphemy law must be repealed", Mashal Sahir; and

"Christians must not forget jailed Pakistani Women, Says Ministry", Ethan Cole.

References:

Interview-Bilal Manto, Lawyer, Nov. 29, 2010

Interview-Justice Nasira Iqbal (retired), Dec. 13, 2010, Gulberg I, Lahore

"Blasphemy law must be repealed," Mashal Sahir, Nov. 26, 2010, The Daily Times

"Christians must not forget jailed Pakistani Women, Says Ministry," Ethan Cole, The Christian Post, Dec. 7, 2010

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.

Comments:

In law there are no negative biases against women, and on the face of it, there are special gender-sensitive provisions to improve access to the judicial system for women. For example, in case of restrictions on the movement of women that have been imposed due to cultural, social or religious practices, the judicial commission is supposed to visit the woman's house.

However, such provisions are rarely useful in practice. Access is severely limited, especially in rural areas, and some more "conservative" parts of the country. Women are also financially constrained, since they mostly are financially dependent on male members of the family or household. This severely restricts their access to justice with regards to domestic and family issues.

Access to justice, in practice, cannot and must not ignore socio-economic and social restrictions.

References:

Interview-Bilal Manto, Lawyer, Nov. 29, 2010

Interview-Justice Nasira Iqbal (retired), Dec. 13, 2010, Gulberg I, Lahore

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

Comments:

10 (5): When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, [11][within fifteen days] from such detention, communicate to such person the grounds on which the order has been made, and shall afford him the earliest opportunity of making a representation against the order:

Provided that the authority making any such order may refuse to disclose facts which such authority considers it to be against the public interest to disclose.

<http://www.pakistani.org/pakistan/constitution/part2.ch1.html>

Interview-Bilal Manto, Lawyer, Nov. 29, 2010

References:

Constitution of Pakistan 1973, article 10 (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:

The legal counsel provided by the state is not adequate. This mechanism uses lawyers who provide service to the state, and these are usually those who are not very successful. Most lawyers do not opt for this option since this is not rewarding monetarily.

References:

Interview-Bilal Manto, Lawyer, Nov. 29, 2010

Interview-Justice Nasira Iqbal (retired), Dec. 13, 2010, Gulberg I, Lahore

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:

Citizens can get a bad lawyer, but even that option is not very affordable. Lawyers often tell their own clients that they should only bring a legal suit if it is absolutely necessary.

References:

Interview-Bilal Manto, Lawyer, Nov. 29, 2010

Interview-Justice Nasira Iqbal (retired), Dec. 13, 2010, Gulberg I, Lahore

100: In most cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance. Attorney 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. Attorney 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. Attorney 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:

A small business cannot afford a good lawyer. It generally depends on the stakes involved. Legal suits require financial means and courage.

References:

Interview-Bilal Manto, Lawyer, Nov. 29, 2010

Interview-Justice Nasira Iqbal (retired), Dec. 13, 2010, Gulberg I, Lahore

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. Attorney 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. Attorney 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:

Accessibility is a huge problem. People from rural areas have to make costly and time-consuming trips. Since the local government mechanism has ceased to exist, this has become an even bigger problem.

References:

Interview-Bilal Manto, Lawyer, Nov. 29, 2010

Interview-Justice Nasira Iqbal (retired), Dec. 13, 2010, Gulberg I, Lahore

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.

6.4. Law Enforcement: Conflicts of Interest Safeguards and Professionalism

83. Is the law enforcement agency (i.e. the police) effective?

17

83a. In practice, appointments to the law enforcement agency (or agencies) are made according to professional criteria.

100 | 75 | 50 | 25 | 0

Comments:

The appointments are made through various means, and mostly appointments through the competitive civil service exams are based on strong criteria. However, postings and transfers are usually not made on professional criteria, but this differs from province to province.

Military regimes have provided greater autonomy than the political governments. Personal contacts with political influential and with military elites are very important, especially as one moves up in the hierarchy. There are variations in different provinces; for instance, Khyber-Pukhtunkhwa has more independence than Punjab (score of 50 versus 25 respectively). The situation can be worse for the lower ranks.

References:

Email correspondence, Superintendent Police, Dec. 20-25, 2010, (name withheld on request)

Abbas, Hassan. "Police & Law Enforcement Reform in Pakistan: Crucial for Counterinsurgency and Counterterrorism Success." Clinton, Mich.: Report for Institute for Social Policy and Understanding, April 2009.

Frederic Grare, "Political Dimension of Police Reform in Pakistan," Policy Outlook, Carnegie Endowment for International Peace, July 14, 2010

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:

The budget is insufficient. The Station House Officer (SHO) has to seek financial support from local politicians, who in return demand favors. The District Police Officers spend the minimum possible amount on the maintenance of vehicles and on staff due to paucity of funds and corruption. Reduction of irregularities in the transport vehicles department and the accounts at the district level is necessary to cater for the needs of district police.

References:

Email correspondence, Superintendent Police, Dec. 20-25, 2010, (name withheld on request)

Abbas, Hassan. "Police & Law Enforcement Reform in Pakistan: Crucial for Counterinsurgency and Counterterrorism Success." Clinton, Mich.: Report for Institute for Social Policy and Understanding, April 2009

Frederic Grare, "Political Dimension of Police Reform in Pakistan," Policy Outlook, Carnegie Endowment for International Peace, July 14, 2010

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:

The first clause of the Police Order 2002 says that the police should be depoliticized. This however was never implemented. Irrespective of personal morals and professionalism, one cannot escape from political interference.

Consider this recent instance, as Abbas notes: In Feb 2009, Mr. Shahbaz Sharif was removed from the post of the chief minister of Punjab province after a controversial court ruling. Afterward, the governor Salman Taseer, who belongs to a different party, relieved the top police leadership in Punjab. During this massive police overhaul, the Sri Lankan cricket team was attacked in a major terrorist attack in Lahore (Abbas, 2009, p. 12).

References:

Email correspondence-Superintendent Police, Dec. 20-25, 2010, (name withheld on request)

Abbas, Hassan. "Police & Law Enforcement Reform in Pakistan: Crucial for Counterinsurgency and Counterterrorism Success." Clinton, Mich.: Report for Institute for Social Policy and Understanding, April 2009.

Frederic Grare, "Political Dimension of Police Reform in Pakistan," Policy Outlook, Carnegie Endowment for International Peace, July 14, 2010

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?

71

84a. In law, there is an independent mechanism for citizens to complain about police action.

Yes

No

Comments:

Appeals under section 22A of the Code of Criminal Procedures.

<http://pakistanconstitution-law.org/category/02-the-code-of-criminal-procedure-1898/>

Provision for a complaint cell exist under the Police order 2002. One can also go to appellate courts or use the complaint mechanisms provided by the Chief Ministers of provinces, Inspector-General of Police, etc.

37. Establishment of District Public Safety and Police Complaints Commission

http://www.nrb.gov.pk/publications /Police_order_2002_with_amendment_ordinance_2006.pdf

References:

Criminal Procedure Code (CrPC) Pakistan, section 22A

Police Order 2002, 37

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

Comments:

In practice, this varies from case to case and also depends on the nature of the issue. The actions by the complaint cells is mostly slow and ineffective. In general a complaint can take 15 to 30 days for resolution. This response is improved if the police officers are personally supervised.

The Citizen-Police Liaison Committee (CPLC) in Karachi is a nonpolitical statutory institute which should be followed as a model all across Pakistan (Abbas, p.20).

www.cplc.org.pk

References:

Email correspondence-Superintendent Police, Dec. 20-25, 2010, (name withheld on request)

Abbas, Hassan. "Police & Law Enforcement Reform in Pakistan: Crucial for Counterinsurgency and Counterterrorism Success." Clinton, Mich.: Report for Institute for Social Policy and Understanding, April 2009.

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

Comments:

The National Accountability Bureau (NAB), and Federal Investigation Agency (FIA) investigate corruption cases committed by law enforcement officials.

References:

National Accountability Bureau (NAB) under the National Accountability Ordinance, 1999

www.nab.gov.pk

Federal Investigation Agency (FIA) FIA Act, 1974, www.fia.gov.pk

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

Comments:

This process is marred by compromises, bribes, corruption and political interference. The breakdown of the complaints against police officials are : 95 percent from District & Session, High Court and Supreme Court, 3 percent from the Ombudsman and 2 percent from miscellaneous resources that include senior officials and the Chief Minister's secretariat.

Hardly any complaints come in from the police complaint cell or district public safety commissions. The latter have been either non functional in most of the districts or thwarted by the police officials.

References:

Email correspondence-Superintendent Police, Dec. 20-25, 2010, (name withheld on request)

Abbas, Hassan. "Police & Law Enforcement Reform in Pakistan: Crucial for Counterinsurgency and Counterterrorism Success." Clinton, Mich.: Report for Institute for Social Policy and Understanding, April 2009.

Frederic Grare, 2010, "Political Dimension of Police Reform in Pakistan", Policy Outlook, Carnegie Endowment for International Peace, July 14, 2010

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:

Chapter XII of Police Order 2002, Regulation, Control and Discipline of the Police has relevant provisions.

Criminal Procedure Code here: <http://pakistanconstitution-law.org/category/02-the-code-of-criminal-procedure-1898/>

Police order here: http://www.nrb.gov.pk/publications/Police_order_2002_with_amendment_ordinance_2006.pdf

References:

Criminal Procedure Code 1898, sections 7, 22A, 29 and 32

Police Order 2002, Chapter XII

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.

Comments:

Several recent high-profile cases demonstrate the law enforcement officials are not immune from criminal proceedings. However, accountability and investigation in low-profile cases is the exception, not the norm.

The Federal Investigation Agency (FIA) has investigated the District Police Officer of Rawalpindi, Saud Aziz, in a case brought to the Anti-Terrorism Court regarding the murder of former Prime Minister Benazir Bhutto.

Another recent case is the investigation of the alleged involvement, negligence and/or complicity of police officials in the murder of two young teenage boys in Sialkot.

References:

Email correspondence-Superintendent Police, Dec. 20-25, 2010, (name withheld on request)

Mudassar Raja, "SP denies becoming approver in BB case," Dawn News, Oct. 24, 2010

"FIA submits BB murder case challan in ATC," The Daily Times, Nov. 16, 2010, http://www.dailytimes.com.pk/print.asp?page=20101116story_16-11-2010_pg7_4

Nasir Iqbal, "SC orders probe into Sialkot lynching of two brothers," Dawn News, Aug 21, 2010

Abbas, Hassan. "Police & Law Enforcement Reform in Pakistan: Crucial for Counterinsurgency and Counterterrorism Success." Clinton, Mich.: Report for Institute for Social Policy and Understanding, April 2009.

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.
