

# IFES FINAL REPORT

## Pakistan: Post-Election Community-Based Mediation and Adjudication Program

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FINAL REPORT  
**PAKISTAN: POST-ELECTION COMMUNITY-BASED MEDIATION AND ADJUDICATION PROGRAM**

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# ACRONYMS

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<b>BBS</b>	Black Box Sound
<b>CEC</b>	Chief Election Commissioner
<b>CMS</b>	Complaints Management System
<b>DAI</b>	Development Alternatives, Inc.
<b>DEC</b>	District Election Commissioner
<b>DRL</b>	Bureau of Democracy, Human Rights, and Labor
<b>EP</b>	Election Petition
<b>ET</b>	Election Tribunal
<b>ETM</b>	Election Tribunal Monitoring
<b>FAFEN</b>	Free and Fair Election Network
<b>IFES</b>	International Foundation for Electoral Systems
<b>NDI</b>	National Democratic Institute
<b>PEC</b>	Provincial Election Commissioner
<b>PILDAT</b>	Pakistan Institute of Legislative Development and Transparency
<b>PSA</b>	Public Service Announcement
<b>RO</b>	Returning Officer
<b>SDPI</b>	Sustainable Development Policy Institute
<b>TAF</b>	The Asia Foundation
<b>UNDP</b>	United Nations Development Program

# EXECUTIVE SUMMARY

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Achieving a fair and timely resolution of electoral disputes is critical for a democratic electoral process. For Pakistan, key administrative and procedural shortcomings in the electoral processes need be addressed to enhance credibility and acceptance of election outcomes, promote peaceful transitions of governments in the future and overcome current political challenges.

IFES' *Pakistan: Post-Election Community-Based Mediation and Adjudication Program* was designed to strengthen electoral dispute resolution processes and mitigate the potential for election violence by accomplishing the following: 1) streamline and standardize adjudication processes; 2) build capacity of electoral and adjudicatory bodies to effectively address electoral complaints; and 3) enhance key stakeholders and the general public's understanding and use of adjudication processes to resolve election-related conflicts. In order to achieve these goals, IFES focused on four major programmatic areas:

**Election Tribunal Monitoring:** IFES' Election Tribunal (ET) Monitoring activities involved the collection of data and preparation of comprehensive reporting in order to strengthen formal electoral dispute resolution mechanisms. Project findings highlighted considerable administrative and procedural delays at several stages of the ET process. A cross-section of stakeholders recommended improvements to the ET process and provided a measurable starting point for effective policy and legal reform for future electoral dispute resolution efforts.

**Media Education:** In conjunction with the Election Commission of Pakistan (ECP), IFES drafted an *Election Dispute Resolution Pamphlet* to facilitate greater understanding of dispute resolution processes detailed in Pakistan's Election Law, concentrating mostly on post-election procedures. Printed and translated pamphlets were widely circulated in English, Urdu and Sindhi as well as posted on the ECP website for general public access. Additionally, IFES organized two events to improve the media's understanding and reporting of elections.

**Voter Education:** IFES implemented the first distinct voter education program on Pakistan's electoral complaints process through a series of nationwide radio PSAs concerning the election complaint process in the two weeks leading up to the election.

**Joint ECP-IFES Election Dispute Resolution Conference:** The conference, *Evolving Principles and Practices for Resolving Election Complaints: Pre-Polling Day*, was held near Murree, Pakistan, with representation from officials from the ECP Secretariat, provincial and district offices and by select district and sessions court judges who had previous experience serving as District Returning Officers and Returning Officers during the election. This conference raised awareness and facilitated a proactive discussion of a complaints process.

Despite on-going political activity and administrative challenges, IFES' project achieved significant achievements.

# I. BACKGROUND

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The Election Commission of Pakistan (ECP) is responsible for administering all complaints related to the electoral process in Pakistan. These complaints relate to alleged violations of the election law and code of conduct. During both the 1997 and 2002 General Elections, approximately 900 complaints were received and managed by the ECP – although many of these complaints were dismissed due to insufficient information. The lack of time limits on the filing of complaints during the electoral calendar and the lack of a standardized form for submitting complaints forced the ECP to respond to submissions received in a variety of formats (letter, fax, telephone, in person), which allowed the record of complaints to vary considerably in quality and completeness of information.

For the 2002 elections, the ECP established complaints cells at the Federal Secretariat as well as at the four Provincial Election Commissions (PECs). For the 2008 elections, the ECP established complaints cells at the national, provincial and district levels. This meant that approximately 160 ECP officials were directly involved in the complaints process, which was a significant allocation of personnel and a tangible indication of ECP commitment to the process. A review of observer reports from the 2002 general and 2005 local government elections indicated there was a general lack of understanding by the various stakeholder groups around the complaint process. IFES' activities were designed to increase awareness of the complaint adjudication process in Pakistan.

In general, Pakistan's numerous adjudication processes are not well understood which serves to exacerbate key stakeholders' distrust of the ECP. The credibility of the ECP significantly decreased due to the lack of a coherent and consistent system for election complaints adjudication and appeals from the perspective of the civil society and the general public. Dispute resolution mechanisms were often complicated and technically nuanced, increasing the likelihood of tension during and after elections.

The tense political situation in Pakistan warranted an improved mechanism for complaints submission and adjudication, a better informed public, and trained officials manning the complaints mechanism at every level. This project worked to prevent and resolve electoral disputes and election violence on three levels by:

1. Improving the adjudication process by developing, streamlining, and standardizing procedures;
2. Building capacity of electoral bodies to effectively address electoral complaints via improved training programs and better manuals;
3. Enhancing key stakeholders' and the general public's understanding and use of the adjudication process to resolve election-related conflicts through fair and effective dispute resolution techniques.

## II. ACTIVITIES

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The project began in October 2007 with the recruitment and deployment of a Complaint Adjudication Advisor and a Training Advisor to complement IFES' core country team. Program staff reviewed the manuals and training programs for presiding officers, poll workers and returning officers, making recommendations to UNDP to improve content and format. Additionally, IFES utilized its relationship with colleagues at NDI and TAF to raise the issue of election complaint training as a component of those organizations' planned training programs for political party polling agents and domestic observer networks.

The project greatly benefitted from the strong professional relationship between the ECP and IFES fostered through IFES' USAID-funded Pakistan Election Support Project. IFES used its rapport with the ECP to engage officials at the federal, provincial and district levels. The ECP was cooperative and receptive of both the project and IFES' recommendations vis-à-vis the complaints process. The ECP was also very proactive in proposing additional improvements to the process.

### A. IMPROVEMENTS TO THE COMPLAINTS ADJUDICATION PROCESS

#### *Concept Paper*

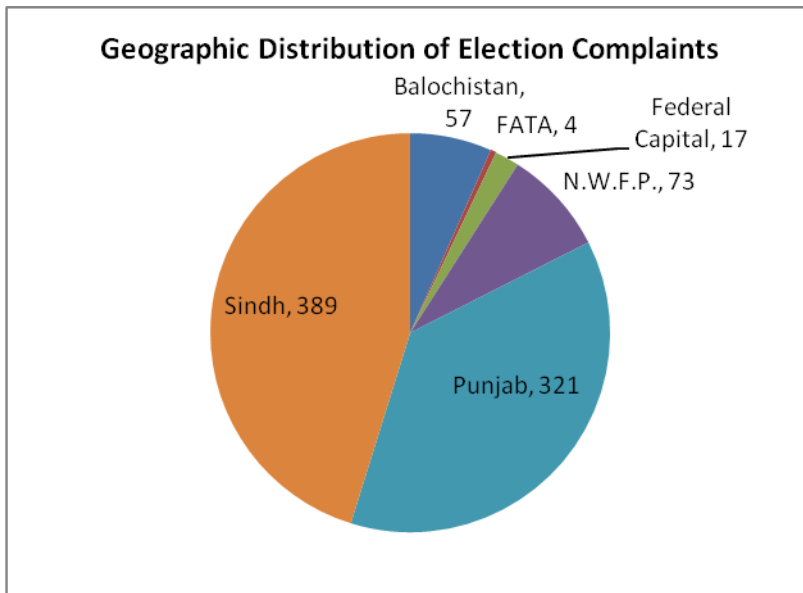
IFES developed and submitted a concept paper to Secretary Dilshad on November 21, 2007 (Annex 1) based on its preliminary work. The concept paper contained a number of recommendations that focused on short-term, high-impact activities aimed at enhancing the credibility of the ECP's management of the complaint process, increasing transparency vis-à-vis the main electoral stakeholders such as political parties and observer groups, as well as facilitating media coverage of the process.

The following table summarizes the concept paper recommendations and details progress towards their adoption by the ECP:

Recommendation	Status
<b>Standard complaint form</b>	Adopted by ECP and currently in use
<b>Standardized coding template</b>	ECP agreed with need for standardized coding but it was not achieved during the program period. IFES intends to pursue this further under its ongoing USAID-funded election support program, scheduled to continue through December 2010. This will be pursued in conjunction with the development of a Complaints Management System.
<b>Standard transmittal form</b>	Not yet adopted. Will be further pursued under ongoing USAID funding in conjunction with Complaints Management System. This will also require ECP coordination with government institutions involved in the complaints process.
<b>Developing a complaints manual</b>	Adopted.
<b>Use of a database</b>	Adopted. Complaint system in place at ECP secretariat level.

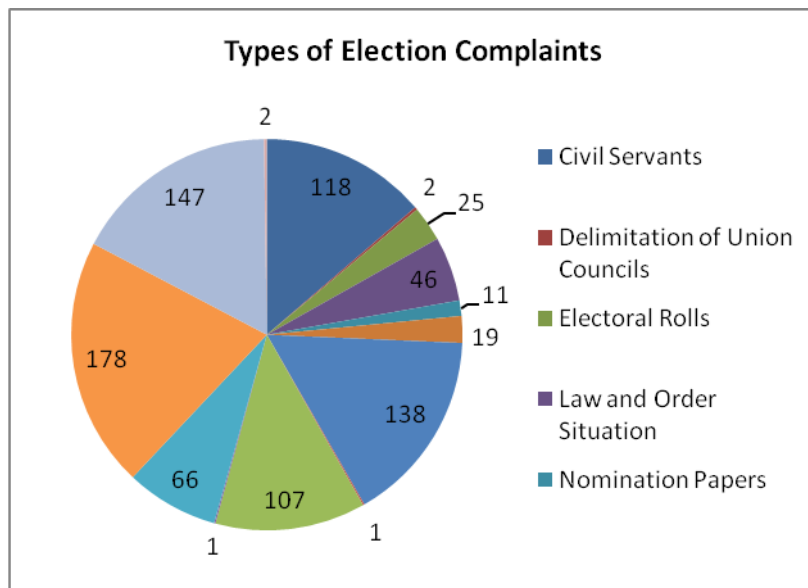
### ***Electoral Complaints in Islamabad***

As of January 1, 2008, the ECP Federal Secretariat in Islamabad had received a total of 861 complaints. In terms of the number of complaints filed geographically, the breakdown is as follows:



The vast majority of complaints came from the two largest provinces: Sindh and Punjab. With Benazir Bhutto's assassination on December 27, 2007 and the ensuing violence, many observers speculated that the number of complaints filed would increase dramatically – the complaints process is commonly viewed as an acceptable outlet for expressing dissatisfaction with the electoral process, and the extent to which complaints increase or decrease may be influenced by the violence that occurred acting as a substitute for the complaints process.

In terms of the numbers and types of complaints (14 different offenses identified) filed; the breakdown is as follows:





Although a large amount of media and political party attention had focused on the role of the *Nazims* (local government authorities) in the electoral process, there were only a total of four complaints filed with the ECP Federal Secretariat regarding these officials. The *Nazims* have often been cited in the media for complaints about the alleged use of state machinery, but just 66 (8% of the total) complaints were filed for this offense.

### ***Complaints Training***

IFES developed a training plan targeting traditional community leaders and political party representatives in the provinces. ECP officials were encouraged to attend. Four trainers were hired and a training-of-trainers session took place at the IFES office from December 18-19, 2007. Training sessions began on December 27, 2007, following the Eid holiday.

IFES suspended its training program for political parties and community leaders following the Bhutto assassination and subsequent unrest.

### ***Legal Analysis***

A legal review and analysis was undertaken to understand the sometimes confusing and complex dispute resolution processes under the law in Pakistan. Four memoranda were shared with DRL for its records and information. In addition, IFES produced two memoranda reporting the appointment of ET judges and shared them with DRL for its records and information (Annex 2).

### ***Election Complaints Handbook***

The ECP Election Complaints Handbook, which details complaints processes for all electoral stages, was approved by the ECP in January 2008. The handbook is designed for election officials and key stakeholders. It was translated into Urdu and Sindhi and distributed to all election official offices, major political parties and election observation groups throughout the country. Copies of the new complaints form and a CD of all materials needed for reproduction was also included. The distribution was originally scheduled for early January 2008 but was delayed until end of the month due to delayed approval by the ECP. The handbook was also made available on the ECP website, [www.ecp.gov.pk](http://www.ecp.gov.pk).

### ***Electoral Tribunal Monitoring***

#### **1. Phase I - ET Monitoring Activity**

Phase I of the ET monitoring project began in January 2008 following deployment of the Monitoring Advisor. By February IFES had trained seven local attorneys as ETMs from all four provinces. The number of ETMs was increased from the initial four to seven for more populated provinces of Sindh and Punjab where most of the challenges to election results were anticipated due to hotly contested seats and obvious population centers. The two additional ETMs also covered tribunal hearings at the provincial High Court's satellite benches in major cities in the country. The ETMs followed the entire ET process by gathering data and observing reporting techniques on the effectiveness, timeliness and transparency of the process. This part of the DRL project was the first comprehensive examination of the ET process and generated recommendations for improvement for the ECP and the judiciary.

During a two-day training workshop held at IFES' office on February 21 – 22, 2008, ETMs were trained on Election Law and the EP and Tribunals processes including a legal refresher course on the Code of Civil Procedure of 1908 and modifications made to the Code by the elections laws. The workshop was conducted by IFES' Complaints Advisor and Monitoring Advisor. In addition the training was enhanced by a presentation by Justice (Retd.) Abdul Rauf Lughmani, a former judge of the Peshawar High Court who presided over ETs during prior elections. Syed Haziq Ali Shah, Advocate of the High Court conducted a course on the Code of Civil Procedure. Maulana Abdul Rauf

Jan, a former provincial assembly candidate, also gave a presentation on a candidate's perspective of the ET process. Mr. Sheikh Nawaz Khan, Section Officer-Legal of the ECP, was invited but was unable to attend. In addition, ETMs received instruction on the program's methodology and training on their two primary tasks: (1) information and data collection related to the court management system and EPs and (2) monitoring of ET proceedings to assess effectiveness, timeliness and transparency of the process.

During January and February 2008, the Monitoring Advisor met in person and conducted interviews with numerous stakeholders including lawyers, retired judges, Pakistan's former Law Minister, a sitting Senator, the Baluchistan Law Minister, academics and current and former candidates. These interviews centered on the tribunal processes to determine an appropriate monitoring methodology and to develop a further understanding of the practice of law at these critical post-election dispute proceedings. In addition, numerous in-person meetings were held with ECP's Section Officer-Legal, the project's main contact point in the ECP Secretariat.

EP and ET Monitoring commenced after notification of election results were published in the official Government Gazette on March 1, 2008. Field visits began in late March when EPs were transferred to the provincial high courts from the ECP. Meanwhile, ETMs visited high court benches to collect information related to processing and managing EPs at each High Court bench. Standard monitoring forms were designed to collect information on internal tracking of EP's paperwork flow, court administrators responsible for overseeing the EP and general case management processes. Several unforeseen administrative barriers were encountered in the initial phase due to hesitation of the concerned court staff to share required details<sup>1</sup>. These issues were resolved in April and IFES encountered little difficulty, subsequently, in obtaining quantitative data from provincial High Courts or access to ET Hearings.

The monitoring of each EP included capturing data on relevant dates, concerned parties, appointed judges, substantive allegations and court orders to assess the value and shortcomings of the current adjudication system. All data collection and information gathering was obtained by ETMs through visits to the courts or telephone calls to courts. Data collected was intended to provide a picture of various timeframes in the EP process, including time intervals between hearings. The data provided significant insight as to the role of various stakeholders in the process and essential descriptive statistics related to, amongst other things, the kinds of charges being alleged by aggrieved candidates.

EP and ET monitoring continued with field visits in April, May and June 2008 and continued during Phase II in August, September and October 2008. Six ETMs and the IFES Research Assistant<sup>2</sup> visited all of the provincial High Court benches to collect information related to processing and management of EPs.

In addition, IFES staff conducted field visits to provinces to undertake interviews with provincial election commission officials and administrative staff at provincial High Courts about the EP/Tribunal process. Substantial insights were gained related to reported provincial court case management system and its required protocol. Provincial stakeholders were forthcoming to IFES staff about deficiencies in the process and offered recommendations for improving and expediting

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<sup>1</sup> IFES formally requested an official letter from the ECP announcing the monitoring project to the courts in February 2008 and the same was approved by the Federal Secretary. No ECP letter was forthcoming by the first week of April. IFES then issued a joint letter from ECP-IFES to announce the Monitoring Project.

<sup>2</sup> The project trained seven Pakistani attorneys as ETMs. One attorney monitor was dismissed for performance reasons. He was replaced by a Research Assistant.

the process generally. IFES achieved an important capacity development success at the PEC level as several PECs now collect quantitative data about EPs—an activity that PECs had not undertaken in the past.

ETMs attended over 150 tribunal hearings and collected data on over 250 EPs as of June 30, 2008. ECP reported that 265 EPs were filed and completed as of the last lawful date for filing; however, due to ECP's internal treatment of statutorily deficient EPs some EPs had not made their way to the provincial High Court system by June 14, 2008.<sup>3</sup> All data collection and information gathering was obtained by ETMs through visits to the courts or telephone calls. Preliminary analysis of EPs and ET proceedings were facilitated by the use of an IFES-developed database, which captured the project's quantitative data. Completion of initial phase of quantitative and qualitative data collection and initial analysis resulted in a Preliminary Report. IFES also presented the Tribunal Monitoring Project's preliminary findings to DRL in late July 2008 in Washington DC.

On June 24-25, 2008, IFES conducted a debriefing workshop for the monitoring team. The workshop focused on data collection efforts and field experiences of the ETMs. It included exercises to triage data and ensure data accuracy in preparation for a preliminary report on the project's findings. ETMs had the opportunity to share field experiences concerning the quality of contacts with PECs and court administration staff. As practicing Pakistani attorneys, the ETMs offered invaluable insight into tribunal procedures, court administration case management and the practice of law by the Bar in Pakistan. Considerable time was dedicated to gathering ETMs' professional observations and analysis of the impacts of the process and procedures for ETs. This resulted in initial recommendations for changes to regulatory and legal frameworks. The workshop was conducted by IFES' Monitoring Advisor and IFES' national attorney who was also instrumental in training the ETMs.

After coming to an initial stopping point<sup>4</sup> in June 2008, EP and ET Monitoring resumed with field visits in September 2008. IFES visited the provincial High Court benches to collect information related to processing and management of EPs at each High Court bench, focusing on ET hearing dates and continued to monitor ET trial proceedings. As in the past, standardized monitoring forms were used to collect information. As mentioned above, in September, IFES encountered an unforeseen barrier to the collection of quantitative data due to a court order issued by the Chief Justice of the Lahore High Court denying IFES or its agents access to any data related to EPs or ETs, although the court order did permit attendance at court proceedings. IFES was unable to obtain a copy of the order and made all reasonable efforts to resolve this issue to resume data collection in accordance with the project's methodology. IFES believes it took all reasonable steps to resolve this issue to resume data collection in accordance with the project's methodology and Pakistani protocol for interacting with public officials. One further point should be noted: IFES was informed by the ECP that all further correspondence with the Provincial High Courts related to this project must originate from the ECP Secretariat.

Beginning in September 2008, the project began distribution of the ET Monitoring Project's Preliminary Report to over 80 civil society organizations. IFES distributed over 1,200 printed copies of the Preliminary Report on ET Monitoring to the Pakistan Senate, the National Assembly

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<sup>3</sup> Once election results are reported in Pakistan's official *Gazette* Petitioners have 45 days to file their challenge. It is important to note, and IFES will discuss this issue in its forthcoming preliminary report, that ECP treats administrative deficiencies on Election Petitions as filed on time but requests that Petitioners remedy the deficiency.

<sup>4</sup> IFES had submitted a reprogrammed request as well as a request for more funding to continue the project scheduled to end on August 31, 2008.

and Provincial Assemblies. IFES distributed the Preliminary Report with the assistance of DAI, USAID's PSLP implementer. Additionally, copies were distributed to individual members of the parliament and each legislator's resource center and library in October 2008. The report was also distributed to 15 major political parties and several legal scholars. IFES sought written comments and recommendations from all organizations and individuals who received the Preliminary Report and requested improvements and comments on the ET processes. The deadline for submission for written comments was extended until mid-December 2008.

IFES received feedback from 25 civil society organizations and published each organization's comments in full in the Annex to the Final Project Report (Annex 3). Political parties submitted no feedback during the formal written request process but provided comment at the November 2008 workshop on ET Monitoring, discussed below. Requests for *formal* comment from the public and stakeholders by institutions or agencies seeking insights and input on governmental policy matters are novel. IFES spent considerable time communicating, explaining, and seeking input from stakeholders often requiring continued—at times daily—follow-up with stakeholders committed to submitting comments.

In an effort to seek additional comment on the Preliminary Report, IFES sought ECP involvement and cooperation in hosting four provincial workshops. The workshops would provide an opportunity to build capacity at the institutional level as it would enable ECP to orally take comments and recommendations related to the ET process in a formal, "open hearing" type proceeding. It was also hoped that through these workshops the stakeholder community would gain greater confidence in the ECP's interest and desire to reach out on specific issues.

After the bombing of the Marriot in Islamabad in late September 2008, the plans for four provincial workshops were changed. It was decided to conduct a single National ET Workshop in Lahore on November 14, 2008, involving participants from civil society organizations, political parties and academia. Several invited stakeholders failed to appear or participate.

In addition, IFES continued to address public awareness activities related to post-election disputes by focusing on improved media reporting on the topic. IFES held a National Media Briefing on the Preliminary Report designed to improve reporting by the media on ETs. Over 50 court reporters, editors and producers from print, TV and electronic media from all four provinces attended the half-day workshop. IFES also awarded a sub-grant to a Pakistani Civil Society Organization to monitor and evaluate IFES' outreach to English and local language media on improved reporting on election disputes. The organization's report about the effectiveness of IFES' public outreach efforts related to election dispute resolution effort is appended (Annex 4).

## 2. Phase II - ET Monitoring Activity

Data collected by IFES in Phase II provided a more comprehensive picture of various timeframes in the EP process, especially those between first the hearing and subsequent hearings until resolution of the dispute. Such information provides substantial insight as to the role of the various stakeholders in the process and provides essential descriptive statistics related to, amongst other things, the kinds of allegations that are being brought forth by aggrieved candidates. Due to the methodology employed, IFES has a high degree of confidence in its reported statistics. It also should be noted that IFES is confident that conclusions made based on the other three provinces' hearing data may be generally applicable to cases found at the Lahore High Court and its coordinate benches, despite IFES' restricted access in Lahore.

In December 2008, IFES completed the analysis and comprehensive report through its ET monitoring activities, including the collection of quantitative data from provincial High Court management systems, qualitative observations of ETs and input from the ECP and various other stakeholders of the EP process. This analysis, like IFES' Preliminary Report on ET Monitoring, found

the resolution of challenges to election results under current administrative and legal processes is wrought with delay. In addition, each ET Monitor was assigned a technical legal component of the ET process to further research and analyze in a written report. These reports complement the Final Project Report and provide an overview of legal issues and the practical application of these issues. It also outlines their significance and impact on ETs. Several ET Monitor reports are appended to the Final Project Report on ET Monitoring.

The Final Project Report packet includes a 10-page Executive Summary Booklet, a 60-page Final Project Report and an Annex to the Final Report containing written stakeholder feedback on the ETM project's Preliminary Report (with other documents that complement findings and analysis). In total, 1,500 copies in Urdu and 2,000 copies in English were printed. Fifty copies of the "Final Report on ET Monitoring Project (Phases One and Two February – November 2008)" were sent to the ECP for distribution to the Chief Election Commissioner and Members of the Election Commission, Chief Justices of the High Courts, all wings and branches of ECP Secretariat and Provincial Election Commissioners.

IFES' ET Monitoring Final Project Report was distributed to the National Assembly, the Senate and Provincial Assemblies with the assistance of DAI. All legislators received a complete Final Report Packet in addition to translations. All legislators received English and Urdu versions of the Final Project Report and the Executive Summary Booklet (Annex 5). In addition, Provincial Assembly members in Sindh Province received Sindhi language versions of the Executive Summary Booklet.

Copies were also distributed to civil society organizations, political parties and members of the media. The Final Project Report was electronically distributed to over 800 members of the media via Intermedia's election alumni list. IFES also continued its public outreach and education of the media by distributing printed copies of the Final Project Report to members of the media that attended IFES' media workshop in April 2008 and media briefing in October 2008. In addition, the Final Project Report was distributed to fifteen major political parties in Pakistan and over 80 civil society organizations many of which provided valuable comments and recommendations which were included in the Annex of the Report.

In December 2008, IFES completed the analysis and comprehensive report through its ET monitoring activities, including the collection of quantitative data from provincial High Court management systems, qualitative observations of ETs and input from ECP and various other stakeholders of the EP process. This analysis, like IFES' Preliminary Report on ET Monitoring, found the resolution of challenges to election results under both their current administrative and legal processes is wrought with delay.

### ***Complaint Adjudication on ECP website***

The ECP website (<http://www.ecp.gov.pk>) contained a separate complaints section with several downloadable documents:

1. *Total complaints*: lists total number of complaints received at the Federal Secretariat broken out by region/province and complaint type
2. *List of all complaints*: complete list of complaints received by ECP, the complainant, province/district, constituency, complaint type and how it was handled/disposed
3. *Complaint forms and instructions*
4. *Contesting Candidates*: Following the publication of the final list of candidates in December 2007, the ECP posted a table detailing, by province, the number of nomination papers received; papers accepted/rejected by the RO; appeals filed to the Appellate Tribunals and appeals upheld/dismissed

These documents provided a summary of ECP's oversight of the initial part of the electoral cycle and represented steps toward improving/increasing the credibility and transparency of the complaints process in Pakistan. The ECP received correspondence from a number of external stakeholders praising their efforts in providing greater transparency of the complaints process by posting information of complaints on the ECP website, for this was the first time such information has been made available to the public by the ECP.

There have been discussions with the ECP regarding the possibility of including - election dispute resolution pages on the ECP website. These pages would provide a forum for public information and notices, serving to increase transparency of the process. The ECP has been equipped with the necessary resources to add these additional election dispute resolution pages to their website.

At the end of the DRL funded project, IFES initiated a dialogue with the ECP Joint Secretary–Local Government Elections, Syed Sher Afgan concerning systematic update of the website with the ongoing status of electoral complaints, that will be further pursued under IFES' ongoing USAID funding. Syed Sher Afgan was the ECP official in charge of complaints, and he attempted to manage all filed complaints during the 2008 elections by instructing District Election Commissioners (DECs) to send complaints received at their level to the Provincial Election Commissioners (PECs) so that they could be consolidated, recorded and managed more effectively by the PEC complaint cells. This was a step towards an effective management of the complain process and eliminated any confusion within the lower levels of the organization, which is a criticism made repeatedly in the Free and Fair Election Network's FAFEN reports; future technical assistance will require consistent administrative policies and procedures for handling and processing complains across all levels of the ECP in all provinces. IFES believes that adding an electoral complaints status component to the ECP website will further facilitate consolidation and management of these complaints.

Another issue to address in the future is the rudimentary Complaints Management System (CMS within the ECP IT section. While this system offers great potential over the long term, its present use is primarily as an electronic logbook for complaints received by the ECP Federal Secretariat. The IT department at the ECP had the ability to install CMS at the four PECs; however, the request to install these systems was declined when submitted to the Secretary due to the costs involved despite the fact that these costs are relatively low. IFES will continue to pursue restoration and expansion of CMS after the DRL program ends, with the goal of improving the quality and efficiency of reporting and achieving country-wide consolidation and analysis of complaints.

## **B. INCREASE ELECTORAL BODIES' EFFECTIVENESS TO ADDRESS ELECTORAL COMPLAINTS**

### ***Political Party Meetings***

In collaboration with NDI, IFES conducted individual meetings with provincial parties, candidates and the PEC in each of the provincial capitals two weeks prior to the February 2008 elections.

The purpose of the meetings was to seek opinions and experiences of these stakeholders with respect to complaints processes and solicit their recommendations for reform of the same. A draft copy of the *Complaints Handbook* was shared with the parties and the availability and importance of using the complaints forms was discussed. This feedback was discussed with the ECP in technical assistance meeting with the IFES' Complaints Advisor.

### ***Joint ECP-IFES Election Dispute Resolution Conference***

In November 2008, the ECP tentatively agreed to a joint three-day conference with the judiciary on election dispute resolution. Following this agreement, IFES submitted a no-cost extension of four

months, which was approved by DRL. The conference was intended to, for the first time; bring ECP officials and high level judicial officials together to discuss issues and challenges related to all phases of the election and the mechanisms used to resolve disputes. The conference intended to bring international jurists to Pakistan to share their experiences and provide comparative perspectives on resolving election disputes. In January, the ECP reiterated its support for a three-day event but was slow to commit to the ambitious nature of holding an event with the judiciary. In February, ECP's hesitation to commit to a three day event with officials from the higher judiciary was further increased by the pending retirement of the CEC, the appointment of a new CEC in mid-March 2009 and the growing crisis in the judiciary related to the lawyer's movement's call for the reinstatement of former Chief Justice Iftikhar Chaudhry.

As a result, in mid-February, with the agreement of the ECP Federal Secretary, the event was scaled back to a two-day conference for ECP officials and members of the lower judiciary with a direct role in resolving disputes during the pre-poll and polling day periods of elections.

By the third week of February the ECP's Chief Election Commissioner formally approved the two day conference. IFES initially scheduled on April 4-5, 2009, as per the ECP's request, the conference, *Evolving Principles And Practices For Resolving Election Complaints: Pre-Poll And Polling Day*, took place on April 5-6, 2009 and was held at the Pearl Continental Bhurban, near Murree, Pakistan. International experts from Canada and the United States provided perspectives, recommendations and guiding principles on effective pre-poll and polling day mechanisms for handling disputes. The event was interactive, with experts providing a panel presentation and facilitating interactive working sessions to engage participants on improving and developing effective and transparent remedies during these important phases on the election cycle. The conference was intended to raise awareness, spur discussion, serve as grounding for streamlining and standardizing the complaint adjudication processes.

The conference included both ECP and judicial officials from the lower judiciary. ECP participants included a diverse cross section of officials from the ECP Secretariat, provincial and district offices. Judicial officials included selected district and sessions court judges who had previous experience as District Returning Officers and Returning Officers during elections. District and session courts judges are nominated by the Chief Justices of the respective Provincial High Courts. In all, there were 40 participants.

In order to ensure all logistics and protocol arrangements were in place for the conference, a part-time event coordinator and Project Officer were recruited in March 2009. An invitation was issued to DRL to send participants to the conference; DRL extended its regrets but expressed support for the event.

### ***Providing Technical Advice to ECP***

IFES continued direct support to the ECP in preparation for future pre- and post-election adjudicatory mechanisms. IFES met frequently with the joint secretaries and the section officer-legal to keep ECP apprised of project activities, particularly the progress of ETMs in the field. These discussions included informal discussions with the Federal Secretary and the Joint Secretary for Local Government Elections. Discussions focused on preparing ECP for the possibility of handling election complaints during the pre-poll and polling day periods if local government elections are called mid to late 2009. In addition, IFES provided technical support to the Joint Secretary for Local Government Elections to provide testimony before the Pakistan National Assembly Committee on Parliamentary Affairs regarding proposed legislation that seeks to amend provisions of the Representation of the People Act (1976) as it related to ETs. The proposed legislation would seek to prioritize ET proceedings in the provincial High Courts by mandating quicker processing by judges and imposing fines to parties who delay proceedings.



## C. INCREASE UNDERSTANDING OF THE ADJUDICATION PROCESS TO RESOLVE ELECTION RELATED CONFLICTS

### ***Voter Education***

IFES developed a memo outlining the voter education component of this project that was approved by the ECP in early December 2007.

Through a competitive bidding process involving six bids, IFES identified BBS to produce, place, and monitor radio PSAs related to the election complaint process. IFES had previously worked with BBS on voter education projects related to the display period for the voter registry. IFES was impressed by the comprehensive placement strategy on both AM and FM radio stations detailed in the BBS proposal (AM stations for rural audiences, including Balochistan province; FM for major urban areas).

In collaboration with BBS and full consultation with the ECP, IFES developed scripts for a series of eight radio PSAs. The ECP approved these scripts with minor edits. IFES then produced a complete set of PSAs in English, Urdu and Sindhi, and developed a media campaign over AM and FM radio to achieve countrywide coverage.

The PSA campaign was scheduled to begin December 21 and conclude January 7, but it was suspended following the assassination of Bhutto on December 27. Following a decision by the ECP to re-schedule the election date to February 18, 2008, IFES resumed its PSA campaign from February 8 – 17, 2008.

Radio spots were also monitored by the production company, BBS, to ensure PSAs aired as scheduled. Both FM and AM frequencies were utilized for maximum coverage around the country. Twenty-four different stations of Radio Pakistan (state radio) and 30 different FM stations aired the PSAs, each with a broadcast radius of 70 kilometers. The PSAs were aired at various planned times throughout each day to maximize reach to the target audience.

This was the first time that a distinct voter education program took place on the electoral complaints process in Pakistan. The campaign was able to reach urban and rural voters from various backgrounds, thereby improving public awareness of the complaint adjudication process and mitigating the potential for violence and conflict among the stakeholders.

In the wake of violence that erupted after the assassination of Benazir Bhutto, IFES submitted a reprogramming request to DRL in January 2008. Following a further assessment of the ground realities and input received from the ECP, IFES submitted a revised request for additional funding which included a proposal for undertaking a targeted public information campaign on post-election dispute resolution and reallocating the funds for additional security services and the increased labor for the Complaints Advisor and the Monitoring Advisor. While DRL approved the reprogramming request, IFES was unable to obtain additional funding to further support the project.

### ***Media Pamphlet***

IFES drafted an *Election Dispute Resolution Pamphlet* with the ECP to provide media with a ready reference guide for understanding the various and overlapping dispute resolution processes under the Election Law, focusing on especially post-election procedures. The English version of the pamphlet was translated into Urdu and Sindhi for distribution throughout the country by media agencies and regional Press Clubs in the third quarter of FY 2008. English, Urdu and Sindhi language versions were distributed directly to IFES' April 2008 media workshop participants and via email to over 800 additional journalists and editors who regularly report on election matters. In



addition, both the *Election Dispute Resolution Pamphlet* and the *Complaints Handbook* were distributed to Provincial Assembly resource centers and directly to members of the National Assembly and Senate. The materials were placed on the ECP website for general public access. Intermedia assisted IFES in distribution to 800+ journalists and editors, using their media alumni database of previously trained editors and journalists who report on elections. DAI through USAID's Pakistan Legislative Strengthening Project assisted with distribution to the National Assembly, Provincial Assemblies and the Senate. DAI Provincial Coordinator in Lahore reported:

“The IFES manuals regarding election monitoring have been distributed to the members with in the house in today’s session. For which I got a written permission from Mr. Speaker to deliver the manuals in the house. Mr. Speaker was a bit reluctant but I make him satisfied that the information given in the manuals is how much important for the members. And during the session members were looking in to the manuals. 310 members got the IFES manuals on election.” (June 20, 2008, email from Pakistan Legislative Strengthening Project Provincial Coordinator, Lahore to Pakistan Legislative Strengthening Project’s Deputy Director.)

“The IFES manuals have left an impressive impact on the members. The MPs who daily visit to our PITRC [Provincial Resource Center] appreciated the information provided in the manuals. They realized its importance and are thank full of the project and IFES by sharing this important information with them which had never been provided before. I also shared the manual with Mr. Brayan D. Hunt principal officer of US consulate in Lahore and his PR Ms. Terci in biweekly meeting on Friday June 21. They also kept a copy in US library. Few local NGOs like AWAMI (Awareness, Watch & Mobilization Institute) and Himat society has asked me for these manuals.” (June 23, 2008, email from Pakistan Legislative Strengthening Project’s Provincial Coordinator, Lahore to Pakistan Legislative Strengthening Project’s Deputy Director.)

IFES responded with additional copies of the materials.

In order to assess the usefulness of the *Election Dispute Resolution Pamphlet* for the media, IFES designed and administered a questionnaire for this population using a combination of an online survey portal called Survey Monkey and follow-up telephone calls. While only 3.5% of the total media distribution list responded, 99% of the media workshop participants responded. The feedback was generally positive. The majority of respondents said they read and would keep the pamphlet and indicated they would share it with colleagues and use it as a future resource. A majority reported that since receiving the pamphlet they had produced a story and indicated that they used the pamphlet to assist writing their story.

To increase feedback response rates and accuracy, IFES issued a request for a proposal seeking a Pakistan-based civil society to monitor and evaluate the effectiveness of IFES’ outreach to the media and track any improvements of media coverage of electoral disputes related to ETs. IFES awarded the grant to SDPI. The sub-grantee’s mandate included evaluating the use and efficacy of two resources IFES produced under this grant earlier in 2008: the *Complaints Handbook* and *Election Disputes Resolution Pamphlet*.

## **Events**

### **a. Public Awareness: Media Workshop I**

IFES’ initial tracking of media reports indicated that news coverage of the past elections often conflated numerous election dispute processes. Precise reporting of post-election disputes is required to enhance the public’s understanding of elections in Pakistan and can help promote a

peaceful transition of government in the country. To improve reporting of election disputes, IFES conducted on April 11, 2008, a one-day briefing workshop for national and provincial media on Pakistan's electoral dispute resolution mechanisms, with a special focus on the EP/Tribunal process. The workshop was designed to develop the capacity of the media to understand and report on electoral and legislative issues related to dispute resolution. Relevant beat reporters and editors from TV, radio and newspapers covering politics, elections and court proceedings attended the workshop. Nineteen participants from across the country attended the event. Participants were asked to complete a written questionnaire about the workshop content and structure. The feedback provided was generally positive; participants found the workshop informative and relevant to their work. ECP Federal Secretary Kanwar Dilshad addressed the workshop. The workshop was conducted by Matiullah Jan, a well-known media consultant and Pakistan television personality and Haziq Ali Shah, IFES' national attorney in Pakistan.

#### **b. Public Awareness: Media Workshop II**

On October 14, 2008, IFES held a National Media Briefing on the Preliminary Report's findings. This media event complemented the April 2008 media briefing workshop. Like the first event, fifty relevant beat reporters and editors from TV, radio and newspapers covering politics, elections and court proceedings attended the workshop—many of whom attended the April 2008 event came again. ECP Federal Secretary Kanwar Dilshad addressed the participants and numerous officials from the ECP Secretariat were present. The October 2008 National Media Briefing provided an opportunity for IFES to present the project's findings as well as for the ECP to highlight its electoral reform agenda. The event resulted in both English and local language media coverage including newspaper and television stories about the ET Monitoring project, its findings and the processes in general. This event generated several news stories in both English and Urdu press.

#### **c. Project's final findings: Joint-Sitting of the Pakistan National Assembly and Senate, Committee on Law, Justice and Human Rights**

On December 22, 2008, IFES presented the project's final findings to a special joint-sitting of the Committees on Law, Justice and Human Rights of the Pakistan Senate and National Assembly. The event was held as a joint endeavor with DAI through the USAID's Pakistan Legislative Strengthening Project. The Pakistan Legislative Strengthening Project provided logistical planning support and IFES briefed parliamentarians on both potentialities generally for election reform in Pakistan as well as the project's findings.

### III. ACHIEVEMENTS

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Amid high levels of political volatility, IFES' Pakistan Complaint Adjudication project has achieved significant progress towards the overall goal of preventing and resolving electoral disputes and election violence by raising awareness and improving the electoral complaint process within the ECP and among key stakeholder groups.

Main project achievements are:

- Adoption and utilization of a standardized complaint form by the ECP.
- Development of a complaints section on the ECP website with downloadable forms and daily updated reports on complaints received by the ECP Federal Secretariat.
- Development of a complaints manual for internal use by the ECP and key stakeholder groups.
- Completion of a training-of-trainers session at the IFES office from December 18-19, 2007. Training sessions targeting community leaders and political party representatives in the provinces began on December 27, 2007.
- Distribution of the Election Complaints Handbook to federal, provincial and district election officials and major political parties.
- Completion of the nationwide AM/FM radio PSA campaign aimed at enhancing public awareness of the ECP complaints adjudication process.
- Development of a post-election dispute resolution pamphlet with the ECP for distribution to national and provincial media and other stakeholders; available on ECP's webpage.
- Organization and facilitation on April 11, 2008, of a one-day briefing workshop for national and provincial media on Pakistan's electoral dispute resolution mechanisms, with a special focus on the EP/Tribunal process.
- Completion of Phase I monitoring activity by six ETMs and one local Research Assistant in all provinces including the assessment of the courts' management system for EPs and ETs.
- Distribution of Preliminary Report to over 80 civil society organizations, Pakistan's Federal Judicial Academy and Law and Justice Commission, Provincial High Court Chief Justices and court registrars, over 800 members of Pakistan's national and provincial media, members of the National Assembly and Provincial Assemblies and the Pakistan Senate through the USAID-funded Pakistan Legislative Strengthening Project.
- Organization and facilitation of National Stakeholder Workshop on ETs on October 14, 2008. Members of civil society and political parties presented oral input at a day-long event before the ECP's Federal Secretary, Joint Secretaries, Deputy Secretaries and the Punjab Provincial Election Commission in November.

- Presentation on December 22, 2008, of the project's final findings to a special joint-sitting of the Committees on Law, Justice and Human Rights of the Pakistan Senate and National Assembly.
- Distribution of ETM Final Project Report, Executive Summary Booklet and Annex to ECP, national and provincial legislators, civil society organizations, scholars, practitioners, High Courts, judges and political parties.
- Preparation and facilitation for a joint ECP-IFES workshop on election dispute resolution on April 5-6, 2009.
- Ongoing support to ECP on preparation for future pre- and post-election adjudicatory mechanisms.

## IV. CHALLENGES

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The project was implemented in a volatile environment. Not only did IFES face significant obstacles due to an unforeseen decision from the Supreme Court affecting key components of the electoral process, but also the political environment proved challenging as a State of Emergency was called early in the project, resulting in delays and changing conditions. Furthermore, the level of political violence and terrorist activities increased significantly during the course of the project.

In this context, IFES was cognizant of the potential for violence and public strife to impede monitoring activities and other planned events inside and outside of Islamabad. Outbreaks disrupted ET hearing schedules and slowed ET monitoring from time to time.

Access to information contained in the EP files was also denied in May 2008 by High Court administration officials at the Lahore High Court. When IFES' Lahore ET Monitor and Research Assistant were deployed to the Lahore High Court in September 2008, the High Court registrar's office denied access to all information related to EPs. The Chief Justice of the Lahore High Court on his own accord converted both IFES' May 23, 2008, and September 12, 2008, letters regarding the status of the monitoring project into a formal request before the court, which he denied. IFES took all reasonable steps to resolve the issue and resume the collection of important quantitative data in accordance with the project's methodology.

Finally, the September 20, 2008, terrorist bombing of the Marriott Hotel in Islamabad created an atmosphere of intense uncertainty. USAID took steps to increase the security of its implementers, banning events and overnight accommodations at well-known international hotels in Islamabad and other cities across the country. The deteriorating security situation in Pakistan forced IFES to cancel four planned provincial workshops on ETs.

## V. SECURITY

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The security situation in Pakistan was precarious at the inception of the program and grew increasingly more fragile. Based on its experiences from operating in security-frail environments such as Afghanistan and Iraq, IFES took several precautionary measures to reduce its risk profile. Although the overriding strategy was to keep a low-profile to avoid unnecessary attention, working with a high-profile governmental institution like the ECP required safety measures be put in place.

All national and international staff, including long-term consultants, took part in an in-house security training conducted by a global security company hired by IFES. IFES' drivers received special training on evasive and defensive driving. The safety and security of the office staff was reflected in an evacuation plan specially designed for emergencies on a field-mission anywhere in the country, at the office or residences in Islamabad.

Following a tendering process, IFES selected a national security company to provide guard duty at the office and residences, while an international security provider was given the overall responsibility for IFES' activities in Pakistan. Stationary improvements were made to IFES' buildings, such as blast film, concertina wire and a swipe-card lock at the office. Although not a primary target, the office suffered structural damage twice, when attacks took place at the neighboring restaurant, Luna Caprese, and the Danish Embassy. On numerous occasions planned events and field-visits were cancelled due to security-related incidents requiring rescheduling and alternative solutions to fulfilling contractual obligations.

The project was completed without any physical injuries to IFES' staff in Pakistan.

## VI. CONCLUSION AND RECOMMENDATIONS

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Based upon the Election Complaints Adjudication program's success, listed below are recommendations expected to have the biggest and most immediate impact. The goal is to strengthen dispute resolution mechanisms by bringing those practices in line with international standards mandating effective remedies that are fair, transparent and provide due process.

Since Pakistan's complaints and adjudicatory systems during the pre-poll and polling day period are nonexistent or weak, efforts to develop and implement processes and procedures must be a priority for future technical assistance. These possible program activities arise from IFES identified areas and/or recommendations and from stakeholders during the program, including conference and workshop participants. The following categorize broad areas:

- Standardized Pre-Poll and Polling Day Complaints Processes/Procedures.
- Integration and Implementation of Complaints Mechanism across Multi-Agency Settings.
- ET Legal Reform.

It is believed that over a period of time focusing on these areas will help build and strengthen EDR systems in Pakistan:

- Programmatic strategy should consider overlap of technical assistance and capacity building for both national election EDR mechanisms, in the long run, and local government EDR mechanisms, in the short run. Success can be achieved on these issues by sustaining relationships that have been developed on these issues.
- ECP Stakeholder outreach and Web-based tracking Mechanisms.
- Need for activities that enhance public and stakeholder awareness of the complaints and dispute resolution mechanisms generally.
- Efforts to develop and implement processes and procedures must be a priority for future technical assistance.
- Follow-up conferences at the provincial level, on the issue of election complaints; providing a basis to build momentum on this issue and broaden engagement of all stakeholders. Political parties must be brought into these conferences along with ECP, judiciary, police, district administration, NGOs, candidates and media.
- Strengthen the complaint handling framework by developing a standard complaint process and procedure jointly by the ECP and judiciary in consultation with relevant stakeholders.
- Substantial numbers of participants recommended trainings on complaints process needs should be given to district and session court judges, candidates, political parties and government officials particularly at the district level.
- Awareness sessions (election law, code of conduct, complaints process, etc.) should be held for candidates once they are officially nominated.

- Rights and responsibilities of voters need to be communicated to them more effectively. Civic/voter education is a required priority through media/public outreach campaigns. Democracy and elections needs to be part of the education curriculum in the schools.
- District Returning Officers / Returning Officers need to have more power and authority and Presiding Officers also need to be empowered, protected and honored for the job they do more effectively and efficiently.

The following categorize broad areas with possible program activities listed under each:

*Standardized Pre-Poll and Polling Day Complaints Processes/Procedures*

- Develop briefing documentation for standardization and application of processes and procedures across provinces and districts.
- Assist in the standardization of intake, handling, processing and resolution of pre-poll and polling day complaints.
- Assist in development and implementation of noncriminal administrative violations, including enforcement, and remedy provisions connected to the code of conduct and administrative adjudications outside the criminal justice system.
- Revise current complaints handbooks and develop public information for all stakeholders.
- Develop training module for ECP officials and other multi-agency officials involved in the complaints mechanisms including support of training at local level.
- Implement stakeholder outreach on procedures including briefings on how to file, required documents.

*Integration and Implementation of Complaints Mechanism across Multi-Agency Settings*

- Develop briefing documents related to instituting protocol agreements between the government department for security as well as intake and investigation of criminal and non criminal complaints (ties into standardization and training activities above).
- Support broad stakeholder discussions related to protocol agreements between local government, law enforcement, provincial governments and ECP to ensure duties and responsibilities are clearly delimited for effective election management.
- Develop communications/training related to protocol agreements.

*ECP Stakeholder outreach and Web-based tracking Mechanisms*

- Assist ECP's development of EDR dedicated web pages.
- Develop technical manual that includes reporting process by those responsible for intake and investigation and resolution/disposition.
- Continue technical assistance to further improve computerized complaints management system.



### *Election Tribunal Legal Reform*

- Review DRL final project report recommendations and begin dialogue with judiciary on reform of administrative handling of election petitions and components of trial practice which undermine effective and fair adjudications.
- Provide technical assistance to the ECP to streamline intake and referral procedures to High Courts.
- Establish links with Parliament to provide technical support and expertise on EDR issues including continued work with other USAID and international parliamentary strengthening programs.
- Establish links, communication and develop implementation strategies with legal community, the ECP and stakeholders to strike to effectively prioritize Election Tribunal adjudications by reviewing trial procedures and practices to increase effective and timeliness of providing remedy under this mechanism;
- Develop strategy for implementing administrative reforms.

# ANNEXES

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1. Concept Paper to ECP Secretary
2. Legal Memos
3. Final Report: IFES Pakistan, Post-Election Community Based mediation and Adjudication Program
4. SDPI Final Report: *Impact Assessment Study/ Media Monitoring and Evaluation*
5. Executive Summary Booklet to the Final Report: IFES Pakistan, Post-Election Community Based mediation and Adjudication Program
6. Summary Report, IFES Media Workshop, Improved Reporting on Post-Election Disputes in Pakistan, April 11, 2008
7. *Evolving Principles and Practices for Resolving Election Complaints* Conference final report